

DIALOGUE

Fall 2009
VOL. 13, NO. 4

News and Perspectives from the ABA Division for Legal Services

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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...](#)

From the Chair... By Sheldon R. Warren

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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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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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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.

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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 R. 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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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:

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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.¹ 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.

¹ 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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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. 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.

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 for more information.

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A Roadmap for Appointed Counsel Under the Servicemembers Civil Relief Act

[Delivery](#)

By Mark E. Sullivan

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A Roadmap for Appointed Counsel

For civilian lawyers, one of the more vexing scenarios presented by the Servicemembers 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. There are, however, a right way and a wrong way to perform as a court-appointed attorney under section 521. This "how-to" article by military legal assistance expert Mark E. Sullivan will walk you through every step required to do the job right, when a judge surprises you with a new client.

From the Chair

Military Pro Bono Project Update

You have just been appointed attorney for a servicemember under the Servicemembers Civil Relief Act (SCRA). So what do you do now?

[Pro Bono](#)

The SCRA, found at 50 U.S.C. Appendix §501, is the largest statutory source of civil-law protections and rights for service men and women, enacted to ensure that they do not needlessly lose their credit, home, car and other protected interests while away from home serving their country.

[SCLAID](#)

The statute provides that, under certain circumstances, an attorney must be appointed for a servicemember by the court.

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This article will help you understand the relevant requirements and protections of the SCRA, the steps you should take to comply with your obligations under the Act, what you need to do to protect "your newest client" – the servicemember client you have never met – and how to complete your job and be discharged by the court.

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Your hypothetical new client is Sergeant Jake Wilson. Below we will walk through the steps of locating him, informing him of the court proceeding, and representing him under the SCRA. (Note that, although our hypothetical refers to a court, the SCRA also applies to all administrative

agency proceedings. Thus the “judge” in your case could be an “administrative hearing officer,” and the “trial” might be an “administrative hearing.”)

Orders and Duties

1. *First of all, get a copy of the appointment order.* Ask the clerk, magistrate or judge to provide you with a document appointing you under the SCRA. You will need it. Also ask the court if there is any other information about the new client, perhaps in the court file or in communications with the court by the servicemember or a Judge Advocate General (JAG) officer on his behalf.
2. *Determine your duties.* Under what section of the SCRA were you appointed? It could have been under either -
 - a. 50 U.S.C. App. Section 521(b)(2), if the servicemember has not entered an appearance, or
 - b. Section 522(d)(2), if request for “additional stay” has been denied.

Ask the court if there are any special instructions on what you need to do. The judge, for example, might instruct you, “Contact SGT Wilson, educate him on what’s going on, and tell him that I want to know his position in this litigation by three weeks from today. This looks like a simple uncontested divorce, but I don’t want to enter a judgment against him until I know what he’d like to do.”

Section 521

3. If the servicemember has not entered an appearance in the case, then you have been appointed counsel under Section 521. The court may not enter a default judgment against a servicemember who has not entered an appearance in the case without appointing an attorney for him. “Default judgment” means any order or ruling adverse to the servicemember’s interest. It does not only mean a final judgment on the merits as to the claims for relief alleged in the lawsuit.
4. Under Section 521, once counsel is appointed, the court needs to decide on a stay of proceedings. The court must stay the proceedings for at least 90 days (upon application of counsel or on the court’s own motion) if the court determines that:
 - a. there may be a defense to the action and a defense cannot be presented without the presence of the servicemember, or
 - b. after due diligence, counsel has been unable to

contact the servicemember or otherwise determine if a meritorious defense exists.

A flow chart illustrating what happens when there is no appearance by the servicemember can be found [here](#).

5. Under Section 521, counsel should ensure that the stay has been granted for at least 90 days. Remind the court that -
 - a. You cannot determine whether there is a defense, *since you were just appointed!*
 - b. And you have not yet had a chance to contact the servicemember or otherwise find out whether a meritorious defense exists – for the same reason.

The point to make with the court is that it will be virtually impossible for you to prepare and present the case without the assistance of the unavailable servicemember.

Section 522

6. When Section 522 of the SCRA is involved, it means that the court has denied a servicemember's additional (not initial) request for a stay of proceedings. The court must appoint an attorney to represent the servicemember in the action or proceeding when a Section 522 "additional stay request" has been denied. 50 U.S.C. App. § 522(d)(2).
 - a. Note that a stay request need not be in a particular format. Such a request need not be made in person, and often doesn't involve a motion filed by an "attorney of record" for the servicemember. The request could be made in a phone call to the judge's clerk, in a letter by a JAG officer to the court, or even by e-mail. It need not be a "motion for a stay."
 - b. You should find out how the stay request was made; this might provide valuable information on your client and how to contact him or her.
7. If you are appointed under Section 522, your first duty is to renew that stay request for your client. Ask the court to reconsider, after you've gotten the case file and combed through it to find out any information favorable to a stay. Here is what you need to know:
 - a. When the servicemember has made a request for a stay, 50 U.S.C. App. §522 states that the court may, upon its own motion, or shall, upon the application of the servicemember, enter a stay of

proceedings for at least 90 days if the motion includes information required by the Act for the court to determine whether a stay is needed.

- b. What information is needed? This “90-day stay” – although it can be for a longer period of time – requires four elements. Here are the requirements:

Punchlist for the Initial 90-Day Stay

Elements of a Valid 90-Day Stay Request.

Does the request contain...

- A statement as to how the servicemember’s current military duties materially affect his ability to appear...
 - and state a date when the servicemember will be available to appear?
 - A statement from the servicemember’s commanding officer stating that the servicemember’s current military duty prevents appearance...
 - and state that military leave is not authorized for the servicemember at the time of the statement?
- c. Don’t worry that your actions might expose your new client to the waiver of a defense, such as lack of personal jurisdiction. The Act makes it clear that a stay request doesn’t constitute an appearance for jurisdictional purposes or a waiver of any defense, substantive or procedural. 50 U.S. C. App. §522(c).
- d. The same section of the statute says that actions by the attorney in the case shall not otherwise bind the servicemember. Thus if you eventually receive instructions from the SM as to a stipulation or response, make sure that you can give the judge a written statement from the client to that effect, since *you* cannot bind the member.
- e. If the court has appointed you because of denial of an additional stay (after the initial 90-day stay), then you still need to request the court’s reconsideration of that stay request. The servicemember may request an additional stay based on the continuing effect of his military duty on his ability to appear. He may make this request at any time when it appears that he is unavailable to defend or prosecute. He must provide the same information as given in the above punchlist. 50 U.S.C. App. §522(d)(1).

Getting Information

8. If you are in court when the appointment takes place, talk to opposing counsel. She is the one who represents the other party in the lawsuit, and she is likely in the best position to give you information about your new client.
 - a. If it is a domestic lawsuit, the odds are that her client will know something about your new client – last known address (preferably a military base!), Social Security number (SSN), rank, etc. Perhaps even an e-mail address or the name of a family member who might assist you in getting in touch with SGT Jake Wilson.
 - b. If the lawsuit involves something else, however – a personal injury matter, a contract claim or a commercial suit – it might take a lot of digging to find information about your new client. This is especially true with respect to the single item that, after the client's name, is most essential to the job of locating him – *the SSN*. You'll need this to contact him. Perhaps a trip to the state Department of Motor Vehicles will be needed. You might find the SSN on the lease he signed or in other documents available through discovery. Possibly a witness or one of the other attorneys may have information on Jake.

Communicating with the Servicemember

9. Once you are armed with your order of appointment and the name and SSN (and possibly Jake's rank – "sergeant"), you should contact any military base – but preferably a base of the same branch of service as Jake – for assistance in locating him. If you use a base from the same branch, you are more likely to be in the same network, so to speak.
 - a. Call the lawyers on base. They typically can be found in the staff judge advocate office, but it also might be listed as the "legal assistance office." You can find telephone numbers for military legal assistance offices at: <http://legalassistance.law.af.mil/content/locator.php>.
 - b. The lawyers in military legal assistance offices are known as "legal assistance attorneys." They may be either JAG officers or civilian attorneys employed by the U.S. government.
 - c. Ask the attorney you speak with – we can call her Captain Susan Clark – to help you locate and get

- in touch with your new client, SGT Jake Wilson.
- d. Captain Clark will probably ask you for verifying information, such as a copy of your court orders; be ready to fax them to her.
 - e. She will also need the full information that you have about Jake – full name, SSN and rank. If you know the place he was last assigned, give her that information as well.
 - f. Then let her go to work.
10. When CPT Clark next contacts you, she might tell you that, ever since 9/11, the military cannot provide outside individuals with information on the location of servicemembers. In that situation, she should offer to get a message to Jake that you are attempting to contact him. If this happens, then you should ask her to send Jake the order of appointment as well as a letter or e-mail from you regarding the situation in court – more on the latter below. You should ask that Jake initiate e-mail correspondence with you so that you can comply with your duties under the SCRA and give a report back to the court.
11. Of course, it is possible that when CPT Clark contacts you, she might have an answer which looks like this:

**Sergeant Jacob Wilson, 275-00-9087.
Company B, 3rd Battalion, 4th Mechanized Infantry
Brigade
Ft. Carson, Colorado 98765**

12. If the base is “stateside,” then use the phone, call the base locator at Ft. Carson, get the number for the above unit, place a call there and ask to speak to your client. In the alternative, write him a letter, letting him know the court has appointed you, the nature of your duties, what the court asked you to do, and what his options are.
13. But what if the information looks like this?

**Sergeant Jacob Wilson, 275-00-9087.
Company B, 3rd Battalion, 4th Mechanized
Infantry Brigade
APO AE 10765**

- a. In that case, it is a sure thing that he is in a foreign country. APO means Army Postal Office, which refers to Europe, Africa and Southwest Asia. FPO stands for “Fleet Postal Office,” and that is the Pacific and the Far East.
- b. Ask the captain if she can find out where he is and contact his servicing JAG office to determine

if that office can send a message to him about your appointment.

- c. Perhaps you can obtain his e-mail address. Maybe Captain Clark can fax or e-mail a copy of your appointment order to his nearest JAG office. Perhaps the office over there can arrange a time when he can phone you from the overseas JAG office to catch up on the litigation.
- d. If all those efforts fail to track down a current military address for your new client, you can use one of the military locator services found at: www.defenselink.mil/faq/pis/PC04MLTR.html. These services cost a nominal fee, and *it make take up to four weeks to get a reply* with your client's current military duty address.
- e. If all else fails, use the U.S. Postal Service.
- f. See if you can get an e-mail address for Jake. All servicemembers have military e-mail accounts. For example, an Army Knowledge Online – or "AKO" – account might have this address: jacob.q.wilson@us.army.mil. Many servicemembers also retain a "civilian" e-mail account.
- g. When writing Jake, you need to explain to him what is going on, what his options are, and what you need to report to the court. If possible, tell him what your opinions are regarding the litigation, and what position he might take (if you are able to do so from your limited review of the case). Don't invoke the SCRA if the only purpose is to incur delay. The SCRA was passed to try to protect servicemembers from the distractions of litigation when their full attentions should be on the military missions at hand. If there is no purpose in delay, or if the lawful delays of the SCRA will likely result in later adverse consequences for Jake, tell him so. Thus, in a child support case, you might advise the client that, if he is not contesting paternity, he should consider the likelihood that any further stay request will not be well received by the judge, as a stay would delay support payments for the client's child.

Directions from the Servicemember

14. If Jake does not want to delay the proceedings and wishes to proceed – after you have given him the pro's and cons – then make a record of his decision. If possible, ask him to confirm it in writing so you can tender to the judge that communication. Then submit a

report to the court. Your duties are over.

15. If, however, Jake wants you to make or renew a stay request, then tighten your seat belt and get ready. The details for the initial 90-day stay, which is mandatory if all elements are supplied, are found above. The "additional stay" requires the court to find that Jake's ability to prosecute or defend is "materially affected" by reason of his or her active duty service. Once this finding of material effect is made, the servicemember is entitled to a stay for such period as is necessary until the material effect is removed. While this is not explicitly stated in the SCRA, it was the rule under SSCRA (the Soldiers' and Sailors' Civil Relief Act, predecessor statute to the SCRA) and most likely will be the rule under the current Act as well. Finally, since courts are reluctant to grant long-term stays, they can and should require servicemembers to act in good faith and be diligent in their efforts to appear in court.

More Information Needed?

16. Here are some questions, ideas and comments that may be helpful in evaluating the strength of your additional stay request:
 - a. How much leave is available to Jake? Ask him. To verify, get a copy of his Leave-and-Earnings Statement (LES) to find out. It is one thing if he has no available leave. It might not go down well with the court, however, if there is plenty of leave, and he has even used some of it in the last few months (unless you can show that the reason for use of leave was a hardship or family emergency).
 - b. What is the nature of the "military necessity" that prevents Jake's attending a hearing or responding to discovery? Is he serving in Iraq, where he cannot be given leave and is facing hostile fire on a daily or weekly basis? Or is he serving as "backfill" at Ft. Carson so that others may deploy overseas, working a comfortable day shift of 7:30 a.m. to 4:30 p.m., with weekends and holidays off?
 - c. Whatever the reason or reasons, make sure that you give a detailed request for the additional stay. Mere conclusory statements cannot help; you want to specify what Jake is doing, how he has applied for leave, who denied the request and when, what he said in the leave request, and so on. Avoid use of military terms and acronyms. "Civilian language" will be better understood by

the civilian judge. Thus "the infantry division's artillery unit" might be better than "division artillery" or, even worse, "DivArty." You should say "7:30 a.m.," not "0730 hours."

- d. When you return to court, make a record of the stay request and your evidence. Get all the documents admitted as part of your request. That means LES, military orders, communications from the servicemember, communications from the commanding officer, etc. Demand a written ruling from the court, whether as an interim order or as part of the final decree. In that small number of cases that involve an appeal, this kind of "due diligence" is essential.

17. What if the judge is not persuaded? If the court is not convinced of "material effect," it has the discretion to:
 - a. Request an affidavit setting out all the facts and circumstances, usually executed by the member or the member's commander.
 - b. Ask for a copy of the member's Leave and Earnings Statement (the military equivalent of a pay statement) to show his basic pay, Basic Allowance for Housing, Basic Allowance for Subsistence, other pay or allowances, tax withholdings, voluntary allotments to pay bills or support, and *accrued leave*.
 - c. Request a more specific affidavit detailing the member's efforts to appear in court, for example, and the next court date when he or she would be available.
18. Some courts require specific information whenever a stay application does not contain sufficient facts. One example is a set of questions to an individual's commander used by the courts in Monterey County, California; it is particularly useful in getting information to allow evaluation of a stay request.¹ The author has added several additional inquiries, and these are formatted below as interrogatories to the servicemember (as opposed to questions by the court):
 - a. What have you done to obtain ordinary and/or emergency leave to attend any necessary hearings and/or trial in this court?
 - b. What results did these efforts produce?
 - c. How much leave did you request?
 - d. When did you request this leave?
 - e. Give the name, rank, title, address and commercial telephone number (if available) of the individual who denied your leave request.

- f. Have you taken any leave in the last three months?
- g. If so, how much and for what purpose?
- h. How much leave do you currently have as reflected on your latest Leave and Earnings Statement?
- i. Provide a copy of your last three Leave and Earnings Statements with your responses to these questions.
- j. What have you done to obtain a transfer to a military installation near this court on either a temporary or permanent basis?
\
k. What results did these efforts produce?
 - l. When were you assigned to the present duty station?
- m. When are you due to be transferred on normal rotation or reassignment?
- n. To what station will you probably be transferred?
- o. (If the servicemember is an enlisted person) What is the date of your present enlistment contract?
- p. When does the enlistment expire?
- q. Do you intent to re-enlist?
- r. Does your service record contain a bar to re-enlistment?
- s. Is there any likelihood that you will obtain an early release from active duty and, if so, when is this expected to occur?
- t. State any and all reasons why you cannot respond to written interrogatories in this case.
- u. State any and all reasons why you cannot respond to written document requests in this case, so long as the documents requested are readily available to you.
- v. State any and all reasons why you cannot respond to written requests for admissions in this case.
- w. Give the location (and distance) of the nearest legal assistance office (JAG office or staff judge advocate office) to you.
- x. State your duty hours during the week.
- y. State your duty hours on weekends.
- z. State what means of communication are available between you and this court, specifically including telephone, e-mail, regular mail and videoteleconference (both individually and through your JAG office).

19. Note that members from all branches of military service, whether buck private or rear admiral, get thirty days of

leave annually, accruing at the rate of 2.5 days per month (although military necessity may limit when the leave may be taken).

20. Also keep in mind that members who are going through basic or advanced training may be unable to appear in court due to the training schedule; there are no extra days built into the schedule to accommodate court dates, depositions or family emergencies, and being gone from training frequently means that the trainee will have to repeat the same training program from the beginning.

The End Is in Sight

21. When can the judge terminate the appointment? While there is nothing written on this, the logical explanation is that the judge may terminate the appointment when there is no longer a need or a desire for the appointment. And that, in turn, means –
 - a. *No need.* Either the case has concluded and there is no reason to continue the appointment, or else the original need for the appointment [default or denial of additional stay] no longer exists; -- OR ELSE --
 - b. *No desire.* The servicemember has signed a waiver (in at least 12-point typeface) specifying that he or she waives the appointment or continuation of the appointment.

Hooper, "The Soldiers' and Sailors' Civil Relief Act of 1940 as Applied in Support Litigation: A Support Attorney's Perspective," 112 Mil. L. Rev. 93, 95-96 (1986).

Mr. Sullivan is a retired Army Reserve JAG colonel and former chair of the LAMP Committee. He practices family law in Raleigh, NC, and has been a certified specialist in family law for over 20 years.

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From the Chair...



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

Standing Committee on Legal Assistance for Military Personnel

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. The volunteer spirit let loose by the Project has proved even stronger than anticipated, as the statistics reported in the accompanying story on the Project's first year bear out.

In engaging in pro bono support for those on active duty, one becomes more acutely aware of the even more complex set of challenges facing that other great patriot population – our American veterans. The line between these two populations, although rigidly drawn by federal bureaucracies in the past, can seem almost artificial when viewed from the individual's perspective. The legal, financial and personal issues facing servicemembers rarely disappear at discharge. In too many cases, they are exacerbated by joblessness and other difficulties associated with return to civilian life after long, high-stress deployments to conflict zones. Thousands of our new veterans are dealing with physical disability, too many are beset by Post Traumatic Stress Disorder, and a significant number are even encountering homelessness.

Not to minimize our duty as a nation to those older veterans who served in prior eras, but our government and private sector must now respond to the distinct set of challenges confronting these new American veterans, so many of whom have served nobly, selflessly and at significant personal cost in Iraq, Afghanistan or both. The recent tragedy at Ft. Hood only underscores the extreme demands placed on these individuals, who have endured deployment after deployment over half a decade or longer.

As tens of thousands more of these new veterans filter back into full-time civilian life in the years just ahead, the challenge to afford them the social

and legal support they deserve will be immense. As Brigadier General Clyde "Butch" Tate II ("BG Tate"), Deputy Judge Advocate General, U.S. Army, recently cautioned, "I don't think we fully appreciate yet the numbers of veterans who soon be back in the civilian world." In remarks at a veterans law seminar hosted by the John Marshall Law School Veterans Legal Clinic in Chicago, attended by our committee staff, Brigadier General Tate challenged those present "to figure out what difference you can make in the life of a soldier, a veteran or a family member in recognition of the quality of their service. It is time to take action."

BG Tate also invoked the remarks of Mr. Ken Fisher on the occasion of Mr. Fisher's receipt of the George Catlett Marshall Medal, conferred by the Association of the United States Army at its annual dinner on October 7, 2009. Mr. Fisher was honored for his work and that of Fisher House, an exemplary philanthropic program providing free or low cost lodging to veterans and military families receiving treatment at military medical centers.

Observing that this generation of returning servicemembers is routinely greeted by the thanks of their countrymen, unlike their counterparts who served in Vietnam, for example, Mr. Fisher urged that words are insufficient:

Yet there is a paradox alongside this sea change in public attitudes and the positive understanding and emotion that underlie them. It is this: Just when we as a people have accepted how much we owe our military and our veterans, it is becoming obvious that "thank you for your service" is no longer enough...

It is a compelling idea. Maybe the thanks of a grateful nation can and ought to be more tangible. Maybe the warm feelings we experience when we shake a soldier's hand and offer best wishes ought to be accompanied by resolve. A resolution to not just SAY something but DO something.¹

Of course, much good work is under way on many fronts to aid our servicemembers and veterans in transition. The efforts of the Dole-Shalala Commission and new federal statutory mandates have engendered a whole new slate of federal programs for wounded warriors and compelled far closer coordination between the services and the Veterans Administration, particularly on disability matters. The Army and the other branches have moved swiftly to create a cadre of specially trained lawyers and other specialists to support wounded warriors, and the services are more focused today on facilitating the transition to civilian life.

Law firms across the nation have stood up veterans legal support programs; the Pro Bono Institute is coordinating a large-scale initiative to train lawyers and involve firms on veterans benefits cases; the National Veterans Legal

Services Program has performed great work in the veterans benefits law arena; the ABA Commission on Law and Aging is funding programs in four states with emeritus attorney pro bono practice rules to establish pilot programs to provide veterans with pro bono legal assistance; and veterans legal clinics are doing great work in various locations, including the exemplar clinic at John Marshall Law School, untangling and fighting through the morass of veteran's benefits red tape on behalf of their clients. Nearly two dozen ABA entities with shared interest in legal issues facing veterans have joined in a Coordinating Committee to provide support ranging from pro bono representation to changes to the legal system. The ABA Law Student Division, through its innovative Duty Bound program, connects law student volunteers with private-practice lawyers who could use assistance on veterans' benefits appeals. The recent movement to set up "veterans' courts" in local court systems must also be applauded and encouraged.

And yet, a multiple of those existing resources will be required to give this generation of veterans its due, resources that must largely come from the heart of the nation through the work of volunteers. As Gordon Erspamer, a San Francisco lawyer in private practice and a recipient of the 2009 ABA Pro Bono Publico Award for his tireless volunteer work with veterans, noted in a 2007 National Law Journal Article: "The need is staggering." As the new veteran population surges, that staggering need will only intensify.

But we take heart from that vast reservoir of volunteer spirit among lawyers tapped by the LAMP Committee's ABA Military Pro Bono Project. We have faith that when the nation's lawyers are called to help our new class of veterans, lawyer volunteers will do their part, as our new veterans surely did when their country called them to service.

¹ Mr. Fisher's complete remarks on the need to act in support of Iraq and Afghanistan veterans may be found at: www.marshallfoundation.org/news/Fisher.htm.

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Military Pro Bono Project Update

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

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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.

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[A Roadmap for Appointed Counsel](#)

As of mid-September 2009, the innovative ABA Military Pro Bono Project (the "Project") secured pro bono legal assistance for nearly 120 military men and women in civil-law matters by connecting them to motivated lawyer volunteers in the 34 states where the cases arose. Founded by the Standing Committee on Legal Assistance for Military Personnel, the Project—still in the developmental phase—has received crucial initial operating support from the Section of Litigation, many of whose members are counted among the Project's pro bono volunteers.

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While the Project is neither the first nor the only source of pro bono legal help for those who serve and have served this country, it is the first centralized national platform for channeling worthy active-duty cases to the right civilian lawyers. The Project's customized on-line referral platform screens and packages meritorious matters for delivery to qualified pro bono counsel in locations across the country where legal representation is needed. All cases originate through military handling attorneys stationed around the globe, and each referral must be approved, as meritorious and otherwise appropriate, by a senior legal officer within each service branch. Project Director Jason T. Vail of the ABA manages the placement of referral requests that arrive through the website, tapping a database of nearly 500 volunteers who also sign up through the website, www.militaryprobono.org. The web resource is programmed to generate regular quantitative reports of interest to the services' respective legal assistance leadership (for that service's cases) and various ABA constituencies.

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A year out from its September 2008 case-referral launch, this much can be said with reasonably certainty about the ABA Military Pro Bono Project: (1) though still in development, it is working well, as designed and according to plan, taking thoroughly-screened, appropriate cases and connecting them to pro bono volunteers; (2) it is well appreciated by clients, military handling

attorneys, and senior military legal officers, who have strongly signaled that the program is delivering a real benefit to military lawyers and servicemember clients; and (3) it is achieving an elevated profile both inside and outside the ABA, appreciated by leadership as a novel and effective conduit for direct ABA support to those men and women who put it all on the line for our country.

Perhaps the best measure of the program's impact to date is the response of military lawyers who have turned to it for support. In an unsolicited email to Project staff via the website, LT Joseph P. Melaragno of the U.S. Navy JAG in the Legal Service Office for Europe and Southwest Asia, wrote:

"I just wanted to convey to you the fact that I think that this is a terrific program. We have had numerous servicemembers assisted by this program who are stationed here in Europe. This program has proven invaluable for those junior military members that can't afford to fly back to the states or retain an attorney at their own expense. These servicemembers are extremely appreciative of all of your efforts to make this happen. Without this program, they would be forced to attempt to handle these matters on their own or spend what little money they have to obtain an attorney. Ultimately, this program is providing a tremendous benefit to your servicemen and servicewomen. On behalf of them, I offer my utmost gratitude for all of your efforts."

In a like vein, John Meixell, the Chief of the U.S. Army Legal Assistance Policy Division, has observed, "The ABA Military Pro Bono Project has been a superb program for our servicemembers. It provides them with a vital resource, thereby allowing them to quickly resolve their legal problems and keep their focus on accomplishing the mission. More importantly, it shows our servicemembers that their sacrifices are appreciated and valued by the American legal community."

When the Project's operational shake-out began, the Fall 2008 issue of *Dialogue* ran a piece suggesting five possible criteria for measuring the Project's impact going forward. After a year of development, it makes sense to take stock by applying those same criteria:

"A strong and reliable inventory of pro bono firms of all sizes"

The Project's initial lawyer volunteer recruitment push targeted mainly large and medium-sized firms. One year later, the current volunteer inventory of nearly 500 volunteers encompasses law firms of all sizes in nearly every state in the nation. Based on the early case referral request flow, the Project is now focused on attracting more small firms and firms with family law concentrations—the substantive legal area capturing a large majority of the matters referred to date.

The sheer number of volunteers to date is a measure of the bar's deep interest in helping servicemembers. As the solicitation of other law firm sizes and types evolves, the Project expects to see a consistently strong level of interest on the part of lawyer volunteers in helping this most deserving and oft-overlooked clientele.

"A continued buy-in from the services"

The legal assistance leadership of the five service branches has proven to be a committed, encouraging and closely involved resource, enabling its success through the formative stages. The services' legal assistance chiefs helped to carefully craft and enforce project criteria while encouraging Project support at every turn. They were closely consulted on the on-line case-referral program design, resulting in a case-intake form that is closely attuned to the services' needs and functions.

Said John Meixell, the Army Chief of Legal Assistance, "The ongoing dialogue with the Project Director has been critical to designing an effective intake system. As originally designed, the intake criteria were carefully crafted to capture all of the necessary client information and to make the process efficient and useable for military lawyers. As we've worked together through the past year, we've identified areas where we could improve the process and Jason has quickly adapted those processes to create a more efficient system."

One initial question concerned the willingness and ability of the services to create a critical quality-control check for the referral process: the identification and involvement of a corps of "supervising attorneys" (i.e., senior legal officers) who review each referral proposed by a military handling attorney and ensure it meets program standards before being forwarded to the ABA. It was understood early on that the quality of referred cases would depend in significant part on the level of engagement of these senior officers. To date, *all* of the involved services have evinced an extraordinary commitment to making this critical quality-control feature function well. Even more fundamentally, the military legal establishment has consistently and forcefully told the program staff and volunteer leadership at all levels of the ABA that they believe in the mission of the ABA Pro Bono Project, that it is helping servicemember clients, and that the services are committed to making it work.

To cap it off, the ABA learned as this article was being prepared that the Secretary of Defense, Robert Gates, has personally acknowledged the program by asking the services to support its development as a partial solution to the raft of family law cases facing today's servicemembers, cases that are largely a consequence of extensive and repeated deployments to conflict zones.

"A consensus on what the Military Pro Bono Project is and is not"

Another initial concern was that the Project not devolve into a repository for undesirable cases that would neither engage civilian volunteers nor meet the mission of assisting on the most deserving servicemember cases. Fortunately, so far that concern has proven to be unfounded. Care has been taken by Project Director Vail and military participants to ensure that the Project is taking on clients only where military legal assistance attorneys have exhausted all means, within reason and their resources, of resolving the legal problem. In fact, as part of the case-intake process, each referring attorney is required to affirm that alternative means of resolving the matter, short of pro bono referral, have been exhausted.

Rather than inadvertently evolving into a substitute for adequate military legal assistance services, in its early stages the Project has added significant new value to military legal assistance, helping in cases where the installation attorney has done everything possible. In a typical Military Pro Bono Project case, a volunteer takes a case arising in the servicemember's home jurisdiction far from the military base and military legal assistance. The volunteer lawyer can go to court for the client if necessary—an option often unavailable to the on-base military lawyer due either to distance from the forum state or state bar restrictions on court appearances by lawyers licensed in other states. Military attorneys are often licensed in states other than that in which they are stationed. For example, in one case a soldier was referred to the Project by a legal assistance attorney at Fort Leavenworth, Kansas, where the soldier was stationed. The referral was for a case filed in Illinois. The Project was able to connect the soldier with an attorney in Illinois who successfully resolved the legal matter on behalf of the soldier despite the geographical distance between them. As noted by COL Samuel J. Rob, the Fort Leavenworth Staff Judge Advocate, in a letter thanking the Project for its assistance of the soldier, "The ABA Military Pro Bono Project is, without a doubt, a huge benefit to the military community."

"Serving those who have borne the burden of deployment"

The Project has remained firmly focused on the objective of prioritizing assistance for those who are or have been deployed to conflict zones. A significant percentage of cases referred to the Project have originated with legal assistance attorneys located in Iraq, Afghanistan, and other locations around the world where the servicemember's duties and distance from home can make seeking counsel to resolve a legal problem an insurmountable task—not to mention a distraction and impediment to mission readiness. The Project not only has endeavored to prioritize placement of pro bono matters on behalf of these clients, it has strived to ensure that the Project's online case referral tools are as accessible as possible to military legal assistance attorneys, regardless of their location.

As noted by U.S. Navy JAG LT Garrett S. Snow, in an email to the Project, "I just wanted to drop a line and say how grateful I am for the Military Pro Bono Project. I just submitted a referral for a case. Whether an attorney can be located or not, I think it's incredible that I can be on an aircraft carrier in the middle of the Pacific Ocean, see a client with a problem, and

log in to refer his case that same day. This is the kind of assistance that our forward-deployed sailors, marines, and soldiers need. Thank you!”

“Maintaining and building internal ABA support and external partnerships”

The ABA Military Pro Bono Project faces a crucial juncture. It requires broader financial support from beyond the ABA to ensure its viability going forward. It also requires the further involvement of other ABA lawyer groups that can provide the family lawyers and smaller-firm practitioners necessary for a balanced and contributing volunteer base. Every indication is that those volunteers will step up, as all have before. Project staff have made steady progress connecting with bar and pro bono organizations in the states, as a means of recruiting volunteers, and hopes to continue with that process.

The civil legal needs of this generation of American servicemembers, including tens of thousands who have spent years in distant conflict zones, away from families and homes, are vast. A single ABA Project cannot even contemplate meeting those needs, any more than the services military legal assistance programs have been able to so, despite best efforts. But the Project can make an important contribution by facilitating help for deserving servicemembers in appropriate cases.

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By The Standing Committee on Pro Bono and Public Service

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2009 Award Recipients Discuss their Pro Bono Work

[LAMP](#)

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. In this issue, the individual recipients describe, in their own words, how they became involved in pro bono, what their pro bono participation has meant to them and the contributions they have made to serve the poor throughout their professional lives. Additionally, program recipients describe the importance of their pro bono work and the unique aspects of their work environment that help to support attorneys who would like to do pro bono.

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Gordon P. Erspamer

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As I left law school in 1978, I was predisposed to do pro bono work, but I had no burning cause to vindicate, as "empathetic" as I was. In my early years in practice I became involved in poverty law cases, drawing upon my work during law school at the Washtenaw County Legal Aid Society. In the early 1980's, events occurred that led me down a different path. My father became seriously ill with leukemia, which he linked to radiation exposure in performing hydrographic surveys at Operation Crossroads in the Bikini Islands. He lacked the energy to pursue any claim or, as he explained to me, "I do not want to spend the last year of my life fighting the Department of Veterans Affairs (VA). So, I began to attend meetings of a non-profit organization dedicated to the cause of "atomic veterans."

I began to investigate our use of soldiers as guinea pigs in the open-air testing of atomic bombs. I learned that an "iron triangle" existed, insulating the government from any judicial scrutiny. First, a statute barred judicial review of VA claim decisions. Second, a veteran could pay an attorney no more than \$10 out of his own pocket for representation. Third, veterans

were barred from suing the government for any torts. For the first time in my life, I could taste and feel injustice on a mass scale.

At about the same time, I received a call from my firm's receptionist, who reported that an old man in a wheelchair and his wife were there to see me without an appointment. My decision to meet with them that day marked the beginning of my journey working for veterans. The story of Al and Jackie Maxwell was captivating: his service in the Army and eventual capture; his experiences in the Bataan Death March; his transport to Japan in one of the infamous "hell ships," which was sunk by an allied submarine; his rescue by a Japanese merchant vessel; his forced labor in Mukden and in Nagoya; his forced participation in the cleanup of Hiroshima; and the couple's loss of four children to congenital heart and lung ailments. The mere telling would have made anyone weep.

Al Maxwell, together with five other atomic veterans or widows, became plaintiffs in a class action which asked the Court to rule that the fee limitation violated due process. After securing a preliminary injunction in the District Court, I argued the VA's direct appeal in the Supreme Court in 1984. During the decade-long course of that case, I met and established friendships with veterans and attorneys serving veterans all across the country. I always drew inspiration from Bob Raven, a former ABA President, who instilled the values of public service in everyone he mentored.

In 1986, the VA was caught shredding millions of pages of documents, and lying in discovery responses in the NARS case. Three years later, in 1989, Congress passed a statute setting up the Court of Veterans Appeals. The first case it heard was that of my mother, Erspamer v. Derwinski, in which the court held that the VA's delay of over 8 years in adjudicating claims arising out of my father's death satisfied the requirements for mandamus under the All Writs Act.

For the next several decades, I represented individual veterans or widows seeking service-connected death or disability compensation. I noticed that the same issues continued to crop up repeatedly — prolonged administrative delay, pressure to reduce grant rates in certain types of cases, documents missing from files, irrational decisions, and, of course, the implications stemming from the absence of attorneys — dismissals based upon missed time deadlines, misconduct by VA adjudicators, and scores of abandoned claims.

Recently, I have led two new cases. The first focuses on the VA's failures to provide mental health care to veterans returning from Iraq and Afghanistan, as well as systemic delays in the adjudication of their claims. The second is on behalf of soldiers used as guinea pigs in the testing of chemical and biological weapons from 1943-75.

I believe that it is a privilege to serve those who serve. It is one of the few

areas, which is almost as apolitical as it is on the point in the circle where left meets right. As a society, we must all pay more than lip service to our veterans and actively assist those who sacrificed the last measure of their devotion.

I am honored to accept the ABA's award on behalf of the firm of Morrison & Foerster, my colleagues, and our veteran clients.

The Federal Government Pro Bono Program

In April 2009, President Barack Obama signed the Edward M. Kennedy Serve America Act into law. At the bill signing ceremony, the President said, "We need your service right now, at this moment in history. I'm not going to tell you what your role should be; that is for you to discover. But I am asking you to stand up and play your part."

Since 1996, the Federal Government Pro Bono Program, directed by the Department of Justice, has worked tirelessly to spread the spirit of public service across the government and throughout our country. We are honored to receive the American Bar Association's Pro Bono Publico Award in recognition of our efforts.

The Federal Government Pro Bono Program was launched by an executive order of President Bill Clinton in 1996. Prior to this time, attorneys who wished to pursue pro bono work outside of their working hours were largely on their own. President Clinton directed federal agencies to encourage their attorneys to engage in pro bono work and instructed the U.S. Department of Justice to coordinate this effort. The Justice Department enthusiastically followed the President's directive by creating the first federal agency pro bono program and convened a committee of federal agencies to work on the issue. Today, that committee, the Interagency Pro Bono Working Group, has grown to include 36 participating agencies, all of which work together to provide thousands of hours of volunteer legal services to Americans in need of assistance.

Owed to the concentration of participating federal employees in our nation's Capital, the Pro Bono Program has become a significant contributor to the residents of the District of Columbia. Through ongoing relationships with local legal services providers such as the DC Bar Pro Bono Program, the Legal Aid Society, and the Neighborhood Legal Services Program, the program has recruited attorneys to contribute direct representation, mediation, transactional work, and brief advice to the low-income residents of the Capital region. Our attorneys provide services in many areas of law, including family law, domestic violence, landlord-tenant, consumer law, personal injury and more.

Modeled on the successful efforts in Washington, DC, the program expanded to Chicago in 2008. Working with a dedicated group of federal

attorneys in that city, the program developed relationships with several legal services organizations, including the Cabrini Green Legal Aid Clinic, the Constitutional Rights Foundation, Chicago Volunteer Legal Services Foundation and the Legal Assistance Foundation of Metropolitan Chicago, and has begun to recruit federal attorneys to volunteer with those organizations. A similar outreach effort has recently been initiated in New York City.

Government attorneys on the federal, state and local levels face unique challenges in their pro bono work. Unlike their private sector counterparts who may receive billable credit and may access the resources of their firm, government attorneys must do pro bono work on their personal time and use their own resources. They also face potential conflicts of interest and must navigate statutory, regulatory and ethical restrictions which limit the kinds of pro bono work they can do and how they can do it. An important mission of the Federal Government Pro Bono Program is to minimize the impact of these limitations and to provide support to federal government attorneys engaged in volunteer work.

The Program's receipt of the ABA Pro Bono Publico Award is a testament to the efforts of our selfless federal attorneys who not only choose a career of public service, but also contribute their evenings and weekends to those in need of help. The extraordinary men and women who participate in the Pro Bono Program do not seek or expect recognition, but this award indicates that their efforts are appreciated. May their generosity of spirit inspire even more Americans to answer the President's call to stand up and play their part.

Holocaust Survivors Justice Network

Do not go where the path may lead; go instead where there is no path and leave a trail.

– Ralph Waldo Emerson

The ground-breaking Holocaust Survivors Justice Network charted truly new territory in delivering pro bono services to low-income individuals on a coordinated, nationwide basis.

With an explorer's spirit and a comprehensive set of guiding materials (training videos, sample documents and forms, FAQs, and a project website: www.holocaustsurvivorsprobono.org), the Justice Network grew from a pilot program engineered by Bet Tzedek Legal Services and the law firm of Manatt, Phelps & Phillips in Los Angeles to involve more than 130 law firms, corporate legal departments, law schools, and other legal and social service entities in 30 locations in the U.S. and Canada, with a total ramp-up time of less than one year.

The Justice Network's 3,000+ volunteer attorneys have rendered one-on-one legal services to thousands of Holocaust survivors, carefully guiding them through a complex German application for reparations payments, which requires survivors to recount some of the most horrific events of their lives.

Reflecting on his service as the Justice Network's initial volunteer national director, Stan Levy of Manatt speaks for many by saying: "It is one thing to know about historic events. It is something quite different and profound when you actually touch that history through the lives of people who lived it. That moment of meeting with a Holocaust survivor affects you to the very depth of your soul."

The survivors served through the Justice Network are all of advanced age and many are in poor health. It is a true travesty of justice that after enduring one of humanity's darkest eras, more than a quarter of today's survivors live below the poverty line and many more struggle to survive on meager pensions. Indeed, "surviving" has become fraught with its own set of daunting challenges – the Justice Network exists to surmount these challenges.

In addition to helping to procure reparations payments that can enhance each survivor's net worth, the Justice Network also strives to enhance survivors' self-worth. Justice Network volunteers spend hours with each survivor, ensuring that their stories are recorded accurately and that their needs are met. As noted by one survivor's child, "I was impressed by the professionalism of the attorneys ... and moved by their kindness; [it] brought tears to my eyes. Echoes of what I have written here are reverberating from coast to coast. Your work is genuinely appreciated."

The Justice Network succeeds not only by restoring a small measure of justice to Holocaust survivors, but also by facilitating new awareness of the legal needs of this vulnerable population and increasing the level of participation in pro bono work among firms and attorneys in all areas of practice and at every level of experience.

To date, the Justice Network has served approximately 5,000 survivors in connection with the German reparations application. And while the network will continue to serve all who need assistance with that application, it is already moving forward to meet additional legal needs within the survivor community.

Through the guidance of a National Advisory Committee comprised of attorneys from 17 law firms and in-house legal departments in 13 cities, the Justice Network is poised to capitalize on its unique set of coordinated resources and dedicated volunteers to address topics including end-of-life planning and financial service issues that are so pressing for survivors, seniors, low-income and other vulnerable people. By leveraging its innovative infrastructure, the Justice Network will endure and continue to

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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From the Chair...

By *A. Michael Pratt*

Standing Committee on Pro Bono and Public Service

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.

As I contemplated what to say in my first *From the Chair* column, I couldn't stop fretting about my greatest leadership weakness - that I am sometimes a bit too passionate and obstinate about issues that strike at my heart. So, I think it important to tell you a little about who I am, what drives that passion and what I hope to bring to the Pro Bono Committee as its chair.

I was born in a small house in Grindstone, Pennsylvania. I was the fourth of twelve children. We didn't have running water in our home and our bathroom was an outhouse. To say that we were not people of means would be a gross understatement, but also not true. We were, in fact, a family of means because our mother made it so. We had the means to hope, the means to dream, the means to keep faith with our family and ourselves. And we had the means to work hard and to help one another.

You see, Joan Tracy, was a young mother who married before finishing high school. For a good number of years, she was a single mother who provided for her family with little money, but loads of love, personal sacrifice and discipline. But no matter how little we had, she would share our home and our food with anyone in need. I remember her taking in friends' children at various times to stay with us because they had nowhere else to go.

My mother also instilled in us the importance of education by both word and deed. I still recall the image of my young mother walking in the snow to attend classes at the adult learning center so she could attain her high school degree. After putting me through college, she went to college herself, often taking just one class a semester at a time, until she received

her college degree more than ten years later.

Growing up, I didn't know any lawyers. I thought I would probably get an undergraduate business degree, get a nice job and call it a life. But I found my way to law school, in large part, because there were people who reached out and engaged me along the way. They were kind, generous, ordinary people who wanted to see me succeed.

My graduation from law school was one of my mother's proudest moments. I remember on the day of my law school graduation, my mother took my diploma out of my hands and would not give it back. Come to think of it, I did not get it back until several years after practicing law.

My mother worked hard, and with help from my stepfather, she was later able to provide a better life for us. I'm proud to say that she also rose to become a prominent civic leader in her own right in our hometown of Uniontown, Pennsylvania. She also continues to work tirelessly for her community even in her retirement years.

We enter 2010 in unsettled times. How do we move forward with faith and fidelity in our mission? I believe the answer lies in the values I learned from my mother; the values of family, of education, of giving back to those less fortunate, and of providing equal opportunity for all.

The ABA's Pro Bono Committee has been at the forefront of efforts to build strong pro bono communities across the country. As chair, I take it as a personal challenge to continue and expand on those efforts. With the expertise of our staff resources and the multiple policy and programmatic efforts that have been developed over the years the Committee is well armed to fight for the value of equal justice for all. Our Committee won't rest until our message has reached every law firm in our legal community, large and small; every corporate law department; every government attorney office; every law school and, ultimately, every lawyer in America. The Pro Bono Committee understands and appreciates all pro bono work that is provided and all the incredible efforts by pro bono programs, but there is much, much more that can, and should, be done.

As I write this, the Pro Bono Committee is preparing to do strategic planning at its November meeting. I will be charging the Committee's members, liaisons and staff to be creative, aggressive and daring. We will continue to work hard so that we reach a level of impact that will bring America closer than ever to guaranteeing broad access to justice for thousands of disenfranchised and vulnerable individuals in communities far and wide.

Joan Tracy taught me to share no matter how little I have. Will those of us with plenty now dig a little deeper and give more? As attorneys, we have the unique opportunity to make a real difference in other people's lives. We make an impact on society. There is a legacy of service that we provide. I



look forward to working with the Standing Committee on Pro Bono and Public Service to fulfill this legacy.

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Tennessee Enacts Rules Permitting Government, Court Employee Pro Bono

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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. Tennessee Supreme Court Rule 5 now permits judicial research assistants to provide pro bono legal services within certain parameters, such as occurring only outside hours of employment, not involving court appearances, and avoiding matters that may present a conflict of interest. Public Chapter No.7, House Bill 416 amends three statutes to permit government attorneys' "voluntary provision of pro bono legal services through an organized program of pro bono legal services that receives [state funding] and that provides professional liability insurance..." Rule 5 is available at <http://www.tsc.state.tn.us/opinions/tsc/rules/2009/Rule%205%20Adopted.pdf>; HB 416 is available at www.state.tn.us/sos/acts/106/pub/pc0007.pdf. For additional information, contact Rebecca Rhodes, Access to Justice Coordinator, Administrative Office of the Courts at rebecca.rhodes@tncourts.gov or (615) 741 2687.

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Pro Bono

Pro Bono: In
their Own
Words

From the Chair

Policy News

U.S. District Court Adopts Pro Bono Plan

The U.S. District Court in Massachusetts recently adopted a "Plan for the Appointment of Counsel for Indigent Parties in Certain Civil Cases", (the "Plan"). The Plan describes when an indigent pro se litigant in a civil case may qualify for the appointment of pro bono counsel, identifies how the assignments are made, sets forth the responsibilities of those law firms that currently are participating in the Plan, and refers appointed counsel to the Court's "Guidelines Governing the Reimbursement of Expenses in Pro Bono Cases. The plan is available online at <http://www.mad.uscourts.gov/general/pdf/050509%20Notice%20with%20Pro%20Bono%20Plan.pdf>. For additional information, contact either Sarah Thornton, Clerk of Court, at USDC-BostonInfo@mad.uscourts.gov and 617-748-4020 or Jeanette McGlamery, Pro Bono Coordinator, at 617-748-9559.

SCLAID

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Ohio Adopts Voluntary Pro Bono Reporting

Ohio has developed a voluntary, anonymous process for pro bono reporting as outlined in the Ohio Supreme Court's Statement Regarding the Provision of Pro Bono Legal Services by Ohio Lawyers, which was adopted in lieu of ABA Model Rule 6.1. Twelve percent (12%) of Ohio Attorneys reported their hours in January 2009, which reflected pro bono hours conducted for

calendar year 2008. For more information, see the last paragraph of the report: <http://www.sconet.state.oh.us/AttySvcs/officeAttySvcs/proBono.pdf>.

Out-of State Attorneys Granted Special Temporary Permit to Practice in Oklahoma

An out-of-state attorney can practice before Oklahoma courts or other tribunals solely for the purpose of participating in a proceeding in which he or she has been employed, including pro bono cases. An out-of-state attorney appearing pro bono to represent the indigent, may request a waiver of the application fee for the permit from the Oklahoma Bar Association based on the client's income. In taking a pro bono case, the out of state attorneys must associate with another Oklahoma attorney, among other requirements. For more information, see <http://www.oscn.net/applications/oscn/deliverdocument.asp?citeID=442166>.

Law Professors Granted Special Temporary Permit to Practice in Oklahoma

An Oklahoma law professor who is admitted to practice law in another state may be granted a Special Temporary Permit to practice law in Oklahoma, without examination, while the person is employed and devotes his or her full time to the teaching of law in such employment. The practice of law under the Special Temporary Permit shall be limited to assisting attorneys licensed in Oklahoma as a consulting or testifying expert, representing clients in a law school clinical program, or providing pro bono services. For more information, see <http://www.oscn.net/applications/oscn/deliverdocument.asp?citeID=442166>.

ABA Resolution Urges House Counsel to Waive Issue Conflicts to Enable Pro Bono Lawyers to Serve Low-Income Debtors

At the 2009 ABA Annual Meeting, the ABA House of Delegates adopted Recommendation 102A urging corporate counsel to facilitate the provision of pro bono legal services by outside counsel to persons of limited means in need of assistance with consumer credit, home mortgage and bankruptcy by waiving positional conflicts of interest. To read the Recommendation and the accompanying Report, see http://www.abanet.org/leadership/2009/annual/daily_journal/One_Hundred_Two_A.doc. For further information, contact the ABA Business Law Pro Bono Project staff attorney, Allyn O'Connor, at oconnora@staff.abanet.org or 312-988-6398.

Illinois Adopts Professional Conduct Rule 6.5 and California Adopts Professional Conduct Rule 1-650 Regarding Conflicts of Interest

As adopted, these new rules provide greater opportunities for lawyers to provide pro bono legal services through not-for-profit or other limited legal services programs. Pursuant to these rules, lawyers will have more opportunities to provide individuals with short term legal consultation without providing further representation. For more information on Illinois' rule, see http://www.state.il.us/court/SupremeCourt/Rules/Art_VIII/

[ArtVIII_NEW.htm#6.5](#) and for California's rule, see <http://www.calbar.ca.gov>.

ABA House of Delegates Supports Funding For Legal Aid and Pro Bono Organizations Serving Disaster Survivors

The ABA House of Delegates at the August 2009 Annual Meeting unanimously adopted Recommendation 102B, which urges federal, state and local governments to address the legal needs of communities affected by major disasters by providing additional emergency funding for not-for-profit legal services providers, bar associations, and pro bono programs. To read the Recommendation and the accompanying Report, see http://www.abanet.org/leadership/2009/annual/daily_journal/One_Hundred_Two_B.doc. For further information, contact ABA Center for Pro Bono Director Emeritus Tony Barash at barasha@staff.abanet.org or 312-988-5773.

U.S. Bankruptcy Court for the District of Maryland Amends Rules

Effective July 1, 2009, the United States Bankruptcy Court for the District of Maryland amended its local rules to accommodate its Low Bono and Deferred Payment Chapter 13 Attorney List ("LBDP List"), a publication of attorneys willing to accept low- or deferred-fee Chapter 13 cases from individuals with financial need. The changes make it clear that such fee arrangements are permissible. The LBDP List and its companion, the Low Bono Chapter 7 Attorney List, are intended to address the needs of debtors who do not qualify for free legal assistance under existing legal services or pro bono programs and are part of the court's efforts to address debtor needs prior to bankruptcy and unrepresented bankruptcy filers. For more information about the rule change or the Low Bono Lists, contact Jessica Vollmer, Pro Bono Coordinator, at Jessica.Vollmer@mdb.uscourts.gov or 410-962-3813.

Hawaii Adopts Model Policy for Government Attorneys Performing Pro Bono Work and Continuing Education Rules for Pro Bono Service

The Hawaii Supreme Court adopted a continuing education rule for attorneys effective January 1, 2010. Rule 22 of the Rules of the Supreme Court establishes Mandatory Continuing Professional Education requirements and Voluntary Continuing Legal Education credits. Access to Justice is one of the subjects that will qualify for the required three hours of mandatory education. Pro bono service in the amount of three hours will satisfy up to three hours of the recommended nine hours of voluntary education credits. For more information on the model policy or the CLE rule, contact Associate Justice Simeon R. Acoba, Jr. at Simeon.R.Acoba@courts.state.hi.us.

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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



Left to right
Don Saunders - Sayde Ladov - Ken Shear - Deborah Hankinson

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