

DIALOGUE

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The mission of the Idaho Law Foundation (the Foundation) is to help the legal profession serve the public. [Read more...](#)

News and Notes

Roger Lilavois passed away on January 30, 2012 after a long, valiant struggle with cancer. Working with the Florida Bar Foundation, he developed the first IOLTA specific software in 1983 that enables IOLTA programs to track interest remitted to their accounts. [Read more...](#)

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By Kelly Scott, Staff Attorney, ABA Center for Pro Bono Medical–Legal Partnerships Pro Bono Support Project

There are many opportunities to make a difference in our communities. Doing pro bono work is a way members of the legal profession can use our specialized skills to help vulnerable populations keep their homes, receive proper medication, and ensure their families are safe. [Read more...](#)

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By Larry McDevitt

I have been a member of the ABA, my entire career as a lawyer, and have been proud of my various associations with different ABA groups and leadership entities during those years. [Read more...](#)

Using Technology to Connect Pro Bono Attorneys to Remote Clients

By William Jones, Technology, Information and Content Coordinator, ABA Center for Pro Bono

The scarcity of attorneys per capita in rural counties is a chronic problem for the delivery of legal services and information to remote clients. [Read more...](#)

New Publication!

A Breath of Hope

By Jo S. Kittinger

This picture book depiction of medical-legal partnerships in action demonstrates how medical-legal partnerships and legal aid can transform the lives of families in need. [Read more...](#) | [Buy Now](#)

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By Alexandra Lee Newman and Yelena Shagall

Since its enactment in 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) has provided a powerful means of addressing employment discrimination against those serving in the military. [Read more...](#)

From the Chair...

By David G. Ehrhart, Brig Gen, USAF (Ret.)

Of the varying types of work undertaken by the LAMP Committee to constantly improve the quality and availability of free civil legal services available to military personnel, our role in supporting and informing policymaking decisions allows us to have a wide and systemic impact for the benefit of our servicemembers and their families. [Read more...](#)

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LRIS Feature

LRIS

LRIS Services Help Rebalance Legal Information Asymmetry

LRIS Services Help Rebalance Legal Information Asymmetry

By Britt Wegner

One of the most frustrating problems facing bar associations and their lawyer referral services today is that of information asymmetry: when the expectations of clients are misaligned with services offered by the legal community. It may seem like an anachronistic problem in an age when much more information is available to everyone than ever before. However, key changes to legal advertising made years ago -- changes intended to benefit clients -- have contributed to the current problem and have been compounded by the current recession.

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The 1976 Supreme Court case *Virginia Pharmacy Board v. Virginia Consumer Council* allowed pharmacists, for the first time, to post their prices for prescription drugs. The Court held that "both the individual consumer and society in general may have strong interests in the free flow of commercial information... The State is free to require whatever professional standards it wishes of its pharmacists, and may subsidize them or protect them from competition in other ways, but it may not do so by keeping the public in ignorance of the lawful terms that competing pharmacists are offering."

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The following year, in *Bates v. State Bar of Arizona*, the Court expanded this principle to allow lawyers to advertise their services for the first time. It was this decision that fundamentally changed the role of lawyer referral and information services for bar associations nationwide in two major ways: First, competition would reduce intake volume for lawyer referral programs because of the increase in exposure to direct lawyer advertising. However, it is the second effect that lawyer referral and information services (LRIS) are still finding difficulty in overcoming: lawyer advertising has fundamentally altered public expectations about the cost of legal services.

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Legal Aid services, government programs, and other *pro bono* resources work hard to stretch increasingly limited resources to meet the needs of the lowest-income individuals, while unrestricted law firm marketing has allowed nearly everyone with a steady income to find private attorneys in their price range. Understandably, LRIS services have worked to fill the gap that remains between these two ends of the spectrum through the establishment of legal clinics, "modest means" panels, and unbundled legal services (similar to the "legal clinic" that was attempting to advertise rates in *Bates*). However, the ability of law firms to post prices has made this task much more difficult.

"...[O]ffering the same no-fee unless you win arrangement as any other firm in Milwaukee."

This slogan runs in a television ad for a prominent Milwaukee P.I. firm, illustrating the potential confusion that can be created by lawyer advertising. Even though it is not the law firm's intention, when stating something like this the public can easily misconstrue it as a belief that all services offered by an attorney regardless of the case type is based on a payment system that only applies after the attorney is victorious. Rampant advertising of this nature -- especially during a recession -- has understandably caused the public to be very curious about "free" or "no-

fee" legal services.

This increase in misunderstanding results in ever more inquiries to private firms and *pro bono* services alike, which neither can satisfy. As both have always done for clients with needs that they cannot meet, private firms and *pro bono* services refer these clients to bar associations. This is not necessarily a bad thing -- LRIS's are a member benefit. However, LRIS's are also still and always will be a public service. The goal is to help each caller according to his/her situation (both financial and legal) to the best of the LRIS's abilities. Many times a referral is not necessary and -- thanks to numerous community resources, free walk-in legal clinics, etc. -- there are options for these callers and hopefully their calls to the LRIS will not just result in another "run-around." In fact, the LRIS is in a great position to reify the LRIS brand and further underscore that it is the trusted source even if no viable referral results.

LRIS services may be receiving less revenue because they face stiff competition for higher income clients from private firms. LRIS's may also have the difficult task of using their reduced revenues to handle intake that may include a higher call volume of people that are unable to afford legal services. However, each referral to the LRIS from an outside organization or law firm strengthens the LRIS's brand as a trusted source -- the LRIS is "the right call for the right attorney" and/or resource for the caller. Though it is a recession, and LRIS's cannot meet the needs of every caller, they can still be the go-to and trusted source; educate the public, demystify the advertising, and further establish that the LRIS should be the first call instead of the last, regardless of the economy.

Chief Justice Warren Burger stated in *Bates*: "Although the exact effect of those changes cannot now be known, I fear that they will be injurious to those whom the ban on legal advertising was designed to protect -- the members of the general public in need of legal services... Indeed, in the context of legal services, such incomplete information could be worse than no information at all. It could become a trap for the unwary." Even though the messages produced by advertising law firms may add confusion, the LRIS can work to reduce the confusion, provide complete information, and simultaneously strengthen its brand and place in the legal field. The LRIS will always continue to cultivate and work towards referring profitable calls, but can also help those that can't afford to retain an attorney but may still need some level of legal assistance.

Britt Wegner is director of Lawyer Referral and Information Service of the Milwaukee Bar Association.

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From the Chair...

By *John Norwine*

Standing Committee on Lawyer Referral and
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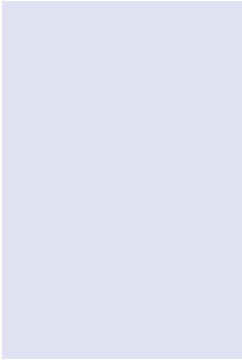
ETHICS 20/20 AND THE ABA LRIS COMMITTEE

In 2009 ABA President Carolyn B. Lamm established the ABA Commission on Ethics 20/20. Its purpose was to review the ABA Model Rules of Professional Conduct in the context of advances in technology and global legal practice developments. What input from the ABA LRIS Committee could this Commission possibly need? As it turned out, our committee provided testimony on two critical occasions to the Commission, persuading the Commission to adopt one of our positions and later to reject an approach suggested by another ABA entity.

At the August 2011 ABA meeting in Toronto, the Commission met and took testimony from a number of individuals on some of its initial proposals. On behalf of our committee, immediate past ABA LRIS Committee Chair Sheldon Warren and Committee Members Ann Jacobs and William Ferreira researched, prepared, and presented information to the Commission in several areas important to Lawyer Referral and Information Services across the country. The most significant area addressed was on-line advertising by for-profit entities. This proposed modification of the ethics rules would have allowed for profit entities to provide a "pay-per-lead" service as opposed to the traditional "pay-per-click" service. The difference here may not be apparent to many who are not involved in this area, but Ms. Jacobs did a phenomenal job providing illustrations of each and explaining that pay-per-click is equivalent to our traditional Yellow Pages advertising: A lawyer's advertising message is delivered to the consumer, usually by the internet, through an intermediary and the consumer then makes a choice. As Ms. Jacobs clearly and patiently explained, however, pay-per-lead differs in that the intermediary often purports to analyze the consumer's legal need and then find the right attorney for them. In fact, that attorney may be "recommended" by the intermediary simply because the attorney bought a particular geographic territory in which that consumer is located. The intermediary gets paid by in effect delivering that consumer to the attorney. Thanks largely to Ms. Jacobs's polished presentation and advocacy, and the great support of Mr. Warren and Mr. Ferreira, the Commission followed our committee's reasoning and recommendations in this area in virtually every respect, and decided not to allow pay-per-lead advertising.

Shortly before the ABA mid-year meeting in New Orleans in February of this year, the ABA Standing Committee on the Delivery of Legal Services requested the Commission modify Model Rule 7.1 and eliminate Rule 7.2(b). The requested change to 7.1 would have eliminated the requirement that an attorney not make a false or misleading statement about the lawyer or the lawyer's services to anyone, replacing it with a prohibition against making such a statement only to a potential client. Again, on behalf of the LRIS Committee, Ann Jacobs appeared and argued forcefully that this would potentially give attorneys too much leeway in statements to a potential client's spouse, or relatives, or even friends. The Commission again agreed with our position.

The second proposal would have deleted Rule 7.2(b) from the Model Rules.



Among other things, Rule 7.2(b) permits an attorney to pay monies to a qualified lawyer referral service. There was no recommendation to replace the Rule with anything else, and this could have created a great number of issues and problems. The Commission, upon hearing Ms. Jacobs's comments to this proposal, again agreed with the position our committee advocated and determined not to eliminate the rule.

Although often not in the glare of public light, the LRIS Committee has been very busy in areas not traditionally pursued by the committee, and it could not have done so without the heroic efforts of Ann Jacobs, William Ferreira, and Sheldon Warren, supported ably by ABA staff member Jason Vail. My continuing thanks to all of these people for that proverbial "job well done."

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The Long View: Discussing the Past and Future of Lawyer Referral Services with Sheldon Warren

By George Wolff

The following is an interview with Sheldon J. Warren, immediate past Chair of the Standing Committee on Lawyer Referral and Information Service. Mr. Warren has deep roots in the LRIS community, has been a frequent speaker at LRIS National Workshops, and has devoted years of service to the Standing Committee (1990-1993, 1996-2002, 2008-2011 (Chair)). Mr. Warren is also a trial attorney with extensive trial experience.

George Wolff: How did you first learn of LRIS's generally? Was there a particular person who inspired or reached out to you?

Sheldon Warren: It was in January of 1981. I had just come down to Los Angeles and was looking for some sort of pro bono program to get involved in. The L.A. County Bar's LRIS had an in-house program where, every afternoon, they would have an attorney in the office meeting with potential clients. I went over there and talked to the directing attorney -- I knew nothing about lawyer referral at the time -- and I said: "Well, this sounds like an interesting program, and I'd get contact with real clients." I was with a large firm working for corporations, so I wasn't going to get that kind of interaction. So, I started going over once or twice a month. I did that for two and a half years, left the firm I was with and went travelling for 8 months, came back, rejoined the firm, and then went back over to start working with the lawyer referral service again. By this time it was early 1984, and Cindy Raisch was the Director. Cindy was certainly one of the most dynamic individuals I have ever met in my life. She just inspired a passion in everyone she came into contact with -- myself included -- for lawyer referral. She was just an amazing individual. She is the one who inspired me to take it up a notch.

Wolff: What did you think of LRIS's at that time? How has your view of LRIS's changed, if at all?

Warren: I think everybody at the time was making referrals out of a shoe box, with an index card, with the lawyer's name on it. My impression of lawyer referral was while they were run well they were not necessarily run as a business. I think the one difference is that the successful lawyer referral services now have adopted the mantra that the ABA Standing Committee adopted more than 20 years ago: they are in the business of public service. It doesn't diminish the public service focus of it by any means. Everything that Coke, Pepsi, Google and Apple do -- you can take their model in many respects, with regard to how they have been successful -- and transfer that over to lawyer referral. That is the biggest change that I have seen in lawyer referral in the three decades that I have been involved -- that, and, obviously, the technological changes that have come with the computers and the internet.

Wolff: What is it that inspires you most about LRIS's and the LRIS community? Why have LRIS's remained such a focus and passion of yours?

Warren: No ego. Having practiced for as long as I have, one of the things that you encounter on a regular basis is lawyers who are absolutely certain that they are the best lawyers in the world. There is none of that in the lawyer referral service community. Second, the target market for lawyer

referral is the middle income consumer. When I started practicing, the *Bates* decision was only 4 years old and attorney advertising was in its infancy. If somebody wanted to hire an attorney and they were in this vast middle income group they would go to the Yellow Pages. Hiring an attorney because of the photo in the yellow pages or their ad on TV, and now their ad on Google – without any mechanism to determine whether that individual actually knew anything about the area of your need – that's just not a good way to hire an attorney. When I started volunteering I thought: "Gee, these folks have subject matter panels." And, the interview counselor would steer them to an attorney who had objectively verifiable experience. There is no better way for folks to find attorneys. I believed that in 1981 and I believe that now. With the proliferation of the web and social media and all of that, it is so easy for consumers to be misled by attorneys with smart advertising agencies that really know how to take advantage of individuals that have a problem but really don't know: "What questions am I supposed to ask? What should I know about the attorney before I hire him/her?" Legitimate lawyer referral services meet that need and there is nothing like them out there. And, it is not a distinction of for profit or not for profit as to whether a lawyer referral service is legitimate, rather, do they have as their primary focus public service? That is the focus that the ABA Standing Committee had always had, and that I believe all legitimate lawyer referral services still have. That is why, after all this time, I feel just as passionate or more passionate than ever. There is no better model.

Wolff: As you look back over all of the years that you have been involved in the LRIS community, what do you think has been its biggest accomplishment? What was its biggest challenge?

Warren: I think the biggest accomplishment and the biggest challenge are related and ongoing. The biggest accomplishment was dealing with the proliferation of "scam" lawyer referral services – and that goes back to the mid-80's – when lawyer referral services were still listed at the front of the yellow pages, and smart "scamsters" realized that if they started the "ABC Lawyer Referral Service" they could be at the head of the yellow pages. And, the "ABC Lawyer Referral Service" was nothing other than a separate phone on the desk of the receptionist for whatever law firm was running this scam. The phone would ring and the receptionist would answer "ABC Lawyer Referral Service," and then refer those callers to the members of whatever firm was running the scam. It became so common that that was the genesis of the lawyer referral legislation that was adopted in California in 1987. And, that legislation was initiated, in part, to allow a certification process whereby the yellow pages and the public would know whether they were dealing with a scam or a real service. The greatest challenge that lawyer referral services have faced and continue to face is an extension of what I have just been talking about: The proliferation of services who market themselves as a referral service. Back in the 80's, if you wanted to buy a full-page ad in the yellow pages that could be a lot of money. Now, you can build a website for \$99 and start advertising a so-called referral service overnight. I think it is a real challenge for public service oriented lawyer referral services to be able to distinguish themselves in the marketplace as being legitimate. I think referral services which satisfy the criteria of the ABA's Model Rules do just that. And, while I believe that the competitive marketplace that exists now is the lawyer referral service community's greatest challenge, by the same token, I think it is its greatest opportunity. That is the beauty of the web. The fact that you are a legitimate local or state bar-sponsored lawyer referral service is going to give you a great advantage.

Wolff: What do you think the biggest challenge is for the LRIS community in the coming years – if you had to pick one?

Warren: I don't think it's so much a market challenge – I think it is more an internal challenge to ensure that a bar's Board of Governors is educated as to the value of lawyer referral services. I have seen this in referral services that I have visited as part of the PAR [Program of Assistance and Review] program: A successful service, breaking even or generating some excess revenue, hits some hard times. All of a sudden there's a downturn in bar membership, a downturn in income at the bar, and the Board of Governors doesn't know anything about the lawyer referral service other than the fact that it now requires a subsidy from the bar. And, they say:

"Why are we doing this? What service does this provide to the larger bar? Boy, we could save all this money if we just dump the lawyer referral service, so let's do that!" I think that lawyer referral services need to be ever vigilant and always working at educating the young lawyers and folks that are going to be the future presidents of their bar association. Get them involved, or at least make sure that they are aware what the lawyer referral service does for the bar association – that the lawyer referral service is in essence the face of the bar association to a vast majority of the general public, and how important that is; how a continuing investment in the lawyer referral service will pay off for the bar; that even though there may be years that it requires a small subsidy stick with it because of the service that it provides and the potential for the revenue it can generate. So, yes, the proliferation of services on the web is a real challenge, but I really think that lawyer referral services should stay focused on educating the folks in the bar as to what it is that they are doing and why what they are doing is important.

Wolff: If you could waive a magic wand, what is the one thing that you would like to see the LRIS community do or change about how they operate?

Warren: If I were to waive my wand it would be that referral services across the country would have an expanded implementation of subject matter panels. Many services have numerous subject matter panels, some have fewer – driven in part by the community, nature of the calls they receive and the like – but it is so important that a referral service establish the objectively verifiable criteria for attorneys to join a particular panel. The example I always use when we are out on PAR visits is: If you have a felony criminal panel, and you have no verifiable experience criteria for that panel, I would suggest that you are doing a serious disservice to a consumer if you make a referral to an attorney that was admitted the day before yesterday. That is not operating in the public interest. Again, that experience – the number of trials you want a person to have in order to satisfy the criteria – may well vary from community to community.

Wolff: What is the one thing that you hope the LRIS community never changes about how they operate?

Warren: The personal contact or personal investment of the LRS telephone counselors. Whether it is by telephone or online – always have an intake counselor available if they require additional assistance. That is something, I hope, that lawyer referral services never lose because it is that concern for the consumer that they get the right referral to the right lawyer that distinguishes a legitimate lawyer referral service.

Wolff: What does the future hold for you? You are never really saying, "Goodbye," right? Are we going to see you at the next [Lawyer Referral Workshop]?

Warren: The chances of not seeing me are probably nil and none. I was on a PAR visit as recently as Monday, and I felt as excited about doing that as I did when I made my first PAR visit in 1988. I am going to continue to attend the workshop on an annual basis. I have too many friends that I see there. I enjoy those workshops too much to take a pass now!

George D. Wolff is Manager of the Oregon State Bar Lawyer Referral and Information Service.

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SAVE THE DATES!

Please join us for the **2012 National Lawyer Referral Workshop at Harrah's in Las Vegas, Nevada***
October 24-27, 2012

This is the only national Workshop designed for public-service Lawyer Referral managers and bar leaders!



Las Vegas Strip

PHOTO CREDIT: LAS VEGAS NEWS BUREAU

* Hotel room rate is \$89 plus tax per night.

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**Judicare Family Law Project:
Helping the Courts and Leveraging Resources in Maryland**

IOLTA

By Harriet Robinson

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A single mother was fighting to get custody of her two children but didn't have the funds to hire an attorney. She never married the father who was subject to a protective order and incarcerated for violence during the relationship. The children witnessed the domestic violence and required therapy. The father was represented by an attorney who filed for joint physical and legal custody or open and reasonable visitation. The mother was afraid of him; although she was a good witness when prepared, she needed the help of an attorney to keep her focused on the proper issues when she was on the stand. With funds from the newly revived Judicare program, a private reduced-fee attorney was hired to help this mother get custody of her two children. The attorney was able to convince the court that joint legal or physical custody was neither proper nor in the best interests of the children. He also argued that supervised visitation was appropriate given the children had not seen their father in three years, coupled with their witnessing the domestic violence and the therapy needed as a result. The court ordered one-day-a-week supervised visitation with a review in six months.

Pro Bono

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Although the above scenario is a fairly routine case for a family law attorney, a self-represented litigant would likely get lost navigating the court process and have trouble achieving these results. Without proper representation, complex cases like this one place an undue burden on members of the bench and the state's entire judicial system. A program in Maryland, which helps low income families obtain representation, has proven successful over the past decade.

In Maryland, the critical need to assure low-income litigants of appropriate representation in divorce, custody, visitation and other contested family law matters is being met by the Judicare Family Law Project, as a part of the continuum of legal services in the state. The program has been successful in providing representation in often difficult, complex, time-intensive cases, which are usually beyond the resources of existing legal services providers and pro bono attorneys. Judicare's support of skilled legal counsel in family representation provides clients with access to justice, helps reduce burdens on the courts and leverages staff and pro bono lawyers for other legal needs.

About Judicare and Its History

"Judicare" is a term coined for a legal services program similar to Medicaid and Medicare. It supports representation provided by private attorneys paid on a fee-for-service basis through government funds. In Maryland, the program was run successfully in the 1970s to the early 1980s by a state agency using federal funding under Title 20 of the Social Security Act. Title 20 reimbursed private attorneys throughout the state at a reduced fee to handle a variety of legal problems for low-income clients.¹ In the early 1980s, the state drastically reduced funding for Judicare and stopped the funding in 1990. In the late 1990s, statewide public hearings uncovered a gap in litigation services, especially in contested family law issues. This gap developed because these issues were not being addressed by existing legal services programs and pro bono attorneys. Soon after, the Administrative

Office of the Courts (AOC) and the Maryland Legal Services Corporation (MLSC) launched a Judicare-type program for complex contested child custody representation. In 2007, a report by the state bar² on the history and potential revival of Judicare and a report by the courts³ on the growth of self-represented litigants led to the expansion of the covered services to other contested family law matters.

How Judicare Works Today

Today, Judicare in Maryland operates through grants funded by AOC and MLSC to seven organizations that are experienced in operating pro bono referral services and have established pro bono panels. The grants cover attorney compensation for a set number of contested family law cases with a cap of \$1,600 per case (20 hours at \$80 per hour) plus some costs to administer the program. Attorneys can receive additional Judicare payments if they meet certain pro bono requirements.⁴ To qualify for Judicare services, clients must have income no more than 50% of the Maryland median family income (approximately \$51,000 for a family of four), which is over 220% of the federal poverty guidelines.

Judicare attorneys are members of a panel of lawyers. These lawyers are guaranteed compensation, support of litigation expenses, malpractice insurance and mentoring support, if needed. In order to be a panel member, attorneys must meet three criteria: 1) he/she must be licensed in Maryland; 2) he/she must have two to three years of family law experience or be supervised or mentored by an experienced family law attorney; and 3) he/she must be in good standing and free of disciplinary action by the courts or Attorney Grievance Commission.

The Judicare administering programs (MLSC grantees) work with the local courts, bar and social services agencies to identify clients with contested family law matters and private attorneys to handle Judicare referrals. They screen the clients, recruit attorneys, document the disposition of cases, handle compensation and report results to MLSC. Most Judicare programs require attorneys to take one or more pro bono cases (usually in another area of the law) as a condition of receiving a referral. Attorneys are obligated to continue the case until closed, even if doing so exceeds the maximum Judicare payment.

Measuring Judicare Results

In early 2008, Judicare representation was extended to all contested family law matters, as a two-year "pilot project" designed to test a reduced-fee model for provision of legal services in custody, divorce, visitation and other contested family law matters. Nine MLSC grantees administered the pilot serving 13 of the state's 24 jurisdictions. At the end of the pilot, the AOC conducted an evaluation with the help of researchers at two local universities, and based on the results, MLSC and the AOC expanded Judicare services to all jurisdictions in the state. The researchers evaluated the ease of use of the Judicare program for clients and attorneys, the efficacy of the Judicare structure, the clients' and attorneys' opinions of the Judicare program, and any variations of the program in jurisdictions.⁵ MLSC prepared a supplement to the evaluation showing the tremendous unmet need for legal representation among low-income individuals facing contested family law matters and detailing case services data since the inception of the Judicare pilot project.⁶

The court's evaluation study, which used surveys, interviews and focus groups, showed the majority of clients were satisfied with the program. They expressed appreciation for being heard and having someone advocate on their behalf. Judicare attorneys admitted to the complicated, time-consuming nature of the cases. Although they often met with difficult clients, they were happy with their experience and would recommend the program to their colleagues. These lawyers were motivated to help others, give back to the community and develop professionally. Grantees administering the program praised the Judicare model but noted the challenge to increase the pool of attorneys willing to take these difficult and time-consuming cases. These grantees indicated that they would like Judicare reimbursement extended to other types of cases, particularly in

rural areas because of the shortage of attorneys.

MLSC supplemented the AOC evaluation with case services data. From 2008 through 2011, Judicare attorneys in Maryland handled nearly 3,000 contested family cases and spent over 37,000 hours helping litigants that would otherwise be unrepresented in court. The average cost per case was about \$1,200. At least 6,000 Judicare hours were provided at no cost, leveraging over one million dollars of free legal services to low-income Marylanders.⁷ Approximately 2,200 pro bono cases were referred as a result of the Judicare project.

Benefits Abound

Access to lawyers for contested family law cases is critical for litigants to achieve just outcomes and equally important for the judicial system and society as a whole.

Since the revival of Judicare in Maryland, litigants who would have otherwise been unrepresented received expert legal representation by private attorneys compensated at significantly reduced fees. Furthermore, Judicare leverages the resources of legal services providers and the private bar. In addition it engages local bar associations, pro bono committees and family courts to work together to help fill the gap of access to justice for unrepresented low-income clients.

Other Judicare benefits include a lessening of the burden that self-represented litigants impose on Maryland's courts and an improvement of the administration of justice. Without this successful program, Maryland's families engaged in contested family law matters would have no other viable resource.

Harriet Robinson is deputy director of the Maryland Legal Services Corporation, which was established by the Maryland General Assembly in 1982 to receive and distribute funds to nonprofit organizations that provide civil legal assistance to low-income persons. MLSC is principally funded by Interest on Lawyer Trust Accounts (IOLTA) and surcharges on court filing fees. Reports referenced in this article are available at <http://mlsc.org/grants/judicare-family-law-project>.

¹ Final Report and Recommendations on the Potential Use of Private Lawyers, Michael Millemann, University of Maryland School of Law for Maryland State Bar Association Section Council on Delivery of Legal Services and the Administrative Office of the Courts, May 2007.

² Ibid., Note 1.

³ Clearing a Path to Justice: A Report of the Maryland Judiciary Work Group on Self-Representation in the Maryland Courts, Maryland Judiciary, August 2007.

⁴ MLSC administers a "supplemental fund," which pays up to 10 additional hours for every hour over 25 hours that the attorney spends on the case (thus five hours must be pro bono and the total cap is \$2,400).

⁵ Evaluation of the Judicare Family Law Pilot Program, Administrative Office of the Courts, April 2011.

⁶ Judicare Family Law Pilot Project: Evaluation Supplement, Maryland Legal Services Corporation, March 2011.

⁷ The AOC Evaluation Report (Note 5) noted that the average fee charged by Judicare attorneys in non-Judicare cases is \$220.

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From the Chair...

By Lora Livingston

Commission on Interest on Lawyers' Trust Accounts

Several weeks ago the members of the Commission and I met for our spring meeting in Denver, Colorado. A highlight of that meeting was lunch with our Colorado guests. Present were, Diana Poole, Executive Director and Philip Johnson, President of the Colorado Lawyers Trust Account Foundation (COLTAF). I was pleased that John Asher, Executive Director of Colorado Legal Services and former Chair of the Commission on IOLTA, was able to attend along with John Gleason from the Office of Attorney Regulation and Fred Baumann, Chair of the Colorado Access to Justice Commission. In addition, we were joined by Mark Fogg, president elect and Charles Turner, Executive Director of the Colorado Bar Association.

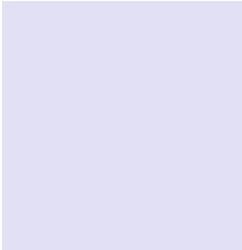
Reports from our guests showed that equal access to justice is a priority for the legal community and that there is strong collaboration and support among the organizations represented in working toward this goal. Phil and Diana provided us with an update on the progress of comparability rule revisions in Colorado; these changes were approved by the COLTAF Board and are now before disciplinary counsel. They should soon be before the state supreme court and it is hoped that the revisions will be adopted this year.

Phil Johnson indicated that even with interest rates at record lows, he hoped that these rule changes will generate greater income, but regardless of the present day yield, he is pleased to see COLTAF proactively prepare for a time when interest rates will be back on the rise. In the meantime, the foundation is actively working to enhance revenue by re-evaluating and reconstructing their bank recognition program. They are finding success by forging new relationships in the banking community, recognizing partnership banks and developing more effective methods of communication.

Like Colorado, many IOLTA programs have increased their efforts in revenue enhancement. On March 5, 2012, the Idaho Supreme Court approved amendments to the state's IOLTA rule. Effective July 1, 2012 Idaho will be the 45th jurisdiction to adopt mandatory IOLTA and the 33rd jurisdiction to adopt interest rate comparability. As always, the Commission on IOLTA and National Association of IOLTA Programs Joint Technical Assistance Committee is available to assist in exploring, drafting and implementing mandatory IOLTA and other IOLTA revenue enhancement strategies (see [News and Notes](#)).

Throughout our time in Denver, generating income remained a pervasive theme, and reports from members of the Commission on the state of IOLTA in their jurisdictions were evidence of the same. Their reports showed that declining income due to low interest rates made it necessary for programs to look to alternate sources of funding such as filing fees, cy pres awards and pro hoc vice fees. In addition, programs have begun exploring innovative ways to bolster income such as planned giving, private fund raising campaigns and the possibility of obtaining real estate escrow interest.

These efforts resonate with the training provided at the retrenchment workshop conducted in New Orleans. This summer we will have another



opportunity to broach retrenchment in a plenary session at the workshops in Chicago on August 2nd and 3rd, which will be held in conjunction with the ABA Annual Meeting. The workshops will include sessions where hot topics and honor roll/prime partner programs are discussed, as well as, a banking session and the return of speed dating. In addition, attendees will have ample time to meet, discuss and collaborate in small groups. As always, I look forward to this gathering of the IOLTA community and hope you will join me there.

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Grantee Spotlight: Bringing the Law to Life: Idaho's Citizens' Law Academy Connects the Legal Profession with the Public

By Carey Ann Shoufler

The mission of the Idaho Law Foundation (the Foundation) is to help the legal profession serve the public. One way this mission is accomplished is through the Foundation's Law Related Education Programs (LRE). Law related education is one of four priorities of the Idaho IOLTA program. In keeping with these priorities, the Foundation's LRE is a recipient of IOLTA funding.

Started in 1985 as a public service program of the Idaho Law Foundation, Idaho's LRE is part of a national program that began in 1978 when Congress passed the Law Related Education Act.

LRE sponsors educational programs for Idaho citizens of all ages that offer participants an avenue to:

- Understand the law, court procedures, and our legal system;
- Recognize the rights and responsibilities of citizenship;
- Foster positive attitudes about law as the basis of a democratic society; and
- Appreciate the processes through which people become positive, participating members of their communities.

A Goal of Public Awareness

In early 2000, the Idaho State Bar and the Foundation convened a joint committee known as the Public Information Committee to promote public awareness on the nature of the legal system, the importance of the rule of law, and the essential role of the lawyer in a just society.

It was the Committee's belief that the practice of law and its relevance to the general public was not understood by many the state's citizens. To address this issue, the Committee began exploring ways to demystify and humanize the legal process. They wanted to create an educational outreach program that would help the public understand:

- The laws affecting their daily lives and their rights under the law;
- What lawyers do and how they serve the public; and
- How the judicial system works and how problems are resolved through the legal system.

To address these lofty goals, the Committee crafted the Citizens' Law Academy (CLA).

How the Citizens' Law Academy Operates

Patterned after the highly successful Citizen Police Academy, the Citizens' Law Academy is a 10- to 12-week public information program developed and delivered through a partnership among the Idaho State Bar, the Idaho Law Foundation, and District Bar Associations. The weekly evening classes are offered in various parts of the state in the fall or the spring. Classes typically run for two hours.

The program is staffed by volunteers from the legal community. Volunteers include practicing attorneys, judges, and staff from the Bar and Foundation who serve as faculty and discussion leaders. Topics are selected by the Public Information Committee and modified to be applicable to citizens in various areas of the state.

Members of the Public Information Committee and leadership of the Fourth District Bar Association write the curriculum, program goals, and objectives. They evaluate class materials and invite participating faculty. The program is run by volunteers from District Bar Associations and staff from the Idaho Law Foundation

The Citizen's Law Academy is offered at no charge to its participants because the Bar Association and the Idaho Law Foundation underwrite the cost of the program. This program receives IOLTA funding as a project of the Foundation's LRE Program. Though these sources sustain the program at present, Idaho's US District Court provided funding through a grant program in the past.

Citizens' Law Academy Topics

While the specific topics covered vary depending on which District Bar Association is organizing the Academy, core topics include:

- **The Foundation of Our Legal System:** Taught by a federal judge, this class includes a discussion of the historical basis of our legal system, the Constitution and the importance of the rule of law. The speaker walks the participants through real-life examples of how our Constitution and legal system have been tested and proven.
- **Our Modern Court System:** Taught by a district judge, this class provides an overview of our court system and insight into the various roles of judges and staff members who work for the courts.
- **Cops and Bad Guys: Truth v. Fiction in Criminal Cases:** Taught by a prosecutor and a public defender, this class uses a fictitious criminal case to discuss the typical procedures and rights involved in a criminal case from the investigative stage through arrest, prosecution, and conviction.
- **Throwing in the Towel: The Process Of Bankruptcy:** Lead by a bankruptcy judge, this class explores the basics of bankruptcy law and the ins and outs of bankruptcy proceedings.
- **Truth and Consequences: The Challenges of Criminal Sentencing:** Lead by a federal judge, this session guides participants through the process of sentencing convicted criminal defendants. The class provides an analysis of factors considered in sentencing, mandatory guidelines, and differences between the federal and state processes.
- **Arguing for a Second Opinion: The Appeal Process:** Taught by an Idaho Supreme Court Justice, participants learn the process of appealing a trial court decision.
- **All in a Day's Work: Employment Law:** Two attorneys who specialize in the practice of employment law use fictitious employment discrimination claims to launch a discussion on the evolution of a civil lawsuit from the filing of a complaint to trial.
- **Judging the Judges: Judicial Selection and the Rules of Judicial Conduct:** A member of Idaho's Judicial Council leads a discussion on the judicial selection process and the Rules of Judicial Conduct that govern judges.
- **How Lawyers are Governed:** Bar Counsel for the Idaho State Bar discusses how lawyers are admitted to the Bar, how they are governed, and the procedures and rules involved.
- **Is It Really Like the Movies?** A panel of attorneys critiques clips

from popular movies and discusses what really happens in and out of the courtroom.

Some of the courses are videotaped so that participants can preview and review a tape, if they are unable to attend a session. At the beginning of each session, participants are given a binder with basic materials for the course, including a syllabus. The program ends with a graduation celebration at which time participants may invite their families to meet the staff and volunteers involved with the program.

Citizens' Law Academy Participants

Citizens' Law Academy is opened to anyone 18 years or older. Two months prior to the program, applications are made available to the public. The application includes questions to help organizers understand the backgrounds and levels of interest from potential participants. These applications are screened by members of the District Bar organizing the Law Academy; they look for a broad cross section of people to ensure wide demographic profiles, a high level interest from the applicants, as indicated from their response to questions, as well as, their involvement in their communities, and a commitment to attendance. Typically 25 to 35 people participate in a session.

Participants have an opportunity to evaluate each of the sessions, as well as provide overall program feedback. These evaluations are used to make any necessary adjustments to future programs. To date, the Academy has been rated very highly by the attendees.

Often Academy graduates go on to volunteer with other Bar and Foundation activities, such as serving as non-attorney members of our standing committees or acting as non-attorney judges for our mock trials. Said one participant, Jan Cottrell, "If there were a follow-up series I would take that too. I learned so much and thoroughly enjoyed each week. The ten weeks flew by. I was hooked from the first week. Our speaker made the Constitution come to life. Each week I continued to be amazed at the people who volunteer their time to make CLA such a success."

Conclusion

Programs like Citizens' Law Academy seek to create a bridge between the legal profession and the public at large. Thanks to programs like this one, more and more of Idaho's citizens can begin to have an accurate understanding of the important work of members of our legal community, one Citizens' Law Academy session at a time.

Carey Ann Shoufler has worked in education and communications for over 20 years. Since 2005, she has served as the Development and the Law Related Education Director for the Idaho Law Foundation. She obtained her Bachelor's Degrees in English Literature from Mills College in Oakland, California and her Master's Degree in Instructional and Performance Technology from Boise State University. For questions about Citizens' Law Academy, you can email Carey Ann Shoufler or call 208/334-4500.

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News and Notes



Roger Lilavois passed away on January 30, 2012 after a long, valiant struggle with cancer. Working with the Florida Bar Foundation, he developed the first IOLTA specific software in 1983 that enables IOLTA programs to track interest remitted to their accounts. Over the past 20 years, Roger worked closely with many IOLTA programs and continually enhanced his software to make their work more efficient. He was dedicated to the success of IOLTA

and took great pride in being part of the IOLTA community. Roger is survived by two sons, Joe and Nick, Joe's wife Susan and granddaughter, Brooke, and his 91 year old mother, Marcelle.

Idaho Rule Change

On March 5, 2012, the Idaho Supreme Court approved amendments to the state's IOLTA rule which include mandatory IOLTA and interest rate comparability provisions. The amendments will become effective on July 1, 2012. With this change, Idaho will become the 45th jurisdiction to adopt mandatory IOLTA and the 33rd jurisdiction to adopt comparability.

Mandatory IOLTA requires that all lawyers who hold client funds establish IOLTA accounts for the deposit of those funds that cannot earn net interest for the client. Rate comparability requires that all lawyers hold IOLTA accounts only in financial institutions that pay those accounts the highest interest rate or dividend generally available to other customers of the institution when IOLTA accounts meet the same minimum balance or other qualifications.

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. Email Commission Counsel, [Bev Groudine](#) or call 312/988-5771 for more information.

Summer 2012 IOLTA Workshops

The Summer 2012 IOLTA Workshops will be held on Thursday and Friday, August 2nd and 3rd at the Drake Hotel in Chicago in conjunction with the ABA Annual Meeting. The workshop sessions will address many timely topics, and the two days of programming will provide an opportunity for IOLTA staff and trustees to share information and network. Registration information can be found at: <http://www.ambar.org/annual>.

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By Kelly Scott, Staff Attorney, ABA Center for Pro Bono Medical–Legal Partnerships Pro Bono Support Project

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Connecting Pro Bono Attorneys to Remote Clients

A Breath of Hope

There are many opportunities to make a difference in our communities. Doing pro bono work is a way members of the legal profession can use our specialized skills to help vulnerable populations keep their homes, receive proper medication, and ensure their families are safe. Over the past couple of years medical–legal partnership (MLP) has significantly increased access to free legal services to low–income patients by integrating a lawyer as a member of the healthcare team to help solve legal problems that burden health. MLPs are now located at over 300 children’s hospitals, public hospitals and health centers across the country. The movement continues to foster the creation of MLPs at new sites or MLPs that help a specific patient’s population such as patients that have cancer. The significant expansion of MLP would not be possible without the dedication and commitment from pro bono partners and the legal aid community that supports their incredible work. By working together with doctors and legal aid attorneys, the pro bono volunteers have significantly improved the lives of many individuals and families through MLP.

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MLP pro bono partners include solo volunteer attorneys and small law firms as well as law firms and corporate law departments in both rural and urban communities. MLP pro bono partners provide direct legal services to patients, support for systemic advocacy projects, MLP site coordination and networking, and research and technical assistance projects unique to MLP sites and the MLP community. An MLP pro bono project allows for programs to be designed in a way that provides the most help to patients and a rewarding pro bono experience for attorneys. An important component of any MLP pro bono project is to decide on an area(s) of law where pro bono attorneys may have existing expertise or an area that they can develop expertise quickly. Or perhaps it is an area of law that a pro bono attorney has a personal experience with outside of their professional lives, such as a child with special education needs – an experience that could be the driving force behind the creation of their firm’s MLP pro bono project. In order to recognize MLP pro bono partners for their commitment to MLP as well as the meaningful work to help patients, the *Annual Outstanding Pro Bono Advocacy in Medical–Legal Partnership* was created in 2011. Below are two award recipients whose programs have worked with their MLP partners to alleviate the social determinants through direct legal services as well as facilitating the growth of new MLPs.

Faegre Baker Daniels & Wishard Health Services

Indiana Health Advocacy Coalition & EMBRACE

Faegre Baker Daniels, a national law firm, has been an essential part of the Wishard Health Services (Wishard) MLP since the Wishard MLP’s inception in 2008. Since that time, Faegre Baker Daniels has been a lead sponsor of the Indiana Health Advocacy Coalition (IHAC) and its vision to help healthcare providers launch MLPs throughout the state. IHAC is a 501(c)(3) organization with board members from the legal, medical, social work and academic communities. Faegre Baker Daniels attorneys work with MLPs in various capacities including helping form and lead the Indiana Health Advocacy Coalition, which advises the state’s MLP sites and supports Indiana’s MLP network of healthcare and legal service providers through the

organization of quarterly training sessions and other educational opportunities.

In 2010, Faegre Baker Daniels launched the partnership between the Faegre Baker Daniels Women's Forum and the Wishard EMBRACE Program. EMBRACE ("Encouraging Meaning and Balance in a Renewing and Comforting Environment") provides wraparound services for women undergoing cancer treatment at Wishard. Faegre Baker Daniels pro bono attorneys help the EMBRACE patients with guardianships for their children, wills and several other issues that may arise when planning for their families.

Walmart Legal Department & Arkansas Children's Hospital

Arkansas Medical–Legal Partnership for Children & Medical–Legal Partnership Corporate Pro Bono Initiative

In 2010, the Walmart Legal Department began to develop its first coordinated pro bono initiative by sparking an MLP at Arkansas Children's Hospital (ACH). Walmart's timing was excellent, as ACH had also sought to develop an MLP. Along the way, the Walmart team consistently raised awareness of the need for legal services for vulnerable children. Working with local legal aid partners, ACH, and other MLP community and national partners Walmart has trained over 150 legal staff to understand the dynamics of poverty and health, and how simple legal interventions can bring transformative changes to families in need. Walmart not only seeks to expand the types of cases that they take at ACH, but to also help establish new MLPs throughout the country. Walmart has integrated non–attorney staff as well as outside counsel in their project and with their MLP partners provide a solid network for patients.

The Walmart MLP Leadership Initiative, led by the Walmart Legal Department, has embraced MLP as an effective pro bono strategy to provide comprehensive support to vulnerable families with legal needs. Having established the first MLP corporate partnership in Arkansas with Arkansas Children's Hospital and Legal Aid of Arkansas in 2011, Walmart is cultivating a leadership circle of MLPs that serve vulnerable children. Walmart will facilitate a gradual expansion, beginning with the establishment in 2012 of the first corporate–led MLP initiative at Texas Children's Hospital.

MLP and pro bono is a perfect match. The possibilities are endless when the legal aid community and private bar work together with physicians as a team. With open communication, setting reasonable expectations and project planning, MLP is a rewarding experience that every partner benefits from being a part of. And, most importantly, more patients will receive critical legal services they require to build healthy lives.

To learn about the ABA MLP Pro Bono Support Project, please visit www.medlegalprobono.org

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From the Chair...

By Larry McDevitt

Standing Committee on Pro Bono and Public Service

One reason why a lot of people don't practice what they preach is they haven't the least idea what it is they are preaching.

— Jack Haney, *The Times-Picayune*, New Orleans, La., March 8, 1927

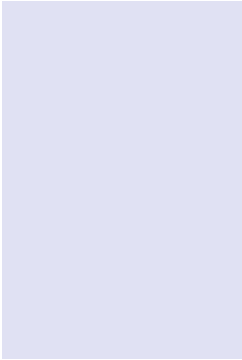
I have been a member of the ABA, my entire career as a lawyer, and have been proud of my various associations with different ABA groups and leadership entities during those years. In my most current role, serving as chairman of the Standing Committee on Pro Bono and Public Service, I was recently reminded that my pride as an ABA member is based in large part on the fact that the ABA knows what it stands for and is committed to working to achieve those goals. We are an organization which does, indeed, practice what it preaches.

ABA Goal II, focused on Improving the Legal Profession, has three objectives, the third of which is to "promote pro bono and public service." Our Committee has the privilege of being the principal ABA group charged with ensuring access to justice through the expansion and enhancement of the delivery of legal and other law-related services to the underserved through volunteer efforts of legal professionals nationwide. We pursue that charge through programmatic, policy, education, leadership and much more as we work with multiple constituent groups and individual attorneys and judges across the country. The Pro Bono Committee does not, however, carry the pro bono flag for the ABA alone.

At a recently convened meeting, hosted by the ABA Board's Program, Evaluation and Planning Committee representatives of over 30 different groups with an existing pro bono committee, project or initiative gathered to share information about their work and to strategize about how internal ABA groups can grow their commitment to Goal II. The discussion we had that day in February was educational, vibrant and stimulating. Most importantly those gathered agreed that there needed to be a more comprehensive approach to internal ABA pro bono efforts involving both better communication and exploration of partnering opportunities. My offer to have the Standing Committee on Pro Bono serve as a facilitator of information collection and dissemination across the ABA was accepted by the group.

Following the February meeting I shared with the Pro Bono Committee my experience learning more about the extensive commitment the ABA has to pro bono and the recommendations that were discussed that day. From that discussion and a subsequent conversation with Mark Schickman – a former Pro Bono Committee chair and current chair of the ABA Board's Program, Evaluation and Planning Committee – a next steps action plan is being developed. The action plan will focus on cataloguing information; providing tools, training and resources to help groups build their pro bono efforts; creating effective communication vehicles; and developing opportunities for collaboration.

In reflecting on this recent experience, it strikes me that every organization in the legal profession – bar associations, law firms, corporate law departments, law schools, government attorney offices and others – can



follow the ABA's example in their own way to practice what they preach about pro bono. Starting with having a clear vision of your pro bono mission, what are the organizational strategies you can undertake to engage your lawyers, your students or your members? What leadership role can you play, individually and institutionally? What resources do you have, or do you need, to ensure that there is a coordinating and comprehensive strategy for implementing your pro bono vision?

Practicing what you preach is about acting on what you believe. I hope that your organization believes in pro bono as much as the ABA and that your actions to build a strong pro bono culture and active pro bono service will flow from those beliefs accordingly.

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Using Technology to Connect Pro Bono Attorneys to Remote Clients

By William Jones, Technology, Information and Content Coordinator, ABA Center for Pro Bono

The scarcity of attorneys per capita in rural counties is a chronic problem for the delivery of legal services and information to remote clients. The majority of attorneys reside and practice in urban areas so the logistics for assisting rural clients can be prohibitive. Technology provides many new ways of transcending travel time, expense and distance – ways that can lower the barriers that prevent pro bono volunteers from helping rural clients. This article will present a number of innovative models that utilize technology to facilitate increased pro bono services to clients in need of assistance.

Maine Videoconferencing Initiative

With funding from a Legal Services Corporation Technology Initiative Grant, the Maine Justice Action Group Collaboration on Innovation, Technology, and Equal Access is developing a project that will use both online videos and video conferencing, in partnership with libraries, to support rural citizens.

Several short, self–help online videos (5–10 minutes) will be available through the Pine Tree Legal Assistance website, helpmelaw.org/ website, and through the non–profit channel at YouTube, which supports mobile phone access effectively. Subjects of the upcoming videos will be divorce, common collection defenses, getting prepared for foreclosure mediation and a video directed toward the Maine Somali community in Lewiston on how to get and use a court interpreter for divorce cases. These videos are being prepared in partnership with the judiciary, private bar and librarians who have helped identify which self–help and limited representation topics are most appropriate. The videos are of high quality and will be narrated by Susan Kimball, a well–known newscaster from the state. The first video, on divorce, should be available in mid–May of 2012.

The video conferencing component envisions both legal information sessions of about an hour's length as well as one–on–one private legal service sessions by appointment. These conferences will be directed to rural audiences who will go to local libraries to participate. These libraries have already had their technology capabilities upgraded through a Broadband Technology Opportunities Program (BTOP) grant that supports broad–band access (a grant application that was supported by the Maine Access to Justice group). Maine libraries have also acquired 100 new desktop computers that are set up with meeting software and fourteen libraries in the state have full video–conferencing setups. The participating librarians have received an online training through the helpmelaw.org website and will do a dry–run of the conferencing in May of 2012.

There will be 8–10 informational conferences with the first planned for early May, then one each month thereafter. The attorneys who will participate in the conferences are being recruited by the [Maine Volunteer Lawyers Project \(VLP\)](http://Maine Volunteer Lawyers Project), primarily from Portland. While the rural attendees will gather in groups of 10 – 40 people in the video–conferencing area at their library, the attorney must go to a local space that is set up for full video conferencing – either at another Maine library or at a law firm. In conjunction with the

video conference, the partner organization websites will have supporting documents and resources that can be used by self-represented litigants. It is envisioned that these conferences will be recorded and made available on both the library and other websites. The project will also allow clients to connect to volunteer attorneys for one-on-one private video conferencing set up by appointment. This project would appear to be highly reproducible in other locales, particularly if the libraries in one's state have received a BTOP grant and upgrades to video-conferencing resources.

Vinson & Elkins Virtual Law Clinic

A more modest approach to connecting pro bono attorneys and clients over a distance is exemplified by a virtual law clinic set up by Vinson & Elkins in conjunction with the Houston Volunteer Lawyers Program (HVLP). Clients at the HVLP offices were able to conference with volunteer attorneys at the Vinson & Elkins office through distinct Skype accounts. Vinson & Elkins purchased four sets of Microsoft webcams and Logitech headsets for HVLP to use in setting up their end of the infrastructure. Vinson & Elkins attorneys already had webcams on their laptops and used Logitech headsets that were purchased specifically for the clinic. Clients were scheduled in accordance with the pro bono attorneys' availability and were able to discuss their legal issues with their pro bono attorney "face to face."

Connecting Clients and Volunteers through a Website

Since 2007, Legal Services of Northern Michigan (LSNM) has connected rural clients to volunteer attorneys through their web-based [Internet Representation Project \(IRP\)](#). In this interactive space both the client and the attorney remain anonymous. Low-income citizens in the 36 northern-most Michigan counties, their eligibility qualified through an online form, create a pass-worded account and then post their legal question. One of the 20 volunteer attorneys registered in the system then selects the anonymous questions that they wish to answer and post their answer to the secure area assigned to the questioner. This is not a real-time conversation, but an asynchronous one, although a client can request a real-time chat with the attorney. The client logs back in to view their answer and to post any follow-up questions. If the client also submitted their email address as part of their registration the attorney's answer can be sent directly to them.

The IRP site has been running for nearly 5 years with more than 2500 questions answered. The top five categories for questions have been Custody/Visitation, Landlord/Tenant, Divorce/Separation, Bankruptcy and Collections issues. In the last few years the average number of clients annually served range from 300-350 (nearly three times that many applicants, around 1100 each year, do not meet the eligibility requirements but may be served by contacting a local LSNM office). The project is monitored by LSNM staff – if they see cases that fit their priority areas they will move them out of the project and into their own case management system.

The same software that runs the Michigan IRP is also used by Legal Services of Northwest Minnesota, another program that addresses the needs of remote rural clients, to power their [Legal Information Online Network \(LION\)](#). If you are interested in obtaining a free copy of the software please email [Kenneth Penokie](#), Executive Director of Legal Services of Northern Michigan or call 989/705-1067.

Tennessee has recently developed their own free online legal advice resource and named it [Online TN Justice](#), a joint project of the Tennessee Alliance for Legal Services (TALS) and the Tennessee Bar Association. Erik Cole, the Executive Director of TALS has a 4-minute YouTube video "[Welcome to Online TN Justice](#)." The website is similar in its process to the Michigan IRP: people who wish to have their legal questions answered must establish eligibility in terms of their income (less than 250% of the federal poverty level) and liquid assets, and must not be imprisoned or enquiring about criminal law issues. As in Michigan, those who are not eligible are provided with alternate paths to assistance. The authorized user will reveal their name and their county after which they use their assigned username and password to send their question in an email. The volunteer attorneys remain anonymous through the interaction and can choose which of the

questions they wish to answer.

The Online TN Justice website is currently serving about 100 low-income clients per month and has at least 250 Tennessee attorneys registered to give legal advice. If a Tennessee attorney wishes to take over the entire case pro bono from a client that they meet through the website, they can do so as long as they communicate with the site sponsors through an email address. Attorneys who use the site are covered by insurance maintained by the Tennessee Alliance for Legal Services. This site runs on two servers, one for the database and one for the website, contributed by Dell. The software to run the resource can be licensed for free by Access to Justice organizations that wish to set up a similar site by emailing [Buck Lewis](#), Chair of the Tennessee Supreme Court Access to Justice Commission or call 901/577-2256. The law firm Baker, Donelson, Bearman, Caldwell & Berkowitz PC was recently recognized by the Tennessee Bar for the contributions their IT department made in creating this site.

These models of technology – connecting clients to volunteer attorneys and legal information – can help the courts, clients and volunteer attorneys. Clients can be better informed self-represented litigants (something the courts greatly desire) through remote trainings that give them helpful information and direct them to prepared resources. Clients can access resources at a time convenient to them without having to travel far. The pro bono attorney also benefits in several ways: contact with the client or self-represented litigant can be made without the need for extensive travel; many of these forms of assistance are asynchronous so they can be conveniently scheduled around the volunteer's other commitments; and the unbundled nature of the matters allows them to control their volunteer hours by allowing them to help in a matter that is not open-ended. As utilization of technology increases in the practice of law, in remote areas, and in clients' communities, it provides a means of increasing access to justice for those facing the greatest challenges to doing so.

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NEW from the American Bar Association's Medical-Legal
Partnerships
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A Breath of Hope

By Jo S. Kittinger

Illustrated by Chuck Gale

- This picture book depiction of medical-legal partnerships in action demonstrates how medical-legal partnerships and legal aid can transform the lives of families in need.
- The story focuses on the plight of a small girl suffering from asthma because of a landlord's neglected, mold-ridden apartment. Torn between being evicted and the health of their daughter, the family is connected with a legal representative by the doctor who cares for the child.
- This story provides a useful teaching tool for families, hospital administrators, doctors, family lawyers, and anyone who can promote or benefit from medical-legal partnerships.
- [Purchase the book](#) through the ABA store* and help support the projects of the Standing Committee on Pro Bono and Public Service including the Medical-Legal Partnerships Pro Bono Support Project.

***Bulk discounts apply.**



A Breath of Hope
By Jo S. Kittinger

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LAMP Feature

LRIS

USERRA and the "Cat's Paw" Theory of Employer Liability after *Staub*

IOLTA

By Alexandra Lee Newman and Yelena Shagall

Pro Bono

LAMP

USERRA and the "Cat's Paw" Theory of Employer Liability after *Staub*

From the Chair

Since its enactment in 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) has provided a powerful means of addressing employment discrimination against those serving in the military. The Act forbids an employer from denying "employment, reemployment, retention in employment, promotion, or any benefit of employment" based on an employee's "membership" or "obligation" to participate in uniformed services and establishes employer liability "if the person's membership . . . is a motivating factor in the employer's action."¹ In March 2011 the U.S. Supreme Court enlarged the scope of the Act's protections in *Staub v. Proctor Hospital*² by extending the reach of "cat's paw" liability in an employment discrimination case brought by a U.S. Army reservist under the Act. Since *Staub* was decided, other courts have applied the requirements of the new "cat's paw" rule and revealed unresolved issues about which employment lawyers and their clients must be aware.

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Plaintiff Vincent Staub, a radiologist and Army reservist, sued his employer Proctor Hospital, alleging that his supervisors filed a disciplinary report against him in which they falsely accused him of violating a hospital policy. The supervisors did this, he alleged, because they harbored hostility toward his military obligations and consequent absences from work, as evidenced by derogatory comments the supervisors had made about his service. The supervisors did not have the decision-making authority to fire Staub, but the Vice President of Human Resources fired him after reviewing the supervisors' disciplinary report, examining his personnel record, and speaking with his co-worker about his absences. A jury found the hospital liable for discrimination under the USERRA and awarded damages of \$57,640 to Staub because his military status was "a motivating factor" in the vice president's decision to fire him.

The U.S. Court of Appeals for the Seventh Circuit reversed the judgment, concluding that the hospital was entitled to judgment as a matter of law.³ Because Staub had alleged a "cat's paw" theory of liability, the appellate court reasoned, he was required to show that the biased supervisors had exerted a "singular influence" over the ultimate decision-maker (the vice president). The appellate court determined that the hospital was immune from liability because of undisputed evidence that, in deciding to fire Staub, the vice president had relied upon personnel records and a co-worker interview in addition to the supervisors' disciplinary report.

The term "cat's paw" derives from a fable in which a monkey convinces a cat to reach into a fire to extract roasting chestnuts; the cat burns its paws and loses all of the chestnuts to the monkey, who escapes unscathed with the bounty. The term was first introduced in the employment-law context in the Seventh Circuit case *Shager v. Upjohn*.⁴ *Shager* explained that the decision-maker for the employer ("the cat") can be liable to an employee for employment discrimination where the decision-maker relies on advice colored by the discriminatory animus of a supervisor ("the monkey") in making an adverse employment decision; if the decision-maker was the conduit of the supervisor's prejudice ("the cat's paw"), the decision-maker's own lack of animus would not protect the company from liability.

Although *Shager* suggested that an employer could be liable under the "cat's paw" theory so long as any taint or influence by a biased supervisor made the decision-maker a conduit of the supervisor's prejudice, the Seventh Circuit later embraced a stricter approach in applying the theory. By the time it decided *Staub*, the Seventh Circuit required a biased supervisor to exert a "singular influence" over the decision-maker's employment decision against the employee for the employer to be liable for the supervisor's bias. Because of disagreement within and outside of the Seventh Circuit over the degree of influence that the supervisor must wield over the decision-maker for "cat's paw" liability to apply, the Supreme Court granted certiorari in *Staub*.

Reversing the Seventh Circuit, the Supreme Court in *Staub* rejected the requirement that the supervisor exert a "singular influence" over the decision-maker to establish employer liability under the "cat's paw" theory.⁵ The Court imported principles of tort and agency law to explain that, where the decision-maker's independent investigation into the employee's performance relies in part on facts provided by the biased supervisor, the supervisor's actions and discriminatory animus remain a "proximate cause" of the adverse employment decision. Proximate cause, the Court explained, requires only "some direct relation" between alleged injurious conduct and the employee's injury, and it is possible for an injury to have several proximate causes. Therefore, the Court reasoned, the supervisor's actions and animus *and* the decision-maker's exercise of judgment following an independent investigation made in reliance on the supervisor's facts may constitute proximate causes of an adverse employment decision.

The Court further explained that the approach advocated by the hospital would be inconsistent with laws designed to prevent employer discrimination, for that approach would immunize an employer as long as the employer "isolates a personnel official from an employee's supervisors, vests the decision to take adverse employment actions in that official, and asks that official to review the employee's personnel file," even though the file is composed of recommendations by biased supervisors.⁶ The Court concluded, "[I]f a supervisor performs an act motivated by antimilitary animus that is *intended* by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA."⁷ After the case was reversed and remanded to the Seventh Circuit, Staub settled his claims with Proctor Hospital.

In the aftermath of *Staub*, a supervisor's antimilitary bias against an employee may now form the basis of employer liability under USERRA for a discriminatory employment decision, even if the actual decision-maker does not rely solely on the supervisor's assessment of the employee in making the decision. Liability attaches, the Supreme Court explained, if (1) the employee's supervisor is motivated by antimilitary animus, (2) the supervisor performs an act intended to cause an adverse action against the employee, and (3) that act is a proximate cause of the decision-maker's adverse employment action.⁸

Following the Supreme Court's *Staub* decision, other courts have determined that the newly articulated "cat's paw" theory extends beyond discrimination claims brought under USERRA and applies to discrimination claims brought under the Americans with Disabilities Act,⁹ retaliation claims under state workers' compensation statutes and the Family and Medical Leave Act, discrimination claims under state whistleblower protection statutes,¹⁰ and retaliation and discrimination claims under Title VII of the Civil Rights Act of 1964.¹¹ But courts disagree over whether the theory may apply in cases brought under the Age Discrimination in Employment Act of 1967 due to that statute's heightened causation standard.¹² And courts have yet to express a view on the legal standard applicable to "cat's paw" claims under 42 U.S.C. §1983.¹³

Before filing "cat's paw" claims under these statutes, plaintiffs should exploit fully the available internal grievance processes within their companies.¹⁴

When preparing for litigation, plaintiffs should broadly consider all potential adverse actions (e.g., termination or transfer) and all potential non-decision-makers (e.g., supervisors and co-workers) when developing their theories of proximate cause under the new "cat's paw" framework. (The Supreme Court in *Staub* expressly reserved the question whether a non-supervisory coworker's bias could serve as a proximate cause.¹⁵) Plaintiffs must assert the "cat's paw" theory of liability at some point before trial (such as in a pretrial filing, in proposed jury instructions, or at a pre-trial or trial conference). The ultimate burden to prove the elements of the theory rests with the plaintiffs, and in doing so plaintiffs cannot rely on mere speculation of animus—they must point to concrete evidence suggesting animus.¹⁶

As courts continue to define the full extent of *Staub*, what remains clear is that the Supreme Court's decision strengthens USERRA protections available to military personnel by providing a more robust means of shielding servicemembers from discrimination in civil employment.

Alexandra Lee Newman and Yelena Shagall are staff law clerks for the United States Court of Appeals for the Seventh Circuit in Chicago. The views expressed in this article are the authors' alone, and should not be construed as directly or indirectly reflecting or revealing the opinions of any judge on the court.

¹ 38 U.S.C. § 4311.

² 131 S. Ct. 1186 (2011).

³ 560 F.3d 647 (7th Cir. 2009).

⁴ 913 F.2d 398 (7th Cir. 1990).

⁵ *Staub*, 131 S. Ct. at 1190–94.

⁶ *Id.* at 1192–93.

⁷ *Id.* at 1194 (emphasis in original).

⁸ *Id.*

⁹ *Dickerson v. Bd. of Trs. of Cmty. Coll. Dist. No. 522*, 657 F.3d 595, 602 (7th Cir. 2011).

¹⁰ *Walsh v. Town of Millinocket*, 28 A.3d 610 (Me. 2011).

¹¹ See *Staub*, 131 S. Ct. at 1192 (noting that USERRA is "very similar to Title VII"); see also, e.g., *McKenna v. City of Phila.*, 649 F.3d 171, 177 n.5 (3d Cir. 2011).

¹² Compare *Simmons v. Sykes Enters., Inc.*, 647 F.3d 943, 949–50 (10th Cir. 2011) (forbidding ADEA claim), with *Shelley v. Geren*, 666 F.3d 599 (9th Cir. 2012) (applying *Staub* to ADEA claim) and *Marcus v. PQ Corp.*, Nos. 11-2009, 11-2066, 2012 WL 149802, at *2 (3d Cir. Jan. 19, 2012) (nonprecedential order) (same).

¹³ See, e.g., *Okon v. Harris County Hosp. Dist.*, 426 F. App'x 312, 319 (5th Cir. May 23, 2011) (nonprecedential order).

¹⁴ See *Staub*, 131 S. Ct. at 1194 n.4.

¹⁵ *Id.*

¹⁶ *McKenna v. City of Phila.*, 649 F.3d 171, 179 (3d Cir. 2011).

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**USERRA and
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From the Chair

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From the Chair...

By David G. Ehrhart, Brig Gen, USAF (Ret.)

**Standing Committee on Legal Assistance
for Military Personnel**

Of the varying types of work undertaken by the LAMP Committee to constantly improve the quality and availability of free civil legal services available to military personnel, our role in supporting and informing policymaking decisions allows us to have a wide and systemic impact for the benefit of our servicemembers and their families. Our work has included seeking federal legislation to fund pro bono legal services for military members, strengthening existing federal law to enhance legal protections for servicemembers in a variety of contexts, and calling upon states to accommodate the ability of military attorneys to represent their clients in state court under special rules of admission.

Beyond matters immediately affecting legal protections and services for military personnel, we are, on occasion, called upon to support policy measures that more broadly address the welfare of military families. Most recently we have had the opportunity to lend our support to an effort to improve conditions for attorneys who are the civilian spouses of military members and who, because of the need to frequently relocate due to the spouse's military service, face significant challenges when seeking licensure to practice law.

The difficulties encountered by the lawyer-spouses of military members are not unusual among those experienced by military spouses under all types of professional licensing requirements. In fact, First Lady Michelle Obama, as a part of her Joining Forces initiative, has identified these issues as a high priority and has called upon the states to adopt uniform standards to support military spouse employment and license portability. Ultimately the goal of the Joining Forces initiative is to ensure that the unique burdens placed upon our men and women in uniform do not result in impairment of their spouses' ability to find employment or advance their careers.

This is an issue about which I am personally familiar. My wife, Chris, is a nurse and has faced this licensing challenge in nursing every time we were reassigned to a new state. But as Joining Forces recognizes, my wife's situation is far from unusual; indeed, many of our own committee members know firsthand of similar experiences. And so, at least within the context of attorney-spouse licensing, the LAMP Committee believes this to be a matter affecting the legal profession about which we are qualified to take a position.

For our November 2011 meeting at Davis-Monthan Air Force Base in Tucson, AZ, we invited Mary Reding to speak to the committee about this important issue. Ms. Reding is an attorney and spouse of an Air National Guard pilot; she is also the cofounder, along with the Hon. Erin Wirth (Coast Guard spouse), of the Military Spouse JD Network. This group has been working to promote improvements to state admission-to-practice rules that will accommodate the particular circumstances experienced by military spouse attorneys. After Ms. Reding's briefing to the committee, LAMP signed on to support a resolution to the ABA House of Delegates to urge courts and state and territorial bar admission authorities to adopt rules, regulations, and procedures that accommodate the unique needs of military spouse

attorneys who move frequently in support of the nation's defense. The resolution, primarily sponsored by the Commission on Women in the Profession, was prepared for presentation at the 2012 ABA Midyear Meeting.

At the February 2012 Midyear in New Orleans, I had a chance to again meet with Ms. Reding and Judge Wirth and to assist with lining up additional speakers on behalf of the resolution. As it turned out, my help was unnecessary—after Judge Wirth's excellent speech to the House of Delegates on the issue, there was no opposition and the resolution was approved without dissent. It was gratifying to see the matter embraced by the ABA as an important issue not only for the profession, but for military families generally. And it was only just a couple of weeks later, at a White House press conference addressing professional licensing for military spouses, that the First Lady recognized the work of the ABA in this area, stating that it was the goal of Joining Forces "to urge more national professional associations to follow the lead of the American Bar Association."

LAMP is proud to have played a role in supporting this important resolution, and we look forward to not only continuing to work with the Commission on Women in the Profession and the Military Spouse JD Network to move this particular cause forward from the ABA and out to the states, but also on other policy matters where we can actively support the needs of our men and women in uniform and their families.

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