

# DIALOGUE

Fall 2009  
VOL. 13, NO. 4

## News and Perspectives from the ABA Division for Legal Services

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### LRIS

#### **Promoting LRIS in a Recession: Five Tips to Boost the Bottom Line** By Charles J. Klitsch

Lawyer Referral and Information Service (LRIS) programs have not been spared the effects of the current recession. Advertising budgets have stagnated or declined. A growing percentage of clients are unable to pay standard legal fees. Panel attorneys take longer to pay percentage fees due. [Read more...](#)

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As I write this, there are signs we are pulling out of the economic recession and things are getting back to normal. However, "normal" for millions of Americans means they live from one paycheck to the next. Just as they do with health care, the working poor lack the discretionary income to pay for legal services when the need arises. [Read more...](#)

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**By Barbara Palace**

There's strength in numbers.

This familiar phrase illustrates a recent trend among the Canadian IOLTA programs, which have begun to take a national approach to increasing revenues and creating effective grant-making processes. [Read more...](#)

### **From the Chair...**

**By Lora J. Livingston**

It is my pleasure to return to the ABA Commission on Interest on Lawyers' Trust Accounts (IOLTA) as its new Chair, especially after having served two terms as a member from 1995-2001. It is a particular honor to take the reins from the Commission's Immediate Past Chair, Jon Asher, who provided fantastic leadership especially during these difficult times. [Read more...](#)

### **Grantee Spotlight: Legal Aid of Western Missouri Helps Communities Survive the Foreclosure Crisis**

**By Kelley Carpenter, Legal Aid of Western Missouri**

As the foreclosure crisis swept across the country, stories of families losing their homes flooded the media. The subsequent impact these empty properties have on individual neighborhoods and the people left behind frequently remain hidden from the spotlight. [Read more...](#)

### **News and Notes**

#### **New Commission on Interest on Lawyers' Trust Accounts (IOLTA) Chair**

The Commission on IOLTA is very pleased to welcome the Honorable Lora Livingston as its new Chair. Judge Livingston has served on the boards of

the National Association of IOLTA Programs, Texas Equal Access to Justice Foundation, Texas Access to Justice Commission, Volunteer Legal Services (formerly Austin Lawyers Care), and Texas Center for the Judiciary.

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## LAMP

### **A Roadmap for Appointed Counsel Under the Servicemembers Civil Relief Act**

**By Mark E. Sullivan**

For civilian lawyers, one of the more vexing scenarios presented by the Servicemember Civil Relief Act (SCRA) is what to do when appointed by a court to represent an absent servicemember under section 521 (b)(2) or (d) (2). Many lawyers have little knowledge of the Act, and often no clue as to how to take the necessary steps to find, notify and advise their new civil-law client. [Read more...](#)

### **From the Chair...**

**By Donald J. Guter, RADM JAGC USN (Ret.)**

The impressive first operational year of the ABA Military Pro Bono Project, a program founded by the Standing Committee on Legal Assistance for Military Personnel, has tapped a deep reservoir of interest within the civilian bar in giving back to our active-duty American servicemembers. [Read more...](#)

### **Military Pro Bono Project Update**

**By Paul Haskins, Staff Counsel, Standing Committee on Legal Assistance for Military Personnel**

One year after the idea of building a national pro bono referral highway from servicemember clients to civilian lawyers became a reality, case traffic is moving apace and the legal world is taking notice. [Read more...](#)

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## Pro Bono

### **Pro Bono: In their Own Words**

**By The Standing Committee on Pro Bono and Public Service**

*2009 Award Recipients Discuss their Pro Bono Work*

On August 3, 2009, the five recipients of the ABA Pro Bono Publico Award were honored at the Pro Bono Publico Awards Assembly Luncheon held during the ABA Annual Meeting in Chicago. In the Summer 2009 issue of *Dialogue*, we profiled these individuals and some of their notable contributions in delivering pro bono legal services to the poor. [Read more...](#)

### **From the Chair...**

**By A. Michael Pratt**

I am honored to have been appointed the Chair of the Standing Committee on Pro Bono and Public Service and humbled that ABA President Lamm chose this country boy, born in Grindstone, Pennsylvania, to lead this important committee that does such meaningful work. [Read more...](#)

### **Policy News**

**By Standing Committee on Pro Bono and Public Service**

#### **Tennessee Enacts Rules Permitting Government, Court Employee Pro Bono**

Tennessee adopted a rule allowing judicial research assistants in the state to perform some pro bono work as well as a statute allowing government lawyers to do pro bono work. [Read more...](#)

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## **SCLAID**

### **2009 Harrison Tweed Award Winners**

Photos of the 2009 Harrison Tweed Award winners, the North Carolina Bar Association and the Philadelphia Bar Association [Read more...](#)

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LRIS Feature

LRIS

### Promoting LRIS in a Recession: Five Tips to Boost the Bottom Line

Promoting  
LRIS in a  
Recession

*By Charles J. Klitsch*

From the Chair

Lawyer Referral and Information Service (LRIS) programs have not been spared the effects of the current recession. Advertising budgets have stagnated or declined. A growing percentage of clients are unable to pay standard legal fees. Panel attorneys take longer to pay percentage fees due.

Pennsylvania's  
Notice to  
Defend

Recent issues of Dialogue have featured articles aimed at helping LRIS programs thrive in these difficult times. Here are five more tips for stretching your advertising resources and reaching new audiences.

Delivery

#### 1. Take a second look at your local newspapers.

IOLTA

Many lawyer referral services have avoided placing ads in local newspapers. The standard wisdom has been that newspaper advertising is affordable to Macy's or Dillard's, but prohibitively expensive for LRIS programs with small budgets.

LAMP

Pro Bono

That situation is changing. Newspaper publishers have reported a sharp decline in advertising revenue since the recession began. Readership is also down, although most newspapers retain respectable circulation figures. Many publishers, desperate for new advertisers, are willing to make deals. Now is a great time to contact a local newspaper and see if you can work out an advertising contract that falls within your program's budget.

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In a few years, this recommendation may seem quaint, as media experts predict that general circulation newspapers may disappear entirely from some markets within the next decade. For now, however, newspapers present a reasonably priced means of reaching potential clients.

#### 2. Consider alternatives to the yellow pages.

Does anyone rely on the yellow pages anymore? Some publishers have recently announced that residential delivery of the print yellow pages

directory will become optional in the near future.

Quite simply, consumers are no longer willing to rely on a book that may have gone to press eight or ten months ago for reliable information on finding the right lawyer. It is time to take the advertising funds you spend on a print yellow pages ad and redirect your spending to the Internet.

Much has been written in Dialogue about pay-per-click advertising on search engines such as Google and Yahoo and I encourage you to search the archives for recent articles on the topic.

Online display advertising has generated little attention to date. That may change. Cook County, Illinois has begun to sell display ads on the Clerk of the Circuit Court's webpage to Chicago area law firms – a reminder that new opportunities for LRIS online display ads are emerging.

### **3. Partner with local universities to expand your client base.**

Many large universities have legal assistance programs for their students. Occasionally, however, these programs are unable to provide a client with legal representation when there is a conflict of interest or when the legal problem is beyond the scope of the services offered. With budget cuts, some university legal assistance programs are no longer able to provide needed services.

A lawyer referral service is ideally suited to meet the legal representation needs of students unable to obtain help through their university's legal assistance program. In Texas, the Austin Lawyer Referral Service (ALRS) has partnered with the University of Texas to provide referrals when the school's Legal Services for Students is unable to represent a student. Under the agreement, the initial consultation fee is waived when a student is referred by Legal Services for Students to ALRS. Jeannie Rollo, Executive Director of ALRS, reports that over 150 students have taken advantage of this arrangement since the program was launched in June, 2008.

### **4. Partner with local politicians to provide constituent services and information.**

In this recession, constituents have inundated the offices of mayors, members of city councils, ward leaders and state legislators with requests for assistance in matters such as mortgage foreclosures, debtor issues, employment problems and evictions.

Be sure that all your local politicians and their staff members are aware of your lawyer referral service. Offer to meet with elected officials to review the wide range of practice fields covered by your referral panels and the quality standards that make LRIS tower above the crowd.

In Maryland, the Bar Association of Baltimore City has partnered with city officials to spread the word about LRIS to constituents. For example, City Council President Stephanie Rawlings Blake regularly includes a paragraph about LRIS in her newsletter to voters.

In Bloomington, Minnesota, the city government's website includes the Hennepin County Bar Association's LRIS on its "Where to Call for Assistance" page.

In Wisconsin, the "Frequently Asked Questions" page of the Milwaukee County government website lists the Milwaukee Bar Association's LRIS as the place to call when a person needs representation.

This free publicity for LRIS came about because LRIS directors took the step of making local officials aware of the services their programs provide.

### **5. Refocus your advertising message.**

After reading this article, take some time to review your advertising medium, whether it be print, online or radio. Ask yourself whether the message is current.

In a recession, consumers tend to focus on value and quality. Your message should reflect that consumer desire. Emphasize the quality standards you require for panel attorneys. Note that the discounted initial consultation is an outstanding value for obtaining legal advice.

Also, if your marketing campaigns mention specific areas of practice, make sure they reflect consumer demand in a recession.

It is easy to adopt a bunker mentality when economic uncertainty stalls the growth of your LRIS. But fretting will not move your program forward, action will. Take advantage of the opportunities in a recession to reach new clients, and you will find that many of them will return to your service when times are better.

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

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### From the Chair...

*By Sheldon Warren*

### Standing Committee on Lawyer Referral and Information Service

I was recently at a large meeting of bar executives, Lawyer Referral and Information Service (LRIS) staff and volunteers at which a suggestion was made by one senior bar executive that the day when lawyer referral and information services should be regulated may have passed. The stated rationale for this suggestion was that, given the proliferation of numerous on-line commercial "referral" services, legitimate, public service oriented referrals services would be better served if these regulations were done away with so they could operate on a "level playing field" with these commercial entities. I had an immediate negative response to this suggestion, which I voiced to those in attendance.

On later reflection, I wondered if my response was merely a reaction to the fact that I had been involved in the drafting of California's LRIS Minimum Standards and enabling legislation, as well as the ABA's Model Rules for the Operation of a Lawyer Referral Service.

Do I still believe that regulation of lawyer referral programs serves the interests of both the public and attorney panel members in the 21st Century?

In considering this question, I think it is important to remember why and how regulations were initially implemented in various jurisdictions. Having had the opportunity to work with LRIS staff and volunteers throughout the country for more than 25 years, I believe the experience in California during the 1980s is fairly representative of what was going on in much of the country.

As I noted in an earlier column, during the early 1980s, bar sponsored lawyer referral services were really the "only game in town" for consumers looking for legal representation. Advertising of legal services on television and radio was in its infancy. Most consumers still looked for lawyers in the



yellow pages and bar sponsored lawyer referral services were listed first by the various yellow pages publishers under the "Attorneys" or "Lawyers" sections of those books.

Unfortunately, unscrupulous individual attorneys and firms, recognizing the opportunity to take advantage of this priority listing, began calling themselves "lawyer referral services." Often, these "services" were nothing more than a separate phone line answered with a unique greeting at a lawyer's office. The operators of these sham services were preying on the public by representing themselves to be something that they were not. They were also preying on attorneys, who were enticed to join these sham operations with unrealistic promises of the number of retained referrals they would receive and who were charged exorbitant fees to "own" one of more zip codes in a particular community. The yellow page publishers soon received complaints about these sham services and demanded that, in order to maintain their priority listing, members of the legitimate lawyer referral service community take action to differentiate themselves from these sham services.

The rise of sham lawyer referral services brought two questions to the fore in California and across the country. First, how could the legitimate lawyer referral service community and interested bar associations ensure that consumers in need of legal assistance were receiving information about legal aid, social service and governmental agencies and, importantly, impartial referrals to attorneys in good standing with the bar and with objective experience in appropriate areas of need? Second, how could attorneys who wished to belong to a lawyer referral service be certain that the service they were joining was legitimate and would provide them with their share of referrals on an equitable, impartial basis?

It was within this context that the lawyer referral service community responded by drafting the "Minimum Standards for a Lawyer Referral Service in California," which were adopted by the California Supreme Court effective January 1, 1997, and California Business and Professions Code section 6155. These regulations established a regulatory framework that provides the public with access to both non-profit bar sponsored lawyer referral services *and* for-profit commercial services, both of which are required to meet the same standards. Further, these regulations ensure that attorneys participating in lawyer referral services will not be taken advantage of by their operators.

Why did these regulations matter more than 20 years ago and why, after thinking about it, do they still matter today? Because, adopting the motto used by law enforcement agencies throughout the country, these regulations "serve and protect the public." Among other things, these regulations require that an LRIS have subject matter panels, so that a consumer receives a referral to an attorney with objective experience in their area of need, and, if there is a problem, that the panel member has professional liability insurance. They require that there be quality control follow-up with the referred consumers to ensure they are receiving the sort

of representation to which they are entitled and, further, to provide an "early warning" for the LRIS of potential problems with their panel attorneys. Perhaps just as important, they provide that an LRIS will refer a consumer to other service agencies if the consumer does not need legal representation.

These regulations also "serve and protect" the attorneys who join an LRIS. They provide that referrals must be made in a fair and impartial manner, preventing the service's operators from giving themselves all the "good" referrals. Additionally, attorneys are protected with a due process mechanism if they have an issue with the service or if a complaint is received from a consumer.

The proliferation of on-line businesses that purport to quickly connect clients with attorneys has created a challenging environment for legitimate, public service oriented lawyer referral and information services. However, I would suggest that abandoning all standards in order to create a so-called "level playing field" with on-line commercial enterprises is not the answer.

If that "level playing field" does not in fact serve the interests of the general public and attorneys, then of what value is it? The test should not be what entity makes the most referrals; rather, the test should be whether consumers and attorneys are being connected in a manner that is mutually beneficial. Public service oriented lawyer referral services throughout the country are showing they can compete and prosper by running their LRIS as a business, i.e. they are in the "business of public service."

Whether they are using Facebook, Twitter or any of the other social media sites, or relying on Google ads or, dare I say it, ads in their local yellow pages, the point is that legitimate lawyer referral services are providing a public service profitably, rather than simply maximizing the profits for their investors. This standard of public service is worthy of continued protection and regulation in the 21st Century.

Finally, it is not too early to get on your calendar the dates for the 2010 ABA LRIS Workshop, which will be held in Portland, Oregon from October 27 through October 30. The LRIS Standing Committee is already putting together the agenda and faculty for that Workshop, which will be held in one of the most vibrant, eclectic cities in the country. I hope to see you there.

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## Pennsylvania's Notice to Defend Helps Clients, Lawyers, Courts and Lawyer Referral Service (LRS)

*By Charles J. Klitsch*

When a defendant first learns he is being sued, most jurisdictions provide him with little guidance. The first filing – whether it is called a summons, complaint or notice of suit – usually informs a defendant of the right to respond and the time limit for doing so. However, most jurisdictions provide a defendant with little or no information about hiring an attorney.

Pennsylvania is an exception. By court rule, all initial pleadings in every court and all subsequent claims filed against additional defendants in the same action must include a notice advising the opposing party of the availability of the lawyer referral service (LRS) to help the party find appropriate legal representation.

Pennsylvania Rules of Civil Procedure, Rule 1018.1 provides:

### **1018.1 Notice to Defend. Form.**

(a) Every complaint filed by a plaintiff and every complaint filed by a defendant against an additional defendant shall begin with a notice to defend in substantially the form set forth in subdivision (b). No other notice to plead to a complaint shall be required.

(b)  
[CAPTION]  
Notice

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and

a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

---

(Name)

---

(Address)

---

(Telephone Number)

#### Official Note

The above notice does not change any of the rules relating to the pleading of objections and defenses.

This rule applies to all complaints including those where service is by publication. For the mandatory content of the publication in such cases see Rule 430(b). When a defendant is served outside the United States, Rule 1026(b) provides a sixty-day period for pleading.

(c) Each court shall by local rule designate the officer, organization, agency or person to be named in the notice from whom information can be obtained.

(d) A court may by local rule require the notice to be repeated in one or more designated languages other than English.

The local rule in all Pennsylvania jurisdictions requires that the office listed must be the lawyer referral service that serves the area. Monroe County Local Rule 1018.1 is typical, and provides:

“In accordance with Pa. R.C.P. 1018.1(c), the Monroe County Bar

Association Lawyer Referral Service, 913 Main Street, P.O. Box 786, Stroudsburg, Pennsylvania 18360 telephone (570)424-7288, is designated the agency to be named in the notice to defend and in any similar notice required by any other applicable Rule of Civil Procedure.”

An example of a “similar notice” would be a notice of the initiation of a divorce action. The language of that Notice to Plead includes information specific to domestic relations cases, but the last paragraphs of such notices are always the same as in Rule 1018.1, and direct parties to lawyer referral services for information about legal representation.

In counties with substantial numbers of Spanish speakers, such as Philadelphia and Dauphin (Harrisburg), local rules require the Notice to Plead to appear in both English and Spanish. This notice requirement has been in place in Pennsylvania for over thirty years and it has worked very well.

The courts benefit from the rule. Prior to the notice requirement, court offices were flooded with calls from defendants wanting to know what to do and whether they needed representation. Providing litigants with contact information for a local lawyer referral service has freed time of court office employees for other tasks.

Plaintiff’s lawyers also benefit. It is a simple requirement and minimizes the number of defendants who call their offices with inquiries about the legal dispute.


Defense lawyers like the rule because they perceive the language of the notice to encourage defendants to seek representation.

Defendants benefit from the plain language information contained in the notice and the guidance they receive in seeking counsel.

Finally, lawyer referral services benefit in two ways. First, the notice results in more calls and more referrals. Second, a court’s “stamp of approval” on a bar association lawyer referral service as the resource for finding legal help has the long term effect of bolstering the service’s reputation in the community.

Other jurisdictions can emulate Pennsylvania’s positive experience with the notice to plead requirement. The logistics may vary, as legislation may be required in some states and a change in court rules in others.

Any attempt to institute a notice requirement will take the coordinated effort of bar leaders, members of the bench and possibly key legislators. However, for bar associations, their lawyer referral services and the public, the effort is clearly worthwhile.



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## From the Chair...

*By Richard Cassidy*

### Standing Committee on the Delivery of Legal Services

As I write this, there are signs we are pulling out of the economic recession and things are getting back to normal. However, "normal" for millions of Americans means they live from one paycheck to the next. Just as they do with health care, the working poor lack the discretionary income to pay for legal services when the need arises. We cannot answer these legal needs with government subsidies and pro bono. We spend hundreds of millions of dollars a year on legal needs for the poor and contribute tens of millions of hours of our time to pro bono for the poor. Yet, we still do not come close to meeting all of their legal needs.

The answer to improved access to legal services to those of moderate income, or the working poor, must be through innovations in the ways we delivery these services. We must change the paradigm from the traditional model of full legal services one-on-one across the desk. The ABA Standing Committee on the Delivery of Legal Services has been dedicated to this goal for more than 30 years. One of the ways that we highlight changes is through the Louis M. Brown Award for Legal Access.

Each year, the Committee recognizes a program, project or entity that has worked toward the improvement of the delivery of legal services to those of moderate income through the Brown Award. Last year, the Virtual Courthouse, an online dispute resolution service that rivals small claims courts, received the Award. The Committee has honored the work of Kent College of Law for its development of A2J, an online document preparation model; the Orange County (CA) Legal Aid Society, for its Legal Resolutions project that partners the technology available to legal aid with referrals to practitioners who assume representation at a fixed fee; the New Hampshire Bar Association, for its leadership in the amendment of rules of procedure and ethics in ways that enable lawyers to provide unbundled legal services; and Legal Grinds, a coffee house in Santa Monica that serves justice and java, enabling people with legal problems to have a low-cost consultation with a lawyer in a relaxed setting.

In and of themselves, none of these programs will change the world. But, each of them will improve the lives of thousands of people and over time, no doubt, tens of thousands and collectively hundreds of thousands and maybe even millions.

Whether it is a bar-sponsored program, a court project, a dot-com start-up or the creative work of a few practitioners, it is important for improvements in the delivery of legal services to be recognized. The time to submit a nomination for the Brown Award is now. The Award is presented each year at the ABA Midyear Meeting. The 2010 Award will be given on February 5, in Orlando. If you work with or know of an innovative program or project that improves access to legal services for those of moderate income, please take a moment to nominate the program. Self-nominations are encouraged. The process is done online and takes only a few minutes. Nominations for the Brown Award are due no later than December 17, 2009. For complete details, go to <http://www.abanet.org/legalservices/delivery/brownnomination.html>.

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IOLTA

*By Barbara Palace*

Canadian Trends in IOLTA

**There's strength in numbers.**

From the Chair

This familiar phrase illustrates a recent trend among the Canadian IOLTA programs, which have begun to take a national approach to increasing revenues and creating effective grant-making processes. By working together, the Canadian programs have found new opportunities to maximize the effectiveness of our work within the justice community. These efforts have become increasingly important in this time of historically low IOLTA revenues.

Grantee Spotlight

News and Notes

**The Canadian Landscape**

There are many similarities between Canadian and U.S. IOLTA programs, the most important of which is the source of our revenue (IOLTA) and our commitment to funding legal services. There are also some interesting differences:

LAMP

Pro Bono

The first difference is a matter of numbers; as there are far fewer provinces in Canada than there are states in the United States, there are also fewer IOLTA programs. There are 13 active members of the Association of Canadian Law Foundations (ACLF), the national association which serves as our hub for communication. Through our annual in-person meeting, periodic conference calls and participation in our list service, the ACLF has become a critical vehicle for sharing information and cooperation.

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In addition, Canadian IOLTA programs are, by their design, mandatory programs. Each law foundation is created by statute, and the statutes require lawyers to maintain pooled trust accounts and to have the interest earned on those accounts remitted to the law foundation in their jurisdiction. The Canadian programs have not had to pursue rules changes to "go mandatory" like so many of our American colleagues.

A third difference is in the type of grants made with IOLTA funds. The Canadian IOLTA programs focus not only on funding legal services, but equally on funding a wide range of other initiatives including legal research, law libraries, and legal education. Depending upon the jurisdiction, "legal education" has a broad meaning, which can range from providing grants for law schools for the formal education of lawyers, to funding community-based agencies which help members of the public learn about the law through public legal education.

A final difference between Canadian and U.S. IOLTA programs is in the number and size of the financial institutions from whom they receive IOLTA revenue. In Canada, banks come under federal government jurisdiction and as such are governed by federal legislation, rather than by provincial statute. Because of that, banks operate on a national basis, and there are 5 major banks from which all of the law foundations receive the vast majority of their revenue. Smaller, regional banks and credit unions play important roles in different parts of the country, but do not displace the central role of the "big 5." This stands in stark contrast to U.S. IOLTA programs, some of which deal with over 200 banks in a single state. This contrast may be short-lived, as there has been a movement over the past several years towards consolidation in the U.S. banking industry, such that regional and national banks play an increasingly dominant role.

## **Money In**

Each Canadian IOLTA program negotiates interest rate arrangements in their jurisdiction with each of the financial institutions where lawyers keep trust accounts. Traditionally, these interest rate arrangements have been based on the prevailing Prime Rate of interest offered by that financial institution, and are expressed as a formula of the Prime Rate minus a negotiated percentage point. At times of a higher Prime Rate, these formulae have worked extremely well, and have allowed revenues to flourish. Because the Prime Rate is at its lowest point in history, revenues in this fiscal year are also hitting historic lows across the country. Minimum interest rates (frequently approximately 0.25%) have been applied in situations where operation of the formula results in a zero interest calculation, but this is not universal.

The Canadian programs have shared information through the ACLF about their respective interest rate arrangements with each of the financial institutions for many years. Having this information has been particularly useful in negotiating with the major banks over the years, and the banks are well aware that the law foundations share this information. In the current revenue crisis, this shared information has become even more critical, as law foundations can develop their own negotiation strategies based upon it.

Until relatively recently, each IOLTA program dealt with contacts from each of the banks in their own jurisdiction. In some cases, regional contacts were

developed. Over the past several years, however, an increasing trend for the banks to centralize their decision-making processes has led to a decrease in local or regional authority in negotiating interest rate arrangements for IOLTA funds. The big banks are beginning to take a national approach in their interest policy decisions, and these decisions and their communication are increasingly coming out of Toronto, where the majority of the large banks are headquartered. To address this issue, ACLF members have been working together more closely than ever on banking issues, and will be discussing the potential for national negotiation strategies at their next annual meeting.

## Money Out

Because Canadian IOLTA programs offer grants for legal research and legal education projects, they frequently receive applications for projects which have national scope or applicability. Grant applications often propose national conferences about the law and legal research projects which cross jurisdictional boundaries. Until recently, applicants for such projects have had to complete an application form for each of the law foundations to which they wished to apply for funds, resulting in some applicants having to complete five or more application forms.

In order to streamline the process for these applicants, the law foundations have developed a common application form. Each IOLTA program's grant application form was reviewed and a draft was created which captured all of the substantive information required by each program. This draft was discussed and adopted in principle at the 2007 ACLF annual meeting. Each program's board of directors was asked to consider adopting this form for national applications, and to date, most programs' boards have adopted that draft. Applicants for national projects may now complete one form and submit copies of that document to each foundation for a decision. Further work on a common assessment process is planned for the upcoming ACLF annual meeting.

In addition, a recent and exciting court judgment in Ontario has created a fund that can be used for national access to justice. The parameters for use of the fund are still in development. The case was a class action award regarding unauthorized charges levied by the bank on foreign currency transactions carried out with VISA cards issued by the bank.<sup>1</sup> As it was determined by the court and the parties to be impracticable to identify more than a small percentage of potential claimants, the court stated in its July decision that a fund be created with a *cy pres* award of \$14.2 million to be administered by the Law Foundation of Ontario "*for the purpose of advancing public access to justice in Canada.*"

The trustees of the Law Foundation of Ontario will be developing a strategic direction for the fund, and will seek input from other law foundations and stakeholders. Informal consultations have begun among the law foundations about how this fund may be best used to achieve the greatest impact across

the country, and this topic will be a central item of discussion at the ACLF annual meeting. This fund, the first for a law foundation, provides another opportunity for developing a national approach to grant making.

### **Looking Forward**

IOLTA programs are unique in their ability to provide significant funding to local legal services and justice-based organizations. Because of our connection to local communities, we are able to communicate with those doing grassroots work and effectively assess where the needs exist. IOLTA programs are also unique in that they come together to form an expansive but close knit network across both Canada and the United States. We have found that collaboration and information sharing through this network dramatically increases the success of our individual efforts as well as our joint efforts towards improving access to justice in Canada.

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<sup>1</sup> Cassano v. The Toronto-Dominion Bank, 2007 ONCA 781.

*Barbara Palace is an attorney and has been the Executive Director of the Manitoba Law Foundation since 2000. She will complete her term as Canadian representative to the National Association of IOLTA Programs (NAIP) in October, 2009.*

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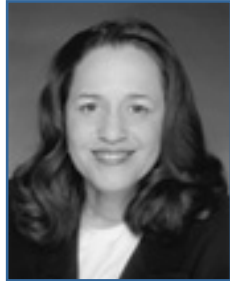
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## From the Chair...



By *Lora Livingston*

### Commission on Interest on Lawyers' Trust Accounts

It is my pleasure to return to the ABA Commission on Interest on Lawyers' Trust Accounts (IOLTA) as its new Chair, especially after having served two terms as a member from 1995-2001. It is a particular honor to take the reins from the Commission's Immediate Past Chair, Jon Asher, who provided fantastic leadership especially during these difficult times. I know that everyone in the IOLTA community is immensely grateful for Jon's contributions and for all of his hard work on the Commission. We are fortunate this year to have a full Commission of returning members, all of whom bring a great deal of valuable experience to apply to the challenges that remain before us. I would like to welcome these members back and thank them for their exemplary efforts, particularly over the past year.

One of the great commitments of the Commission and NAIP is to ensure that vital information and experience is shared throughout the IOLTA community. This is accomplished, in part, through the biannual IOLTA Workshops cosponsored by the Commission and NAIP. The Summer Workshops this year produced an energetic exchange of strategies designed to turn challenges into opportunities, and designed to make IOLTA programs stronger and more robust than ever.

One of the most frequently cited lessons learned from the past year is the need for IOLTA programs to have both a reserve and a reserve policy that takes into account the cyclic nature of IOLTA revenue. While there is no one-size-fits-all model for the design or size of reserves, workshop participants shared widely varying policies on how to build reserves as well as ideas on how and when to spend them. Many of these ideas can be found, along with the 2009 Summer Workshop materials, at [www.IOLTA.org](http://www.IOLTA.org). Another lesson learned, discussed by Workshop attendees, is the value of building new funding partnerships within the larger philanthropic community.

A few states shared dramatic successes that will continue to inspire many

others. The IOLTA program in Texas, my own home state, demonstrated the benefit of working closely with the state access to justice commission to achieve unprecedented legislative funding which made up for a devastating IOLTA shortfall. Arkansas had similar success with their legislature, making up a \$500,000 shortfall by organizing a broad lobbying campaign. The Michigan State Bar Foundation partnered with the Ford Foundation to fund a statewide foreclosure project and they are now working to raise further awareness of access to justice issues within the greater philanthropic community. Many others told the stories of how their programs, together with friends and supporters of legal services, have worked collaboratively and in innovative ways to ensure the ongoing vitality of civil legal services in their states.

The ABA's Commission on IOLTA and the joint committees are committed to supporting the efforts of IOLTA programs around the country in the months and years ahead. In particular, the Joint Technical Assistance Committee of the Commission/NAIP is always available to provide input and assistance on IOLTA-related matters. While we can anticipate that the next year may be a particularly challenging one, I look forward to working with the Commission, IOLTA programs, and with the greater access to justice community to make it another year of collaboration, innovation, and progress.

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## Grantee Spotlight

### Legal Aid of Western Missouri Helps Communities Survive the Foreclosure Crisis

By Kelley Carpenter, Legal Aid of Western Missouri

As the foreclosure crisis swept across the country, stories of families losing their homes flooded the media. The subsequent impact these empty properties have on individual neighborhoods and the people left behind frequently remain hidden from the spotlight.

First one home, then two, then groups of empty homes grow like weeds, leaving once vibrant neighborhoods to wilt and decay, and driving property values down. Residents trying to hold onto their homes are often powerless as they watch their communities dissolve.

Foreclosures have emerged as a serious problem in the Kansas City metropolitan area over the last few years and have reached epidemic proportions in the urban core. According to property records, there were about 1,200 foreclosures in Jackson County in 2005. Three years later in 2008, foreclosures surpassed 2,600, with the greatest impact in low-income neighborhoods.

Leaders at Legal Aid of Western Missouri noticed the devastation in low-income neighborhoods and used Interest on Lawyers' Trust Accounts (IOLTA) funding to take several innovative approaches to address the growing problem. While maintaining its efforts to represent individual homeowners trying to save their homes, Legal Aid also decided to mobilize neighborhood groups, community leaders and mortgage lenders to address



Above are before and after pictures of a property that

Legal Aid of Western Missouri acquired under the

Abandoned Housing Act. The property has been

rehabilitated for owner occupancy by a not-for-profit

partner of the Neighborhood Stabilization Program.

the destruction caused by the empty, often abandoned homes left behind in the foreclosure crisis. This work has evolved into three effective IOLTA-funded initiatives.

### **Loan Servicers' Summit**

Three inner-city neighborhood associations turned to Legal Aid to combat the rising tide of vacant, foreclosed properties. Lenders purchasing foreclosed properties in 2007 and 2008 often failed to secure and maintain those properties inviting vandalism and other illegal activity.

The vandalism, which consistently included the removal of all copper piping for resale, often drove the cost of making the properties habitable higher than the total property value. These properties are then frequently abandoned and become blights on inner city neighborhoods.

In July 2008, in partnership with the City of Kansas City, Legal Aid threatened legal action against Deutsche Bank, the holder of more than 300 foreclosed properties in the city for failing to maintain its properties. In the same year, Legal Aid organized a loan servicers' summit for Deutsche Bank and other national and regional lenders holding foreclosed properties.

Deutsche Bank brought its top level lenders to the summit, where Legal Aid negotiated a new property protection protocol to secure and maintain foreclosed properties and a significant reduction in Deutsche Bank's area foreclosed property portfolio. Attendees, including representatives from the municipal government, set in motion the idea for a new city ordinance which requires loan servicer registration of foreclosed homes. As a result, foreclosed properties are being cleaned up, restored and renovated. Lenders who continue to foreclose on properties are now taking much better care of the properties of which they take possession.

"The way the lenders were letting properties deteriorate was an embarrassment," said Margaret J. May, Executive Director of the Ivanhoe Neighborhood Council in Kansas City. "Our neighborhood has taken giant steps forward in the last ten years and these lenders just neglected property after property after taking the foreclosure action. Legal Aid's work in getting Deutsche Bank and others to do the right thing and take good care of their properties has made a big difference. Because of Legal Aid, the foreclosed properties are finally being maintained."

David Park, Acting Director of the Neighborhood and Community Services Department agreed: "This has been an excellent partnership," he said. "Working with Legal Aid we have been able to keep hundreds of foreclosed properties from ever becoming problem properties. Everybody wins in this project. The lenders, by taking care of their property now are preserving their investments and the urban neighborhoods are being spared from blight. The project will make a big difference in the city's urban core for many years to come."



## **The Post Foreclosure Task Force**

As an individual family suffers the tragedy of a lost home during foreclosure, the surrounding community also suffers a loss to their property values, loss of community, and nuisances from vacant properties.

Legal Aid's Community Economic Development Unit managing attorney Michael Duffy holds a monthly meeting group for experts to share ideas on tackling the neighborhood problem. It includes elected officials, neighborhood activists, real estate professionals, counseling and community development agencies and federal regulators.

The Post Foreclosure Task Force has produced new city and state laws, improved municipal plans for neighborhood stabilization, and enhanced code enforcement and community outreach events to connect lenders with homeowners.

"Legal Aid brought the reality of this crisis to the community's attention," said Brent Schondelmeyer, Communications Director of the Local Investment Commission. "They harnessed the energy of a diverse group of community groups and elected officials to collaborate on solutions to the problems being faced by these neighborhoods."

"By bringing the key players to the table, Legal Aid not only focused a spotlight on a problem threatening to destabilize neighborhoods, but won commitments that offered a solution benefitting everyone," said Paul Wenske, Senior Community Affairs Officer for the Federal Reserve Bank of Kansas City. "It demonstrated an inclusive style of leadership."

## **Neighborhood Stabilization Program**

This spring, Kansas City received \$7.3 million for the Neighborhood Stabilization Program ("NSP"), as part of the federal stimulus package. The funding must be used to acquire and rehab properties within the next 18 months. The city's goal for the NSP funding is to acquire and rehabilitate 195 properties in areas of Kansas City that have experienced particularly high foreclosure rates and to sell the properties to owner occupants. The project is a race against the clock. If the the \$7.3 million is properly committed by October 2010, then money from the sales of the rehabilitated houses can be used to rehabilitate even more houses; it will become a revolving fund. Any money that is not committed by October 2010 must be returned to the federal government.

Legal Aid is playing a key role in facilitating this effort by matching the five non-profit Community Development Corporations chosen by the city to rehabilitate the properties with a coalition of five private law firms to handle the many complex legal issues involved. These firms are Bryan Cave LLP,

Husch Blackwell Sanders LLP, Polsinelli Shughart LLP, Sonnenschein Nath & Rosenthal LLP and Levy and Craig, PC. The work began by negotiating an agreement between the five not-for-profits and the city of Kansas City.

"With a good agreement in place, the redevelopers will be able to hit the ground running in their work renovating properties," said Allison Tanner, of Sonnenschein Nath & Rosenthal, LLP. "This is something the redevelopers, which are all small not-for-profits, just wouldn't have been able to do on their own. The law firms also bring our contacts in the real estate and finance community with us in this work. We have been able to put the redevelopers in contact with community-minded lenders who have inventories of foreclosed properties that they can make available cheaply, which will allow the redevelopers to get to work right away."

"I feel very good about this work," Tanner continued. "It has let me give something back to the community and will really help to stabilize some of city's most vulnerable neighborhoods."

Legal Aid estimates that approximately 20 attorneys will contribute at least 600 hours of volunteer work on the Neighborhood Stabilization Project; an in-kind donation valued at over \$120,000. Up to 50 of these properties will be renovated next year, thus improving the likelihood that stimulus funding will be spent effectively. The available volunteers are a tremendous resource and give Legal Aid the opportunity to leverage further funding.

"With legal assistance, NSP negotiations and property acquisitions will be much more effective," said Joanne Bussinger, director of Blue Hills Community Services, one of the five nonprofit community organizations the project matched with volunteer attorneys. "Having the attorneys manage the legal issues will allow us to focus on neighborhood priorities and rehabbing homes in foreclosure to provide quality, affordable homes for homeownership. With the assistance of all of our partners and the legal teams, we will leverage the \$7 million in federal funding for major community improvements."

These three initiatives are part of an innovative strategy to address the broader impact of the foreclosure crisis on low-income neighborhoods in Kansas City. "We are very grateful to the Missouri Lawyer Trust Foundation for providing the funding that allows us to do this work," said Gregg Lombardi, Legal Aid's Executive Director. "Because of the flexibility of IOLTA funding in Missouri, we were able to put funds to use immediately to solve emerging community problems. IOLTA funding is making a gigantic difference in community development in Kansas City."

*Kelley Carpenter is the Director of Development at Legal Aid of Western Missouri.*

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#### **New Commission on Interest on Lawyers' Trust Accounts (IOLTA) Chair**

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The Commission on IOLTA is very pleased to welcome the Honorable Lora Livingston as its new Chair. Judge Livingston has served on the boards of the National Association of IOLTA Programs, Texas Equal Access to Justice Foundation, Texas Access to Justice Commission, Volunteer Legal Services (formerly Austin Lawyers Care), and Texas Center for the Judiciary. She has been active in local, state, and national bar association activities. Judge Livingston has served on the Judicial Section of the State Bar of Texas, and she is now a delegate to the American Bar Association House of Delegates, representing the State Bar of Texas. Previously, she served as a delegate from the Travis County Bar Association. She is currently serving a two-year term as a member of the Select Committee of the House of Delegates. She was previously appointed to the ABA Standing Committee on the Delivery of Legal Services, and served three years as its Chair. She was then appointed to the Standing Committee for Legal Aid and Indigent Defendants and completed a three year term this past August.

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Judge Livingston is a 1982 graduate of UCLA School of Law. She began her legal career as a Reginald Heber Smith Community Lawyer Fellow assigned to the Legal Aid Society of Central Texas in Austin and worked in the area of poverty law until 1988. She then practiced at the firm of Joel B. Bennett, P. C. before starting the law firm of Livingston & Parr. In January, 1995, she was sworn in as an Associate Judge for the District Courts of Travis County, Texas. After her successful election, Judge Livingston was sworn in as Judge of the 261st District Court in January, 1999. She is the first African-American woman to serve on a district court in Travis County, Texas.

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#### **Kentucky Rule Change**

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The Kentucky Supreme Court has recently approved amendments to the state's IOLTA rule which include mandatory IOLTA and interest rate comparability provisions. The amendments will become effective on January 1, 2010. With this change, Kentucky will become the 41st state to adopt mandatory IOLTA and the 28th state to adopt comparability.

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Assistance in exploring, drafting and implementing mandatory IOLTA and



other IOLTA 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.

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engage volunteers in providing critical pro bono service for years to come.

The Justice Network's volunteers regularly remark upon how their survivor-clients enrich their lives by providing a greater appreciation of who we are, what we have, and the time and place in which we live. "Our" survivors inspire us to believe that we have the inner resources to transcend life's myriad trials and travails.

They are the true heroes.

This award belongs equally to each of our clients and to the literally thousands of individuals who have worked to make the Justice Network a force for good and justice in the world. We are exceptionally humbled to receive recognition for our work from the ABA, which represents the highest ideals of the legal profession.

*It is one of the most beautiful compensations of this life that no man can sincerely try to help another without helping himself.*

– Ralph Waldo Emerson

## **Hope Olsson**

I am tremendously honored to receive the ABA's Pro Bono Publico Award and especially want to express my deep gratitude to the public service attorneys who work throughout their careers to provide civil legal services to underrepresented people within our communities. It is these public service attorneys who set the example for all of us to take pride in the profession we practice and the services we provide to clients.

As a second-career attorney, I am always aware of what a privilege it is to practice in a profession that is interesting, challenging and rewarding on a daily basis. The opportunity to do pro bono work by serving individual clients as well as the greater community is an inherent attribute in the practice of law. It is always an honor as well as a privilege to be able to provide legal services to pro bono clients.

One of the primary reasons students go to law school is to learn a profession in which they can help others and give something back to their communities. I was fortunate to attend law school at the State University of New York at Buffalo which has a strong emphasis on public service law and students are encouraged to make a commitment to pro bono work.

It is my good luck to practice in a community that has an established and strong structure within which attorneys can do pro bono work easily and efficiently. The Volunteer Legal Services Project (VLSP) of Rochester, New

York, provides a framework and support services for attorneys to work with pro bono clients. Most importantly, VLSP provides the catalyst to enable more attorneys to make a commitment to do pro bono work.

In particular I want to honor the work of Farmworker Legal Services of New York which is committed to upholding the legal rights of those who work so hard, under unenviable conditions, to bring food to our tables. This population is often invisible to the general public, and it is constantly an uphill battle to pursue their legal rights. The public service attorneys who work in this area serve as model advocates in working to pursue the basic constitutional rights of individuals.

For many pro bono clients, their presenting legal problem is one of the very few times they will be involved in the legal system. The work of legal services and pro bono lawyers serves to demonstrate that the law can help solve these problems. It is an opportunity to engender respect for the work attorneys do and for the legal system as a whole. I am honored to have the opportunity to do pro bono work on a regular basis and I encourage other attorneys to think about why they went to law school in the first place and to do pro bono work. Pro bono work is an excellent way to serve people who wouldn't otherwise have legal representation and to make the community a better place for all.

### **Weil, Gotshal & Manges LLP**

The lawyers and staff of Weil, Gotshal & Manges are honored to receive the 2009 Pro Bono Publico Award, which is especially meaningful because candidate law firms must be nominated for the award by other persons or organizations. For the past several years Weil Gotshal has enjoyed the strong support of five nominating organizations: The Legal Aid Society, Lawyers Alliance for New York, New York Lawyers in the Public Interest, Dallas Volunteer Attorney Program, and Legal Services for NYC. We are gratified by their support for this recognition because it is emblematic of the deep relationships the firm seeks to build with organizations in the pro bono arena.

Since embarking on a project to revitalize its approach to pro bono, Weil Gotshal has posted tremendous increases in pro bono hours and matters. The cornerstone of the firm's approach is our firm-wide policy to encourage participation and embed a pro bono ethic into the firm's culture. The firm maintains the goal that every lawyer perform 50 hours of pro bono work each year; the expectation that every partner work on a pro bono matter each year; and the requirement that every new entering attorney – from first-year associates to lateral partners – take on a pro bono matter within the attorney's first two years at the firm.

The policy has clearly produced the desired results. Since 2004, Weil Gotshal has seen a 100% increase in the number of hours devoted to pro

bono work firm-wide. In 2008 alone, the firm performed over 89,000 hours of pro bono work, an average of roughly 82 hours per lawyer in the US, and equivalent to 45 full-time lawyers.

While the raw numbers are useful – they help to quantify the impact of what the firm does – they capture only part of the story. Along with encouraging greater lawyer participation, Weil Gotshal’s guiding philosophy is to bring genuine change to the pro bono world by challenging the traditional pro bono model associated with large law firms. Rather than just log hours, Weil Gotshal seeks to develop and implement new models for the provision of pro bono legal services. That often means formulating new ways to deliver pro bono service, such as partnering with The Legal Aid Society to provide pro bono representation in housing court, a rarity for large law firms before Weil Gotshal attorneys did it. Similarly, the firm seeks innovative approaches to counseling pro bono organizations, helping them to better leverage their resources and time to drive efficiencies within their own organizations.

More than simply logging large numbers of pro bono hours, Weil Gotshal aspires to demonstrate leadership in the pro bono arena by encouraging and developing innovative approaches to problem solving. This philosophy has led the firm to partner directly with the providers of aid and services – such as Human Rights Watch, Oxfam, and the UN World Food Program – to help them think proactively about how the considerable skills and resources of law firms and their lawyers might enhance each organization’s core mission. These partnerships have the potential to revolutionize not only the effectiveness of aid and service delivery on a global basis, but the very idea of what pro bono can do.

The world’s top law firms handle transactions and litigations of extraordinary sophistication. Weil Gotshal’s vision for pro bono is that the same level of sophistication be applied to challenges – like human rights, climate change, and economic development – that require both local action and global resolve. The firm is very proud of and grateful for the ABA’s recognition and is no less excited about what the future holds for pro bono programs across the legal industry.

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## 2009 Harrison Tweed Award Winners

### North Carolina Bar Association



*Left to right Front Row*

Michelle Cofield- Janet Ward Black - Gene Pridgen - Briana Wagner -  
Deborah Hankinson

*Left to right Back Row*

Allan Head – Don Saunders – George Hausen – Gerard Davidson

### Philadelphia Bar Association

