

**THE LOCAL GOVERNMENT
ATTORNEYS GUIDE TO
PRO BONO PUBLICO SERVICE**

**Local Government Attorneys of Virginia, Inc.
Pro Bono Committee**

**THE LOCAL GOVERNMENT ATTORNEYS’
GUIDE TO *PRO BONO PUBLICO* SERVICE**

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INTRODUCTION

Jacob P. Stroman, IV

“To those whom much is given, much is expected.”

A local government attorney might read this quote with a touch of irony. After all, those of us who have devoted ourselves to public service have already made a conscious decision to forego the relatively lavish salaries of the private sector for compensation packages which at times seems to approximate the legal career equivalent of a vow of poverty. Ah, but the intangible professional satisfaction of public service. While local government law offers unparalleled opportunities for job satisfaction, the reality of our day-to-day professional lives is that the courtroom win, the closing of a major transaction, or unanimous passage of a well-drafted ordinance is balanced against the occasional angry citizen or unreasonable bureaucrat. Our long hours toiling at the “public sector pay scale” coupled with the day-to-day challenges of government work may tempt us to say, “My entire career is a form of *pro bono* service. Why should I take on any more?”

This guide is an invitation to rise above that impulse. As local government lawyers, we understand the attractions and duties of public service as well as the needs of the broader community.

Several years ago, the Board of Directors of the Local Government Attorneys Association recognized the benefits of raising the awareness of the local government bar of *pro bono* activities. To do so, it established the *Pro Bono* Committee as a standing committee of the LGA.

One of the *Pro Bono* Committee’s first acts was to conduct a survey at the LGA’s Spring 2005 Conference. Encouragingly, the survey revealed a deep desire on the part of local government attorneys to participate in *pro bono* activities. However, another issue quickly became apparent: How does a local government lawyer with an interest in *pro bono* get started? The Committee’s response was to consider a guide which provided information on existing programs, lists of resources, and answers to basic *pro bono* questions. Over the last two years, our committee has worked toward that goal.

As in many aspects of government service, the initial question was, “How do we get the money to pay for this?” The Virginia Law Foundation generously awarded the Committee a grant to help defray costs. Committee members have spent countless hours in meetings, doing research, writing and gathering materials which will be helpful to the local government attorneys willing to extend their service beyond the workplace.

We hope this Guide will be a helpful “how to” guide for our membership. You will find materials from the LGA’s *Pro Bono* Services Study, as well as the LGA’s formal *pro bono* policy.

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Pro bono service offers some unique challenges for local government attorneys because they typically do not have professional liability insurance and, in many cases, must deal with ordinances, personnel policies and even conflicts of interest that private sector attorneys do not face. We have included a checklist based on the American Bar Association model, and a discussion of various barriers to *pro bono* service and how to overcome them.

There is a wealth of other information for attorneys seeking *pro bono* opportunities, and we have provided some of those in this Guide. We have relied heavily on the Virginia State Bar's excellent *pro bono* guide, Legally Informed, and new programs are constantly being developed. Regional and specialty bar associations can be excellent sources of new information, and we have included those as well. Perhaps the best place to start is the LGA *Pro Bono* Committee website which lists a number of very helpful links.

Examples of successful *pro bono* projects abound. For those of you who regularly read the LGA's Bill of Particulars, the Committee publishes a quarterly article on a *pro bono* activity in which local government attorneys are involved. This Guide includes a listing of some of those success stories. The breadth of successful projects demonstrates remarkable opportunities available to our membership.

One of the great advantages of *pro bono* service is the opportunity to be creative. Lawyers generally, and perhaps local government attorneys in particular, may have been marked down in kindergarten for coloring outside of the lines. Viva la difference! While many of you may find an existing program which suits your needs, others may not. Our final section provides some insights into channeling your creative energies into developing a project to fill an unmet need. Virginia is a large and diverse commonwealth. *Pro bono* activities embrace the idea that one size does not fit all.

So go out, change the world, and have fun doing it!

The Local Government Attorneys Association
of Virginia *Pro Bono* Committee
March 21, 2008

Jacob P. Stroman, IV, Chair
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THE LGA AND *PRO BONO*

LGA *Pro Bono* Services Study and Report (April 14, 2005)

I.

The Board of Directors in August 2004 charged the Committee on Issues Affecting Local Government Law (Committee) to study the *pro bono* obligation established by Rule 6.1 of the Virginia Rules of Professional Conduct¹ to determine and describe an appropriate role, if any, of the LGA in this regard. By Interim Report dated December 20, 2004, the Committee reported to the Board on January 13, 2005. The interim report is incorporated by reference. The Board on January 13, 2005 provided refined direction and oversight as to the work of the Committee in completing its assignment, as reflected by this study and report dated April 14, 2005.

II.

Rule 6.1 states that “[a] lawyer should render at least two percent per year of the lawyer’s professional time to *pro bono publico* legal services.” This requirement represents “a personal responsibility to provide legal services to those unable to pay”²

Rule 6.1 defines *pro bono* services as “includ[ing] poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of *pro bono* legal services.”³ The comments to Rule 6.1 further define “*pro bono* legal services” as follows: “any professional services for which the lawyer would ordinarily be compensated”; “in poverty law, ... free or nominal fee professional services for people who do not have the financial resources to compensate a lawyer”; “in civil rights law ... free or nominal fee professional services to assert or protect the rights of individuals in which society has an interest”; as to religious charitable or civic groups, “operating a hotline ... or providing public service information”; as to “volunteer activities designed to increase availability of *pro bono* services,” training and mentoring lawyers who have volunteered to take legal aid referrals or helping recruit lawyers for *pro bono* referral programs.”⁴

Rule 6.1 recognizes that some categories of lawyers, such as local government attorneys, “are prohibited by the terms of their employment from engaging in any outside practice. Other lawyers lack the experience and access to resources to provide competent legal assistance.” The rule suggests that “[l]awyers who are unable to fulfill their *pro bono*

¹ Virginia State Bar Rules of Professional Conduct, Rule 6.1, 2004-2005 Professional Guidelines.

² Comment 1, Rule 6.1, Rules of Professional Conduct.

³ Rule 6.1(a).

⁴ Comments to Rule 6.1.

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obligation through direct, legal representation should support *pro bono* legal services ... through financial contributions....”⁵

The Committee found that a financial contribution “is not necessarily the exclusive means by which a government lawyer may fulfill his [or her] *pro bono* commitment under Rule 6.1.”⁶

The Committee addressed practical problems facing local government attorneys in providing *pro bono* services: authority from employer, lack of malpractice insurance, use without permission of government resources, conflict of interests, and competency.

With the Board of Director’s direction on January 13, 2005, the Committee concentrated on these areas: non-representational *pro bono* service and representational, non-court *pro bono* service.

III.

The Committee contacted State, specialty and local bar associations to determine a sense of viable non-representational *pro bono* services that LGA members could perform. The Virginia Bar Association offers an extensive two part program involving *pro bono* and Community Service. While the latter involves community service work and is broader in scope than *pro bono* services, still opportunities exist under the community services element to provide *pro bono* services. The VBA program offers for example these non-representational *pro bono* opportunities: disaster assistance legal work; court tours for students; moot court competition participation; teaching high school teachers about the law; teaching *pro bono* providers about preparation of advance medical directives; mentoring; and *pro bono* hot lines work.

The Henrico Bar Association’s *pro bono* program by way of non-representational *pro bono* services offers opportunities to advise student government classes, to advise the student government, and to serve in a court docent program to educate middle school students about the court system.

The Virginia State Bar offers opportunities to advise military personnel on mobilization or demobilization.

The Greater Richmond Bar Association affords opportunities to advise non-profit entities in contracting, corporate document, and employment law, among others; and to staff a telephone legal advice hotline.

⁵ Comments 8 and 9, Rule 6.1.

⁶ Email dated December 17, 2004 from Ethics Counsel McCauley to Mr. Rapisarda.

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The Committee also discovered these non-representational *pro bono* opportunities: “So you are 18” project involving speaking to high school students on legal rights and duties and screening of potential legal aid clients for Legal Services of Northern Virginia.

Finally, the Committee learned that the Fairfax County General District Court offers a program for volunteers to help citizens navigate the court system; to serve as guides and direction givers; to interview criminal defendants for eligibility for court appointed counsel; and to assist probation officers in contact with defendants and in administrative duties.

From this survey, the Committee determined that LGA members could successfully participate in a wide range of non-representational *pro bono* services through existing programs or like programs that the LGA may set up. In order to satisfy Rule 6.1, any such work must meet the definition of *pro bono* legal services; and any local government attorney must overcome the practical problems of authority and permission for use of resources.

IV.

The Committee also addressed a role for LGA members in providing representational non-court *pro bono* services. Here the Committee focused on a relationship in this regard with legal aid societies because the Committee found these entities would afford malpractice insurance to LGA members providing *pro bono* services.

The Committee discovered a Charlottesville program involving the restoration of voting rights to felons who have completed their sentences. Chuck Greenfield of the Legal Services of Northern Virginia stated that his group would like to work with LGA members and would offer \$500,000 malpractice insurance.

The Committee made inquiries to Central Virginia Legal Aid Society, Inc., Legal Aid Justice Center, Virginia Poverty Law Center, Blue Ridge Legal Services, Inc., Legal Aid Society of Roanoke Valley and Southwest Virginia Legal Aid Society. The organizations were contacted to determine if LGA members could provide non-court representational *pro bono* service under the malpractice policy of the organization, and under what conditions and what tasks could be performed. Responses were received from Central Virginia Legal Aid and Blue Ridge Legal Services.

Kathy Brigman, Director of *Pro Bono* Services for Central Virginia Legal Aid, advised that her organization provides \$1 million of coverage which would extend to LGA members. The organization has offices in Richmond, Charlottesville and Petersburg. Central Virginia Legal Aid also provides training and office space for its attorney volunteers. Ms. Brigman advised that her organization has a great need for assistance in drafting wills and powers of attorney, providing legal advice on the hotline, and handling VEC unemployment hearings.

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Ms. Brigman also provided a sample memorandum of understanding that sets out the terms and conditions of the *pro bono* service. She graciously volunteered to meet with LGA or its members to further explain her organization's program and service area. The organization welcomes the assistance of LGA.

John Whitfield, Executive Director of Blue Ridge Legal Services, oversees the operations of four legal aid offices in western Virginia, in Winchester, Harrisonburg, Lexington and Roanoke. *Pro bono* opportunities exist in each of the offices, and the organization welcomes the assistance of LGA.

Mr. Whitfield advised that his organization has malpractice insurance that covers attorney volunteers, with limits of \$250,000 per claim and \$500,000 in the aggregate. The organization offers training for the Roanoke hotline but otherwise does not have any regular training. However, Mr. Whitfield noted that the Virginia legal aid community holds an annual state-wide training conference that volunteers would be able to attend with registration fees waived based on a Virginia Law Foundation grant. Training is also offered on an ad hoc basis by the organization. Blue Ridge also offers office space and supplies to its volunteer attorneys, as well as law students who can provide research support.

As for specific tasks to be performed, Mr. Whitfield advised that his organization could tailor a *pro bono* opportunity to the needs of any LGA volunteer. In the Roanoke office, a *pro bono* hotline is staffed by volunteers, and in all four of Blue Ridge's offices, attorneys are needed to draft wills and powers of attorney, among other documents.

Mr. Whitfield noted that the Virginia legal aid community recently developed an online *pro bono* opportunities database for volunteers to use. Blue Ridge has 59 such opportunities listed in the database, which can be searched and sorted by geographic area and practice area. Contact information is provided on each program.

V.

The LGA could serve a role in encouraging, educating, facilitating, and communicating *pro bono* opportunities for local government attorneys and in addressing and helping to resolve the practical problems. The Committee sees the LGA website and the “Bill of Particulars” as means to these ends.

VI.

The Committee offers the following course of action for the Board to establish a *pro bono* policy for the LGA and to guide the membership in fulfilling the *pro bono* obligations of each lawyer. A recommended effectuating resolution is also provided.

- 1) The Board should adopt a Board policy on *pro bono* services to encourage, educate, communicate, and facilitate LGA members’ participation in existing non-representational and representational non-court *pro bono* services.

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- 2) The Board should create a new yearly award for meritorious *pro bono* services under the auspices of the LGA *Pro Bono* Policy.
- 3) The Board should adopt the attached resolution which establishes the LGA’s policy on *pro bono* services.

attachment: draft resolution

Respectfully Submitted

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LGA *Pro Bono* Policy Guidelines (Adopted by the LGA Board of Directors on April 15, 2005)

The following policy guidelines resulted from a study undertaken by the LGA standing committee on issues affecting local government law.

1. The Board finds that each member of the LGA must assume “a personal responsibility to provide legal services to those unable to pay”; and urges each member of the LGA to fulfill this requirement in a manner consistent with Rule 6.1 of the Rules of Professional Conduct.

2. The Board encourages and supports the provision by local government attorneys of *pro bono* services as defined by and in a manner consistent with Rule 6.1 of the Rules of Professional Conduct.

3. The Board finds that there is a *pro bono* services role for members of the LGA in providing legal services to those unable to pay for these services, as well as non-representational legal services.

4. To this end, the Board should communicate with and educate the members as to the many existing opportunities for local governmental attorneys for provision of *pro bono* services.

5. The Board of the LGA should facilitate the provision by local government attorneys of such services in a way that overcomes or addresses these practical problems that the membership faces in provision of *pro bono* services: authority from client; permission of client to use governmental resources; conflicts of interest; lack of malpractice insurance; and competency in relevant fields of law.

6. The Board intends to fulfill the roles of communication, education, and facilitation as to *pro bono* service opportunities for members by informative pieces published in the “Bill of Particulars” and by an ongoing and continuously updated element on the LGA’s web page on this subject.

7. The Board shall use existing staff, an existing or a new standing committee, and a volunteer or volunteers from the membership to implement this policy.

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PRO BONO CHECKLIST

Alexandra S. Fannon

Baby Steps to *Pro Bono* Service for a Local Government Attorney

Pro bono service can be representational or non-representational, may involve court or just advice, or simply involve educating others about the legal system. No matter the type of *pro bono* service, certain issues must be addressed before you start.

Thus, whether you are taking steps to encourage *Pro Bono* service in your office or interested in *pro bono* service, with much help from the American Bar Association, we have created a list of considerations for you here.

1. CHECK YOUR LOCAL LAWS AND POLICY

The first question you must ask is whether your local laws, personnel regulations or office policy allow representational work. If the answer is seemingly no, then you have two choices. You can either work to change the wording to allow and encourage *pro bono* service or consider the non-representational *pro bono* service opportunities in your area.

2. GET PERMISSION AND KNOW THE PARAMETERS

The next question you must ask is whether you have permission from your supervisor and what parameters exist. The ABA recommends that each office develop a written *pro bono* service policy to address the general issues related to the type of service and the specific issues related to amount of time, use of office resources, etc. For a sample policy, please see the *pro bono* link on the American Bar Association website. If your office does not have a written policy, then make sure you understand the authority from your supervisor, including whether you can utilize flexible time to work during office hours and whether you can use de minimis office resources.

3. CHECK FOR CONFLICTS OF INTEREST

An important question before undertaking *pro bono* service is to ask what process is in place to screen for possible conflicts of interest. In addition, if your office has a conflict of interest section in the office *pro bono* policy, then make sure that the program you want to serve is in concert. See page 17 for a more detailed discussion of this crucial issue.

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4. FIND OUT WHO WILL PROVIDE MALPRACTICE COVERAGE

Many of the established programs, e.g., Legal Aid and certain local bar association programs, will provide malpractice coverage for you. See page 16 for more information on malpractice insurance coverage is provided below.

5. KNOW WHERE TO LOOK FOR HELP ON THE LEGAL TOPIC

At a minimum, know the contact information of at least one person involved in the program for answering substantive or procedural questions. Although most local government attorneys are jacks of all trades, some of the existing opportunities for service involve areas of law outside the usual spectrum of local government lawyer expertise. Thus, check into the availability of free training sessions or materials. In some cases, this training will count as CLE credit.

6. ASK ABOUT RESOURCES

Before recreating the wheel, investigate whether the program has sample forms and/or pleadings for your use. In addition, ask up front whether the program has research materials and/or library access, any administrative/clerical support for volunteers, and how to get reimbursement of incidental fees and costs. You may also inquire whether the program provides a location for you to meet with the client and access to a phone and/or computer.

7. CLARIFY YOUR ROLE WITH THE CLIENT

The best practice is to have a retainer agreement signed by the client and maintained in a file. Programs may have a form agreement. Make sure the client understands that you are working in your individual capacity, not on behalf of your locality, and that you represent them on this matter only. Remember to refrain from using your locality business cards, office letterhead, voice mail, etc. so that the client does not become confused about your capacity in the case. Often the program will allow you to use its contact information for communications with the client.

8. HOPE FOR THE BEST, BUT PLAN FOR THE WORST

Even the simplest legal issue can suddenly evolve into something much more complex, so at the front end of the representation explore the safety net. First, check with the program about how, and if, you can have help should a case become more complex and time-consuming than you planned (e.g., teaming up with another volunteer attorney or staff member). Second, ask how you can terminate representation should a conflict of interest arise after initial work has started, and if you can terminate should the caseload exceed or conflict with your office policy. Finally, communicate with your own office for approval if the matter becomes too complicated or time-consuming.

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9. REMEMBER THAT NON-REPRESENTATIONAL *PRO BONO* SERVICE OPPORTUNITIES ARE AVAILABLE EVERYWHERE

If representational work is not possible, then explore the possibility of other service opportunities, such as volunteering to educate the local youth about the legal system. For instance, many areas have court docent, moot court, and Law Day programs available through local bar associations. Also, consider helping the representational programs like Legal Aid with their screening process or their phone lines.

Right now there is a *pro bono* opportunity waiting for you. All you have to do is LOOK.

Limits Imposed by Local Ordinances

John A. Gibney, Jr.

Local charters and ordinances may place obstacles in the way of local government attorneys who want to provide *pro bono* services. It should come as no surprise to attorneys working in local government that the rules vary tremendously across Virginia. Some localities simply forbid the practice of law outside of government service; others do not address the duties of the city, town, or county attorney anywhere in their ordinances or charters. Some local ordinances or charters may require amendment to allow *pro bono* practice.

The local laws can range from the strict to the permissive. The City of Richmond, for instance, prohibits outside practice. The City Code restricts the City Attorney and his assistants from practicing law except as set forth in the Charter:

The regular, permanent, fulltime assistant city attorneys shall not engage in the practice of law otherwise than as prescribed in the Charter for the city attorney.

Richmond City Code § 2-131. The Charter, in turn, limits the attorneys to work on City business. In pertinent part, it provides:

The city attorney shall be appointed by the council, shall serve at its pleasure, and *shall devote full time and attention to the representation of the city* and the protection of its legal interests. The city attorney shall have the power to appoint and remove assistants or any other employees as shall be authorized by the council and to authorize any assistant or special counsel to perform any of the duties imposed upon him/her in this charter or under general law. The city attorney may represent personally or through one of his assistants any number of city officials, departments, commissions, boards, or agencies that

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are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, commission, board, or agency.

Richmond City Charter §4.17.

Other localities restrict the duties of the city or county attorney, but not the duties of the attorney’s assistants. For instance, Roanoke County says that the County Attorney “shall devote his full time and attention to the work and service of the county,” but imposes no restrictions on assistants. Roanoke County Charter, § 7.02.

Fortunately for those who want to engage in *pro bono* service, by far most localities impose no limitation on the local government attorney.

In localities with restrictive provisions, local government attorneys may be limited to non-representational *pro bono* work, such as coaching students in a mini-trial at a high school. Even the most conservative reading of the local charters and ordinances would not prohibit such volunteerism.

Moreover, a simple amendment of local ordinances to allow *pro bono* work will open the door to a wider range of activities. Almost all localities say that local government attorneys shall perform such activities as are directed by the governing body, thereby allowing the board or council to authorize *pro bono* activities. Even Richmond’s strict prohibition on outside practice could be relaxed by adding language to the ordinance quoted above that would permit work, for instance, at the legal aid society.

In sum, before starting a *pro bono* project, the local attorney should check the ordinances and charter (if any) for restrictions on practice. If local law is restrictive, a simple amendment may be all that is needed to allow local government attorneys to perform the full panoply of *pro bono* work. It may also be prudent for the local government attorney to notify the local governing body that the attorney will be engaging in *pro bono* service or some similar phrase.

Local Personnel Regulations and Policies

David P. Bobzien

The personnel regulations and other human resources policies of localities may also throw obstacles in the way local government attorneys wishing to provide *pro bono* services. For example, at one time the class specifications for the several grades of attorneys in the Fairfax County Attorney’s Office all included the “necessary special requirement” that “[a]ll positions allocated to the County Attorney series are under the Fairfax County Merit System

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of personnel administration and are limited to full-time employment and preclude the private practice of law.”

When that Office began to encourage its attorneys to participate in *pro bono* activities, a concern was raised that such activities would run afoul of the special requirement that precluded the private practice of law. To ensure that *pro bono* activity would be authorized, the following sentence was inserted: “However, the phrase “private practice of law” does not include the provision of *pro bono publico* legal services in a *pro bono* legal services program approved by the County Attorney and in accordance with the policy of the County Attorney governing participation in an approved program.”

Therefore, in addition to checking ordinances and charters (if any) for restrictions on practice, you should also review your personnel regulations and policies to be sure that your *pro bono* activity is sanctioned and to request the necessary changes if it is not.

Malpractice Insurance Coverage for the Local Government Attorney Engaging in *Pro Bono* Activity

David P. Bobzien

Essential to the provision of *pro bono* services by local government attorneys is their need to have adequate malpractice insurance coverage. This is true regardless of whether the activity is representational or non-representational. Providing bad legal advice is just as susceptible to a malpractice claim as providing ineffective counsel in court. All but a small minority of private practitioners “go bare” in Virginia, and often it is that small minority that is most in need of the coverage. But the local government attorney seldom, if ever, obtains such coverage because there is typically no need to do so. The locality protects its attorneys in the work they do for the locality. However, when its attorneys provide *pro bono* service to the outside world, the locality cannot be expected to, and likely legally cannot, indemnify the actions of its attorneys. So where do the attorneys turn? If they choose to provide the *pro bono* service through a bar association program or other recognized *pro bono* provider, malpractice coverage often will be in place to cover them. Many of the *pro bono* providers are paying members of the National Legal Aid & Defender Association and utilize the comprehensive insurance program it offers. As an example, the Fairfax Bar Association, which has a well-established *pro bono* program and boasts the only full-time *pro bono* coordinator of any local bar in Virginia, has coverage through NLADA of \$500,000 per occurrence and \$5,000,000 in the aggregate. Of particular interest is the fact that the Fairfax Bar Association pays an additional premium to secure the Primary *Pro Bono* Endorsement that NLADA offers. This endorsement permits the attorney to look first to NLADA, should a claim arise, as the primary insurer and not to the attorney’s day-to-day malpractice carrier. This type of endorsement is particularly significant to the local government attorney whose “day-to-day malpractice carrier” is either the locality, if it is self-insured, or the entity that insures the locality. One could imagine the hassle involved in demonstrating to NLADA or

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any insurer of a *pro bono* provider that the locality is not available to the local government attorney to serve as a primary insurer. The existence of the Primary *Pro Bono* Endorsement to the basic NLADA policy should illustrate that the mere fact that a policy is in place does not guarantee its adequacy, and the local government attorney should be absolutely certain of all of the ramifications of the coverage provided by the *pro bono* provider before undertaking any work under its auspices.

Conflict of Interest Issues

Jacob P. Stroman, IV

Like every other aspect of legal practice, *pro bono* service must be rendered within the bounds of the Virginia Rules of Professional Conduct. Representational *pro bono* service, in particular, raises the specter of potential conflicts of interest.

Before undertaking representational *pro bono* service, a local government attorney should review Rules 1.7-1.11 of the Rules of Professional Conduct. These rules address conflict of interest issues; Rule 1.11 addresses the unique conflicts of interest challenges of former and (most relevant to this [Guide](#)) current government officers and employees.

As with many ethical issues, the overarching issues are very clear, but, as the saying goes, “the devil is in the details”. Obviously, the local government attorney cannot represent a *pro bono* client adverse to his or her locality. While everyone who has litigated will attest to the strange twists and turns a case can take between evaluation of the file and verdict, *pro bono* cases present a somewhat greater possibility of taking an unexpected turn. You might undertake a *pro bono* case with no apparent conflict, only to have one emerge once you are the midst of the representation. Lawyers, it is sometimes said, are programmed to think in terms of the worst case scenario. Some types of *pro bono* cases will be more likely than others to result in potential conflicts with the locality. For example, it is a rare bankruptcy case that does not have issues relating to unpaid utility service bills or unpaid local taxes. Uncontested divorces can become “contested matters” involving child custody which can implicate your local social services department. Home improvement contracts gone awry may reveal involvement of the locality’s Codes and Compliance staff. There are other areas which likewise have more potential for conflicts than others. *Pro bono* representational work would benefit from a preliminary analysis that anticipates potential hidden conflicts.

It has been said that there are two kinds of conflicts of interest: legal conflicts and “business” conflicts. This translated into a policy in which my former firm would refuse work which was likely to antagonize a substantial, existing client. The same holds true in the public sector. Due consideration must be given to representational work for a client who may, for example, be facing an animal control charge filed by the locality. A local government attorney must also consider the appearance of *pro bono* representation when a *pro bono* client may well owe taxes, fees or fines to the municipality for which the local government attorney works. Finally, there can be some sensitivity on the part of a county board or city or town council to *pro bono* court appearances by local government attorneys in

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the locality’s courts. One solution to the issue is to perform the representational work in an adjoining or nearby jurisdiction. David Bobzien successfully utilized this approach in a *pro bono* divorce case discussed in the Appendix (look for the reference to “Las Vegas on the Potomac”).

As in other aspects of your practice, conflicts of interest must be carefully reviewed. *Pro bono* cases should be subject to the same kinds of conflict checks utilized in other aspects of your practice. Local government attorneys who do not have a systematic office conflicts check may need to circulate a memorandum to their colleagues and the chief legal officer.

But this story has a happy ending. Conflicts of interest need not be an insurmountable obstacle to *pro bono* service.

WHERE TO GO FOR *PRO BONO*

Examples of *Pro Bono* Opportunities

Jeanette Irby

So we have got your interest up---you are ready to get involved; “what can I do and where do I go” you ask. There are a myriad of opportunities in Virginia---some representational and some non representational. The Virginia State Bar in partnership with the Conference of Local Bars has published “Legally Informed”, which list many *pro bono* opportunities. If you are interested in representational *pro bono* legal opportunities, one of the best places to start is with your local legal aid society; the addresses of the several societies in the state are listed in this booklet. They all carry malpractice insurance and serve a geographical area large enough to avoid conflicts. Additional representational opportunities abound in such areas as domestic, housing, immigration and in the preparation of wills and medical directives; the following are but a few examples. The Chesterfield County, Henrico County and Prince William County Bar Associations provide free-of-charge representation to victims of domestic violence/family abuse who are seeking protective orders. For general civil case assistance, the Harrisonburg-Rockingham Bar Association handles approximately 100 *pro bono* cases per year. The Henrico Bar Association in conjunction with the Hunton and Williams Church Hill Legal Aid Clinic provides legal services to clients who are ineligible for legal aid. The Wills for Heroes program has been a collaborative effort of the VBA Young Lawyers Division, the Virginia State Bar Young Lawyers Conference, and the George Mason University School of Law, with support from Virginia CLE, LexisNexis, the Fellows of the Virginia Law Foundation, Hunton & Williams LLP, and McGuire Woods LLP. Wills for Heroes programs provide free wills, living wills, and healthcare and financial powers of attorney to first responders and their spouses or domestic partners.

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In the non-representational venue, there are many programs that go far beyond your obligatory speaking engagement on Law Day. Many bar associations sponsor an annual “Ask a Lawyer” project: Check with your bar association to see if one exists or better yet, organize one. The Young Lawyers Division of The Virginia Bar Association periodically sponsors a regional telephone legal advice hotline for low income and elderly clients from legal aid offices in Charlottesville, Petersburg and Richmond. Probably one of the best recognized school programs is the Page County Bar Association program which gives presentations to area students and culminates in an annual trip to the U.S. Supreme Court or the Virginia Supreme Court.

List of Local and Specialty Bars

For a complete list of local and specialty bars in the Commonwealth of Virginia, please refer to the Appendix.

The LGA Website

Marissa D. Mitchell

The LGA *Pro Bono* Committee website provides helpful links to a variety of resources: *pro bono* opportunities, training materials, continuing legal education, model pleadings, relevant case law, and a network of *pro bono* and legal service attorneys. You may visit the LGA website at <http://www.coopercenter.org/lga/> and click the Committee link to access the *Pro Bono* Committee webpage. You can also access the LGA *Pro Bono* Committee webpage directly at www.coopercenter.org/lga/COMMITTEES/Pro%20Bono.php.

Please contact an LGA *Pro Bono* Committee member if you have suggestions for additional resources or other ways we can improve our website.

GOT A GREAT IDEA? *PRO BONO* IS A GREAT WAY TO CHANNEL YOUR CREATIVE ENERGIES

Jeanette Irby

Pro bono legal services are generally defined as: “Being or involving uncompensated legal services performed especially for the public good.” Rule 6.1 of the Virginia State Bar Rules of Professional Conduct includes within *pro bono* services, poverty law, civil rights law, public interest law and volunteer activities designed to increase the availability of *pro bono* services. The Virginia State Bar Rules of Professional Conduct 6.2 indicate that a lawyer should render at least 2 percent of their professional time to *pro bono publico* services. These services include poverty law, civil rights law, public interest law, and

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volunteer activities designed to increase the availability of *pro bono* legal services. The CPR also gives a lawyer the option to contribute direct financial support as an alternative to fulfilling a lawyer's responsibility under the rule.

The American Bar Association Rule is more generous in its definition as to what constitutes *pro bono*. The ABA's definition encompasses persons of limited means or other disadvantaged persons; charitable, religious, civic, community, governmental, health, and educational organizations in matters that are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose; or activities seeking to improve the law, the legal system, or the legal profession.

The VSB rule is limiting in its definition of *pro bono*; however, at this point it is still "aspirational." While the VSB rule is a useful benchmark, it should not limit the scope of your *pro bono* activities.

There is a perception amongst the communities in which we live and practice that attorneys do not do anything for free. We all know that to be false. Many attorneys in the private sector participate in *pro bono* activities. Attorneys in the public sector also desire the opportunity to give back to the communities in which they serve.

There are several options in approaching how one wants to participate in doing *pro bono*; the first of course is to do nothing. However, consider choosing another option, to take the opportunity to apply your experience to allow our profession to better serve the citizens of our communities.

For those wishing to begin or expand their *pro bono* work, one way to start is to think about what you most like about practicing law. Doing what you know and like can provide a comfortable transition to *pro bono* work. Another way is to volunteer at the local legal aid office. Legal aid offices provide a wide range of legal services and often provide training for volunteers. Still another approach is to look for unmet needs in the community and learn what is necessary to meet them.

In terms of specific opportunities for *pro bono* services, local non-profit organizations such as a local historical society or a youth sports league may need an attorney to help it set up its organization. A church might need an attorney to help it review contracts or prod a reluctant contractor to finish a job. Local social services departments may need volunteer guardians or conservators, or courts might want to use a neutral case evaluator or mediator.

Many individuals need *pro bono* help too. For example, the "Wills for Heroes" program provides a "first responder" with peace of mind that loved ones will be provided for should he or she not return home. Attorneys can provide valuable services to individuals who are in difficult domestic situations or who may need a power of attorney because a family member is ill. Persons facing eviction or debt repayment difficulties would welcome knowledgeable legal assistance in times of crisis.

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Even some activities that don't meet the traditional definition of *pro bono* services can be very rewarding. For example, a court docent program in which attorneys accompany students to various courts can provide a valuable introduction to the judicial system.

In the final analysis, every attorney has a variety of *pro bono* opportunities, and the *Pro Bono* Committee is here to help and to answer questions. We strongly encourage you to consider the possibilities for both you and the community. Those who participate in *pro bono* activities know the intrinsic satisfaction of providing legal services to those who need but cannot afford them.

Some examples include the "Wills for Heroes" program which is the value of providing "a first responder" with peace of mind that their loved ones will be provided for should they not return home because of their service to country or community. The value is immeasurable.

How do you place a value on providing legal assistance to individuals who are in difficult domestic situations or who may need a power of attorney because a family member is ill? Anyone can find forms and fill them out; it takes an attorney to help explain the meaning and ramifications of the "form."

Participating in a Neutral Case Evaluation program as an evaluator provides value to the litigants, their attorneys and to the court. The intrinsic value to the evaluator by facilitating a settlement, focusing on the issues and providing the parties an evaluation of the case for a more efficient presentation in court is not insignificant.

There are many ways to give back to your communities and you should not have to look too hard to find an opportunity to give assistance to those in need. For example, is there a local nonprofit who needs the benefit of an attorney to help them through the process of setting up their organization? Some examples would be a local historical society, boys or girls club, or a youth sports league. A church may need an attorney to help them review contracts with those that they do business or prod a reluctant contractor to finish a job.

Although "technically" some activities are not *pro bono*, (under the VSB RPC) mentoring young people, whether it is through Law Day or a Law Camp program has its own intrinsic benefits. The Henrico Court Docent Program is another fine example of a local bar association introducing young people to the law in an interesting and meaningful way. These are the activities and opportunities to help shape the view that young people will have of our profession as they mature into adults. A teen's exposure to the legal system should be more than the lawyer that may have to represent them in court when they have ended up on the wrong side of the law.

While each one of us must find the service opportunity that best suits us, the *Pro Bono* Committee is committed to help. We are in a profession of service and it is time for us to think about the manner in which we can use our hard earned skills as lawyers to serve others.

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SUCCESS STORIES

Marissa D. Mitchell

THE HENRICO COURT DOCENT PROGRAM

The Henrico Court Docent Program offers a unique opportunity for attorneys to provide nonrepresentational *pro bono* services. In the program, attorneys work with teachers to show middle school students the judicial system at work. The volunteer attorney goes with the students on visits to courts and the juvenile detention center and follows up with a visit to their school.

There is a modest time commitment for volunteer attorneys. On the first morning, the students meet one of the judges at the Juvenile & Domestic Relations District Court before the morning docket begins and then tour the juvenile detention center. The attorney then accompanies the students to the Circuit Court or General District Court courtroom most likely to have interesting proceedings that day. The first day generally requires three hours.

The following week, the attorney meets with the students at their school for less than an hour to discuss their observations and to answer questions. Students are often anxious to hear the outcome of cases they couldn’t see to conclusion, and they ask a range of questions, such as “how do you get to be a judge?” and “how much money do you make?” For many of these students, the question and answer session is the first opportunity they have to discuss the legal system with a practicing lawyer.

Approximately 675 students from all 12 Henrico middle schools participate each year. In addition to giving students an overview of the court system, the program exposes students to possible career opportunities, such as lawyer, clerk, and deputy. It also promotes law-abiding lifestyles by showing the consequences of failing to follow the rules.

The Richmond Lawyers’ Auxiliary, a group of spouses of lawyers and judges from the Richmond area, sponsors the program, and the Henrico Bar Association coordinates attorney support. Dale B. Boice, Nancy H. Miller and Susan H. Parsons are the three co-chairpersons of the program for the Richmond Lawyer’s Auxiliary, and Eileen Smith is the attorney contact for the Henrico Bar Association.

If you have questions or would like to volunteer, please contact Eileen Smith at Dankos, Gordon & Whitlock at 262-8000 or esmith@dgw-law.com.

WILLS FOR HEROES

G. Carl Boggess

The Wills for Heroes program has been a collaborative effort of the Will for Heroes Foundation and the Young Lawyer Division of the American State Bar Association; together,

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the YLD and Wills for Heroes Foundation have worked to facilitate this program into a number of states. Here in Virginia, the program is the result of the collaborative efforts of the VBA Young Lawyers Division, the Virginia State Bar Young Lawyers Conference, and the George Mason University School of Law, with support from Virginia CLE, LexisNexis, the Fellows of the Virginia Law Foundation, Hunton & Williams LLP, and McGuireWoods LLP.

Wills for Heroes programs provide free wills, living wills, and healthcare and financial powers of attorney to first responders and their spouses or domestic partners. It is a public service project that by its very nature expresses respect and support for first responders and that exemplifies public service by “protecting those who protect us.” If a local government attorney’s office or a local bar association is interested in sponsoring the program please contact either Lauren K. Douglas, (703) 712-5062, ldouglas@mcguirewoods.com, or Erin S. Whaley, (804) 697-1389, erin.whaley@troutmansanders.com.

PARTNERING WITH A LOCAL HIGH SCHOOL

Alexandra S. Fannon

The American Bar Association encourages government attorneys to broaden the definition of *pro bono* service to overcome some of the inherent hurdles for public attorneys. Although the Virginia State Bar’s definition of *pro bono* service is presently more limited, educating public students about the legal system falls within the ABA’s broader definition of *pro bono*.

The success story: Partnership with Thomas Jefferson High School, Richmond

Several years ago, local bar association leaders and Juvenile & Domestic Relations District Court Judges in the Richmond area discussed ways to reach out to the public high schools. One suggestion was for each local bar association to partner with a local high school to provide an enrichment program about the legal system. In response, the Metropolitan Richmond Women’s Bar Association (“MRWBA”) partnered with Thomas Jefferson (“T.J.”) High School to create such a program.

The partnership began with the modest goal of providing one speaking program and one court tour, but it has grown to encompass multiple programs. Steered by the Public Service Committee of the MRWBA, the partnership parameters change each year depending on the interests of the committee chairs and volunteers. Topics have included domestic violence awareness and credit abuse education, and activities have ranged from tours of the Capitol and the Supreme Court to holding mock trials in the classrooms. This worthwhile program has received two Awards of Merit from the Conference of Local Bar Associations

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and is an excellent opportunity for all attorneys, including local government attorneys, to share their knowledge of the legal system with high school students.

So how do you set up such a project?

First, appoint one person as the “*Pro bono*” Coordinator. For example, the MRWBA has two attorneys serving as co-chairs to help steer the office program. Second, select a public school where the principal will support the program and appoint a contact person. Although most of the coordination can be done through emails or phone calls, you should set up at least one face-to-face meeting initially.

Next, set a modest and achievable goal of one or two events per school year. At T.J. our experience was that the list of interests and desired activities was long and involved, but converting the ideas into reality took a lot more work. So before discussing topics with your school, poll the office to see who is interested in volunteering and then choose one or two topics that might interest that age of students, *e.g.*, the child welfare system, how the School Board system works, or civil prosecution of slum lords. Then speak with the school about their interests and whether they want you to speak to individual classes or a specific group. Teachers are often able to streamline your topic into relevant topics at school.

Finally, include evaluation tools in your program, which could consist of a simple survey for both the students and the volunteers. Also, to encourage participation, you should recognize the volunteers in your office by mentioning them in your central office meetings, highlighting their efforts in newsletters, or even creating a volunteer award.

Suggestions for programs

Don’t worry if you don’t feel creative enough to develop a new idea for a program. There are many existing ideas and programs that need your involvement. Here are just a few ideas:

The “*So You’re 18*” booklets distributed by the Virginia State Bar can be presented and discussed with senior classes about their new rights and responsibilities. For copies of the booklet contact Paulette Davidson at (804) 775-0521 or davidson@vsb.org, or visit <http://www.vsb.org/publications/brochure/so18.pdf>.

To prepare students for the crazy world of credit cards, consider presenting the national C.A.R.E. (Credit Abuse Resistance Education) program which educates students about credit dangers in an interesting way. You don’t have to be a bankruptcy attorney to do it! The MRWBA has presented the C.A.R.E. program several times, with the first time including U.S. District Court Bankruptcy Judge Douglas Tice, the U.S. Trustee, and the next time with local practitioners. There is even an existing PowerPoint presentation and script available for your use. To learn more about the C.A.R.E. program, contact Suzanne Wade of the Boleman Law Firm at (804) 358-9900, ext. 1131 or at sewade@bolemanlaw.com.

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For mock trials in the classroom, instead of developing something overly complicated, simply select a fact pattern from your background and change the “characters” to ones the students will recognize. Divide the class into the different roles (i.e., attorneys, client(s), judge, jury and witnesses). The volunteer attorneys can briefly describe the roles to the students and assist in the trial preparation. Then let the trial begin! Volunteers should help the students lawyers with objections and the student judge with rulings. Students love this activity, and the thespians are naturals!

Another suggested activity is coordinating a tour of the local government hot spots. Escort student to the locations of City Council or Board of Supervisors meetings, courtrooms, police or fire stations, or even Public Work areas. Students always enjoy field trips.

So, what are you waiting for? Try something new. You will be amazed at how rewarding this type of *pro bono* service can be for you and the students.

Leadership in the Law Summer Camp

Jeanette Irby

The Loudoun Bar Foundation and the Fauquier Bar Association sponsor an innovative Leadership in the Law Summer Camp that gives rising seniors practical experience about the legal system. The camp introduces students to the practice of criminal and civil law, courtroom procedures, crime scene investigation and the handling and preservation of evidence.

Experienced practitioners volunteer their time to provide instruction and hands-on demonstrations. There are opportunities to be a mentor to a legal team which requires a significant time commitment. Attorneys also get to use their acting abilities if they chose to play the part of a witness. Of course, an attorney may also participate as a juror on the day of trial.

Student legal teams receive a case outline, study the facts, visit the crime scene, interview witnesses and experts, analyze evidence, develop exhibits and prepare witnesses and experts for trial. The program culminates in a jury trial, in which students assume the roles of lawyers. A sitting Loudoun or Fauquier County Circuit Court Judge presides over the trial. Students also participate in recreational activities such as a rope course, volleyball, soccer, and water sports. Several of the mentors have participated in the recreational activities as well.

Attorneys who have participated in the program either as a mentor, witness, or juror often marvel at the level of proficiency that the students demonstrate when putting on their cases. I have had the opportunity to participate as a recruiter, fundraiser, juror and mentor. Being a mentor is truly a satisfying experience. Teaching the campers about motion practice and then watching them argue their position in front of the judge is impressive. Naturally

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they are nervous, and you are nervous for them. You want your team to win, but even if they do not, the confidence that your camper develops through the experience is well worth the effort. Students learn that witnesses sometimes “forget” to tell you the entire story until the witness is “remembering” on the stand. It is interesting to observe campers using the lessons on impeaching a witness when you can see by their countenances that the students are furious, but able to use the tools that they have learned at camp to obtain the result needed for their cases.

Generally the program has supported 24 to 30 students who were selected to participate in the overnight camp. Students are transported to the old Courthouse in Leesburg. Because of the contributions received from individuals and organizations from the local area, the sponsorship by the Loudoun Bar Foundation and Fauquier Bar Association, the program is offered to students at no cost.

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***PRO BONO* OPPORTUNITIES FOR THE LOCAL GOVERNMENT ATTORNEY:
The Page County Bar Association’s Legal
Education Program**

David P. Bobzien

For over 20 years, the Page County Bar Association, one of the smallest bar associations in the Commonwealth due to the fact that the Page County population is only around 22,000, has heeded former Chief Justice Harry Carrico’s 1984 challenge to lawyers to forever become “adjunct professors of law.” In his challenge, the Chief Justice envisioned lawyers educating young people in the public schools about the law and preparing them for jury service as adults.

The format for the last 14 years of the Project has been as follows: (1) In-class presentations by attorney-presenters to individual classes upon teacher requests for presentations on designated topics, aimed to conform to the statewide Standards of Learning; (2) In-service seminars to Page County school personnel upon administration request on various topics, such as confidentiality, physical contact between teachers and pupils, and civil liability in the school setting; (3) Maintenance and expansion of a law-related education audio-visual and book library for use by attorney-presenters and teachers in the presentation of law-related education topics in the public schools; and (4) Organization and chaperoning of field trips to witness oral arguments in the United States Supreme Court and the Virginia Supreme Court or the Virginia Court of Appeals for selected high school juniors and seniors.

One of the keepers of the flame of this marvelous endeavor is George W. Shanks, the Page County Attorney and a past Chair of the Virginia State Bar’s Conference of Local Bar Associations. The following musing by George explains why he and his colleagues in Page County find this Project so rewarding: “I fear I have been too successful at extolling the virtues of trips to see The Supremes. In the beginning of our now 20+ year educational odyssey, I could contact the U.S. Marshal’s office and, as often as not, get a seating on the first day of the Term. Now, a request for a seating for a group of 40 is honored with a promise for consideration in 4 years. Not exactly a benefit to our target population of honors juniors and seniors. Still, in a nation of 300 million souls, the opportunity to share this experience with a handful of Page County youngsters is like being Santa Claus and making check marks on a Life List.”

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REPRESENTING THE *PRO BONO* CLIENT: The Local Government Attorney’s Dilemma

David P. Bobzien

The Fairfax Bar Association runs an effective *pro bono* program that is designed to supplement the work of Legal Services of Northern Virginia by assisting people who have incomes that are, in many instances, slightly higher than those served by LSNV, but who are still too poor to hire lawyers. The Fairfax Bar calls its service the “Neighborhood Outreach Program” and provides it at several County–run homeless shelters and neighborhood resource centers. One of those centers is the Franconia Family Resource Center, which is located in the basement of a large, subsidized apartment complex on Commerce Street in Springfield. The center provides the connection that the residents, who are virtually all Latino, have to County services and the *pro bono* program. The residents, for the most part, are the working poor, and most of them work in the building trades, in lawn maintenance service, and as domestics, and they often hold down multiple jobs.

For several years, I have been volunteering at the center every quarter. Sometimes I can help a client on the spot. With the assistance of a bilingual County Department of Family Services employee who staffs the center during the day and graciously schedules the clients and stays on to translate through the two-hour *pro bono* session offered one or two evenings a month, I can sometimes help clients during the session or do some research and get back to them later. (On my last visit, I was able to explain to a young man the import of a subpoena he had received to attend a hearing in J&DR Court in Manassas and to try to assuage his concern about testifying against a known youth gang member. The next day I was able to contact the Prince William County Police Department’s victim-witness coordinator, who then got in touch with him further to allay his fears.) But more often than not, I am relegated to diagnosing the legal problem, writing it up, and forwarding it to the Fairfax Bar’s full-time *pro bono* coordinator for her referral to another volunteer, who will handle the matter from there.

That’s where the frustration comes in. As a local government attorney, I have reluctantly concluded that it’s really difficult to undertake “representation” of a *pro bono* client. The client may be confused regarding your role, and why not? When I give my County business card to a client with a promise that I will get back to her with an answer, and I hand the card to her at a County-run center, it’s likely that she thinks that this is another government service, my concerted efforts to explain my true role to her notwithstanding. How would I then go about contacting her employer to seek the money she says he owes her without raising the inference that the County Attorney’s Office was after him? And if I had to go to court in Fairfax, what judge, let alone court personnel, and the tax-paying public, would not be confused as to what I was doing there on behalf of this woman? It’s because of my frustration over realizing that representational service, at least in my estimation, is almost impossible, that I became intrigued last year when LSNV offered a two-hour CLE on “uncontested divorces,” with the “cost” being a promise that the participant would handle

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three uncontested divorce cases in the future. The announcement of the program promised a how-to-guide to handling uncontested divorces in the three courts served by LSNV: Fairfax, Arlington, and Alexandria, which I would later learn is referred to among “matrimonial lawyers” as Las Vegas on the Potomac. More important, it brought me the promise of being able to have a client to whom I could make abundantly clear that I was not assisting her on behalf of the County and being able actually to go into a court, other than Fairfax’s, where the judges, court personnel, and public (even if anyone knew who I was), might more easily understand my role in representing a “civilian” client.

The “uncontested divorce” CLE offered by Legal Services of Northern Virginia, was everything I could have wanted and more. Not only did the CLE review the current law, it explained the procedural differences among the circuit courts in Fairfax, Arlington, and Alexandria, where LSNV provides its services. The CLE also provided a CD-ROM with fill-in forms for every stage of the process in each of the jurisdictions in a variety of circumstances—everything from a cooperative defendant to a jailed defendant. Piece of cake, right? Wrong, for at least two reasons.

First, I forgot that knowing the law is not practicing the law. As I bumbled along contending with the various steps in the process that would have been second nature to a lawyer experienced in divorce law, it occurred to me that I had not handled a divorce of any kind since I left private practice in 1979. In the best of circumstances, because of the perfectionist in me (and I am certain in all of my colleagues in LGA), I soon realized that it would take a lot longer than I would have expected in things both large and small, down to double-checking the number of copies of the Complaint I would have to file with the clerk. Second, I forgot a lesson I had learned as far back as 1969, when, as a second-year law student, I was doing intake at the Charlottesville legal aid society: it is sometimes more difficult to work with poor clients.

I learned from the CLE that the Alexandria Circuit Court was the most “relaxed” in its procedures, and I knew and considered as friends all three of its Circuit Court judges. Alexandria was definitely the place for me. Now all I needed was a client. Soon after the CLE, LSNV sent me a file on my first client. I immediately contacted her to set up a meeting at the LSNV office in Alexandria, which was fairly close to her home and reachable by public transit. At the appointed time I arrived and waited...and waited...and waited for over half an hour, only to find out later that she had arrived one hour after the scheduled appointment and had arrived drunk. To LSNV’s credit, staff told her that LSNV would not be able to assist her. Shortly thereafter another file arrived, and this client met with me as scheduled and emphasized that she was anxious, as in a big hurry, to get divorced. Since I barely knew where the courthouse was located, I cautioned her that, even though uncontested, (with me) the divorce could take some time. She promised that she could get her husband to sign an acceptance of service of process and waiver of further service of process and notice before a notary public, as required by law. I mailed her the necessary forms and pleadings with strict instructions that she was to have her husband sign the papers before a notary public. While it *appears* that she obtained her husband’s signature, she had *her* signature notarized but not her husband’s. When I brought this to her attention, she told

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me that she would do it correctly, and I sent her a new set. Several weeks went by, and I heard nothing from her. When I finally was able to contact her, she told me that she had been in a coma for an unspecified period (first time I ever heard that one) and, furthermore, that her husband was now unwilling to cooperate. Back to the drawing board. I eventually obtained service by posting at an apartment where the husband was supposed to be boarding. After the required time to respond had come and gone, I called chambers to schedule an *ore tenus* hearing, at the conclusion of which, if successful, my client could go home with a signed decree. LSNV advises *pro bono* attorneys to advise the courts of their status, and doing so certainly resulted in express service in the Alexandria Circuit Court. On the fateful day, my client and her witness arrived exactly at the time I had requested them to be there, which, just to be safe, was one-half hour before court was to convene. I found our case on a “short” docket, but mercifully either the judge or her clerk had placed us second, so I could see how the questioning was supposed to be done. It worked. Relying on a script that used all leading questions to establish the allegations in the Complaint, we were through in ten minutes, with the judge allowing me to “walk” the file, containing the signed final decree, down to the clerk’s office where certified copies were made. With hearty handshakes, my client and her witness were out the door five minutes later, divorce decree in hand. In all, it took almost a year (including the break for the coma) for my simple, uncontested divorce to reach conclusion. Even though I had spent way too much time on something that a competent divorce lawyer could have done incredibly more efficiently, I got what my client wanted, and I left the courthouse feeling as exhilarated as I had ever felt at any time during my legal career. I will definitely do another one, but first I am going to take a little time off to recover.

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APPENDIX

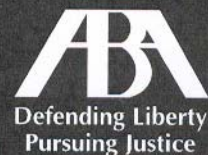
RURAL PRO BONO DELIVERY

A Guide to Pro Bono Legal Services in Rural Areas



**ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC
SERVICE AND THE CENTER FOR PRO BONO**

Supported by a grant from the Program on Law & Society
of the Open Society Institute



The American Bar Association

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RURAL PRO BONO DELIVERY:
A Guide to Pro Bono Legal Services in Rural Areas

AMERICAN BAR ASSOCIATION
750 North Lake Shore Drive
Chicago, Illinois 60611

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ABA RURAL PRO BONO DELIVERY INITIATIVE

The Rural Pro Bono Delivery Initiative (Rural Initiative) grew out of the recognition of an extremely high level of client needs in rural areas. Despite the prevalence and persistence of poverty, clients in rural areas are often overlooked. Rural lawyers have unique limitations on providing pro bono services. These include conflicts of interest, multi-district registration requirements, fewer support staff, and greater travel demands. Staff-based rural legal aid programs face similar difficulties because they cover a wider geographic region with fewer personnel than urban legal aid programs. For their part, rural clients also face greater challenges in the access to justice than their urban counterparts due to scarce resources, transportation problems, and a general lack of information about legal help.

In 1999, the American Bar Association Standing Committee on Pro Bono and Public Service (the Committee)-the policy arm of the ABA with respect to pro bono issues-examined its past experience with small firms and rural delivery. The Committee and its project, the Center for Pro Bono (the Center), had long supported the efforts of lawyers and programs located in rural areas. They created the Rural Pro Bono Consortium, a confederation of pro bono and legal services managers from rural areas who consider and address issues impacting their programs. They also produced manuals designed to assist small and midsize law firms develop pro bono programs and policies.

The Committee and Center concluded that the current pro bono support community, small law firms, rural clients, and lawyers in both rural and urban areas would all benefit from a project designed to increase volunteer participation and build connections between rural and urban lawyers. With financial support from the Open Society Institute, the Center launched the Rural Pro Bono Delivery Initiative in 2000. This two-year Initiative focused energy and resources on rural clients and the programs that serve them. The purposes of the Rural Initiative were to develop and promote successful models for serving the legal needs of particular segments of the rural poor population and to develop, improve and advocate for pro bono delivery strategies that serve the entire rural poor community. The major goals of the Rural Initiative were to:

- Build urban-to-rural connections through new relationships and technology;
- Encourage urban lawyer participation in rural pro bono delivery, including law firms, corporate counsel, and the government;

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- Identify and develop more effective models for rural pro bono delivery;

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- Institutionalize within the Center and state and local legal services providers a focus on the legal need of clients living in rural areas; and
- Analyze and report to the pro bono/legal services community about the state of pro bono delivery in rural areas.

SECTION I: BARRIERS ENCOUNTERED IN RURAL LEGAL SERVICES DELIVERY



THE LOCAL GOVERNMENT ATTORNEYS' GUIDE TO *PRO BONO PUBLICO* SERVICE

I. BARRIERS ENCOUNTERED IN RURAL LEGAL SERVICES DELIVERY

RURAL PRACTICE BARRIERS

A lawyer who practices in a very small town or rural region faces a particular set of practice barriers when he or she tries to serve low-income clients. This is true both for the lawyers at staff-based legal services offices and for pro bono lawyer projects that are operated by bar associations, stand-alone nonprofits, or legal services agencies.

A major challenge of providing pro bono legal services to the rural poor stems from the critical shortage of lawyers practicing in rural areas. Most of the nation's lawyers reside and work in urban areas. A survey of 100,000 ABA lawyers found that only 20 percent live in areas of less than 50,000 population.⁵ Unlike their urban counterparts, rural pro bono program coordinators face the challenge of having a small and limited pool of lawyers from which to develop a volunteer panel. Private lawyers practicing in rural areas often report feeling constrained from providing pro bono services. They face a series of practice barriers to providing free legal services:

- Working in sparsely populated areas with few other lawyers, rural lawyers often encounter conflicts of interest that prevent representation.
- Much of the technology that is helping urban-area lawyers, such as high-speed Internet service and the increased availability that cell phones bring to lawyers with heavy travel schedules, can be problematic in rural areas, where cell phone reception is spotty and high-speed web connections are not yet widely available.
- Some innovative legal service delivery strategies take longer to implement in many rural communities due to factors unique to those communities; for example, dispute resolution projects-such as those involving mediation, family group conferencing and mandatory parenting classes-have been hampered in rural areas by the lack of affordable mediation services for low-income parties and by the lack of trained mediators (particularly multi-lingual or culturally-trained mediators) serving those regions.
- Public transportation is nonexistent in many rural communities and the structure of rural systems further complicates access and a meaningful lawyer-client relationship. Frequently, clients live at locations with no street addresses, or on poorly marked or paved rural roads, making access extremely difficult. Lawyers and clients must resort only to phone contact and not much of that, all leading to the further degradation of lawyer-client relationship.

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- Rural lawyer practice areas and rural client legal needs often do not mesh, as in the case of a client in need of family law assistance in a community of lawyers with only bankruptcy and real estate law expertise. Rural lawyers need same access to resources as their urban cohorts: training manuals, continuing legal education, and bar association practice groups that offer sample forms and potential co-counsel arrangements or assistance.

Of course, staff-based legal services providers face most of the same practice barriers. And, in this time of budget shortfalls, program mergers and general funding cutbacks, rural legal services programs are forced to grapple with covering wider service areas with fewer personnel than their urban legal aid counterparts.

INVISIBLE CLIENTS

Who are the rural poor? They are more likely to be married than city-dwellers; they are more likely to be working and less likely to be dependant on welfare than their urban counterparts. But poverty populations in rural communities are also more likely to be chronically or long-term poor than poverty populations in urban areas. Extreme age, young or old, is a characteristic associated with rural poverty. As providers search for ways to better serve the rural poor, many are concentrating on populations with special needs.

Family Farmers

Virtually all the farms that are subject to foreclosure and dispossession are family farms. For the dispossessed family, this means unemployment and long-term poverty, as well as the loss of a home and a place in the community. The family farmers remaining on their land face a maze of financial programs and legal rights and regulations that are continually changing. They must file applications for numerous kinds of federal assistance and address the inevitable delays and rejections that come with those applications. Without timely access to adequate operating credit and assistance from crop insurance and federal disaster programs, many farms will not survive. This economic situation creates rural communities with families barely scraping by.

Migrant Workers

At the same time, rural communities are now home to thousands of new immigrants, who come to take the below-poverty and highly dangerous jobs such as those in poultry processing, meatpacking, or fruit harvesting plants. The consolidation of the largest meat and poultry producers and the resulting pressures in increase profits has caused deterioration in the overall working conditions in the production plants and erosion of worker’s rights. These newly immigrant families face barriers which limit their access to the legal system and make them more vulnerable to violation of their rights: most are unfamiliar with their rights, even though they are covered by all the same protections as non-immigrant employees; most are unfamiliar with how to reach an attorney or legal services agency; and most feel that if they

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complain, they will face discharge or potential immigration consequences. As for the surrounding community, it faces new demands on its social services, health care, and other

public services. Rural communities are often ill prepared for the cultural, economic and social changes this influx of new immigrants has brought.

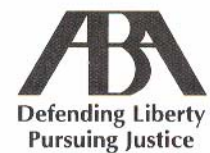
Rural Battered Women

Battered women living in rural locations are confronted with extreme access problems for domestic violence services. Service providers and lawyers are harder to find, transportation barriers loom larger, and ethnic and cultural differences seem more pronounced. It is not unusual to find rural families in which the men exercise complete control in their family relationships, not allowing the women to drive the car, handle any property, or access the family bank account. Some rural domestic violence providers point to the large number of rural women with one or few large animals (horses, cows) and insist that these women are refusing to get to safety because there is nowhere to board the animals under their care. Finally, battered rural women face profound privacy concerns in small rural areas and tiny towns, where inappropriate information-sharing or outright gossip often occurs between community members and between members of the courts and legal system, who all seem to know one another.

Advocates for the rural poor have long recognized these many obstacles and they understand the difficulties in making much-needed legal services more available to rural clients. They are also realizing that building effective local partnerships in order to improve the delivery of legal services do not depend entirely on developing new resources, but, instead by creatively leveraging existing resources. By building relationships and resourcefulness, they are helping to meet advocacy challenges in rural communities.

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**SECTION II:
LESSONS FROM THE FRONT:
COMMUNITY ACTION AT WORK**



The American Bar Association

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II. LESSONS FROM THE FRONT COMMUNITY ACTION AT WORK

According to one old adage, “necessity is the mother of invention.” Responding to the overwhelming need for rural legal services, innovative rural pro bono delivery projects—in rural, urban, and in mixed urban-rural settings—have sprung up all over the nation. The ABA’s Rural Pro Bono Delivery Initiative has studied dozens of projects that have transcended traditional legal services and pro bono advocacy delivery methods. Some projects improve client outreach and clinic operation with websites, video conferencing, hotlines, or mobile law clinics; some focus on training local community advocates or on meeting the needs of populations with special needs; some build bridges with complementary urban programs; and others actively involve the judiciary, law students, or partners from social service agencies or other sectors. Whatever the approach, these rural projects have one thing in common: the recognition that partnership development is the key to delivering services to rural areas.

Effective collaborations help spread resources (time, money, experience, and skills) wider and farther, since the resources that multiple partners can bring to bear upon a given problem are typically greater than those that one organization can harness on its own. Partnerships also broaden the range of sectors taking responsibility for the well-being of rural clients. They raise awareness of pressing social problems, such as lack of access to justice, poverty, and family violence. Coalitions such as the ones described in the following pages harness preciously untapped resources in new and creative ways. Above all, a well-conceived partnership sends a clear and important message: a community, no matter how small or isolated, can contribute to the overall health of its citizens. Pro bono advocates must combine their efforts with other key players in rural communities and assess each community individually to find ways to engage the appropriate stakeholders.

Those small-town and rural pro bono projects that have met with the most success are those that are flexible, open to new opportunities, and understand the value of partnerships—even non-traditional partnerships with churches, public libraries, welfare departments, or other community groups. Successful projects have learned the following lessons:

- ✓ **Tap into urban resources whenever possible.** Long-established urban service agencies, bar associations and volunteer lawyers programs have much to offer newer rural projects: volunteers, expertise, technology initiatives, sample forms, legal research, law students, and law firm pro bono panels. Often rural programs can tap into larger, better-resourced urban programs’ fund development staff and infrastructure as well, creating joint fundraising opportunities and generating joint

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grant proposals. It is important to remember, through, that rural programs give as well as they take. Many rural areas and programs have a whole host of valuable assets to offer their urban counterparts, including experienced lawyers who can serve as mentors, cultural awareness and training, and intimate knowledge of the local community and its barriers and resources.

- ✓ **Engage the local community.** At all stages of program development, rural projects and their managers are most successful when they stay as involved as possible with the key stakeholders in the community. Rural providers and programs must be prepared to adapt delivery models according to evolving community needs and must remember to factor state planning efforts into their community needs assessment. They should infiltrate the state planning process and work with Access to Justice coordinators to become part of a statewide delivery system (they are a strong voice for the power and reach of pro bono involvement). Rural providers and programs should forge new community partnerships to assist with rural delivery, and look to other sectors’ resources, such as government or corporate attorneys, judges, law clerks, paralegals and law students and retired attorneys. But they should include partners from outside the legal community such as faith-based organizations and social service agencies. Legal services agencies are not alone in their missions to help the poor, strengthen communities and ensure access to justice. Creative partnerships with unlikely persons or groups may help a program address not only service delivery needs, but also resource development needs. In recent years, the legal community has seen this kind of cross-sector partnership develop around the need for increased domestic violence legal services: shelters, churches, lawyers and government agencies all banded together and, with the help of federal grants, developed winning service delivery methods.

- ✓ **Experiment with volunteer recruitment strategies.** Rural pro bono programs should set their volunteer targets long and wide: law firms, corporations, government offices, retired attorneys, small-practice and solo attorneys. First, project developers should get to know the community and the special needs it may have, and then talk to potential recruits in person. Project developers should assure potential volunteers that a pro bono coordinator or some other staff will make their jobs easier by providing a variety of supports; these supports may include offering free continuing legal education, up-front client eligibility screening, malpractice insurance, court costs, or even “brownie points” with judges. Sometimes it is possible to offer litigation support too, such as low-cost depositions, interpreters and court reporters, and if possible, legal research or assistance from law student volunteers. Successful pro bono programs have learned about recruitment strategies by looking to models within their own community such as grass roots organizers, fundraisers, special event coordinators, and even salespersons. The best recruiters teach their volunteers that they are providing a valuable community service: in addition to directly assisting one or two individuals with critical legal needs, volunteers are also contributing to the health of their own community and the entire justice system.

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- ✓ **Train and support your volunteers.** Some lawyers worry that they cannot be effective volunteers. Rural program coordinators hear, I don’t know how to do that kind of law, I’ve never been in court before, or I’m afraid it will take too much time. This especially true if the potential recruit does not typically deal with individual clients, as in the case of in-house counsel. Pro bono programs must show their volunteers that gaining new experience is valuable to them that there is support available to them. Many jurisdictions offer manuals, handbooks, and form books in several substantive areas including those poverty-law areas like Family Law, Landlord-Tenant Law, Consumer Law, Domestic Violence, and Wills and Estates. Successful rural projects realize the value of collaborating with urban resources on volunteer training. They also draw upon the power of mentorship, some with formal mentor programs and events, and other by creating informal networks or even online alliances, listservs and chat rooms. More and more, guides and forms are available online, and each state hosts advocate websites and portals to assist staff-based legal services lawyers and other volunteer lawyers with finding the information they need to be a valuable advocate. Some programs will conduct their own trainings for volunteers, while others will keep volunteers aware of other appropriate Continuing Legal Education trainings. Project leaders should explore the possibility of using their most experienced lawyers or staff-based services lawyers in co-counseling arrangements. Finally, by listening to what their volunteer lawyers are telling them about roadblocks they are encountering, pro bono project leaders can consider various legislative advocacy or impact litigation efforts that may affect larger scale, systemic change.

- ✓ **Pay attention to volunteer recognition.** Most volunteers appreciate being recognized personally for their efforts, but rural pro bono coordinators should not be surprised if a volunteer from a small town or rural firm does not want local recognition for fear of gaining a reputation as “the lawyer who works for free.” Successful programs are exploring other ways to recognize and thank volunteers, such as hosting recognition events, award luncheons or judicial networking events, advertising in bar association publications, or offering free Continuing Legal Education trainings in exchange for their volunteer service. Some programs report positive feedback from giving volunteers small gifts, such as t-shirts or coffee mugs, but most programs recommend one very simple and low-cost but effective method for recognizing volunteers: sending personal thank-you notes upon case acceptance and case closing. Many successful pro bono project leaders learn new recognition methods by looking to other volunteer-driven projects or agencies in their communities.

- ✓ **Open up to the idea of pro se projects.** Given persistent rural poverty, overwhelming rural legal needs, and scarce rural resources, it stands to reason that the rural poor will try to help themselves. Rural pro bono programs must be willing to help the rural poor help themselves. Pro bono project coordinators can educate the rural poor about their rights; teach them the correct procedures and court etiquette; provide them with appropriate forms, how-to books, brochures and self-help videos;

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give them the advice they need, however brief; and connect them with other advocates whenever possible. Most importantly, rural project leaders can play a role in ensuring that their community’s judges, law clerks and court officials warm up to pro se projects too. Well-run pro se projects can lead to clients who receive more effective relief and courts that operate more professionally and efficiently.

- ✓ **Involve state and local bar associations.** Bar associations with as few as 50 members have operated successful rural pro bono projects. Any bar association in a community where there exists significant concentrations of underserved clients and a shortage of lawyers able to take on pro bono work should consider developing or co-developing a rural pro bono project. Consider the following commonly asked questions:

Q: What are the essential elements of a successful rural pro bono project?

A: The basics include strategies to recruit and train volunteer lawyers and a system of case referral and monitoring. In addition, the essential elements of a successful pro bono project for rural clients are (1) a close working partnership between a bar association and a local legal services organization, (2) a corps of volunteer lawyers, and (3) supervision by experienced lawyers willing to provide general support and professional advice to volunteer lawyers.

Q: How much money would a bar association need to operate a project?

A: This depends upon whether a bar association wants to develop a volunteer lawyer program with a staff coordinator or discrete project aimed at a particular locale or clientele. Some bar associations have operated discrete pro bono projects with as little as \$5,000 in capital and in-kind resources.

Q: How can a bar association determine which population to target and what area of law to work in?

A: A bar association should rely on the local organizations that work with the community and best know the needs of the community. These organizations can help identify and contact potential clients and help to identify what services the pro bono lawyers will provide.

Q: How many volunteer lawyers does a project need to be successful?

A: The number of volunteers a project need depends on the number of persons it plans to assist. New bar projects should set their goals significantly lower than bars with ongoing, established pro bono projects. Projects have operated successfully with a few as ten as many as 900 lawyers.

Q: How would volunteer lawyers for the pro bono project be recruited?

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A: A bar association bears primary responsibility for recruiting volunteer lawyers. Bar associations with established pro bono programs can easily recruit volunteers by following their established recruiting strategies. Other bars can recruit volunteers through mass mailing, telephone calls, bar publication articles, contact with law firms, and mailing to other non-profit organizations. Once a project gets started, word of mouth usually brings in other volunteers.

Q: Must pro bono lawyers have a particular expertise?

A: Successful pro bono projects utilize the services of lawyers with various levels of experience. Lawyer volunteers have come from legal backgrounds as diverse as general practice, litigation, family, criminal, personal injury, commercial, and real estate.

Q: Must the project conduct a comprehensive training program in all aspects of the law?

A: No, in fact, successful projects often limit their scope to a particular, confined area of the law because of the particular needs in a community. Specialized projects are often the most feasible for volunteer lawyers with little or no practice experience and limited time to dedicate to learning poverty law.

Q: How many hours can a volunteer lawyer expect to devote to a single case, and over how long a period of time?

A: The length of the representation will depend on the type of case. A simple family law matter may only require representation over a period of a few months; a case involving a hearing could take up to a year or more.

Q: How many cases should each pro bono lawyer handle?

A: Most bars require the lawyer to agree to accept one or two cases in exchange for training.

Q: How will pro bono lawyers know they are representing their clients well, and to whom can they look for assistance?

A: Many successful pro bono projects assign experience mentors to the pro bono layers. Mentors help the lawyers with tricky aspects of their clients’ cases and monitor progress. Often mentors can be recruited from the pool of trainers. Other mentors are former volunteers or legal services staff members.

Q: Where is the best place for pro bono lawyers to meet their clients?

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A: The most successful projects make their pro bono lawyers as accessible as possible to the target clientele by choosing a location familiar and in close proximity to the clients, in some cases, and by making advocates available at set times and at regular intervals.

Q: What has been the response of pro bono lawyers to participation in rural pro bono projects?

A: The response of pro bono lawyers has been very positive. Projects from across the country work with community organizations serving rural populations; some use the Internet to reach lawyers and clients, others address the issue of travel, and many have networks of experienced lawyers willing to assist new volunteers.

CONCLUSION

Since its inception, the Rural Initiative has generated new resources, ideas, and volunteers by disseminating mini-grants, building a support system for rural advocates, capitalizing on innovative technology, and improving collaboration with urban pro bono programs. For more information about this Initiative, the Center for Pro Bono, or the Standing Committee on Pro Bono and Public Service, contact: Steve Scudder (scudders@staff.abanet.org) or Dina Merrell (merrelld@staff.abanet.org) at 312.988.5773, or visit www.abaprobono.org.

Portions of this article have been edited because of space limitations, please refer to www.abaprobono.org for the complete article.

Ten Tips for Starting a Pro Bono Program in a Government Law Office

By Katherine Mikkelson

The ABA Model Rules of Professional Conduct state that every lawyer has a professional responsibility to provide legal services to those unable to pay for those services. Some public sector lawyers believe that government service satisfies this obligation. However, by declining to volunteer, these lawyers are missing a great opportunity to broaden and enhance their legal skills while helping those less fortunate.

Likewise, managers of government lawyers are often reluctant to encourage pro bono participation because, given budgetary limitations, they are already demanding a great deal of their lawyers. Additionally, some managers may fear that agency heads and the public may think that if their lawyers have time to volunteer, they must not have enough work to do. Managers should balance these concerns with the knowledge that pro bono participation often has the positive effect of enhancing office morale by giving lawyers more client contact, trial experience and the chance to work on novel legal issues. And positive office morale, in turn, helps to recruit and retain excellent lawyers.

Despite the benefits of participation, pro bono work for public lawyers is sometimes problematic. Government lawyers face conflict of interest restrictions, limitations or prohibitions on the use of office resources, as well as statutory restrictions constraining their ability to perform pro bono work. Due to these impediments, government lawyers may believe that establishing an office pro bono program is difficult if not impossible. However, the challenges are not insurmountable, and hundreds of programs are currently under way. Here are ten tips to get your office started.

Katherine Mikkelson
is the Division's associate director.

1. Choose the type of pro bono program that would work best in your office.

Government law offices generally use one of three models for developing a pro bono program:

- Partnering with an established bar association program that will provide pre-screened cases (for conflicts of interest and suitability), training, mentors and other support
- Participating with an independent outside pro bono service provider that has been pre-approved by your office (e.g., Catholic Charities, Legal Aid Society, Legal Council for the Elderly, Volunteer Lawyers for the Arts)
- Creating an in-house program (for example, the Maryland Attorney General's Office is referred pre-screened cases from several organizations and a committee within the office administers the program)

When deciding which model best suits your office, take a look at the number of potential staff members available for volunteer work, the culture of your office and the personalities of the staff and managers. Generally, the easiest and most efficient method may be to coordinate with an existing program whose administrative structure and support are already established. For lawyers that are prohibited from practicing law outside the office, a program can be established for volunteers to handle such matters as staffing client intake sessions at pro bono clinics, teaching street law courses or offering a seminar for low-income elderly on writing a will.

2. Develop a pro bono policy.

Developing a pro bono policy may seem daunting, but countless offices at the city/county, state and federal levels have already crafted policies that can be used as models

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Unforeseen Benefits

By Daniel F. Collopy

I first met my pro bono client, Joe,* almost eight years ago at the D.C. Bar's Pro Bono Clinic Night program. My agency, the National Labor Relations Board (NLRB), was staffing the clinic with lawyers from a major Washington, D.C., firm. It was difficult for Joe to explain the status of litigation involving his visitation rights for his then three-year-old son (unfounded allegations of physical abuse and neglect, complaints about his compliance with prior custody orders, and motions pending to end or severely restrict his ability to visit his son). However, I left our initial meeting with the strong belief that this man loved his son and that his difficulty communicating with others, particularly the court, was seriously jeopardizing his ability to see his son.

Now, several years and countless motions, hearings, guardian ad litem and settlement agreements later, Joe and his family have spent a great deal of time with Joe's son and have formed close, caring and loving bonds.

In that time, our paths have crossed many times, inside and outside of court. A few years ago, while handling another pro bono matter in court, Joe's name was called in a case brought by an insurance company for my client's failure to maintain an auto insurance policy (while opening the door of a friend's car, the door was struck by an oncoming car). Fortunately, I was there and able to jump in and reach a settlement for Joe. Not long after, I ran into Joe as he was heading to his demolition job on a remodeling project just a few doors down from my home. The number of coincidences was starting to mount.

About three years ago, Joe spent six months in jail for not paying court-ordered child support; he had health

issues and had missed some payments because he was not able to work. Proud and embarrassed, he tried to handle the matter himself. When I found out what happened after he was released from prison and again trying to visit his son, I gave him (and his mother and sisters) a hard time for failing to call me to see if I or someone else could help him. Now I simply call him or his mother every month or two to see how things are going.

Probably the best work that I have done for Joe was to have him meet with me in my office for several hours while we pieced together a résumé and job applications for federal employment. Joe had done cleaning work at a federal building for nearly 20 years before being laid off prior to my representing him. I'll never forget the sound of Joe's voice when he called to tell me that he had just been hired by a government employer with full restoration of vacation benefits, a thrift savings account and holiday pay and could quit his job at an industrial laundry.

I'd be lying if I said that representing clients like Joe is challenge-free. However, I realize how I have touched his life and solved some serious problems for him. Unfortunately, the world is full of Joes who need our assistance. In most cases, it doesn't take extraordinary legal talent to help, just a willingness to serve as an advocate for the under-represented. ■

Daniel F. Collopy

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*not his real name

(the Division has collected many of these policies on its website at www.abanet.org/govpub/probono.html). In addition, the federal government's Intra-Agency Task Force on Pro Bono Service (contact Laura Klein at the Department of Justice [laura.klein@usjdoj.gov] or Dan Collopy at the NLRB [dan.collopy@nlrb.gov]) can provide guidance and additional sample policy statements.

Adoption of a formal pro bono policy signals to potential volunteers that the leadership of the office supports pro bono work and encourages all lawyers to participate. In addition, it addresses important office policy issues up front, organizes them in one place, and provides a useful resource for volunteer lawyers.

At a minimum, the policy should contain the following:

- **A definition of what constitutes pro bono legal work:** Use Model Rule 6.1 and the corresponding state ethics rule as a starting point.

- **Procedures for accepting cases and conflicts checks:** Which supervisors or senior managers must review and approve specific pro bono work?
- **Permissible use of office resources:** May lawyers use administrative and paralegal support; office equipment such as telephones, copiers, faxes and desktop computers; online flat-rate research databases (Lexis/Nexis or Westlaw); and phones to make long-distance telephone calls?
- **Provisions concerning the use of administrative, compensatory or vacation leave:** May lawyers work on pro bono cases during regular business hours, or must they take leave? Can lawyers make up missed time informally by coming in early or staying late? (Because new lawyers are the most likely to volunteer and rarely have much accumulated leave, it is important to address these issues. Likewise, volunteers should be encouraged to partner with other office lawyers to provide

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coverage when the lead volunteer lawyer must attend to pressing office needs.)

- **Number of suggested hours per year:** Provide an aspirational goal for volunteers.
- **Types of cases that may be handled (civil and/or criminal, public benefit cases, cases where government entity is a party):** Take into consideration the difficulty of the issues presented and the number of court appearances needed to handle the case, resources available to train and mentor volunteers, and other resources (pleading or form databases and funds to pay for court fees).
- **Model retainer agreements:** These agreements are useful for communicating to the client his/her responsibilities and the limitations on the scope of issues/problems that will be handled by the volunteer lawyer (some states require written retainer agreements).
- **Evaluation procedures:** How will the program coordinators obtain feedback and suggestions for program improvements from volunteers?

3. Create a pro bono steering committee and coordinator.

One of the most important elements for a successful pro bono program is effective leadership of the program. A program coordinator or pro bono committee representative should serve as the liaison between the office and the outside or in-house program and should coordinate program administration and training. A committee has several advantages in operating and promoting an office's pro bono program. With a committee, representatives from all divisions of the office can be involved and available for consultation and for advertising pro bono opportunities.

4. Contact local bar association programs and other pro bono programs for partnership opportunities and case sources.

Partnering with an established program will reduce the work for the office program organizers and minimize "reinventing the wheel." Many pro bono clinic programs have partnered with large firms for years and generally welcome the opportunity to establish partnerships with government pro bono programs. For example, the Department of Justice and the NLRB work with the D.C. Bar Association to provide volunteer lawyers who have handled hundreds of cases over several years. Many pro bono providers also have specially tailored programs to accommodate the needs of government lawyers (screening out criminal and government benefit cases, for example). In some states, such as Wisconsin, certain government lawyers are prohibited from representing individual clients, but they can handle client intake, serve on the board of a nonprofit organization or serve as trainers for community legal education programs for low-income groups. Because government lawyers do not generally have malpractice insurance, partnerships should be formed only with outside pro bono programs that will provide malprac-

tice insurance for government volunteer lawyers.

Because many federal government lawyers are not licensed to practice law in the states where they work, it may be necessary to modify court rules to permit such government lawyers to represent clients on a pro bono basis. The District of Columbia has adopted a specific provision to this effect (Rule 49).¹ Likewise, local courts, through bar associations, should be encouraged to give priority on the court's docket to government pro bono lawyers to have their cases called first to minimize their time away from the office. New York's Erie County Bar Association lobbied for, and has had great success, having judges call pro bono cases first for all volunteer lawyers (not just government) to encourage greater pro bono participation. "Express lane" programs, particularly where administrative leave is rarely granted for pro bono work, can be a big factor in recruiting and retaining volunteer lawyers.

5. Set up a referral and case assignment process.

The most important institutional component of a successful in-house pro bono program is the referral and case assignment mechanism. The referral process should include a screening for financial eligibility (generally the poverty line), a detailed conflicts check, and a standardized method for recording case assignments and case status. Again, if a pro bono committee is used, these tasks can be rotated among committee members or their designees. Procedures should also be established for closing completed cases.

6. Ensure that volunteers are provided with case support and training.

Case support can include a thorough summary of the facts and an accurate assessment of what will be required to handle a particular case; office space for conducting interviews; specialized manuals (often provided by estab-

Resources

- www.abanet.org/govpub/probono.html - the Division's website, which includes an online tool kit specifically designed for public sector lawyers
- www.abanet.org/legalservices/probono/home.html - the ABA's Center for Pro Bono website, which contains news items, publications, rules and policies, and more; staff contact is Cheryl M. Zalenski, 312-988-5770, zalenskc@staff.abanet.org
- www.probono.net - a New York City-based clearinghouse that matches volunteer lawyers with projects and cases in 15 jurisdictions, with more regions set to join within a year

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lished pro bono providers online and in hard copy) in the various substantive law areas; malpractice insurance; sample pleadings; paralegal, administrative or law student assistance; funds to cover litigation costs (depositions and filing fees); and mentoring and co-counseling of volunteers, where appropriate.

Training is also vital if lawyers take pro bono cases in subject areas in which they do not practice. Many bar association-sponsored programs develop specific training materials just for public sector lawyers. Lawyers may also need training in practice before local or administrative courts, alternative dispute resolution techniques or specific practice rules. Consider distance-learning opportunities, such as computer-based training, CD courses, online training, webcasts with live video streaming, or podcasts; they may be vastly more convenient and less expensive than traditional training programs.

7. Develop a review and evaluation procedure.

Fairly regularly, program coordinators should meet to review operations, update procedures and modify the referral process if necessary. Program coordinators should also conduct a more formal review to determine if program goals are being met.

Decide on the form of review: peer review teams, review by agency or organizational leaders, or independent outside evaluation.

Data should be gathered to answer the following types of questions:

- What is the nature or scope of the services being provided?
- Has the project been successful in recruiting volunteer lawyers?
- Does the program receive referrals that do not create conflicts?
- Is the project's case acceptance system organized and functioning well?
- What improvements would ensure that clients are receiving the best quality legal representation?

8. Publicize the project.

Publicizing the pro bono project helps to accomplish three goals: recruiting volunteers, building and maintaining morale, and securing and magnifying support from office management. It also informs the community at large about the volunteer activities of the office. A pro bono project may be publicized by brochures, posters, email announcements, office intranet sites, office newsletters and notices in bar association publications. One of the most effective methods is a kick-off or informational event where program coordinators describe the project, highlight current volunteers and answer questions. Schedule it during lunchtime and provide pizza and soda or at midafternoon and provide sweet treats and coffee.

9. Recruit volunteers.

If the program has a lot of support at the top (particularly by office leaders personally volunteering to handle cases or staff intake sessions) and it is publicized regularly and in a positive manner, recruitment should not be difficult. New staff members are a good source for recruitment. Prospective hires should be told about the program at interviews, and information about the program should be included in welcome packets and orientation materials. Current volunteers can informally tout the program to colleagues. Often a person-to-person request to take on a specific case does the trick. Many projects sponsor recruiting campaigns where a letter to staff, signed by the agency head, is accompanied by a brochure or other literature describing the project.

Other methods of recruitment include the following:

- Holding a brown-bag lunch-and-learn program
- Arranging a function where the head of the office describes the program and encourages participation
- Providing specialized in-house training for one of the substantive areas
- Arranging for a "government lawyer night" at a local clinic where conflict-free cases are handled
- Establishing an annual Law Day recruitment event
- Bringing representatives in from local pro bono programs to discuss their programs (pro bono fairs)

10. Recognize your volunteers.

It's very important to recognize the achievements of volunteers. Recognition encourages them to continue to participate and helps to recruit others to participate.

Determine the form that will best suit your group. Consider local bar associations, nonprofit groups or the judiciary as sponsors of a recognition event.

Some ideas for recognition include the following:

- A special reception, luncheon or dinner recognizing outstanding pro bono service
- An awards ceremony
- An "honor roll" of all lawyers who contribute a certain amount of hours
- Individual thank-you letters at the end of the year
- Magazine or newsletter articles about the program participants ■

Endnotes

1. Rule 49 of the D.C. Court of Appeals rules discusses the unauthorized practice of law in D.C. courts. Rule 49(c)(9) provides an exception for pro bono cases. Rule 49(c)(9)(C) authorizes pro bono practice

[w]here the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, and is assigned or referred by an organization that provides legal services to the public without a fee; provided that the person is supervised by an enrolled, active member of the District of Columbia Bar.

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Title	Bar Name	Formal Name	Full Address	Phone	Fax	Email
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President	Alleghany-Bath-Highland Bar Association	William A. Parks, Jr., Esq.	226 West Locust Street P.O. Box 1175 Covington, VA 24426	540-962-2222	540-962-2234	wparks22@aol.com
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Virginia Rules of Professional Conduct

Rule 6.1. Voluntary *Pro Bono* Publico Service.

(a) A lawyer should render at least two percent per year of the lawyer’s professional time to *pro bono* publico legal services. *Pro Bono* publico services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase availability of *pro bono* legal services.

(b) A law firm or other group of lawyers may satisfy their responsibility collectively under this Rule.

(c) Direct financial support of programs that provide direct delivery of legal services to meet the needs described in (a) above is an alternative method for fulfilling a lawyer’s responsibility under this Rule.

Rule 6.2. Accepting Appointments.

A lawyer should not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client.

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