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September 14, 1999

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OFFICE OF
APPELLATE COURTS

SEP 14 1999

FILED

Re: Petition for Rule Amendment: Board of Continuing Legal Education

Dear Mr. Grittner:

Enclosed for filing is the Petition of the Minnesota State Board of Continuing Legal Education For Amendment of the Rules of the Minnesota Supreme Court and State Board for Continuing Legal Education of Members of the Bar.

We will also provide a disk.

Very truly yours,

Minnesota Board of Law Examiners

A handwritten signature in black ink, appearing to read "Margaret Fuller Corneille".

Margaret Fuller Corneille
Director

bb

Enclosure

cc: Hon. Paul Anderson

GRITFILE

No. C9-81-1206
STATE OF MINNESOTA
IN SUPREME COURT

SEP 21 1999

FILED

In re:

Amendment to the Minnesota Rules of the
Supreme Court for Registration of Attorneys

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association ("MSBA") respectfully submits this pleading to petition this Honorable Court to amend the Minnesota Rules of the Supreme Court for Registration of Attorneys to establish a requirement for the anonymous reporting of *pro bono publico* services and financial contributions by all Minnesota lawyers, in furtherance of the aspirational standards set forth in MINN. R. PROF. CONDUCT

6.1. In support of this Petition, the MSBA would show the following:

1. Petitioner MSBA is a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota.
2. This Honorable Court has the exclusive and inherent power and duty to establish the standards for regulating the legal profession and to establish mandatory ethical standards for the conduct of lawyers and judges. This power has been expressly recognized by the Legislature. *See* MINN. STAT. § 480.05 (1998). This Court has established rules for admission to the practice of law and for the registration of attorneys.

3. The MSBA has for decades been committed to serving the legal needs of the disadvantaged. It has consistently devoted itself to promotion of public service and performance of *pro bono publico* services by all lawyers.

4. The MSBA's Legal Assistance to the Disadvantaged Committee ("LAD Committee") has studied the myriad issues facing the Bar in its quest to devise and implement effective mechanisms to minimize the extent of unmet legal service needs of the disadvantaged. With respect to the proposed reporting requirement, the LAD Committee issued its Report and Recommendations to the MSBA, a copy of which is appended to this Petition as an Addendum ("Add.") and made part hereof. The General Assembly of the MSBA adopted these recommendations at the Annual Meeting of the MSBA in Duluth in July 1999. This Petition was authorized at that time. Questions and Answers used to explain the proposal are included in Petition's Appendix ("App.") at 1.

5. The LAD Committee Report and Recommendations were published to the public and all MSBA member lawyers in the April/May 1999 issue of BENCH & BAR OF MINNESOTA. The Report and Recommendations were preceded by an article published in the March 1999 issue of BENCH & BAR OF MINNESOTA. See Thomas C. Mielenhausen & Charles A. Krekelberg, *A Better Idea: Reporting Pro Bono Services*, BENCH & BAR OF MINN, Mar. 1999, at 21. App. 7. The MSBA also participated in meetings throughout the State of Minnesota during the 1998 and 1999 Bar years to discuss required *pro bono* reporting and related issues. The MSBA and the LAD Committee believe there is broad

support for a modest reporting program as proposed in this Petition. Minnesota Women Lawyers and Volunteer Lawyers Network support required reporting, and various organizations that have opposed required reporting in the past have now gone on record to support it, including the Minnesota Trial Lawyers Association, the Academy of Matrimonial Lawyers, and the MSBA's 12th District Bar Association, a county bar which expressed strong opposition in 1990.

6. As part of its efforts the MSBA petitioned this Honorable Court in 1990 to amend the Rules of the Supreme Court for Registration of Attorneys to adopt a requirement for the reporting of *pro bono* legal services and contributions. The Court declined to adopt required reporting at that time, but did state that it “unreservedly reaffirms the obligation of members of the legal profession to support and participate in *pro bono* activities.” The Court also stated that a majority of the Court “is not persuaded that mandatory *pro bono* reporting would appreciably advance or assist in the discharge of that obligation.” Order, No. C9-81-1206 (Minn. Sup. Ct., May 22, 1991).

7. Since 1991 there have been a number of significant developments making required reporting demonstrably necessary and helpful to the bench and bar in ensuring that legal services are made available to the public. These developments include the following:

- ▶ The unmet need for legal services in critical areas such as family and housing law is large and growing. In 1996 the

U.S. Congress imposed a 30% cut in federal funding for legal services, greatly exacerbating the unmet need for these services in Minnesota. Each year the regional Minnesota Legal Services Coalition programs that serve the entire state must turn away over 19,000 people who request assistance. Another approximately 58,000 people do not even ask legal aid offices for assistance with legitimate legal problems for reasons including their perception that there are not enough resources to help them. There has been an approximate 60% increase in requests for legal aid since the early 1980s, while legal aid's income in real dollars has increased only 38%. The serious problem of unmet legal needs, and its debilitating effect on the public and the legal system in Minnesota, have been well-documented. *See* Report of the Joint Legal Services Access and Funding Committee (Dec. 31, 1995), at 6-8, 11-12. (App. 13). The problem requires ongoing and comprehensive initiatives to ensure that legal services are available to all persons.

- ▶ In 1995, by amendment of MINN. R. PROF. CONDUCT 6.1, this Court recognized the need for greater levels of *pro bono* service by establishing an explicit aspirational standard of 50 hours of *pro bono* service per year by Minnesota lawyers, and the contribution of money by lawyers and law firms to organizations that provide legal services to persons of limited means.

- ▶ Also in 1995, this Court's Joint Legal Services Access and Funding Committee recommended that the idea of a *pro bono* reporting program be reexamined. By Order dated Sept. 21, 1995, this Court established the Committee and directed it to "[E]xamine the alternatives for addressing the critical civil legal needs of low-income people including systemic changes in the legal and judicial systems and the legal services delivery system to facilitate access . . . identify[ing] costs and funding options for these alternatives and make recommendations to the Court and the Legislature by December 31, 1995." *Id.* at 1. (App. 16). The Committee reported that its efforts in fulfilling this mandate were frustrated by the absence of

comprehensive, reliable data on the participation of Minnesota lawyers in addressing the unmet need for legal services. *Id.* at 34. (App. 49). Among other recommendations for improving access to legal services, the Committee recommended that *pro bono* reporting be thoroughly studied and reconsidered. *Id.* (App. 49).

- ▶ The concerns raised by the Joint Legal Services Access and Funding Committee have not subsided. Although it appears that lawyers have increased their performance of *pro bono publico* services, it remains impossible to quantify accurately or usefully the extent to which *pro bono* services are rendered or the amount of financial support given by the lawyers of Minnesota.
- ▶ Since 1990 the organized bar in this country has amassed substantial experience with reporting programs—both required and voluntary—and this experience militates strongly in favor of required reporting.

8. Required reporting has been adopted in Florida, and has worked well there. *See Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar – Pro Bono Public Service*, 696 So. 2d 734, 736 (Fla.) (Overton, J., concurring) (discussing the effectiveness

of the reporting requirement), *rehearing denied*, (Fla., July 9, 1997); THE STANDING COMMITTEE ON PRO BONO LEGAL SERVICE'S REPORT TO THE SUPREME COURT OF FLORIDA, THE FLORIDA BAR, AND THE FLORIDA BAR ASS'N (Feb. 1999) (reporting substantial increase in level of participation, including 76% increase in amount of *pro bono* services rendered, and 112% increase in financial contributions to legal aid organizations). As would be true in Minnesota if this Petition is granted, *pro bono* service is not required in Florida, but reporting is. Add. 6; App. 10. The constitutionality of the Florida requirement was affirmed by the federal courts. *See Schwartz v. Kogan*, 132 F.3d 1387 (11th Cir. 1998).

9. States that have adopted voluntary reporting programs have encountered unacceptably low levels of response, ranging from a response rate of 5.0% in Illinois to 35% in Arizona. Add. 11. These low response rates prevent meaningful conclusions to be drawn with confidence about the *pro bono* services performed by lawyers in those states.

10. Required reporting has had the salutary effect of increasing the level of voluntary *pro bono* services. The MSBA believes that a minimally intrusive requirement of anonymous reporting of *pro bono* activity is preferable to a requirement that lawyers perform *pro bono* services. At its July 1999 Annual Meeting, the General Assembly of the MSBA specifically supported a requirement of anonymous *pro bono* reporting, while opposing mandatory provision of *pro bono* service.

11. The data collected through required reporting will be immensely useful to this Court, the bar, and legal services programs in their efforts to insure that appropriate levels of service are available to meet the growing critical need.

12. The data collected should include some demographic information to permit useful application of the data by bar associations, legal service providers, and others involved in making policy about the delivery of legal services to the disadvantaged. It is important that data relating to individual attorneys be both anonymous and confidential. Access to the data is governed solely by rules adopted by this Court. *See* MINN. STAT. § 13.90. The MSBA and its LAD Committee are prepared to assist the Court and its boards in setting up the data collection process in a way that both collects useful data and maintains anonymity of those providing it.

13. The data collection process should also allow for identification of those who choose to identify themselves. This will facilitate public recognition of those lawyers who do meet or exceed the *pro bono* standards of Rule 6.1, and thereby encourage participation.

14. The MSBA has drafted a proposed Rule 2(F) of the Rules of the Supreme Court for Registration of Attorneys that would implement the relief requested in this petition, and that rule is set forth as follows:

1 **RULE 2. REGISTRATION FEE**

2 * * *

3 F. Every lawyer admitted to practice law in this state shall report the
4 number of hours spent providing *pro bono publico* legal service and financial
5 contributions as contemplated by Rule 6.1 of the Minnesota Rules of
6 Professional Conduct. The report shall accompany the annual renewal of the
7 lawyer's registration and be in such form as the clerk of the appellate courts
8 may prescribe. The reporting form shall not require identification of the
9 reporting lawyer.

15. The MSBA has proposed a form for implementing this rule, attached as an exhibit to the MSBA LAD Committee Report. App. 5-6. This form for reporting is suggested as a feasible way to implement the rule, although the specific form can be modified to suit the needs of the clerk of the appellate courts or other interested boards.

16. The MSBA respectfully submits that the proposed amendment to Rule 2(F) will constitute a significant advance in the administration of the legal system and in the delivery of legal services to all those with legal needs. It will further the Court's mission, consistent with the Minnesota Constitution, of giving all persons in Minnesota meaningful access to justice.


Accordingly, Petitioner Minnesota State Bar Association respectfully requests this Honorable Court to amend the Minnesota Rules of the Supreme Court for Registration of Attorneys by adopting a new Rule 2(F) as set forth in paragraph 14 above.

Dated: September 20, 1999.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

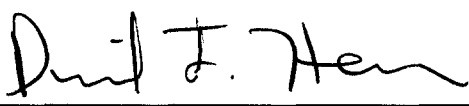
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ATTORNEYS FOR PETITIONER MINNESOTA
STATE BAR ASSOCIATION

Legal Assistance to the Disadvantaged Committee
Report on *Pro Bono* Reporting
April 15 1999

I. Recommendation

The Legal Assistance to the Disadvantaged Committee, to create an effective means of (1) increasing the amount of critically needed legal services to the disadvantaged in Minnesota and (2) providing reliable data about such services, recommends that the MSBA petition the Minnesota Supreme Court to order that, as part of their annual license renewal, all attorneys licensed to practice law in Minnesota report *pro bono* services and financial contributions provided in accordance with Rule 6.1 of the Minnesota Rules of Professional Conduct.

II. Findings

Based on extensive study and discussion, the LAD committee has found:

1. There is a serious and growing unmet need for legal assistance for low-income Minnesotans.
2. A *pro bono* reporting program is an effective means of encouraging attorneys to meet and exceed the aspirational standards set forth in Rule 6.1 of the Rules of Professional Conduct.
3. A *pro bono* reporting program would increase the amount of *pro bono* legal services provided by attorneys and the amount of money contributed to programs that provide *pro bono* legal services to the disadvantaged.
4. A *pro bono* reporting program would provide reliable data about the nature and extent of attorneys' efforts pursuant to Rule 6.1.
5. A *pro bono* reporting program can be used to analyze the extent to which the disadvantaged in Minnesota have access to justice.
6. A *pro bono* reporting program would provide reliable data that can be used to encourage the Legislature, private charities and others to increase funding for improving access to justice for all Minnesotans.
7. A reporting program will enhance public understanding about the contributions lawyers make to provide the disadvantaged with access to justice.

8. A *pro bono* reporting program is effective and yields reliable and useful data only when lawyers are required to respond.

9. The reporting form used in the program should request only the information necessary to achieve the objectives of the reporting program.

10. The reporting program should allow for anonymity.

11. The reporting program should provide for recognition of those who meet or exceed the aspirational standard in Rule 6.1 and who choose to identify themselves.

III. Discussion

A. Background

1. **Summary** There is a greater than ever need of the disadvantaged for legal services in critical areas such as family and housing law. Minnesota lawyers have done a lot to try to address the problem of access to justice, but we need to challenge ourselves, the Legislature and private charities to do more. For this and other good reasons, Minnesota needs an effective program for gathering accurate information on the *pro bono* legal services donated by the state's lawyers.

Florida, a state where lawyers are required to report *pro bono* work, found that their *pro bono* reporting program is an effective means of increasing the amount of volunteer legal services provided to persons in need. An annual reporting form increases the awareness of each lawyer in the state. Once a year, it reminds lawyers of their special responsibility to provide access to justice, including *pro bono* service. A reporting program helps to encourage lawyers to learn more about, and take advantage of, *pro bono* opportunities. It also allows recognition and commendation of individual lawyers, as well as organizations within the state, for outstanding *pro bono* efforts, which helps to inspire others to do more.

A *pro bono* reporting program can also document the Minnesota legal profession's strong commitment to improving access to justice – evidence that can then be used to develop broader legislative and community support for addressing the unmet legal needs of low-income Minnesotans. It will also enhance public understanding about the contributions lawyers make to give the disadvantaged in Minnesota access to justice. Minnesota's civil legal aid providers, including volunteer attorney programs, can use this evidence each time they seek desperately needed funds from the Legislature, foundations and other funders. These funding sources

continuously ask, "What are the lawyers doing to help address the problem of unmet legal needs?" Legislators and private charities want to see matching contributions – a partnership with the lawyers who are licensed to practice in Minnesota. Legal aid providers, including volunteer attorney programs, know and appreciate that many Minnesota lawyers generously contribute both time and money in an effort to address the problem of unmet legal needs. Yet the most legal aid providers can do in answering the basic question about lawyer involvement is to offer limited data and anecdotes.

With reliable statistical information, the Legislature, judiciary, bar, foundations and other funders can accurately assess the extent and most pressing areas of unmet legal needs, and the extent and effectiveness of lawyers' *pro bono* efforts in addressing those needs. Existing and additional resources can then be directed more efficiently. The data can also be used to recruit more attorneys and seek additional support. The end results of a *pro bono* reporting program would be increased *pro bono* legal services donated by a greater number of lawyers, increased and better-allocated funding for legal aid and volunteer attorney programs, more recognition of lawyers' individual and collective efforts, and increased public respect for the bar. The goal is that thousands of disadvantaged Minnesotans, whose critical legal needs would not otherwise be met, would be provided access to our justice system.

2. The Need for a Reporting Program

The need for accurate information on lawyers' *pro bono* work cannot be overstated. Several years ago, in response to sharp reductions in federal government funding for legal aid programs and the growing unmet need of the disadvantaged for legal services, the Minnesota Supreme Court and Legislature established the bipartisan Joint Legal Services Access and Funding Committee to examine the civil legal needs of low-income Minnesotans. The Committee membership represented the Legislature, the federal and state judiciary, lawyers in private and public practice, legal services and volunteer attorney program staff, and the public. After extensive study, the Committee found a serious and growing unmet need for legal assistance to low-income Minnesotans, particularly in cases involving family law, domestic violence, housing and other matters relating to basic subsistence. The Committee estimated that, at best, legal aid and volunteer attorney programs had resources sufficient to meet only 30% of low-income Minnesotans' legal needs. In 1994 alone, legal aid programs had to turn away more than 20,000 eligible people who came to them for help with critical legal needs. These problems were exacerbated in 1996, when Congress cut federal

funding for legal aid programs by over 30%, and imposed restrictions and prohibitions on what federally-funded programs could do for their clients.ⁱ

The Joint Legal Services and Access Committee found that the severe reductions in federal funding for legal aid programs have significantly increased the gap in the ability of low-income Minnesotans to obtain basic legal services. The Committee recognized that legal aid and volunteer attorney programs play a vital role in our communities by, among other things:

- getting battered spouses and children out of abusive situations;
- preventing homelessness and school instability;
- protecting access to food, clothing and medical care;
- keeping people in safe and sanitary housing;
- obtaining child-support orders and Social Security disability payments that reduce taxpayer-funded public assistance; and
- helping people work themselves out of poverty and down the road to self-sufficiency.ⁱⁱ

The Committee also found that legal aid and volunteer attorney programs help to prevent legal problems. Often they provide appropriate legal services to avoid the *pro se* cases which would otherwise further clog and increase the costs of our court system. The Committee observed:

Legal problems don't disappear when legal services programs shrink. While some people simply abandon legitimate claims, many others pursue their cases without representation. They are forced to navigate the court system without a guide. They negotiate with landlords or other parties who have lawyers to help them. They file their own briefs and other papers. These cases clog the court system, increasing its costs. Legal services offices reach tens of thousands of persons each year through community legal education workshops, self-help materials, newspaper columns and radio and TV shows. Legal services staff also train public and private social service agency staffs in relevant areas of the law. This enables many clients to avoid legal problems or resolve them without having to use the legal system.ⁱⁱⁱ

The 1996 cutback in federal funding for legal aid programs substantially shifted the responsibility for the problem of unmet legal needs of low-income persons. Now more than ever, the problem is one of state and local concern. As a result, the need to expand the well-respected partnership among the Minnesota Legislature, foundations, other funders, and the lawyers who enjoy the privilege to practice in this state, has become critical. Understandably, the Legislature and foundations want to know more clearly what one of their other partners is doing to address the problem of unmet legal needs. Minnesota courts also have an increasing stake in obtaining accurate

and useful information on lawyers' efforts to address the problem of unmet legal needs and pro se litigants.

3. Reporting Proposals in Minnesota -- Then and Now

The idea of *pro bono* reporting in Minnesota has been broached before. At their 1990 convention, the membership of the Minnesota State Bar Association ("MSBA") voted by a wide margin to support a reporting proposal. Subsequently, however, the Minnesota Supreme Court declined to adopt the MSBA's petition for a reporting program. In a brief order, the Court stated that it "unreservedly reaffirms the obligation of members of the legal profession to support and participate in *pro bono* activities," but that a majority of the Court "is not persuaded that mandatory *pro bono* reporting would appreciably advance or assist in the discharge of that obligation." ^{iv}

Since 1990, numerous developments have shown that *pro bono* reporting will advance and assist in increasing available legal services to the disadvantaged in Minnesota.

First, as found by the Minnesota Supreme Court's Joint Legal Services Access and Funding Committee, there is a significant unmet need for civil legal services for the disadvantaged.

Second, the severe cutbacks in federal funding for legal aid, major changes in welfare and other laws affecting low-income people, and the increasing diversity of our population have exacerbated the unmet legal needs of low-income Minnesotans and placed a substantial funding burden on the Minnesota Legislature and private charities. In determining their levels of contribution, those funding sources have increasingly insisted on reliable data demonstrating the *pro bono* efforts of Minnesota lawyers.

Third, in 1995 in response to an MSBA petition, the Supreme Court revised Minn. R. Prof. Conduct 6.1 to incorporate an aspirational standard of 50 hours of *pro bono* legal service per year for each lawyer licensed to practice law in Minnesota. The revised rule also contains definitions of what legal work meets the Rule's standards. The aspirational standard calls for the substantial majority of those legal services to be performed for persons of limited means. Additionally, the Rule encourages lawyers to contribute money to organizations that provide legal services to persons of limited means. The aspirational standard specifically emphasizing the importance of legal services to persons of limited means and recommending a minimum number of hours to be donated, arose in large part from the cutbacks in federal funding for legal aid. The added specificity in Rule 6.1 was viewed as one means of directly encouraging all Minnesota lawyers to address the growing unmet legal needs of low-income Minnesotans.

During the November 1995 hearing on the revised Rule 6.1, the Justices of the Minnesota Supreme Court asked several questions about how the success of the aspirational standard might be measured, and whether the MSBA had again considered a *pro bono* reporting program. The Joint Legal Services Access and Funding Committee raised similar concerns. The Committee had encountered substantial difficulty in obtaining reliable data regarding the nature and extent of *pro bono* legal work actually being performed by Minnesota lawyers. The Committee concluded that such data was important to the efforts of the bar, the courts and the Legislature in addressing unmet legal needs of low-income Minnesotans.^v Others supporting revisiting the issue of *pro bono* reporting include 1997-98 Hennepin County Bar President Brad Thorsen in an article in *The Hennepin Lawyer*.^{vi}

A fourth development warranting a fresh look at *pro bono* reporting is that reporting programs have been adopted in a number of other states over the past several years.^{vii} The Minnesota Supreme Court and bar now have the benefit of the experiences of those states in determining whether to adopt a *pro bono* reporting program in Minnesota and, if so, the best way to structure the program.

4. The Florida Experience

The experience in Florida, which has had a reporting program in place for five years, is particularly helpful.

In 1993 the Florida Supreme Court implemented a comprehensive plan to increase and improve the delivery of *pro bono* legal services by Florida lawyers.^{viii} The Court amended its rules of professional conduct to require each lawyer to sign an annual form which indicates the amount of *pro bono* legal services the lawyer provided to low-income persons, and the amount of money the lawyer contributed to legal aid organizations during the preceding year. Although the donation of such time and money is purely voluntary under Florida's rules of professional conduct, the reporting of how much time and money was donated is required.^{ix}

The Florida Supreme Court's Standing Committee on *Pro bono* Services annually compiles the data from the *pro bono* reporting program. The Committee's reports illustrate the quality of information that can be gathered through a reporting program. The 1997-98 report, for example, sets forth precise and reliable data demonstrating the number of Florida lawyers who actually performed *pro bono* services for low-income persons (about 44%), and the amount of services actually performed (an average of about 15 hours per active lawyer statewide).^x Florida's 1997-98

report demonstrates that the Florida bar as a whole substantially increased its donations of both money and *pro bono* legal services since the inception of the state's *pro bono* reporting program, and contributed far more resources than the rest of the state's citizenry toward the problem of the unmet legal needs of low-income persons.^{xi} The number of lawyers providing *pro bono* legal services has increased 11.7 percent and the hours of service increased 76 percent since 1994-95, which is considered the base year. The number of those making direct monetary contributions has jumped 48 percent while contributions to legal aid organizations are up 112 percent. Assuming an average hourly rate of \$150, the Florida bar contributed the equivalent of nearly \$148 million in services (989,936 hours) to low-income persons in 1997-98. In addition, Florida lawyers reported a total of more than \$1.8 million in direct donations to legal aid organizations. The combined time and direct monetary contributions from the Florida bar far exceeded the 1998 total of \$24 million in direct funding for legal aid from the federal Legal Services Corporation and the Florida Bar Foundation which distributes state-appropriated and IOLTA funds.^{xii} Yet, despite these impressive donations of time and money, Florida Legal Services estimates that approximately 239,000 legal needs of eligible clients are unable to be met each year by legal aid and volunteer attorney programs.

Through the reporting program, the Florida bar has thus been able to document its substantial and increasing commitment to addressing the unmet legal needs of low-income persons, and to challenge both itself and its partners – the Legislature and other funding sources – to do more.

B. Creating a reporting program would be a legitimate action by the Minnesota Supreme Court and is constitutional.

State and federal courts in Florida have reviewed and upheld the Florida reporting program in the face of challenges to both the aspirational standard for *pro bono* and the reporting requirement. In 1993, the Florida Supreme Court explained its authority and reason for adopting its *pro bono* rules stating:

[T]his court, as the administrative head of the judicial branch, has the responsibility to ensure that access to the courts is provided for all segments of our society. Given the number of reports presented to this Court that document the legal needs of the poor, we find it necessary to implement the attached rules. Justice is not truly justice if only the rich can afford counsel and gain access to the courts. Consequently, these rules are being implemented in the hopes that they will act as a motivating force for

the provision of legal services to the poor by the members of this state's legal profession.^{xiii}

In 1997, the Florida Supreme Court reiterated its finding that accurate reporting is essential for evaluating the Florida's bar's delivery of *pro bono* legal services to low-income persons, and for determining the areas in which those services are not being provided. The Court found no circumstances which would cause it to change that determination. To the contrary, the Court concluded, "[t]here is no more effective way to gauge the success of lawyers in meeting their obligation to represent the poor"^{xiv}

In upholding Rule 4-6.1's reporting requirement, the Florida Supreme Court referred to the bar's unique role in the justice system:

Lawyers have been granted a special boon by the State of Florida -- they in effect have a monopoly on the public justice system. In return, lawyers are ethically bound to help the State's poor gain access to that system. The mandatory reporting requirement is essential to guaranteeing that lawyers do their part to provide equal justice.^{xv}

In a concurring opinion, Justice Overton noted that the Florida Supreme Court developed its *pro bono* rule in response to "the glaring deficiency in the availability of legal services to the poor." The Court approved a "carefully crafted compromise" that kept the minimum standard for *pro bono* service voluntary and aspirational, while creating a required reporting mechanism "with which to gauge the amount of *pro bono* work actually being provided in Florida." Justice Overton observed:

There can be no doubt that the reporting requirement has been effective. Accurate statistics are now available as to the number of *pro bono* legal hours being provided in Florida each year. These statistics can be used by this court to analyze the extent to which the constitutional mandate of court access is being met. Additional resources can then be directed intelligently to areas of need. Without the reporting requirement, such evaluations would be made with incomplete information. Further, a positive side effect of our *pro bono* rule is that both *pro bono* legal services and contributions to legal services have increased. While the rule was not developed to force attorneys to provide *pro bono* legal services, the fact that the rule has raised consciousness and thereby increased the performance of such services does not disturb me.^{xvi}

In January 1998, in *Schwarz v. Kogan*, 132 F.3d 1387 (11th Cir. 1998), the United States Court of Appeals for the Eleventh Circuit affirmed the district court's grant of summary judgment against a Florida attorney who challenged the Florida Supreme Court's Rule 4-6.1, including the aspirational standard and the mandatory reporting provision of the rule. In his appeal, the attorney

argued that the rule violated his constitutional rights, including his substantive due process rights under the Fourteenth Amendment to the United States Constitution, and his right to just compensation under the Fifth and Fourteenth Amendments for a governmental taking of his property.

The Eleventh Circuit rejected each of the claims. As to due process, the Eleventh Circuit noted that the plaintiff provided no support for his position that the court apply a "strict scrutiny" test, rather than the less demanding "rational basis" standard, to Rule 4-6.1. The court said:

Indeed, this Circuit has indicated that there is no fundamental right to practice law, let alone to practice law free of any obligation to provide *pro bono* legal services to the poor. *See, e.g., Kirkpatrick v. Shaw*, 70 F.3d 100, 103 (11th Cir.1995) (*per curiam*) (holding that rational basis review is the appropriate standard for classifications affecting the admission of applicants to the bar); *Jones v. Board of Commissioners*, 737 F.2d 996, 1000-01 (11th Cir.) (same finding with respect to equal protection and substantive due process challenges to rules limiting the number of times an applicant could sit for the bar), *reh'g denied*, 745 F.2d 72 (1984).^{xvii}

In order to survive the minimal "rational basis" scrutiny, the challenged rule need only be rationally related to a legitimate governmental purpose. "In other words, if there is any conceivably valid justification for Rule 4-6.1, and if there [is] any plausible link between the purpose of the Rule and the methods selected to further this purpose, then no violation of substantive due process exists."^{xviii}

The Eleventh Circuit concluded that the Florida Supreme Court has a valid justification for its rule relating to *pro bono* legal services, because it "undoubtedly has a legitimate interest in encouraging the attorneys it has licensed in the State of Florida to perform *pro bono* legal services as one aspect of their professional responsibility." Citing a number of federal cases, the Eleventh Circuit observed:

We have recognized that states have an "especially great" interest in regulating lawyers, since "lawyers are essential to the primary government function of administering justice." [*Kirkpatrick*, 70 F.3d at 103]. Due to the unique and important role of the legal profession in this country, the free provision of legal services to the poor has long been recognized as an essential component of the practice of law. In *Waters v. Kemp*, 845 F.2d 260, 263 (11th Cir.1988), for example, this Circuit emphasized that one of the traditions of the legal profession is that a lawyer, as an officer of the court, is "obligated to represent indigents for little or no compensation upon court order." *Accord, United States v. Accetturo*, 842 F.2d 1408, 1412-13 (3rd Cir.1988). Similarly, in *Mallard v. United States District Court*, 490 U.S. 296, 310, 109 S.Ct. 1814, 1823, 104 L.Ed.2d 318 (1989), the Court commented that at a "time when the need for legal services is growing and public funding for

such services has not kept pace, lawyers' ethical obligation to volunteer their time and skills *pro bono publico* is manifest.^{xix}

The Eleventh Circuit also concluded that “[t]here is plainly an adequate nexus between the establishment of aspirational *pro bono* goals for members of the Florida Bar and the Florida Supreme Court's legitimate interest in encouraging Bar members to provide legal services to the indigent.” The court noted that the plaintiff

does not, and cannot, dispute that there is a powerful, documented need to broaden and improve the scope of legal representation available to the poor. The choice of a not terribly onerous goal of twenty hours of *pro bono* service per year advances the Florida Supreme Court's interest in at least two ways. It supplies individual Bar members with a benchmark for evaluating how many hours of *pro bono* work they should be performing, while at the same time suggesting that a lawyer's professional responsibility to perform legal services for the poor may easily be integrated with other tasks that draw on an attorney's time and energy.^{xx}

Turning to the mandatory reporting provisions of Rule 4-6.1, the Eleventh Circuit concluded that “there is a constitutionally sound basis for expecting bar members to report their compliance with the Rule's aspirational goals.” The court said:

It was rational for the Florida Supreme Court to conclude that requiring Bar members to report their compliance with the Rule's aspirational *pro bono* goals both encourages lawyers to honor these goals and provides the Court with a pool of information that might lend some insight into what, if any, additional measures are needed to help the poor obtain counsel and secure access to the courts.^{xxi}

C. Elements of the Proposed Program:

1. A *pro bono* reporting program yields reliable and useful data only when lawyers are required to respond.

As illustrated in Table 1, states with voluntary reporting programs, in which lawyers are encouraged but not required to respond to a questionnaire, have experienced disappointingly low response rates. In fact, organizations conducting those voluntary programs have reported that lawyer response rates are so low that the resulting data is of limited value at best. The organizations have found that the data they receive cannot be considered reflective of the overall *pro bono* efforts in the state, because the voluntary reporting form is typically returned only by lawyers who do *pro bono*. As a result, the per capita amount of *pro bono* hours performed by all lawyers tends to be substantially lower than that performed by responding lawyers. Indeed, if extrapolated, the data can lead to starkly negative conclusions about lawyers' *pro bono* efforts. Since it appears that most lawyers who do not do *pro*

bono do not return the reporting forms, the average number of *pro bono* hours per lawyer falls short of any aspirational standards.

Arizona	35.0%
Georgia	8.3%
Hawaii	33.5%
Illinois	5.0%
Kentucky	15.0%
Louisiana	8.0%
Maryland	7.0%
Missouri	8.0%
New Mexico	33.0%
Texas	27.0%
Wisconsin	23.0%

Florida, the only state with a required reporting program, has a nearly 100% response rate. The annual reports which analyze data from the program illustrate the reliability, accuracy and usefulness of the information that can be gathered through a required reporting form. When compared to data from states with voluntary reporting programs, there is no question that requiring lawyers to report is essential to ensuring data that are reliable and useful. Moreover, it is evident that Florida's required reporting program has moved the bar as a whole to increase substantially its donations of both money and *pro bono* legal services.

2. The most effective reporting form is one that asks for only the information necessary to achieve the objectives of the *pro bono* reporting program.

The principal reason for a reporting program is to gather accurate and reliable data that can be used to address the growing and critical unmet need for legal services to persons of limited means and to encourage attorneys to increase their efforts to address this problem. The form, a sample of which is attached as Exhibit A, should ask lawyers to indicate the amount and nature of their *pro bono* legal services, as defined in Minn. R. Prof. Conduct 6.1, and the amount of money contributed to organizations providing such services. This data can then be used to document the overall contributions of the bar in addressing the unmet needs of low-income Minnesotans.

The form should ask for certain limited demographic information (e.g., year admitted, nature of practice, size of firm and zip code), which will enable legal aid and volunteer attorney organizations, the Legislature, foundations and other funders to direct their resources efficiently.

3. A *pro bono* reporting program need not be an administrative burden.

Most lawyers keep a daily record of their time serving clients, so recording time associated with *pro bono* cases should not add significantly to an already-existing task. Moreover, lawyers would need to keep track of only the amount of time spent on *pro bono* matters. Unlike client billable hours, they would not have to record a description of their activities. Thus, the task of recording the time spent on *pro bono* matters should involve only seconds of time during those days on which *pro bono* services were provided. At the end of the year, completion of the reporting form should take only a few minutes, particularly for the many lawyers who now use computerized time-keeping programs. Minnesota law students who provide *pro bono* services through the Minnesota Justice Foundation (MJF) report their time routinely. Within three to five years, MJF expects to have close to 80% of Minnesota law students participating in the tri-school Law School Public Service Program. So a substantial majority of law students will be used to reporting before they ever graduate.

The reporting system need not be costly to administer. The reporting form could be designed to be computer scannable. The form would be sent with the annual attorney registration statement so there should be no extra cost for mailing. While there would be some startup costs for computer programs to analyze the data, ongoing costs should be modest.

4. The reporting program should be designed to allow for anonymity.

Florida requires its lawyers to identify themselves on their report forms and individual data are publicly available. The LAD Committee believes that this may not be necessary in Minnesota. The Committee recognizes that many lawyers hold legitimate convictions about declining public recognition for *pro bono* work and that this reporting program should be an examination of personal conscience. The *pro bono* reporting program should be structured to allow for anonymity, while at the same time promoting the compliance that is necessary for accurate and useful data. We recommend that the *pro bono* report form be mailed to lawyers with the Supreme Court's annual registration statement. A lawyer would be required to certify on the registration statement that he or she completed and returned the *pro bono* reporting form. The form, while returned with the

registration statement, would be separate and anonymous. We see no reason why the report form should be require lawyers to identify themselves.

5. The program could allow for recognition of those lawyers who meet or exceed the aspirational standard in Rule 6.1 and who choose to identify themselves.

The reporting form could permit lawyers to identify themselves even if they are not required to do so. Recognition of lawyers who do *pro bono* can be a good way to increase the overall amount of *pro bono* services delivered by the bar. Lawyers, especially new lawyers, learn from the example of their peers. A reporting form that allows for recognition (e.g., by including an optional signature line) enables the bar to promote both the individual and collective good works of Minnesota's lawyers, and in the process challenge us to do more *pro bono* work. Recognition could be done in many ways, for example, through an annual listing in *Bench & Bar*, membership in a *Pro Bono* College, or a certificate signed by a Supreme Court Justice.^{xxii}

6. The reporting program does not mean mandatory *pro bono*.

Pro bono reporting programs have not resulted in mandatory *pro bono* in any state in which such programs have been adopted. In fact, the evidence indicates that reporting programs reduce pressure by state legislatures and the public to enact mandatory *pro bono* measures. One state's reporting program, for example, grew in part from the state legislature's consideration of a law requiring lawyers to provide *pro bono* legal services as a condition of licensure.^{xv} With data from an effective reporting program, the bar can persuasively document the amount of *pro bono* services and the monetary value of lawyers' efforts to address the problem of unmet legal needs. The LAD Committee does not support mandatory *pro bono* service. The Committee is confident that a reporting program will document that the bar is already a major partner in the effort to meet the need. The Committee believes that reliable data documenting the millions of dollars of time and money contributed annually by Minnesota lawyers will enhance the stature of the profession. Thus, rather than posing a threat of mandatory *pro bono*, a reporting program can show there is no justification for mandatory *pro bono*.

IV. Conclusion

It's time for a *pro bono* reporting program in Minnesota. Thousands of Minnesotans with critical legal needs -- needs that affect their basic safety and subsistence -- would ultimately benefit from such a program. An effective reporting program would lead to increased efforts by Minnesota

lawyers, the Legislature, foundations and other funders to address those unmet needs. It could also allow for recognition of the outstanding work of lawyers who exceed the aspirational standard set forth in Minnesota Rule of Professional Conduct 6.1, and thereby encourage others to do more. It would demonstrate the bar's commitment to providing equal access to justice. Our profession has nothing to fear and much to gain from such a program.

- i In 1998, a small amount of the federal funding was restored but legal services funding remains woefully inadequate.
- ii *Report of the Joint Legal Services Access and Funding Committee* (Dec. 31, 1995) (hereinafter *Joint Committee Report*), at 11-12.
- iii *Id.* Minnesota Legislators, the Committee noted, have estimated that steering just 5 people away from the risk factors of violent crime – including school disruptions and family instability, abuse and deprivation – saves taxpayers \$4 million in prison and corrections costs. See Sen. Ellen Anderson and Rep. Charles Weaver, “Put money into Prevention Programs, Not More Prisons,” *Star Tribune*, March 8, 1995, at 15A.
- iv Order, *In Re Petition to Amend the Rules for Registration of Attorneys*, No. C9-81-1206 (Minn., May 22, 1991).
- v *Joint Committee Report* at 34.
- vi Thomas Gallagher, “An Interview with Bradley C. Thorsen, HCBA President 1997-98,” *The Hennepin Lawyer*, (July 1997) at 5, 17-18.
- vii As of this writing, 14 states have adopted a *pro bono* reporting program, and another 5 states are considering adoption of a program.
- viii See *Amendments to Rules Regulating the Florida Bar – 1-3.1(a) and Rules of Judicial Administration – 2.065 (Legal Aid)*, 630 So.2d 501, (Fla. 1993), as clarified on denial of rehearing, (Fla., Feb. 3, 1994). See also T. D’Alemberte, “Tributaries of Justice: The Search for Full Access,” 25 Fla. St. U. L. Rev 631 (Spring 1998).
- ix Legal challenges to Florida’s reporting requirement have been rejected by both the Florida Supreme Court and the United States Court of Appeals for the Eleventh Circuit, in thorough and well-reasoned decisions. See *Schwarz v. Kogan*, 132 F.3d 1387 (11th Cir. 1998); *Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar – ProBono Public Service*, 696 So.2d 734 (Fla. 1996), rehearing denied, (Fla. July 9, 1997) (hereinafter *Amendments to Rule 4-6.1*).
- * See *Florida Supreme Court’s Standing Committee on Pro Bono Services’ Report to the Supreme Court of Florida, the Florida Bar and the Florida Bar Foundation* (1998) (hereinafter *1998 Florida Report*), at 1. See also “Pro Bono reports show rise,” *Florida Bar News*, March 15, 1999 at 1, 19.
- xi *1998 Florida Report*. at 3.
- xii *1998 Florida Report*. at 1, 3.
- xiii Cited in *Amendments at 735* (emphasis in original).
- xiv *Id.*
- xv *Id.*
- xvi *Amendments to Rule 4-6.1* at 735-736 (Overton, J., concurring).
- xvii *Schwarz*, 132 F.3d at 1390 n.2.
- xviii *Id.* At 1390-91.

xix *Id.* At 1391.

xx *Id.*

xxi *Id.*

xxii On one state's form, for example, a lawyer may certify that he or she has met or exceeded the bar's aspirational *pro bono* standard, and would like be identified as a member of the "College of *Pro Bono*" for that year.

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

SEP 21 1999

No. C9-81-1206

FILED

In re:

Amendment to the Minnesota Rules of the
Supreme Court for Registration of Attorneys

APPENDIX TO
PETITION OF MINNESOTA STATE BAR ASSOCIATION

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Questions and Answers
Recommendation for a Pro Bono Reporting Program in Minnesota
Prepared by MSBA Legal Assistance to the Disadvantage Committee
April 29, 1999

1. What is the LAD Committee proposing?

The Committee proposes that, as part of their annual license renewal, all licensed attorneys report the amount of *pro bono* services and financial contributions provided in accordance with MN Rules of Professional Conduct 6.1.

2. What exactly would be included?

The proposed reporting form is attached. Attorneys would indicate the estimated number of *pro bono* hours under four categories identified in Rule 6.1.

- a. Legal services without fee or expectation of fee to persons of limited means, or charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means (*See* Rule 6.1 (a)(1) and (2)).
- b. Legal services at no fee or substantially reduced fee to individuals, groups or organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate. (*See* Rule 6.1 (b)(1)).
- c. Legal services at a substantially reduced fee to persons of limited means. (*See* Rule 6.1 (b)(2)).
- d. Participation in activities for improving the law, the legal system or the legal profession. (*See* Rule 6.1 (B)(3)).

Attorneys would also be asked to indicate the estimated amount of money they voluntarily contributed to organizations that provide legal services to persons of limited means. Monetary donations are an additional aspirational goal set forth in Rule 6.1

In addition, attorneys will be asked for some limited demographic information.

3. Why is reporting important? How will reporting help to address the unmet need for legal services?

The purposes of the reporting program are to create an effective means of (1) increasing the amount of critically needed legal services to the disadvantaged in Minnesota and (2) providing reliable data about such services.

Severe cutbacks in federal funding for legal aid, major changes in welfare and other laws affecting low-income people and the increasing diversity of Minnesota's population all have contributed to a significant and growing unmet need for legal services. From 1984-1998, the Minnesota Legal Services Coalition caseload grew by 41%, from just over 30,000 cases in 1984 to over 40,000 in 1998. In that same period, requests for service increased by over 60%. Coalition programs had to turn away more than 20,000 eligible people in 1998. Those figures do not include the many more persons with critical needs who did not seek the limited assistance

that the Coalition programs could provide. Failing to meet the need of low-income persons destabilizes families and communities; clogs the court system with problems that might otherwise be prevented; and keeps people from becoming self-sufficient and effective participants in society.

When asked for money, funding sources including the Legislature increasingly insist on reliable data demonstrating the commitment of *pro bono* time and money of Minnesota lawyers. An effective reporting program will provide the public, the bar, and the judiciary with concrete statistics, rather than anecdotes, about the voluntary *pro bono* efforts of attorneys. With the reliable statistical information, the courts, bar and funding sources can more accurately assess the unmet legal needs, and the role of attorneys' *pro bono* efforts in addressing those needs. Resources can then be directed more effectively.

Reporting programs have been adopted in a several states. In Florida, which requires reporting, the hours of *pro bono* service increased 76% since 1994-95, the year after reporting began; financial contributions to legal aid organizations are up 112%. By reminding attorneys at least once a year, in a direct way, of their special responsibility to provide *pro bono* service, a reporting form can be an impetus for increased *pro bono* services and contributions.

4. Wasn't this idea proposed before?

In 1990, the MSBA General Assembly voted by a wide margin to petition the Supreme Court to adopt a reporting program. While "unreservedly reaffirming the obligation of members of the legal profession to support and participate in *pro bono* activities," the Supreme Court declined to adopt the MSBA's petition because of uncertainty about whether it would help with the unmet need. Since 1990, numerous developments discussed above have shown that *pro bono* reporting will assist in increasing legal services to the disadvantaged.

Additionally, the Supreme Court revised Minn. R. Prof. Conduct 6.1 in 1995 in response to an MSBA petition to incorporate an aspirational standard of 50 hours of *pro bono* service per year for each lawyer licensed to practice in Minnesota. The Court, in the hearing on Rule 6.1, raised questions about how the success of the aspirational standard might be measured.

5. Is a required reporting program constitutional?

Yes. State and federal courts in Florida reviewed and rejected challenges to both the aspirational standard for *pro bono* and the reporting requirement.

6. Will reporting be helpful in how the public views lawyers and the legal profession?

Accurate data on *pro bono* can persuasively document the legal profession's commitment to improving access to justice and can be used to develop broader community and governmental support for access to justice. The data can also be used to enhance public understanding about the contributions lawyers make to provide the disadvantaged with access to justice and the legal services they donate to the community at large. In Florida the bar has received good press based on the results of their reporting program.

7. Is the proposed reporting program merely the next step toward mandatory pro bono?

Absolutely not! The Committee does not support mandatory *pro bono* service. Rather than posing a threat of mandatory *pro bono*, a reporting program can show there is no justification for mandatory *pro bono*. The Committee is confident that a reporting program will document that the bar is already a major partner in the effort to meet the need. The Committee believes that reliable data documenting the millions of dollars of time and money contributed annually by Minnesota lawyers will enhance the stature of the profession. *Pro bono* reporting programs have not resulted in mandatory *pro bono* in any state in which such programs have been adopted. In fact, the evidence indicates that reporting programs reduce pressure by state legislatures and the public to enact mandatory *pro bono* measures. One state's reporting program, for example, grew in part from the state legislature's consideration of a law requiring lawyers to provide *pro bono* legal services as a condition of licensure.

8. Will a reporting form sent in with an attorney's annual license renewal have the effect of coercing the attorney to comply with the voluntary standard in Rule 6.1?

No, the Committee recommends that the reporting form be anonymous, with a separate certification on the registration statement that the form was completed and returned.

Rule 6.1 remains aspirational. No attorney is required to do *pro bono* work. The form could be sent in with zeros.

9. What happens if a lawyer doesn't comply?

If a lawyer doesn't certify that the reporting form has been filled out or neglects to include the form, the Attorney Registration Office will return the registration statement to be completed. This is similar to what happens if a lawyer forgets to fill out the trust account information on the registration form. License renewal will not be effective if an attorney does not complete the certification and return the reporting form. Non-renewal of an attorney's license will result in administrative suspension until registration is completed.

10. Will the reporting program add another bureaucratic burden?

Most lawyers keep a daily record of their time serving clients, so recording time associated with *pro bono* cases should not add significantly to an already-existing task. Moreover, lawyers would need to keep track of only the amount of time spent on *pro bono* matters. Unlike client billable hours, they would not have to record a description of their activities. Thus, recording *pro bono* time should involve only seconds of time during those days on which *pro bono* services were provided. At the end of the year, completion of the reporting form should take only a few minutes, particularly for the many lawyers who now use computerized time-keeping programs. Many providers of *pro bono* services in Minnesota already work with their volunteers to keep track of the time attorneys donate on cases referred by the programs. Those providers have indicated their willingness to help volunteer attorneys keep track of their time on the cases programs refer.

11. How will law firm contributions of time and money be treated?

Attorneys will need to report their own contributions of time. Firms may decide to allocate their firm financial contributions for purposes of individual attorney reporting. Of course, individuals should also report personal donations they make directly.

12. When will the MSBA decide its position on reporting?

The General Assembly meets on Friday, July 2 at 1:30 p.m. at the MSBA Convention in Duluth. Any MSBA member registered for the Friday convention sessions is eligible to vote. Contact the MSBA for registration information or look for the registration form in the March issue of *Bench & Bar*.

13. How are lawyers who meet or exceed the aspirational goal in Rule 6.1 recognized?

At this time, local volunteer attorney programs recognize their own volunteers. There is no statewide system for recognition because there is no way to know who is meeting or exceeding the standard. The Committee proposal would let individuals choose to identify themselves on the reporting form for the purposes of recognition. Recognition could be done in many ways, for example, through an annual listing in *Bench & Bar*, a certificate signed by a Supreme Court Justice, or membership in a *Pro Bono* College.

A BETTER IDEA: *REPORTING PRO BONO SERVICES*

Experience of other states suggests that a pro bono reporting program can increase lawyers' pro bono service while producing data to support requests to the Legislature and private charities for funds to support legal aid.

The need of the disadvantaged for legal services in critical areas such as family and housing law is greater than ever. Minnesota lawyers have done a lot to address this problem, but we need to challenge ourselves, the Legislature, and private charities to do more. For this and other good reasons, Minnesota needs an effective program for gathering accurate information on the pro bono legal services donated by the state's lawyers.

Other states have found that a pro bono reporting program increases the amount of volunteer legal services donated to persons in need. An annual reporting form raises lawyers' consciousness, reminding them of their special responsibility to provide pro bono service. A pro bono reporting program encourages additional lawyers to learn more about pro bono opportunities. It also fosters recognition and commendation of individual lawyers and communities for outstanding pro bono efforts, thereby inspiring others to do more.

If designed effectively, a pro bono program can persuasively document the commitment of Minnesota lawyers to improving access to justice — evidence that can then be used to develop broader support for addressing the unmet legal needs of low-income Minnesotans. Minnesota's civil legal aid providers, includ-

ILLUSTRATION © SCOTT POLLACK / LAUGHING STOCK

BY THOMAS C.
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KREKELBERG

"With data from an effective reporting program, the bar can persuasively document that the monetary value of lawyers' efforts to address the problem of unmet legal needs far exceeds the amount of funding from the federal and state government."

ing volunteer lawyer programs, can use this evidence when they seek funds from the Legislature and private charities. Those funding sources increasingly want to know: "What are the lawyers doing to help address the problem of unmet legal needs"? They want to see matching contributions — a partnership with the lawyers of Minnesota.

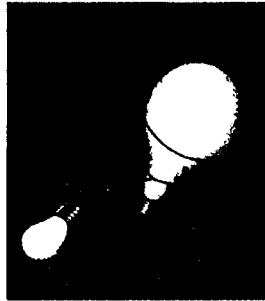
Many Minnesota lawyers generously contribute both time and money in an effort to address the problem of unmet legal needs. Yet, the best legal aid providers can do to demonstrate widespread lawyer involvement is to offer imprecise data and ultimately unpersuasive anecdotes.

With reliable statistical information, interested parties can accurately assess the nature and extent of unmet legal needs, as well as the extent and effectiveness of lawyers' pro bono efforts in addressing those needs. Resources can then be directed more efficiently. The end results of an effective pro bono reporting program would be increased and better-allocated funding for legal aid, increased pro bono legal services donated by a greater number of lawyers, more recognition of lawyers' individual and collective efforts, and increased public respect for the bar. Thousands of persons, whose critical legal needs would not otherwise be met, would gain equal access to our justice system.

THE NEED FOR A PROGRAM

The need for accurate information on lawyers' pro bono work cannot be overstated. Several years ago the Minnesota Supreme Court and Legislature, in response to sharp reductions in federal funding for legal aid, established the bipartisan Joint Legal Services Access and Funding Committee to examine the civil legal needs of low-income Minnesotans. The committee membership represented the Legislature, the federal and state judiciary, lawyers in private and public practice, legal services program staff, and the public. After extensive study, the committee found a serious and growing unmet need for legal assistance to low-income Minnesotans, particularly in cases involving domestic violence, housing, and other matters relating to basic subsistence.¹ The committee estimated that, at best, legal aid programs could meet only 30 percent of this need. In 1994 alone, legal aid programs had to turn away more than 20,000 eligible people who came to them for help with critical legal needs. These problems were exacerbated in 1996, when Congress cut federal funding for legal aid programs by over 30 percent and restricted what federally-funded programs could do for their clients.

The Joint Legal Services and Access Committee found that the severe reductions in federal funding for legal aid have created a significant and increasing



price tag for Minnesota. The committee recognized that legal aid programs play a vital role in our communities by, among other things:

- getting battered spouses and children out of abusive situations;
- preventing homelessness and school instability;
- protecting access to food, clothing and medical care;
- keeping people in safe and sanitary housing;
- obtaining child-support orders and Social Security disability payments that reduce taxpayer-funded public assistance; and
- helping people work themselves out of poverty and down the road to self-sufficiency.²

The committee also found that legal aid programs help to prevent legal problems that would otherwise further clog and increase the costs of the court system. The committee observed:

Legal problems don't disappear when legal services programs shrink. While some people simply abandon legitimate claims, many others pursue their cases without representation. They are forced to navigate the court system without a guide. They negotiate with landlords or other parties who have lawyers to help them. They file their own briefs and other papers. These cases clog the court system, increasing its costs. Legal services offices reach tens of thousands of persons each year through community legal education workshops, self-help materials, newspaper columns, and radio and TV shows. Legal services staff also train public and private social service agency staffs in relevant areas of the law. This enables many clients to avoid legal problems or resolve them without having to use the legal system.³

The 1996 cutback in federal funding for legal aid programs, as well as subsequent federal legislation, substantially shifted the responsibility for the problem of unmet legal needs of low-income persons. Now more than ever, the problem is one of state and local concern. As a result, the need to expand the well-respected partnership between the Minnesota Legislature, private charities, and lawyers has become critical. Understandably, in determining the increasing levels of their funding, the Legislature and private charities want to know more clearly what lawyers are doing to address the problem. Minnesota courts also have an increasing stake in obtaining accurate information on lawyers' efforts to address the problem of unmet legal needs and pro se litigants.

REPORTING PROPOSALS — THEN AND NOW

The idea of pro bono reporting in Minnesota has been broached before. At their 1990 convention, the membership of the Minnesota State Bar Association ("MSBA") voted by a wide margin to adopt a reporting proposal. Subsequently, however, the Minnesota Supreme Court declined to adopt the MSBA's petition for a program. In a brief order, the Court stated that it "unreservedly reaffirms the obligation of members of the legal profession to support and participate in pro bono activities," but that a majority of the Court "is not persuaded that mandatory pro bono reporting would appreciably advance or assist in the discharge of that obligation."

Since 1990, several developments have warranted a new look at the idea of pro bono reporting.

First, as noted above, the significant unmet need for civil legal aid services and the benefit of those services to the broader community have been clearly documented. The severe cutbacks in federal funding for legal aid, changes in welfare laws, and other emerging factors have exacerbated the unmet legal needs of low-income Minnesotans, placing a substantial funding burden on the Minnesota Legislature and private charities. Those funding sources, in determining their levels of contribution, have increasingly insisted on reliable data demonstrating the pro bono efforts of Minnesota lawyers.

Second, in 1995 the Supreme Court, in response to an MSBA petition, revised Rule 6.1 of the Minnesota Rules of Professional Conduct ("Rule 6.1") to incorporate an aspirational, voluntary standard of 50 hours of pro bono legal service per year for each lawyer licensed to practice law in Minnesota. The aspirational standard calls for the substantial majority of those services to be performed for persons

"Pro bono reporting programs have not resulted in mandatory pro bono in any state in which such programs have been adopted."

of limited means. Additionally, the standard encourages lawyers to contribute money to organizations that provide legal services to persons of limited means. The need for an aspirational standard that specifically emphasizes the importance of legal services to persons of limited means, and recommends a minimum number of hours to be donated, arose in large part from the cutbacks in federal funding for legal aid. The specificity added to the aspirational standard in Rule 6.1 was viewed as one means of directly encouraging all Minnesota lawyers to address the growing problems associated with the unmet legal needs of low-income Minnesotans.

During the November 1995 hearing on the revised Rule 6.1, the Supreme Court asked several questions about how the success of the aspirational standard might be measured, and whether the MSBA had again considered a pro bono reporting program. Similar concerns were raised by the Joint Legal Services Access and Funding Committee. The committee encountered substantial difficulty in obtaining any reliable data regarding the nature and extent of pro bono legal work actually being performed by Minnesota lawyers. The committee concluded that such data was important to the efforts of the courts, the Legislature, and the bar in addressing



MINNESOTA RULE OF PROFESSIONAL CONDUCT 6.1

VOLUNTARY PRO BONO PUBLICO SERVICE

A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

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

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

(b) provide any additional services through:

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

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

“Other states have found that a pro bono reporting program increases the amount of volunteer legal services donated to persons in need.”

unmet legal needs of low-income Minnesotans.⁵

A third development warranting a fresh look at pro bono reporting is that various reporting programs have been adopted in a number of other states over the past several years.⁶ The Minnesota Supreme Court and bar now have the benefit of the experience of those states in determining whether to adopt a pro bono reporting program in Minnesota and, if so, the best way to structure the program. The experience in Florida, which has now had a reporting program in place for five years, is particularly helpful.

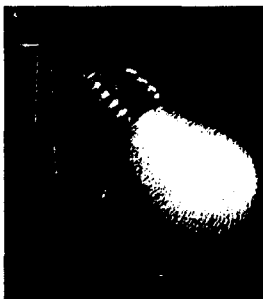
THE FLORIDA EXPERIENCE

In 1993 the Florida Supreme Court implemented a comprehensive plan to increase and improve the delivery of pro bono legal services by Florida lawyers.⁷ The Court amended its rules of professional conduct to require each lawyer annually to report the number of hours of pro bono legal services the lawyer provided to low-income persons and the amount of money the lawyer contributed to legal aid organizations during the preceding year. Although the donation of such time and money is purely voluntary under Florida's rules of professional conduct, the reporting of whether and how much time and money was donated is required.⁸

The Standing Committee on Pro Bono Services of the Florida Supreme Court annually compiles the data from the pro bono reporting program. The committee's reports illustrate the quality of information that can be gathered through a reporting program. The 1998 report, for example, sets forth precise and reliable data demonstrating the number of Florida lawyers who actually performed pro bono services for low-income persons (about 44%), and the amount of services actually performed (an average of about 15 hours per active lawyer statewide).⁹

The 1998 Florida report demonstrates that the Florida bar as a whole substantially increased its donations of both money and pro bono legal services since the inception of the state's pro bono reporting program, and contributed far more resources than did other Florida citizens toward the problem of the unmet legal needs of low-income persons.¹⁰ Assuming an average hourly rate of \$150, the Florida bar contributed the equivalent of nearly \$130 million in services to low-income persons in 1998. In addition, 4,312 Florida lawyers reported a total of \$1,427,263 in direct donations to legal aid organizations. The combined \$131.4 million contribution from the Florida bar far exceeded the \$24.7 million in direct funding for legal aid from the federal Legal Services Corporation and other sources.¹¹

Through the reporting program, the Florida bar has thus been able to document its substantial and increasing commitment to addressing the unmet legal needs of low-income persons, and to challenge both itself and its partners — the Legislature and other



funding sources — to do more. In 1997 one Florida Supreme Court justice, in an opinion observed:

There can be no doubt that the reporting requirement has been effective. Accurate statistics are now available as to the number of pro bono legal hours being provided in Florida each year. These statistics can be used by this court to analyze the extent to which the constitutional mandate of court access is being met. Additional resources can then be directed intelligently to areas of need. Without the reporting requirement, such evaluations would be made with incomplete information. Further, a positive side effect of our pro bono rule is that both pro bono legal services and contributions to legal services have increased. While the rule was not developed to force attorneys to provide pro bono legal services, the fact that the rule has raised consciousness and thereby increased the performance of such services does not disturb me.¹²

The United States Court of Appeals for the 11th Circuit agreed with this assessment. In rejecting a legal challenge to the Florida program, the 11th Circuit said:

It was rational for the Florida Supreme Court to conclude that requiring Bar members to report their compliance with the Rule's aspirational pro bono goals both encourages lawyers to honor these goals and provides the Court with a pool of information that might lend some insight into what, if any, additional measures are needed to help the poor obtain counsel and secure access to the courts.¹³

WHAT PROGRAM FOR MINNESOTA?

Over the past year the MSBA's Legal Assistance to the Disadvantaged (“LAD”) Committee has conducted an extensive study of pro bono reporting programs in other states. The results of that study indicate several precepts underlying an effective reporting program.

■ **FIRST**, a pro bono reporting program yields reliable and useful data only when lawyers are required to respond. As illustrated in Table 1, states with voluntary reporting programs, in which lawyers are encouraged but not required to respond to a questionnaire, have experienced disappointingly low response rates. In fact, organizations conducting those voluntary programs have reported that lawyer response rates are so low that the resulting data is of limited value at best. The organizations have found that the data they receive cannot be considered reflective of the overall pro bono efforts in the state because, typically, only those lawyers who do pro

**“states with voluntary reporting programs . . .
have experienced disappointingly low response rates . . . so low
that the resulting data is of limited value at best.”**

bono return the voluntary reporting form. As a result, the number of pro bono hours per capita performed by all lawyers tends to be substantially lower than that performed by responding lawyers. Indeed, if extrapolated, the data can lead to starkly negative conclusions about lawyers' pro bono efforts. If one assumes that lawyers who do not do pro bono do not return the reporting forms, the average number of pro bono hours per lawyer falls far short of the aspirational standards in those states.

Florida, the only state with a required reporting program, has a nearly 100 percent response rate. The annual reports that analyze data from the program illustrate the reliability, accuracy, and usefulness of the information that can be gathered through a required reporting form. When these data are compared to data from states with voluntary reporting programs, there is no question that requiring lawyers to report is essential to ensuring a high response rate and data that are reliable and useful. Moreover, it is evident that Florida's required reporting program has moved the bar as a whole to substantially increased its donations of both money and pro bono legal services.

■ **SECOND, keep it simple.** The most effective report form is one that asks only for the information necessary to achieve the objectives of the pro bono reporting program. For example, the form should ask lawyers to indicate the amount and nature of their pro bono legal services, as defined in Rule 6.1, and the amount of money contributed to organizations providing such services. These data can then be used to document the overall contribution of the bar in addressing the unmet needs of low-income Minnesotans.

Additionally, the form should ask for certain limited demographic information (e.g., year admitted, nature and general location of practice, and size of firm), which will enable legal aid organizations, the Legislature, and private charities to direct their resources efficiently. The reporting program in Texas, for example, has generated useful demographic information about the responding lawyers who do pro bono



work. Among other points, the Texas data show that solo practitioners, firms with five or fewer lawyers, and lawyers in rural areas donate more pro bono service than their counterparts in larger, urban firms.

A pro bono reporting program need not be an administrative burden on lawyers. Most lawyers keep a daily record of their time, so recording time associated with pro bono cases should not add significantly to an already existing task. Moreover, lawyers would need to keep track of only the amount of time spent on pro bono matters. Unlike recording billable hours, they would not have to record a description of their activities. Thus, the task of recording the time spent on pro bono matters should involve only seconds of time during those days on which pro bono services were provided. At the end of the year, completing the reporting form should take only a few minutes, particularly for the many lawyers who now use computerized time-keeping programs.

The experience of other states also shows that a reporting program need not be a burden on the organization that compiles the reported data. The program in Texas, for example, saves substantial administrative time and cost by using a computer-scannable form. The time involved in scanning, analyzing, and reporting on the data amounts to about 50 hours per year.

■ **THIRD, a reporting program can be designed to allow for anonymity.** Florida requires its lawyers to identify themselves on their report forms. This may not be necessary in Minnesota. At least initially, a pro bono reporting program might be structured to allow for anonymity, while at the same time promoting the compliance that is necessary for accurate and useful data. Under such a program, the pro bono report form might be mailed to lawyers with the annual registration statement from the Supreme Court. A lawyer would be required to certify on the registration statement that he or she completed and returned the report form, but the form itself could be returned separately and anonymously. If this program does not result in the appropriate response rate, the report form could easily be modified to require lawyers to identify themselves.

A reporting form should encourage lawyers to identify themselves, even if they are not required to do so. Recognition of lawyers who do pro bono is a good way to increase the overall amount of pro bono services delivered by the bar. Lawyers, especially new lawyers, learn from the example of their peers. A reporting form that allows for recognition (e.g., by including an optional signature line) enables the bar to proclaim both the individual and collective good works of Minnesota's lawyers, and in the process challenge ourselves to do more.¹⁴

■ **FOURTH, a reporting program does not mean mandatory pro bono.** Pro bono reporting programs

Georgia	8.3%
Hawaii	10.0%
Illinois	5.0%
Louisiana	8.0%
Maryland	7.0%
Missouri	8.0%
New Mexico	33.0%
Texas	39.7%
Wisconsin	23.0%

“a pro bono reporting program might be structured to allow for anonymity, while at the same time promoting the compliance that is necessary for accurate and useful data.”

have not resulted in mandatory pro bono in any state in which such programs have been adopted. In fact, the evidence indicates that reporting programs prevent efforts by state legislatures and the public to enact mandatory pro bono measures. One state's reporting program, for example, grew in part from the state legislature's consideration of a law requiring lawyers to provide pro bono legal services as a condition of licensure. With data from an effective reporting program, the bar can persuasively document that the monetary value of lawyers' efforts to address the problem of unmet legal needs far exceeds the amount of funding from the federal and state government. Thus, rather than posing a threat of mandatory pro bono, a reporting program can provide the bar with the best defense against mandatory pro bono.



CONCLUSION

It's time for a pro bono reporting program in Minnesota. Thousands of Minnesotans with critical legal needs — in most cases needs that affect their basic safety and subsistence — would ultimately benefit from such a program. An effective reporting program would lead to increased efforts by Minnesota lawyers, the Legislature, and private charities to address those unmet needs. It would allow for better recognition of the outstanding work of lawyers who exceed the aspirational standard set forth in Rule 6.1, and thereby encourage others to do more. It would demonstrate the bar's commitment to providing equal access to justice, and lead to increased public respect for lawyers. Our profession has nothing to fear from such a program, and so much to gain. □

NOTES

1 Report of the Joint Legal Services Access and Funding Committee (Dec. 31, 1995), at 6-8.

2 *Id.* at 11-12.

3 *Id.* Minnesota legislators have estimated that steering just five people away from the risk factors of violent crime saves taxpayers \$4 million in prison and corrections costs. See Sen. Ellen Anderson and Rep. Charles Weaver, "Put Money into Prevention

Programs, Not More Prisons," Star Tribune, March 8, 1995, at 15A.

4 Order, In Re Petition to Amend the Rules for Registration of Attorneys, C9-81-1206 (Minn., May 22, 1991).

5 Report of the Joint Legal Services Access and Funding Committee (Dec. 31, 1995), at 34.

6 As of this writing, 12 states have adopted a pro bono reporting program, and another 7 states are considering adoption of a program.

7 See Amendments to Rules Regulating the Florida Bar — 1-3.1(a) and Rules of Judicial Administration — 2.065 (Legal Aid), 630 So.2d 501 (Fla. 1993), as clarified on denial of rehearing, (Fla., February 3, 1994).

8 Legal challenges to Florida's reporting requirement have been rejected by both the Florida Supreme Court and the United States Court of Appeals for the 11th Circuit. See Schwarz v. Kogan, 132 F.3d 1387 (11th Cir. 1998); Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar — Pro Bono Public Service, 696 So.2d 734 (Fla. 1997), rehearing denied, (Fla. July 9, 1997).

9 See Florida Supreme Court Standing Committee on Pro Bono Services, Report to the Supreme Court of Florida, the Florida Bar and the Florida Bar Foundation (1998), at 1.

10 *Id.* at 3.

11 *Id.* at 1, 3.

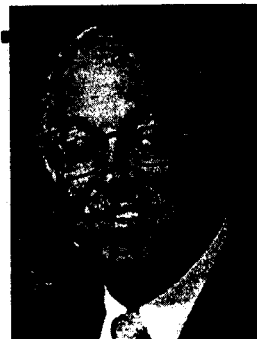
12 Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar — Pro Bono Public Service, 696 So.2d at 736 (Overton, J., concurring).

13 Schwarz v. Kogan, 132 F.3d at 1391.

14 On one state's form, for example, a lawyer may certify that he or she has met or exceeded the bar's aspirational pro bono standard, and would like to be identified as a member of the "Pro Bono College" for that year.



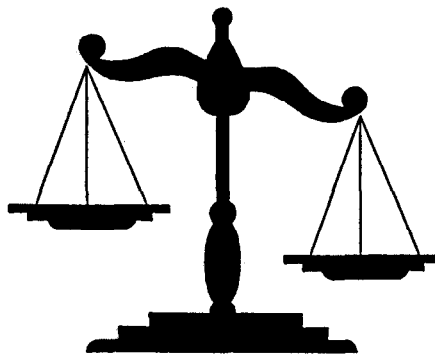
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REPORT OF THE
JOINT LEGAL SERVICES ACCESS
AND FUNDING COMMITTEE

December 31, 1995



Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws. (Minnesota Constitution, Art. I, Sec. 8)

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INTRODUCTION

The 1995 session of the Minnesota Legislature directed the Minnesota Supreme Court to:

[C]reate a joint committee including representatives from the Supreme Court, the Minnesota State Bar Association, and the Minnesota Legal Services Coalition to prepare recommendations for state funding changes or other alternatives to maintain an adequate level of funding and voluntary services that will address the critical civil legal needs of low-income persons as a result of reductions in federal government funding for such programs.

By Order dated September 21, 1995, the Minnesota Supreme Court established the Committee and directed it to:

[E]xamine the alternatives for addressing the critical civil legal needs of low-income people including systemic changes in the legal and judicial systems and the legal services delivery system to facilitate access...identify[ing] costs and funding options for these alternatives and make recommendations to the Court and the Legislature by December 31, 1995.

The Court appointed 29 members to the Committee representing the Legislature, the federal and state judiciary, lawyers in private and public practice, legal services program staff, and the public.¹ The following 24 Committee members, and Supreme Court liaison Justice Edward Stringer, participated in the Committee's work:

Diane Ahrens
Gloria Bostic
Rep. Sherry Broecker
Patrick Burns
Leah Carpenter
Hon. Bruce Christopherson
Sen. Richard Cohen
Joseph Dixon

Glenn Dorfman
Daniel Gislason
Catharine Haukedahl
Jarvis Jones
Sen. David Knutson
Charles Krekelberg
David Kuduk
Bricker Lavik

William Mahlum
Barbara F.L. Penn, Co-chair
Steven Reyelts
Hon. James Rosenbaum
Mary Schneider
Jan Smaby
Roger Stageberg, Co-Chair
Hon. John Stanoch

At its first meeting on September 29, 1995, the Committee established subcommittees to identify issues and develop recommendations directed toward the court system, legal services programs and the private bar. Each subcommittee also reviewed funding issues and brought suggestions to the entire Committee to address.

The Committee understood its charge to include identifying both short-term and long-term solutions to meet the legal needs of low-income Minnesotans, especially in light of reductions in federal funding. In response to the question of how Minnesota's lawyers, the courts, and the Legislature can work together on this critical issue, the Committee adopted a partnership approach and focused on a five year plan.

¹A complete listing of Committee members is in Appendix A. The Committee wishes to thank the staff of the Minnesota Supreme Court, the Minnesota State Bar Association and the legal services programs who assisted the Committee. The Committee also wishes to thank the Otto Bremer Foundation, which provided funding for the preparation and printing of this report.

I. EXECUTIVE SUMMARY

There exists in Minnesota, as across the nation, a very serious unmet need for civil legal services for low-income persons. Many organizations have documented this need including the American Bar Association, the Minnesota State Bar Association (MSBA), the Minnesota Supreme Court Gender Fairness Task Force, and the Minnesota Supreme Court Race Bias Task Force. Studies have consistently concluded that even the most critical legal needs -- such as those relating to housing, family income, and family violence -- are not adequately met. It is also clear that the work done by legal services programs

- stabilizes families, maintains communities and makes society safer;
- saves the taxpayers money;
- helps to prevent legal problems which would otherwise clog the court system; and
- helps people to become self-sufficient and participate effectively in society.

Federal funding for the national Legal Services Corporation (LSC) for 1996 is almost certain to be cut by 20-30 percent. While Congress had not completed action on the fiscal year 1996 appropriation as of December 31, 1995, it is also clear that Congress will impose numerous restrictions and prohibitions on the legitimate work that providers receiving federal funding can do for their clients. Other federal funding for legal services to senior citizens and persons with disabilities is also being cut approximately ten percent. This means a loss of over \$1.7 million for Minnesota's programs. Some other funding sources such as local United Ways are also shrinking. At the same time, many laws affecting low-income Minnesotans are changing dramatically, creating new and additional legal needs.

Over 80 percent of the resources currently available to meet the critical legal needs of low-income Minnesotans come through the staff and volunteer lawyers who work with the six programs that serve all 87 Minnesota counties. The six programs work together as the Minnesota Legal Services Coalition (Coalition). The remainder of the resources come through a variety of other staffed offices and free-standing volunteer attorney programs generally providing additional services in single counties or to special populations. Collectively, Minnesota's legal services programs are considered nationwide as a model for the ways in which they have worked cooperatively with each other, the private bar, funders, the courts, and the Legislature. Unfortunately, additional efficiencies notwithstanding, decreased funding will inevitably result in decreased available services and in a greater unmet need for low-income Minnesotans.

The Committee explored issues facing, and developed recommendations directed toward, the court system, the legal services programs themselves, and the private bar. The Committee also developed recommendations for legislative action.

RECOMMENDATIONS²

With respect to the court system, the Committee recommends that:

- A. Each judicial district should approve and implement an action plan to help meet the legal needs of low-income Minnesotans consistent with judicial ethical requirements.
- B. Courts' efforts to improve services to pro se litigants should address the special needs of low-income users.
- C. Trial judges in all courts in Minnesota should be educated about the need for funding for legal services for the disadvantaged, and be encouraged to consider making counsel and litigants aware of the possibility, in appropriate cases, of designating local legal services or volunteer programs, or the Supreme Court's Legal Services Advisory Committee (LSAC), as the recipients of cy pres funds. This is money left over after class action proceeds have been distributed as far as possible.

With respect to the legal services providers, the Committee recommends that:

- A. While the Coalition programs and others are already a national model of coordination and cooperation, the programs should continue to search for areas in which they can achieve additional efficiencies and improve client services through increased coordination and cooperation.
- B. All civil legal services providers should become familiar with and abide by the ABA's Standards for Providers of Civil Legal Services and, when available, the ABA's Standards for Pro Bono Providers.
- C. LSAC and the Lawyer Trust Account Board (LTAB) should explore asking all legal services providers to use a common format for keeping track of and reporting case service statistics to facilitate monitoring and evaluation of the overall delivery of civil legal services to the poor in Minnesota.
- D. Each local legal services provider should establish an administrative client fee or fees, which may be voluntary or mandatory at the option of the local program's board, in the suggested amount of at least \$10, subject to hardship exceptions, and the programs should report to LSAC with respect to their ideas and experiences with such fees.
- E. The legal services delivery system should continue to strive to offer to low-income people a level playing field, access to all forums and a full range of legal services in areas of critical need.

²This report reflects the views of the Joint Legal Services Access and Funding Committee. It does not necessarily reflect the views of the Minnesota Legislature, the Minnesota Supreme Court, the Minnesota State Bar Association, or any other organization or agency that had representation on the Committee.

- F. Legal services funding should be structured to ensure that populations with special needs, such as Native Americans, migrant and seasonal farm workers, people with disabilities, and financially distressed family farmers, continue to have access to legal services and that adequate state support services, such as training, community legal education materials and mechanisms for information sharing, continue to be available to all legal services providers, including volunteer attorney programs.

With respect to the private bar, the Committee recommends that:

- A. The organized bar and local legal services providers should encourage all lawyers to meet their obligation under revised Rule 6.1 to donate 50 hours of legal services annually, primarily to the disadvantaged, and to make direct financial contributions to local legal services providers.
- B. Volunteer attorney programs should continue to be well funded so that there are adequate means at the local level to match client needs with volunteer lawyers. The MSBA should provide additional technical support to assist local programs with fundraising and increasing donated legal services.
- C. The MSBA's Legal Assistance to the Disadvantaged Committee should be encouraged to develop a system for measuring the pro bono activities undertaken by Minnesota lawyers in order to establish a baseline for those activities, to encourage more lawyers to participate, and to evaluate whether efforts to increase such activity are successful.
- D. The bar should encourage and support private fundraising initiatives undertaken by the legal services providers.
- E. The MSBA and LTAB should work together to encourage Minnesota banks to restore the interest rates on lawyers' trust accounts to earlier levels. Even a one percent increase would substantially increase the revenue available for distribution to legal services programs.
- F. To ensure that all lawyers assume an increased part of the responsibility for funding legal services providers, beyond the voluntary financial contributions that many individual lawyers already make, the Supreme Court should be petitioned to increase the annual lawyer registration fee by \$50 for lawyers practicing more than three years, and \$25 for lawyers practicing three years or less, with the increase going to the Legal Services Advisory Committee for allocation to legal services providers, including volunteer attorney programs.

With respect to the Legislature, the Committee requests that funds appropriated from the general fund for legal services be increased as follows:

- The appropriation base for civil legal services should be increased by \$900,000 for the fiscal year which begins on July 1, 1996, bringing the annual base amount to \$5,907,000.
- The appropriation base for civil legal services should be increased by \$1,000,000 for the fiscal year which begins July 1, 1997, bringing the annual base amount to \$6,907,000.
- The appropriation base for civil legal services should be increased by \$1,500,000 for the fiscal year which begins on July 1, 1999, bringing the annual base amount to \$8,407,000.

Because the Committee believes that providing access to civil justice for all people, like access to criminal justice, is a fundamental responsibility of our society, the Committee does not believe that appropriations should be increased only if a new revenue source is created. The Committee notes that the following revenue sources exist or could be created by the Legislature:

- The State has a projected surplus in the general fund in excess of \$500,000,000.
- The fee for filing certain real estate documents could be increased by \$2, as was done in 1992 and 1993. This would generate \$1.8 million per fiscal year.
- The fee for filing civil court lawsuits could be increased by \$8. This would generate \$1.1 million per fiscal year.
- The annual filing fee for professional corporations could be increased by \$75 per year. This would generate \$290,000 per fiscal year.

The pros and cons regarding the use of each of the above sources are discussed in Section VII, below.

These increases, if implemented, will offset the current and pending 1996 LSC funding losses. If no further losses occur in the next few years, these increases would also significantly reduce the unmet need, which carries a serious cost to our State. They would also provide a stable funding base, leaving Minnesota's low-income citizens less vulnerable to the effects of unpredictable political changes on the national level. Additional means of addressing the unmet needs should also continue to be explored.

II. THE LEGAL NEEDS OF MINNESOTA'S POOR PEOPLE AND THE CIVIL LEGAL SERVICES DELIVERY SYSTEM

A. The Unmet Needs for Legal Services

The 1990 census reports over 640,000 low-income³ individuals in Minnesota, 16 percent more than in 1980. A 1994 study by the American Bar Association found that 47 percent of those households will experience at least one legal need each year; half will face more than one need.⁴ Thus, over 300,000 low-income Minnesotans experience legal problems each year, many of them critical to basic needs and survival.

The legal needs of low-income Minnesotans most often involve problems which directly affect their day-to-day lives: their homes, their families, their health and personal safety, and support for their children. Preventing an eviction or the repossession of the family refrigerator or securing child support or an order for protection against domestic abuse often means the difference between having adequate food, clothing, or shelter or doing without. The need for lawyers also arises from the complexity of the laws and regulations that confront low-income persons. The intricacy of subsidized housing regulations, the technical aspects of public assistance eligibility, and the requirements of programs for financially distressed family farmers are difficult to understand not only for low-income people but also for lawyers who do not specialize in poverty law. In most instances, low-income persons are unable to assert their rights without the assistance of a lawyer.

The Minnesota Supreme Court's Task Force on Race Bias in the Judicial System identified lack of access to civil legal services for minority race individuals as a serious problem, and the Minnesota Supreme Court's Gender Fairness Task Force found that access to civil legal services is a serious problem for low-income women and their children. A 1989 MSBA study, Family Law: A Survey of the Unmet Need for Low-Income Legal Assistance, found that legal services providers were able to accept for full representation only 27 percent of the low-income eligible callers requesting help with family law problems. While there is one lawyer for every 265 persons in the general population, there is only one legal aid lawyer for every 3,000 poor persons in Minnesota.

From 1984 to 1994, the Coalition programs' caseload grew by 41 percent, from just over 30,000 cases in 1984 to over 43,000 in 1994. In that same time period, requests for service increased by over 62 percent. Coalition programs had to turn away more than 20,000 eligible people in 1994 who actually came to the programs requesting service; many more with critical legal needs did not even seek assistance.

This large and growing unmet need for civil legal assistance can be attributed to the following factors, among others:

³Low-income refers to persons living on incomes below 125% of the federal poverty level. This standard was set at a gross annual income of \$9,338 for one person and \$18,938 for a family of four in 1995.

⁴Legal Needs and Civil Justice: A Survey of Americans, American Bar Association, p.p. 3-5 (1994).

- Poverty has grown due in part to underemployment and recessions, continuing high unemployment in some industries, and the short supply of jobs that pay a living wage and provide benefits.
- Minnesota's minority population grew 72% between 1980 and 1990, the fourth highest rate of increase in the country.
- An analysis of 1990 census data showed that 43.7 percent of the nonwhites in Minneapolis and St. Paul live below the poverty line, the highest percentage of people of color in poverty in the 25 largest metropolitan areas in the country.⁵
- Between 1980 and 1990, the number of Minnesota children living in poverty rose from 118,000 to over 142,000, a 20 percent increase; the poverty rate for female-headed families grew from 31.8 percent to 40 percent.
- The growing refugee population in Minnesota brings special legal needs. The Asian and Pacific Islander population grew by almost 200 percent between 1980 and 1990. Minnesota has the fifth highest rate of increase in Asian population in the country.
- Each year about 45,000 migrant farmworkers come to work in Minnesota fields and food processing plants. Relationships between workers and growers are governed by a complex set of federal and state labor and employment laws. Typical legal problems include wages being illegally withheld and workers being underpaid for their work.
- Homeless populations are growing. Minority race persons now account for 59 percent of all persons housed in overnight shelters and the number of families in shelters has increased substantially. A 1994 Wilder Foundation study found that the number of persons without permanent shelter in Minnesota rose by 64 percent from 1991 to 1994. The number of homeless Minnesota children grew by 500 percent in the last 10 years.
- Affordable, safe and decent housing is in very short supply. A recent study by the St. Paul Tenants Union of over 1,000 households with incomes of less than \$10,000 found annual average rental payments to be 50-85 percent of monthly income.
- The depressed economy in rural parts of the state presents serious legal problems for financially distressed family farmers, and other rural residents. After factoring in all off-farm income, 22 percent of family farmers, who account for more than 20 percent of all U.S. agricultural production, live in poverty, which is much higher than the rate of poverty for the general population.
- Traditional agricultural credit is drying up, so farmers borrow money wherever they can find it, facing usury and other lending law issues. The rise of industrial agriculture is forcing farmers into contracting arrangements where they need help under the Packers and Stockyard Act and many complex state laws.
- Substantial changes and reductions in government benefits programs at the federal and state level in areas such as health care programs (Medicare and Medical Assistance), income maintenance programs (AFDC, SSI and Food Stamps), farm programs (FmHA and farm credit), and housing programs (public and subsidized housing, emergency energy assistance, and tax credits for construction of low-income housing) pose significant challenges as programs are redesigned and as clients lose important services.
- Changes in immigration laws have established new standards for legalization and made major changes related to employment of aliens. Proposed changes in government benefits programs are likely to exclude even persons with legal resident status.

⁵Metropolitan Council, "Keeping the Twin Cities Vital: Regional Strategies for Change in the Fully Developed Area," at p. 18, (February, 1994).

- Physical isolation, cultural barriers, language barriers and special legal problems arising from Federal Indian law and treaties make it more difficult and expensive to provide legal services to low-income Indian people residing on reservations.⁶
- There is a high correlation between disability and poverty. In Minnesota, of the 524,000 people of working age with disabilities, over 70% are unemployed. Discrimination against persons with physical or mental disabilities is a long-standing problem. Also, federal budget cuts and redesign of the Minnesota's health care delivery system threaten services needed by persons with disabilities to enable them to live with their families in the community and to function independently.

The national ABA survey noted above, as well as other state surveys around the country, confirm that poverty and legal problems go hand-in-hand. Lack of resources leads to increased stress on family relationships, causes debt-related problems, jeopardizes housing and access to health care, and often brings people into contact with one or more of the "safety net" programs, all of which have complicated eligibility rules unfamiliar not only to most citizens but also to most attorneys. Lack of resources also makes court appearances difficult. Many people have limited access to child care and transportation. Transportation is especially a problem in rural areas. And those who are fortunate enough to be employed, risk job loss if they miss work to see a lawyer or to appear in court.

B. How Legal Services Works In Minnesota

At the center of the civil legal services delivery system in Minnesota are the six programs which comprise the Minnesota Legal Services Coalition. They provide legal assistance to low-income, elderly and disabled persons with funding derived in part from the national Legal Services Corporation. LSC is a private, non-profit corporation funded by Congress to make grants to local programs which provide free legal assistance to poor people in civil matters. The Coalition programs provide services in all 87 counties in Minnesota.⁷ The goal of these six private, non-profit corporations -- Anishinabe Legal Services, Judicare of Anoka County (Anoka), Legal Aid Service of Northeastern Minnesota (LASNEM), Legal Services of Northwest Minnesota (LSNM), Mid-Minnesota Legal Assistance (MMLA), and Southern Minnesota Regional Legal Services (SMRLS) -- is to provide a full range of high quality civil legal services to poor persons to enable them to

- obtain the basic necessities of life and assure equal opportunity,
- assert and enforce their legal rights and
- obtain effective access to the courts, administrative agencies, and other legal forums.

The programs enforce the law when clients' rights are violated, represent clients' interests when changes in the law which would affect them are being considered, and inform low-income people of their legal rights and responsibilities. The programs do not handle criminal cases or lawsuits

⁶See Appendix C for further information on these factors.

⁷See map showing program service areas, Appendix B, page 52.

which might be fee-generating, that is, cases in which the lawyer might be able to recover a fee from the proceeds of the case.

Approximately 72 percent of those served by Coalition programs are women and children, reflecting the continuing feminization of poverty documented in the census and other reports. Other disadvantaged groups make up a significant portion of the client population: a significant number are people with mental or physical disabilities, 16 percent are age 60 or over, and more than one-quarter of the clients are Black, Hispanic, Native American or Asian though only 6.3 percent of Minnesota's total population are members of racial minorities according to the 1990 census.

In 1994, the types of legal problems handled by Coalition programs included family (27.3 percent), housing (23 percent), income maintenance (15.1 percent), consumer (10 percent), individual rights (7.4 percent), health (5.5 percent), employment (2.2 percent), juvenile and education (2.2 percent), and other (7.4 percent).⁸

Each Coalition program is governed by a board of directors composed of lawyers (60 percent), eligible clients (33 percent), and others who reside in the area served (7 percent). Local bar associations and the Minnesota State Bar Association appoint the majority of lawyer board members. Client organizations or advisory groups often recommend client members. These locally controlled boards oversee program finances, policies, and operations and adopt legal work priorities.

The six Coalition programs provide staff legal services through 38 offices and employ 166 lawyers, 70 paralegals and 107 administrative and clerical support persons (as of May of 1995). Over 325 private lawyers participate on the Anoka, LASNEM and LSNM judicare panels, averaging 10 cases per year. Over 1,700 private lawyers donate legal services through the six programs' volunteer and judicare programs, donating legal services valued well in excess of \$3.5 million each year. These volunteer programs cover 78 of Minnesota's 87 counties. Volunteer attorney services in the other nine counties are coordinated by independent volunteer attorney programs, two of which receive subgrants from LSC-funded programs to support their service delivery.

The Coalition programs handle approximately 43,000 cases for low-income families and individuals annually. Most clients receive assistance resolving legal problems without litigation. This may include advice only, brief service, or negotiation. Although many cases involve limited time, they require an in-depth understanding of the substantive law. Matters involving sophisticated issues of law, complex government regulations, obscure consumer protection laws, and the like, can be handled in an effective and efficient manner because of staff familiarity and expertise in poverty law. Only 10 percent of Coalition program cases in Minnesota are resolved by court or administrative agency decisions. In fewer than one-tenth of one percent of legal services cases, important legal problems common to large numbers of low-income persons may be addressed through group representation and class action litigation. This is done only when it is more cost-effective than litigating the same issue over and over. It is estimated that an additional 30,000 to 40,000 persons benefit each year from such cases. Approximately one

⁸See chart of the Types of Problems Handled by Coalition Programs, Appendix B, page 53.

percent of Coalition programs' work involves representation of eligible clients in legislative and administrative rule-making proceedings, often at the request of appropriate public officials. Like class actions, legislative representation can be undertaken only in compliance with detailed policies adopted by local programs' boards of directors. This work affects large numbers of low-income people.

The Coalition programs also fund the Minnesota Legal Services Coalition State Support Center, which furnishes training, coordination and substantive law support services to the direct-assistance program staffs, volunteer lawyers, and clients. The support center provides training for legal aid staff and volunteers, develops community legal education booklets for clients in as many as five languages, publishes a poverty law newsletter for legal aid staff and over 2,000 volunteer lawyers, and oversees statewide task forces in poverty law areas. State support services are also available to non-LSC-funded programs and volunteer lawyers throughout Minnesota. The Center received a significant portion of its funds through the LSC from its inception in 1982 through 1995. LSC funds will not be available for state support services in 1996 and thereafter. The Coalition programs are committed to maintaining these services, albeit on a reduced basis, through other funding sources.

The Coalition programs, through staff and volunteers, provide well over 80 percent of the resources currently available to meet the critical legal needs of low-income Minnesotans. The remainder comes through a variety of other staffed offices and independent volunteer attorney programs generally providing additional services in single counties or to special populations. Fourteen of these other legal services providers are funded in part by the Legal Services Advisory Committee and/or the Lawyer Trust Account Board. All of these services supplement the statewide coverage provided by the Coalition programs. Some programs, like Centro Legal, provide services using staff lawyers and paralegals; others, like the Volunteer Lawyers Network and the Duluth Volunteer Attorney Program, have primarily non-attorney staff and provide client services by referral to volunteer lawyers. Others, like the legal assistance programs in Dakota, Olmsted and Washington Counties, handle some matters using staff lawyers and others by referral to volunteer lawyers. The staff and volunteer lawyers working with these programs handle between 8,000 and 9,000 cases each year including full representation, brief advice, and referrals.

More detailed descriptions of the Coalition programs, the independent volunteer attorney programs, and others receiving state and/or Lawyer Trust Account Board funds are attached as Appendix B.

C. Who Is Eligible For Legal Services In Minnesota

To qualify for legal assistance through one of the Coalition programs, an applicant must (1) have income less than 125 percent of the federal poverty level; (2) be found eligible under the program's financial guidelines; (3) reside in one of the counties or on one of the reservations that the program serves; and (4) have a critical legal problem which falls within the local priorities adopted by the program's board of directors. Financial eligibility requirements for service with state-appropriated funds are derived from the LSC standards. Generally, financial eligibility for the volunteer attorney programs serving all 87 Minnesota counties is based on these guidelines, although some programs, such as the Volunteer Lawyers Network in Hennepin County, have tighter financial requirements. Funding sources other than the LSC may have their own

guidelines. For example, programs for Older Americans, persons with developmental disabilities or mental health problems, programs for battered women, and others, may have special categorical eligibility guidelines. Any foundation will require services in conformance with the particular grant agreement.

D. Impact of Legal Services on the Community/How Legal Services Saves the State Money

The unmet need for legal services has a price tag for society.

● **Legal aid stabilizes families, maintains communities, and makes society safer.** By getting battered spouses and children out of abusive situations, by keeping people in safe and sanitary housing, by preventing homelessness, by protecting access to food, clothing, shelter and medical care, and by avoiding sudden school changes which result from evictions, legal aid gives low-income persons a voice and a stake in our society. Family instability, abuse, deprivation, and school instability are identified risk factors in producing violent crime. Legislators estimate that steering just five people away from violent crime saves taxpayers \$4 million in prison and corrections costs.⁹

● **Legal aid saves taxpayers money.** In Minnesota, family law cases handled by legal services programs result in over \$4 million in new child support orders each year, most for public assistance recipients. Many orders also require maintenance of private health insurance for children who would otherwise be on taxpayer-funded Medical Assistance. Social Security cases for disabled persons result in reimbursement to the state and counties of approximately \$2.9 million a year, plus \$2.8 million a year in monthly disability benefits. Recipients would otherwise be dependent upon state and county-funded General Assistance, or on private charity, or would be destitute and homeless, placing an increased demand on shelter and food shelf resources. The \$2.8 million benefit cumulates each year since disability benefits are provided only to those who are permanently disabled. Legal aid's successes, therefore, dramatically reduce state and county tax burdens and the burden on private charities. Federal disability benefit recipients also shift from General Assistance Medical Care to Medical Assistance, reducing the state's cost by 54 percent.

● **Legal aid helps to prevent legal problems which would otherwise further clog the court system, increasing its costs.** Legal problems don't disappear when legal services programs shrink. While some people simply abandon legitimate claims, many others pursue their cases without representation. They are forced to navigate the court system without a guide. They negotiate with landlords or other parties who have lawyers to help them. They file their own briefs and other papers. These cases clog the court system, increasing its costs. Legal services offices reach tens of thousands of persons each year through community legal education workshops, self-help materials, newspaper columns and radio and TV shows. Legal services staff also train public and private social service agency staffs in relevant areas of the law. This enables many clients to avoid legal problems or resolve them without having to use the legal system.

⁹Sen. Ellen Anderson and Rep. Charles Weaver, "Put Money into Prevention Programs, Not More Prisons," StarTribune, March 8, 1995, p. 15A.

•**Legal aid helps people to become self-sufficient and participate effectively in society.** Legal aid provides constructive resolution of problems resulting from family violence, homelessness, substandard housing, malnutrition, lack of access to medical care, and discrimination. This enables disadvantaged persons to stabilize their lives and become contributing members of society. Legal aid helps reunite families, thus strengthening them as an economic unit and moving them down the road to self-sufficiency.

III. CURRENT FUNDING

A. History of State Funding and Other Sources of Funding

In 1995, funding for the Coalition programs came from a variety of sources.

Minnesota Legal Services Coalition Programs Financial and Volunteer Legal Support Received in Calendar 1995

Source	Percent	Amount
Legal Services Corporation	29.1	5,000,725
United Way	7.2	1,225,686
Older Americans Act	4.2	713,835
Other Federal	8.5	1,447,933
Foundations	5.4	920,725
Local	3.6	620,809
State of Minnesota (General)	24.4	4,181,300
State of Minnesota (Family Law)	5.1	877,000
Lawyers Trust Account Board	4.8	823,158
Interest	1.0	177,855
Attorneys' Fees	2.5	422,200
Miscellaneous	4.2	719,459
TOTAL	100.0	\$17,130,685
Value of Volunteer Legal Services Through Coalition Programs		3,500,000
TOTAL including Volunteer Legal Services		\$20,630,685

An average of 29 percent of funding for the Coalition programs comes from LSC, a total of just over \$5 million in 1995. For individual programs this ranges from 62 percent to 20 percent of their total funding. State appropriations account for another third of the Coalition programs' resources. The Lawyer Trust Account Board, United Ways, local governments, other federal funding, foundations, corporations, and other sources provide the remaining third. Private lawyers give over \$500,000 each year to legal services providers. In addition, legal services donated through the Coalition programs alone are valued at over \$3.5 million each year. Significant legal services are donated through other providers and directly to clients by lawyers.

Other civil legal services providers, including volunteer attorney programs, receive funds from similar sources except they do not receive LSC, Older Americans Act, and other major federal funding. Many get significant local government, United Way and private support. All non-LSC-funded providers have access to services from the Coalition's State Support Center. Volunteer attorney programs also receive support from the Minnesota State Bar Association's (MSBA) Minnesota Volunteer Attorney Program.

In 1984, the Supreme Court, at the request of the MSBA and in cooperation with Minnesota banks, initiated the Interest On Lawyers' Trust Account (IOLTA) program. Through this program, certain client trust funds being held by lawyers, which could not be placed in separate accounts for the benefit of the client, are placed in pooled interest-bearing accounts, with the interest forwarded to the Supreme Court to be distributed for law-related charitable purposes by the Court-appointed Lawyer Trust Account Board (LTAB). This program at its peak generated approximately \$2,200,000 per year. Due to reduced interest rates, it now generates about \$900,000 per year.

Civil legal aid funding (Minn. Stat. § 480.24)¹⁰ was initially enacted by the Legislature in 1982 to help counter a 25 percent reduction in federal funding in 1981. This first legislative action generated approximately \$1,000,000 through a dedicated \$10 surcharge on certain civil court filing fees. The statute ensured proportional state-wide distribution of 85 percent of the funds to Coalition programs with the remaining 15 percent distributed by grants through the Supreme Court Legal Services Advisory Committee (LSAC).¹¹ In 1985, a 3-year sunset on the surcharge was removed. The dedicated funds were later replaced with an appropriation from the general fund.

In 1986, the Legislature, based on recommendations from a joint MSBA-Attorney General task force, added another \$10 surcharge on civil filing fees to support an appropriation of \$825,000 per year for legal assistance to financially distressed family farmers. This was later merged into the general fund. The understanding was that local Coalition programs would continue to provide direct legal services as needed for individual family farmers and that statewide services delivered by the Minnesota Family Farm Law Project of the Farmers Legal Action Group would be supported through the discretionary funds distributed by LSAC.

In 1990, the Legislature increased the filing fee surcharge by \$5 and appropriated an additional \$890,000 as the first step in addressing the critical unmet need for family law legal services identified in the Supreme Court's Gender Fairness Report.

¹⁰Minn. Stat. §§ 480.24-480.242 are contained in Appendix D.

¹¹County by county poverty population statistics for Minnesota are found in Appendix B, page 54-55.

The Legislature subsequently approved \$2 (1992) and \$2.50 (1993) surcharges on most real estate document filing fees to fund an increase in legal aid appropriations. These surcharges together produce over \$5,000,000 per year. Legal aid received an increase of approximately \$2,400,000 a year in 1992-93 or 48 percent of the new revenues. The balance was used for other state and county purposes.

In 1995, an additional \$500,000 per year was appropriated. The current annual appropriation base is \$5,007,000 for general civil legal services, plus \$877,000 for family law services.

B. Recent and Anticipated Funding Reductions and Their Impact on Staffing

In 1995, in addition to the rescission of some 1995 LSC funds, many legal services providers suffered cuts from United Ways; in the metro area, United Way cuts averaged four to five percent because of diminished revenue and designated donations. In 1996, LSC-funded programs face a major cut in their federal funding. Further cuts, if not total elimination of federal funding, are possible for calendar year 1997. There will no longer be federal funding for State Support Center services. It is unlikely that there will be earmarked federal funding for migrant legal services as there has been in the past. Other federal funding will also decrease; for example, Older Americans Act funds will be cut by approximately ten percent. Protection and Advocacy programs for persons with mental illness and developmental disabilities will also be cut back. FARM AID, a public charity funded by the proceeds from Willie Nelson's concert series, has been a core funder of the Farmers' Legal Action Group. While FARM AID continues to grant FLAG about one-sixth of all money raised, the dollar amount has decreased from about \$300,000 for 1988 to about \$100,000 for 1995. Legal services providers generally may also face further declines in United Way funding as designations of donations increase. LTAB revenues have fallen over 55 percent in the past four years, reducing grants to the Coalition programs by \$1 million a year and to other programs funded through the LTAB by over 50 percent.

The Coalition programs have been preparing for the past year for the funding cuts, anticipating their impact in 1996 and 1997. For example, MMLA has eliminated seven casehandler positions since November 1994, and will eliminate five more effective July 1996. SMRLS has eliminated 5 casehandler positions since January 1995, and plans to eliminate 4.5 more in 1996. LSNM has eliminated 2 casehandler positions since January 1995 and eliminated all plans for a branch office in Thief River Falls which was scheduled to open in Fall of 1995 and included 4 staff positions. LASNEM has eliminated one casehandler position since January 1995 and will exhaust its reserve funds in order to retain its remaining staff through 1996. Further layoffs may occur in 1997. Anishinabe lost one casehandler position in 1995; effective January 5, 1996, remaining staff took a 20 percent cut in salary with the office closed on Fridays. And Anoka is reducing the number of clients served by Judicare panel members.

RECOMMENDATIONS

The Committee explored issues facing, and developed recommendations directed toward, the court system, the legal services providers themselves, and the private bar. The Committee also developed recommendations for legislative action. These recommendations, with supporting background information, are outlined below.

IV. RECOMMENDATIONS TO THE COURT SYSTEM

The Committee acknowledges the efforts of the Minnesota Supreme Court and the Conference of Chief Judges to address the critical civil legal needs of low-income persons and recommends that the Court system take the following additional actions.

- A. Judicial District Action Plans.** Each judicial district should approve and implement an action plan to help meet the legal needs of low-income Minnesotans consistent with judicial ethical requirements.

In 1993, the Minnesota Supreme Court established a committee chaired by Justice Sandra Gardebring to consider ways in which state court judges could assist in addressing the unmet legal needs of the state's low-income population. Recognizing the inability of publicly-funded legal service organizations to meet all the needs for legal services, in its December 1994 report, that committee made several recommendations for judicial involvement to address the unmet legal needs of the state's population and to encourage representation by volunteer lawyers. The Committee endorses the recommendations in the Gardebring Committee report.

To implement the Gardebring Report, the Conference of Chief Judges has acted to require each judicial district to develop a plan defining the role of judges and court administrators in meeting the unmet needs for legal services in Minnesota. By resolution adopted by the Conference of Chief Judges in early 1995, each judicial district is to develop a plan addressing the following issues:

- Recruitment and retention of volunteer lawyers,
- Procedural practices to facilitate representation by volunteer lawyers, and
- Judicial training and education.

Each judicial district is to present a plan to the Conference of Chief Judges in 1996. The Committee urges the judges and court administrators to involve others, including local legal services and volunteer attorney programs and local bar associations, in a cooperative, on-going effort to develop and implement each district's recommendations.

1. Support for Volunteer Lawyers. The Committee encourages judges, consistent with judicial ethical requirements, to be actively involved in the recruitment and retention of volunteer lawyers. The Gardebring Committee identified a number of steps judges can take, consistent with the Canons of Judicial Ethics, to encourage the recruitment and retention of volunteer lawyers.

The Committee also supports the Gardebring Committee's recommendations in the areas of scheduling practices to facilitate representation by volunteer lawyers and judicial training and education. Court administrators should consider all necessary steps to provide maximum scheduling flexibility for volunteer lawyers and to provide flexible court hours to facilitate volunteer lawyers' representation of indigent clients. Each judicial district should consider the particular needs of volunteer lawyers in that district and take all efforts to remove administrative barriers to that representation.

2. Consider Attorney Fees. In addition, judges should consider awarding attorney fees to volunteer lawyers and legal service organizations. In family law cases under Minn. Stat. § 518.14 and in other appropriate cases, the Gardebring Committee recommended that judges consider awarding attorney fees. The Gardebring Committee Report noted that case law supported its recommendations. The Report cited Blum v. Stenson, 465 U.S. 886 (1984), in which the Court said that volunteer lawyers and legal services programs should be awarded attorney fees at the same rate as a private lawyer would be awarded fees. The Gardebring Report also cited Rodriguez v. Taylor, 569 F.2d 1231, 1245 (1977), in which the Third Circuit said "[l]egal services organizations often must ration their limited financial and manpower resources. Allowing them to recover fees enhances their capabilities to assist in the enforcement of congressionally favored individual rights."

Award of attorney fees to a volunteer lawyer in a family law case may mean that the lawyer will then be able to accept additional referrals from the volunteer attorney program where, without fees, s/he may not be able to accept additional referrals, particularly after a difficult and long case. Many lawyers and firms donate attorney fee awards to the legal services provider that referred the case, thus enhancing the program's ability to deliver services to more clients. Awards of fees to legal services providers supply funds to represent more clients who might otherwise be appearing pro se. In interpreting statutes similar to, but more discretionary than, Minn. Stat. § 518.14, courts in Montana, Connecticut, and Colorado have ruled in recent years that it is entirely appropriate to award attorney fees to volunteer attorneys and legal services providers. See In re Malquist, 880 P.2d 1357 (Mont. 1994), Benavides v. Benavides, 526 A. 2d 536 (Conn. App. 1987), and Marriage of Swink, 807 P.2d 1245 (Col. App. 1991).

3. Designate a Contact Person. Each judicial district should designate a contact person for local legal services and volunteer attorney programs. The Committee believes that the designation of such a person will assist in better communication regarding the needs of low-income litigants and their counsel in that judicial district.

4. Judicial Education. The Committee believes that it would be useful to include a session during the annual conference of judges addressing the legal needs of and substantive legal issues faced by low-income persons. If possible, the Committee recommends that this be

a plenary session. Judges and lawyers with acknowledged expertise in this area could give an update on pertinent legal developments and facilitate discussions designed to educate judges on the needs of low-income litigants. It is also important that local court staff receive adequate training to assist low-income clients effectively. Staff should be prepared to assist low-income litigants in appropriate referrals to local legal services organizations and volunteer attorney programs and with the proper use of court forms and referral to other appropriate services.

B. Pro Se Litigants. Courts' efforts to improve services to pro se (self-represented) litigants should address the special needs of low-income users.

The numbers of litigants appearing in Minnesota courts without attorneys are increasing, slowing the judicial process, increasing costs and requiring additional resources of the court. They come from all socio-economic groups. Some are pro se by choice, others by necessity. The problems of low-income litigants are often exacerbated by barriers of literacy, language and culture.

The Minnesota court system has initiated a study of this situation and will be making recommendations to provide assistance to pro se litigants. In addition to providing more information to pro se litigants, the courts will be exploring emerging "user friendly" technologies such as information kiosks, auto-attendant telephone systems, and video and computer technologies, to conserve court resources.

While such technologies and services for pro se litigants may be useful in assisting many litigants, pro se assistance cannot replace trained legal counsel representing a litigant. This is especially true of low-income litigants. As the court system proceeds with plans to assist pro se litigants, the fact that many low-income persons may not have the necessary skills to effectively utilize these "self help" methods should be addressed. Training and volunteer recruitment should be expanded to ensure that there are resources to assist those who may not be able to effectively use such "self help" methods. The Committee recommends that court efforts to improve services to pro se litigants should address the special needs of low-income users.

Finally, as the courts recruit volunteers for efforts to improve access to the courts for pro se litigants, the Committee urges them to work cooperatively with local volunteer attorney programs to ensure that volunteers are not drawn away from serving low-income clients directly in high priority cases. In some rural counties, for example, most lawyers are already participating as volunteers, and there are few additional lawyer resources to tap. The Committee believes that especially in the metropolitan area, there can be synergistic efforts between the courts and volunteer programs to draw new volunteers into both the court and legal services efforts. Retired attorneys and law students also should be recruited and involved wherever possible.

- C. Undistributed Class Action Proceeds.** The Committee recommends that trial judges in all courts in Minnesota be educated about the need for funding for legal services for the disadvantaged, and be encouraged to consider making counsel and litigants aware of the possibility, in appropriate cases, of designating local legal services or volunteer programs or the Legal Services Advisory Committee as recipients of cy pres funds, the money left over after class action proceeds have been distributed as far as possible.

Charitable organizations are often designated as the recipients of unclaimed residual funds in class actions under the long-standing cy pres doctrine. The concept is that the unclaimed portion of a class action recovery may be applied to a charitable purpose related to the original purpose of the case. Recently, the cy pres doctrine has become increasingly flexible. Residual funds have been awarded to programs or charities having only a peripheral relationship to the law or subject matter of the underlying litigation. See e.g., Superior Beverage Co. v. Owens-Illinois, 827 F. Supp. 477 (ND Ill. 1993). Legal services providers have been the beneficiaries of cy pres awards in Minnesota and around the country.

D. Conclusion

The Committee recognizes that the state court system, as exemplified by the Report of the Committee on the Role of Judges in Pro Bono Activity, has taken a leadership role in meeting the needs of low-income persons. These commendable efforts provide an excellent foundation for the significant work which still needs to be done. By creating structures that allow for on-going communication among judges, court staff, legal service providers, and local bar associations, the court system will further improve its treatment of and responsiveness to low-income litigants.

V. RECOMMENDATIONS TO THE LEGAL SERVICES PROGRAMS

As discussed earlier in this report, many organizations have documented the serious unmet need for legal services including the American Bar Association, the Minnesota State Bar Association, the Minnesota Supreme Court Gender Fairness Task Force, and the Minnesota Supreme Court Race Bias Task Force. The studies conducted have consistently concluded that even the most critical legal needs -- such as those relating to housing, public assistance income, and family violence -- are not adequately met. Despite limited resources, Minnesota has a comprehensive and well-integrated system of providers delivering civil legal services to low-income people. The Committee looked in detail at the current delivery system and how it might serve clients even more effectively and efficiently.

- A. Cost Savings in Legal Services Programs.** While the Coalition programs and others are already a national model of coordination and cooperation, the programs should continue to search for areas in which they can achieve additional efficiencies and improve client services through increased coordination and cooperation.

The vast majority of the resources available to meet the critical legal needs of low-income Minnesotans come from the Minnesota Legal Services Coalition Programs. Consistently lean budgets have led the Coalition programs to search continuously for ways to deliver services more efficiently and effectively. The Coalition has a national reputation for the ways in which the programs have worked cooperatively with each other, the private bar, other legal services providers, including independent volunteer attorney programs, funders, the courts, and the Legislature. In search of further increases in efficiency and possible cost-saving systemic changes, the Committee began by looking at how Minnesota's legal services providers already work together. A significant amount of consolidation has already occurred among legal services providers. In 1980, the six LSC-funded programs received a special planning grant which they utilized to identify areas for coordination and cooperation. The system in place today is the result of that process.

After careful examination and extensive discussion, the Committee was impressed with the extent to which the Coalition programs recognize the importance of coordination and consolidation and avoiding duplication, and already possess many of the qualities of a centralized organization -- a shared vision, essentially uniform policies and procedures, coordination of training and service delivery, and shared expertise. For readers to understand the level of coordination and cooperation already achieved, the next two sections describe functions that are currently coordinated and identify other organizations providing supportive and coordinated services.

- 1. Functions That are Currently Coordinated.** The following functions are currently consolidated and/or coordinated among the programs, many by the Coalition's jointly-funded State Support Center (Center).

Client Education: The Coalition programs jointly provide self-help booklets and fact sheets relating to critical needs such as housing, consumer, and family law. Several of these booklets

are provided in Spanish, Laotian, Hmong, Vietnamese and Cambodian, as well as in English. In 1995, 24 community legal education booklets and hundreds of fact sheets and supplemental inserts for booklets were produced. The booklets and fact sheets are widely accessible to clients and potential clients of programs throughout Minnesota. In a recent joint initiative, the Center is working with the Minneapolis firm of Leonard, Street & Deinard to develop a brochure advertising the booklets to public libraries and social service providers, among others. The Center has also been successful in obtaining some donated printing, allowing for greater distribution of these booklets.

Training: The Coalition programs jointly provide continuing legal education for staff of Coalition and other legal services programs, including volunteer lawyers. In 1994, 28 statewide training events in substantive poverty law and legal skills were sponsored by the Center; in 1995, there were 34 events. Most trainers are Coalition program staff. The Center also recently developed an initiative, in cooperation with the MSBA Volunteer Attorney Program, to continue to provide skills training. Some private law firms have agreed to include legal services staff in skills training for their own associates. Local volunteer attorney programs also coordinate their own training events. Where possible, Coalition and volunteer attorney program training events are videotaped so that they can be repeated for lawyers unable to attend the live events. The Center has negotiated with continuing legal education sponsors, such as Minnesota CLE and MILE, for reduced fees for legal services staff. This benefits staff of all legal services providers, not just Coalition programs.

Administrative Rulemaking and Legislative Representation: Critical issues for low-income clients are involved in the legislative process and when administrative agency rules are adopted. Sometimes the legislature is the only forum in which these issues can be resolved. Often legislators and agency staff request legal services staff participation because of their special expertise and familiarity with how laws and regulations affect the day-to-day lives of poor clients. The Coalition programs jointly fund the Legal Services Advocacy Project which provides representation to eligible clients before the Legislature and in administrative agency rulemaking on such subjects as domestic violence prevention, landlord/tenant disputes, public benefits, the cold weather rule, consumer protection, and health care regulation.

Statewide Litigation: Although over 99 percent of cases handled by the Coalition programs involve individual representation, the programs from time to time cooperate on complex litigation. In appropriate cases, such litigation is considerably more cost-effective than litigating the same issue over and over. Class actions, which require court approval, are designed as a judicial efficiency mechanism.

Volunteer Attorney Programs: There are programs covering all 87 Minnesota counties through which private attorneys can volunteer to provide civil legal services to low-income clients. They are described in more detail in the private bar section of this report and in Appendix B. The Coalition programs contribute financial support to the Director of Volunteer Legal Services position at the MSBA. The Director runs the Minnesota Volunteer Attorney Program of the MSBA (MVAP), provides support services to volunteer attorney programs throughout the state, including the independent volunteer attorney programs, and convenes the coordinators of these local programs

three or four times each year to share information and discuss common problems. State Support Center and local Coalition program staff work with MVAP to write and keep up-to-date a Volunteer Attorney Desk Manual, monthly Family Law Appellate Case Summaries, and a Welfare Issues in Dissolution Cases Handbook. These materials go to over 1,500 volunteer lawyers through local programs statewide. The Center's newsletter, task forces and trainings are designed, in part, to address needs of volunteer lawyers.

Case Referral: The Coalition programs have an inter-program client referral policy. The policy applies to situations, for example, where a client may live in one program's service area but have a case venued in another service area. The Coalition programs also work closely with other providers in their service areas to ensure appropriate referrals.

Technical Assistance: The legal services providers coordinate and communicate regularly on the mutual provision of technical assistance. This includes areas like improving the uses of technology, fiscal oversight systems, and support for volunteer attorney programs.

Contracts/Space Sharing: Coalition programs contract with each other and with other agencies, such as Centro Legal and Legal Assistance of Dakota, Olmsted and Washington Counties, in order to avoid duplication and share space, support staff and resources, where appropriate. Some Coalition programs also contract a portion of their LSC funds to independent volunteer attorney programs such as Volunteer Lawyers Network in Hennepin County and the Duluth Volunteer Attorney Program.

Statewide Newsletter: The Center publishes a twice-monthly newsletter for legal services staff and over 1,800 volunteer lawyers. The newsletter emphasizes recent developments in poverty law cases, statutes and regulations, updates on cases, upcoming training opportunities, availability of booklets and other client education materials, and notices of task force meetings and other events of interest. Over 50,000 copies of the newsletter were distributed in 1995. The Minnesota Volunteer Attorney Program of the MSBA underwrites the mailing and printing costs for distribution to volunteer lawyers.

Task Forces: Center staff coordinate bi-monthly statewide meetings of task forces in the areas of family, housing, government benefits and seniors law, and use of computer technology. The task forces discuss common legal problems and conduct training. Non-Coalition program staff and volunteer attorneys are invited to attend task force meetings as appropriate. Through the task forces, ad hoc working groups are also established as needed to deal with specific subjects such as family mediation and welfare reform proposals.

Joint Fundraising: The Coalition programs approach the Legislature jointly for funding and submit a joint IOLTA grant proposal. From their inception in 1982, the Coalition's legislative efforts have included a funding distribution mechanism, the Supreme Court's Legal Services Advisory Committee, which makes a portion of the appropriation available for distribution to non-Coalition programs, such as the independent volunteer attorney programs. In addition, the programs have initiated joint ventures in the past in the areas of farm law, immigration law, and family law. The

programs carefully analyze each fundraising effort to determine whether joint fundraising is appropriate. The decision reached depends on whether the potential funder would prefer one statewide proposal, a joint proposal from several programs, or individual proposals from one or more programs. Where appropriate, non-Coalition programs are also included in joint fundraising efforts.

Bi-Monthly Meetings: The Coalition program directors, along with representatives of some non-Coalition programs, meet bi-monthly to review and coordinate initiatives and matters of statewide concern. The Coalition directors also use these meetings to oversee State Support Center activities.

2. Other Organizations Providing Supportive/Coordinated Services.

Minnesota Clients Council: The State Support Center, as well as the individual Coalition programs, provide some funding for this statewide organization of eligible clients which trains local program board members and provides community legal education.

Minnesota Justice Foundation: MJF coordinates volunteer services by law students at all three Minnesota law schools and provides law clerks and volunteer assistance to legal services program staff statewide. Students assist volunteer lawyers as well which leverages additional volunteer lawyer time. This program is unique in the United States in providing coordination among independent law schools. In the 1993 - 1994 program year, 175 students donated 5,390 hours of legal research and other types of assistance to 203 lawyers representing 2,162 clients.

Loan Repayment Assistant Program: The MSBA and MJF, in cooperation with legal services providers and the law schools, founded this program which makes it possible for legal services lawyers with high student loan debt loads to work for legal services programs which have very low salaries. This program has helped legal services providers statewide recruit and retain staff and is particularly important in improving legal services staff diversity.

3. Staff Compensation. The Committee looked at staff compensation while considering possible areas for cost saving. It quickly became clear that this is not an area where further savings are possible. Junior lawyer salaries generally start below \$25,000, and average about two thirds of comparable public lawyers, such as public defenders. Senior lawyers and supervisors are at even lower percentages of parity with public lawyers. Statewide, the staff lawyer experience level averages about nine years. Staff do not accumulate pension rights. Eroding compensation to save money would jeopardize staff stability and experience levels, which are among the programs' strengths. It would also undermine their ability to attract good new lawyers, who are graduating from law school with debts loads averaging as high as \$20,000 or more. By accepting such low salaries, legal services staff already effectively subsidize the delivery system. The Committee believes it would be unfair to ask even greater sacrifices.

4. Conclusion. The Committee concluded that while coordination and cooperation are important, there are important benefits to maintaining a significant degree of local control among

the various programs. Community local control, exercised by clients, local lawyers, social service providers, and funders, has been important for the programs in setting priorities. Although all programs tend to identify the same major priority categories (e.g., housing, family law, public benefits), the day-to-day problems experienced by clients in these areas of law vary significantly from program to program. For example, rural and urban clients often experience quite different needs. In addition, programs serving specific populations, for example, Migrant Legal Services, Anishinabe Legal Services, and the Minnesota Disability Law Center division of Mid-Minnesota Legal Assistance, meet very particular needs and consider relevant cultural and other differences in establishing priorities. All programs have developed effective systems for addressing local needs by including client members on each program's local board. For example, Mid-Minnesota Legal Assistance has 24 client members on its various boards. As a result, it receives much more local control and accountability and is more effective than it could be if only one statewide board existed. The Committee concludes that, in many respects, the Coalition programs have already achieved an appropriate balance between centralization to achieve efficiencies and sensitivity to local priorities.

After discussion, committee members noted that further merger of rural offices may not be cost effective. Non-salary costs represent only about 25 percent of program costs. Merging offices leads to increased travel costs and attorney road time while making services less accessible to clients, many of whom do not have easy access to transportation.

The Committee identified several areas where it did believe that increased coordination and cooperation among the Coalition and other programs should be explored. These include improved local, regional, or statewide intake; the possibility of a statewide hotline for brief telephone advice; additional materials and mechanisms for involving volunteer lawyers; joint purchasing; and expanded uses of technology. The Committee gathered information about these possibilities but did not have time to evaluate them thoroughly enough to make concrete recommendations. Experience in other states with statewide hotlines and regional intake has been mixed; both require significant startup and ongoing operating funds and do not reduce the need for staff for full representation of clients. Programs are urged to continue to gather information on these and other ways in which further improvements in client services and cost saving systemic changes can be made. All programs need to continue to communicate regularly with other programs serving similar populations and similar geographical areas to ensure maximum cooperation.

B. Quality Control and Accountability. All programs should become familiar with and abide by the ABA's Standards for Providers of Civil Legal Services, and when available, the ABA's Standards for Pro Bono Providers.

As required by the LSC Act, local Coalition program boards of directors identify critical legal needs, set priorities and client eligibility guidelines, determine which kinds of cases will be handled, establish policies on class actions and appeals, establish client grievance procedures, allocate scarce resources, and perform all other fiduciary duties required of non-profit board members by state statutes. The LSC Act requires grantees to undergo an annual independent financial audit. LSC also uses independent teams of legal and fiscal monitors to evaluate all

Coalition programs on a regular basis, in recent years every 18-24 months. LSC-funded programs also are required to use common case-tracking and statistics formats. Regular input is sought from program clients about their satisfaction with services provided.

The Coalition programs are also subject to performance criteria required by the LSC. The criteria are derived from the ABA's Standards for Providers of Civil Legal Services to the Poor. The performance criteria cover assuring the quality and responsiveness of legal representation, disseminating information about significant legal developments to clients and their advocates, and training of staff and volunteers, among many other things.

The Committee recommends that all programs become familiar with and abide by the ABA's Standards for Providers of Civil Legal Services to the Poor. The ABA's Standing Committee on Lawyers Public Service Responsibility will be presenting Standards for Providers of Pro Bono Services to the ABA's House of Delegates in February of 1996 for adoption. As with the Civil Legal Services Standards, the Pro Bono Standards were developed in cooperation and consultation with volunteer attorney programs, bar associations, and other legal services providers around the country. The Committee recommends that once they are adopted, all programs become familiar with and abide by these Standards.

- C. Common Case Service Reports. The Legal Services Advisory Committee and Lawyer Trust Account Board of the Supreme Court should explore asking all legal services providers to use a common format for keeping track of and reporting case service statistics to facilitate monitoring and evaluation of the overall delivery of civil legal services to the poor in Minnesota.**

The Committee recommends that the Legal Services Advisory Committee and Lawyer Trust Account Board explore asking LSAC and LTAB funding recipients to use a common format for case service statistics such as that already used by the Coalition programs and their subgrantees, for example, the Duluth Volunteer Attorney Program. As noted above, the Coalition programs use common definitions and categories for keeping track of case service statistics. As noted in Section II, the Unmet Needs section of this report, figures provided in funding proposals to LSAC and LTAB indicate that the non-Coalition programs handle roughly 8,000-9,000 cases each year. For most programs, it is not clear whether these cases are full representation, brief advice, or simply referrals. The Committee believes that it would greatly further the ability of state, local, and private funding sources to monitor and evaluate the overall delivery of legal services in Minnesota if at least all programs receiving LSAC and LTAB funding used similar case tracking and reporting formats.

- D. Contributions By Clients.** Each local legal services program should establish an administrative client fee or fees, which may be voluntary or mandatory at the option of the local program's board, in the suggested amount of at least \$10, subject to hardship exceptions, and the programs should report to LSAC with respect to their ideas and experiences with such fees.

The Committee devoted considerable attention to discussing the concept of clients contributing to the cost of legal services. The Committee recognized that it is important that legal services clients play an integral role in the legal services delivery system. In addition to having client representation on local program boards of directors, the Committee concluded that each local program should establish policies on client contributions toward the legal services they receive. Some believe that asking for client contributions will cause more of a "buy-in" or commitment to the case by some clients.

Some Minnesota organizations have requested or required some level of contribution in the past. For example, the SMRLS' rural volunteer attorney program has since 1982 requested a \$25.00 administrative fee which is forwarded to the volunteer attorney at the end of a case to reimburse for out-of-pocket expenses. SMRLS grants hardship waivers in about 10 percent of the cases to which the fee applies. The contribution system receives strong support from the SMRLS volunteer lawyers. No fee applies to staff cases or to volunteer cases in Ramsey County. On the other hand, the volunteer attorneys serving the rural portion of the MMLA service area have rejected the idea of an administrative fee. MMLA, many years ago, requested a \$3 contribution. However, receiving feedback that the contribution was a barrier for some clients, it ceased requesting the contribution. LASNEM used to ask for a \$50 administrative fee before a client was added to the marital dissolution waiting list. In late 1995, the LASNEM board rescinded the fee believing it was a barrier to service. Centro Legal employs a sliding scale fee system in certain cases. It never charges clients for advice only. It waives the fee if a client cannot pay. Centro Legal has found the fee program somewhat difficult to administer. Programs providing services to senior citizens using Older Americans Act funds are encouraged to request a client contribution at the close of service. Experience with this varies. In some programs, contributions are not requested of people who are totally destitute, in part because program experience has been that some clients may feel compelled to give the program money instead of purchasing needed prescription drugs or food, for example. Others bring cookies or handicraft items instead of money. As providers develop their client contributions policies, the Committee suggests that they gather information about experiences with client contributions both within and outside of Minnesota.¹²

Under current LSC regulations, LSC-funded programs cannot charge for services. After getting LSC approval, programs can ask clients for a contribution for limited administrative expenses.

¹²See for example, F. Wm. McCalpin, "Should Clients Pay? The Canadian Experience," Management Information Exchange Journal IX:33 (1995).

The Committee analysis determined that imposition of a client contribution would contribute only slightly to funding for the programs.¹³ A majority of the matters coming to the programs would not be appropriate for a fee, for example, advice only matters, many of which are handled by telephone; family law cases involving domestic abuse, which are a significant percentage of the Coalition programs' cases; emergency housing cases; or public benefits cases. Any contributions plan must be very sensitive to the fact that even a very small fee will pose a significant or prohibitive barrier for some clients. As the sample monthly budgets found in Appendix E demonstrate, many legal services clients are not simply poor -- they are destitute. For those clients, a fee of even \$10 is impossible to pay. Plans must reflect local community needs, including cultural issues. Committee members noted that in some communities, because of pride and other cultural factors, destitute clients may not seek service at all despite availability of a hardship waiver. Some programs may want to consider asking for a contribution at the close of service rather than up front.

While there are strong proponents of asking clients to contribute, the biggest concern expressed by some Committee members was that destitute clients with meritorious cases not be discouraged from requesting service. Also, some programs that have implemented client fees or contributions, such as Centro Legal, do not find any difference in client commitment in fee versus non-fee cases. A Committee member noted that cases involving some difficult clients of legal services programs could be even harder to handle if the client has paid a fee to the program.

Because experiences with client contributions and administrative fees have varied so widely and because each local program may take a different approach to implementing the Committee's recommendation, the Committee believes that it is important for the programs to report to the Legal Services Advisory Committee with respect to their experiences with and ideas about such fees. The programs are also encouraged to share their experiences with each other.

E. Full Range of Legal Services. The legal services delivery system should continue to strive to offer to low-income people a level playing field, access to all forums, and a full range of legal services in areas of critical need.

For over 50 years, Minnesota's legal services programs have offered low-income Minnesotans access to a full range of services, ranging from advice and representation in routine cases to client representation in legislative and administrative rulemaking proceedings and representation of large numbers of clients in complex litigation addressing systemic legal problems. For example, legal services staff in Minneapolis and St. Paul helped draft and get passed the Small Loan Act to respond to loan sharking. The Minneapolis program helped with the creation of the Conciliation Court system, to give low-income people access to justice in small cases without the need for a lawyer. Legal services staff in the past have represented clients successfully challenging race

¹³Generous estimates are that client contributions would raise no more than \$100,000 statewide per year. In some cases, these contributions or administrative fees do not come to the program. For example, the administrative fee paid to the SMRLS rural volunteer attorney program goes to the individual volunteer lawyer as reimbursement for costs at the end of the case. Some volunteers donate the fee back to the program.

discrimination in the Minneapolis and St. Paul fire departments, race and disability discrimination in public housing, and illegal termination of disability benefits to thousands of disabled Minnesotans. Legal services staff helped draft and get passed the Domestic Abuse Act, which has given tens of thousands of abuse victims fast access to the courts without the need for lawyer involvement. There are many other examples of similar cost-effective lawyering by legal services staff in Minnesota.

The Committee recommends that every effort be made to preserve the flexibility of local programs to respond to client need in the most efficient, effective manner. It is equally important that legislative and administrative policy-makers have access to the unique perspectives of legal services staff, and that the judicial system be able to fashion the most cost-effective remedies available in cases handled by legal services lawyers. This is especially important if program resources are shrinking while client needs are growing. While the final details are not in place, it is clear that Congress is going to impose on providers that accept LSC funds, restrictions and prohibitions on activities which Congress does not wish to fund. However, in a change from past practice, these restrictions and prohibitions will apply to all funds received by those programs, including state-appropriated, United Way, private foundation, and other funds. Some of those non-LSC funds are earmarked by funders for activities which will now be restricted. It will be critically important for programs that do not receive LSC funds to continue to offer clients access to legitimate services that cannot be provided with LSC funds but that local boards determine are essential. Some of the restrictions and prohibitions include

- no legislative representation of eligible clients at the local, state, or federal level, including responding to requests from city council or county board members or state legislators.

- no administrative rule-making representation at the local, state, or federal level, including responding to requests for information or assistance from agency staff.

- no legal representation for any person or any other participation in litigation, legislation, or rulemaking involving efforts to restructure a state or federal welfare system, except that programs could represent an individual client who is seeking specific relief from a welfare agency where the relief does not involve an effort to amend or otherwise challenge existing law.

- no ability to seek or collect statutory attorney fees awarded by the court¹⁴

It is very important that legal services providers in Minnesota continue to strive to offer to low-income people a level playing field, access to all forums, and a full range of high quality legal services in areas of critical need.

The Committee recommends that the LSC-funded programs take whatever steps they can to keep non-LSC funds free to be spent on whatever activities other funders wish to support.

¹⁴See Section IVA2 at page 17. The Committee recognizes that the prohibition on LSC-funded programs claiming attorney fees may cause problems with implementing this recommendation encouraging judges to consider awarding attorney fees. As resources for legal services are more limited, it will be even more important that judges consider awarding attorney fees to volunteer lawyers and to non-LSC funded programs. There is no prohibition on LSC-funded programs recovering actual costs.

- F. Special Populations and State Support Services.** Legal services funding should be structured to ensure that populations with special needs, such as Native Americans, migrant and seasonal farm workers, people with disabilities, and financially distressed family farmers, continue to have access to legal services and that adequate state support services, such as training, community legal education materials and mechanisms for information sharing continue to be available to all legal services providers, including volunteer attorney programs.

As described in Section II on the unmet legal needs, Congress has decided to discontinue earmarking LSC funds for services to populations who are historically undercounted in the census and who are particularly vulnerable and have special legal needs such as migrant workers. LSC funding for Native American programs, while being provided as a separate line item, is being substantially reduced. As noted above, legal and advocacy services for persons with disabilities are also losing funding at the same time that benefit programs for those persons are being drastically cut back; this will jeopardize self-sufficiency efforts for those trying to work and may lead to reinstitutionalization of many children and adults with disabilities. Financially distressed family farmers are having serious difficulties financing their operations and face increasingly complex legal issues involving lending law generally and agricultural credit and new farm programs in particular. All of these populations with special needs must continue to have access to legal services.

Also, all LSC funding for national and state support services such as substantive poverty law training and information sharing has also been eliminated. Until 1996, four percent of LSC funds allocated for each state (approximately \$200,000 in Minnesota) went to state support services. In the past, a national poverty law journal, Clearinghouse Review, was provided free to each local LSC-funded office. Copies of pleadings and other documents could also be requested and computerized legal research assistance with the specialized poverty law data base was available. Other national support center publications were supplied free to local LSC-funded offices and independent volunteer attorney programs. These included extensive practice manuals in public and subsidized housing, consumer law, welfare law, and education law, among others. Centers also provided expert assistance through phone consultations and sending trainers to statewide continuing legal education programs. All of these resources made local programs more efficient by eliminating duplication of effort and "reinventing the wheel". Local programs will now have to budget separately for all of these services which could easily cost several thousand dollars each year. Minnesota's State Support Center relied on these materials and trainers as a base on which to produce the high quality, Minnesota-specific materials relied upon by local programs, clients, and volunteer lawyers.

The importance of Minnesota's State Support Center to the coordination and cooperation among all civil legal services providers, including the volunteer attorney programs, and the loss of the LSC funding for state support services and loss of the national resources, make it critically important that there be strong efforts to continue state support services in Minnesota with other funds.

VI. RECOMMENDATIONS TO THE PRIVATE BAR

In Minnesota, the legal profession has a long tradition of providing uncompensated legal services to people who cannot afford them. Meaningful access to our system of justice usually requires the assistance of a lawyer. Minnesota lawyers, understanding that the disadvantaged must have access to justice, fill an important and expanding role in the overall delivery of legal services to the disadvantaged. Organized volunteer attorney programs, some of which are almost 30 years old, have continued to grow. LSC-funded programs are required to make an amount equal to 12.5 percent of their LSC grant available to provide opportunity for the involvement of private attorneys in the delivery of legal assistance to eligible clients. The pool of lawyers who volunteer their services through the structured programs in Minnesota has increased from under 500 in 1981 to over 3,000 in 1994.¹⁵ The MSBA's Directory of Pro Bono Opportunities for Attorneys lists over 70 organizations through which lawyers can volunteer.¹⁶ Unfortunately, as the need for legal services is increasing, the ability of LSC-funded and other programs to meet the need is adversely affected by shrinking resources and LSC restrictions. Volunteer lawyers will be increasingly called upon to help meet the legal service needs of the disadvantaged.

Recent efforts build upon many years of MSBA activity in support of access to legal services generally and volunteer legal services specifically. The MSBA encouraged and assisted with formation of volunteer attorney programs to serve all 87 Minnesota counties in the early 1980s. The MSBA's Director of Volunteer Legal Services provides technical assistance and support to Minnesota civil legal services providers including volunteer attorney programs. The MSBA has developed, adopted and disseminated Model Pro Bono Policies and Procedures for Law Firms and Government Attorneys. The MSBA's Legal Assistance to the Disadvantaged (LAD) Committee is currently circulating for comment a draft model pro bono policy for law schools. More broadly, the MSBA has consistently supported adequate funding for civil legal services delivery and has actively worked in the Legislature to encourage increased funding. In 1994, the MSBA led efforts to form Minnesotans for Legal Services, a broad-based organization whose mission is to ensure that people throughout Minnesota are kept informed about legal services developments in Washington and St. Paul so that they can advocate with members of Congress and the state Legislature in support of legal services.

¹⁵ABA 1994 Harrison Tweed Award Nominee Information Sheet for Minnesota State Bar Association, at p. 4.

¹⁶For additional history and description of pro bono in Minnesota, see McCaffrey, "Pro Bono in Minnesota: A History of Volunteerism in the Delivery of Civil Legal Services to Low Income Clients," Law & Inequality 13:77 (1994).

- A. Rule 6.1. The organized bar and local legal services providers should encourage all lawyers to meet their obligation under revised Rule 6.1 to donate 50 hours of legal services annually, primarily to the disadvantaged, and to make direct financial contributions to local legal services providers.**

To respond to the unmet need for legal services, Minnesota lawyers and their professional organizations recently have moved aggressively to increase the amount of voluntary legal services for the disadvantaged. The MSBA's petition to the Minnesota Supreme Court to amend Rule 6.1 of the Minnesota Rules of Professional Conduct was granted on December 11, 1995, to be effective on January 1, 1996. This Committee recommended that the Supreme Court adopt the MSBA's petition, and the Committee co-chairs submitted a letter to the Court conveying its support, before the Court's November 15, 1995 hearing on Rule 6.1.

The revisions strengthen the Rule by stating an aspirational goal of 50 hours of volunteer service per year, the substantial majority for the disadvantaged, and giving a clear definition which focuses on legal services to persons of limited means. The Rule also encourages lawyers to contribute money to legal services providers as well as donating volunteer time. The Committee supports the MSBA's LAD Committee in its plans for an extensive statewide educational campaign, in cooperation with local bar associations and local volunteer attorney programs, to acquaint lawyers with revised Rule 6.1 and to encourage them to comply with the aspirational goal. Written materials have already been prepared. The LAD Committee and MSBA staff will work with local programs on expanding the availability of volunteer legal services as well as on fundraising from individual private lawyers.

- B. Strengthen Support for Volunteer Attorney Programs. Volunteer attorney programs should continue to be well funded so that there are adequate means at the local level to match client needs with volunteer lawyers. The MSBA should provide additional technical support to assist local programs with fundraising and increasing donated legal services.**

1. Background

Organized volunteer attorney programs cover all 87 Minnesota counties. The structure in Minnesota that enables this effective and efficient involvement of the private bar is paid for in large part with LSC funds. Over 1,700 private lawyers donate legal services through the Coalition programs' volunteer and judicare programs, donating legal services valued well in excess of \$3.5 million each year. These volunteer programs cover 78 of Minnesota's 87 counties. Volunteer lawyer services in the other nine counties are coordinated by five free-standing programs. While these organizations receive some funding from LSC grantees, they are managerially separate and obtain funding from other sources, such as LTAB, LSAC, county boards, and donations from local lawyers and law firms. These programs are Legal Assistance of Dakota County, Legal Assistance of Olmsted County, Legal Assistance of Washington County, Volunteer Attorney Program of Duluth, and Volunteer Lawyers Network. They are described in Appendix B.

For many years, private lawyers in Minnesota have also contributed financially to legal services providers. They now contribute approximately \$500,000 each year through the SMRLS Campaign for Legal Aid, The Fund for the Legal Aid Society of Minneapolis, the Hennepin County Bar Association's Annual Bar Benefit and Volunteer Lawyers Network Silent Auction, the District 21 (Anoka County) Bar Association's and the Itasca Bar Association's annual giving, and other local fundraising activities.

The American Bar Association has issued a Pro Bono Challenge to the nation's 500 largest law firms, asking them to dedicate three to five percent of their billable hours annually to pro bono legal services, primarily to the disadvantaged. In Minnesota, 11 law firms, with approximately 1,000 lawyers, collectively, have accepted the Challenge. The Minnesota response is the highest percentage response in the country.

In addition to donating time and money, individual private lawyers also handle many cases at reduced fees for people whose incomes are slightly over the limits for free representation. If program funding is reduced and private attorneys are expected to fill the gap by doing more free work for the poor, this may put pressure on them to increase their fees for middle-income clients who already have difficulty affording representation. This could be especially true for small firms and solo practitioners, many in rural areas and many of whom are already under growing financial pressure.

Even before the creation of structured volunteer attorney programs, the bar acknowledged that its responsibilities included providing free legal services to people in need. Lawyers throughout Minnesota continue to provide such services directly as well as through the organized programs. It is difficult to determine how much service is provided informally. As law practice becomes more specialized and fewer lawyers engage in general practice, it may be more difficult for individuals needing free assistance to find a lawyer directly and organized volunteer programs may assume increased importance. Also, the organized programs provide a mechanism to ensure more equitable distribution of the uncompensated work, as well as a way to find representation for clients who approach a lawyer directly but whom that lawyer cannot assist. The organized programs provide lawyers with training in poverty law and the special needs of low-income clients, malpractice coverage for cases taken through the programs, mentors, and many other support services.

2. Steps to Strengthen Volunteer Attorney Programs.

Not only do low-income people need to be far better informed about their legal rights and about the availability of legal services, but the private bar, legislators, and the public also need to understand better the severity of the unmet need for low-income legal services, especially in areas beyond family and housing law. While many private lawyers already are contributing time, "in general, too few are asked to give too much. While they are surprisingly very successful in what they are able to accomplish, it is clear that they need [more] ... assistance."¹⁷ Lawyers

¹⁷November 10, 1995, memo from Rep. Sherry Broecker to the Committee.

particularly need additional training on how to work effectively with low-income clients and in substantive poverty law. Even with the number of lawyers currently volunteering, there are some bottlenecks caused by insufficient staffing. As more lawyers volunteer more hours, considerable additional resources will be needed to screen the clients, match them with willing lawyers, and ensure that lawyers taking cases receive needed training and materials. In much of rural Minnesota, virtually every private lawyer is volunteering time already. In these areas, there are no more private lawyers to ask.

The Committee recommends that continued attention be given to the volunteer attorney programs to ensure that there is an adequate system to match the volunteer lawyers and the low-income clients. A portion of any increase in funding must be available to the volunteer attorney programs through which lawyers provide direct volunteer legal services to the poor.

Given the increase in critical legal needs and cuts in federal and other funding, the need for volunteer lawyers will increase. With the implementation of revised Rule 6.1, and continuing expansion of the ABA Pro Bono Challenge, the number of lawyers volunteering their time should also increase, as will the need to train and supervise volunteer lawyers and match them with clients. With some of the restrictions that Congress is imposing on the type of cases handled by LSC-funded programs, the disadvantaged who cannot be served by LSC programs will turn increasingly to the private lawyers. New approaches will need to be devised to engage more private lawyers in areas in which they have previously not routinely volunteered, for example, in complex litigation and public policy areas.

The Committee also recommends that the MSBA increase the resources it devotes to providing technical assistance to the volunteer attorney programs, as well as the other legal services providers. The MSBA, as a statewide organization of lawyers, is in a unique position to provide such support. This could include:

- improving approaches to fundraising from law firms and individual lawyers, especially by programs and in geographical areas in which this is not already being done.
- developing materials for programs to use in encouraging planned giving.
- encouraging law firms to place lawyers in fellowships with legal services providers for several months or for particular projects. This is sometimes known as rotation of volunteer lawyers or "lend-a-lawyer" and has been done successfully in several places around the country.
- assisting with grant proposals to community funds and foundations.

- C. Reporting of Pro Bono.** The MSBA's Legal Assistance to the Disadvantaged Committee should be encouraged to develop a system for measuring the activities undertaken by Minnesota lawyers in order to establish a baseline for that activity, to encourage more lawyers to participate, and to evaluate whether efforts to increase such activity are successful.

In 1990, the MSBA asked the Supreme Court to implement mandatory reporting of volunteer legal services and financial contributions to legal services providers. At that time, the Court issued an order strongly encouraging pro bono but declining to implement mandatory reporting. Since 1990, the Texas State Bar implemented voluntary reporting of pro bono and the New York State Bar conducted an extensive pro bono survey. Most recently, the Florida Supreme Court implemented mandatory reporting of pro bono time and financial contributions to legal services providers along with adoption of a rule similar to 6.1 setting an aspirational goal for pro bono hours or a specific dollar amount to be contributed in lieu of the hours. Since then, contributions of time and money have increased dramatically in Florida.

At the November 15, 1995, hearing on the MSBA's petition to amend Rule 6.1, the justices asked several questions about how the success of the revised rule might be measured and whether the MSBA had again considered the reporting of pro bono. Those questions were consistent with frustrations this Committee has experienced over the past four months. The Committee knows that a great deal of volunteer work is being done by lawyers in Minnesota, far in excess of the \$3.5 million which is donated through the Coalition program volunteer components. However, it has proven impossible to come up with any reliable number. The Committee believes it is important that the Supreme Court, the Legislature, and the public have clear information on the extent to which lawyers in Minnesota are helping to address the unmet need for legal services. This Committee believes that the time is ripe to reconsider the idea of some form of reporting in Minnesota. The LAD Committee is in the best position to undertake such a review, consider the pros and cons of what has been done elsewhere, and recommend a process.

- D. Private Fundraising Initiatives.** The bar should encourage and support fundraising initiatives undertaken by the legal services providers.

Revised Rule 6.1 states that in addition to donating time, "a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means." As noted above, Minnesota lawyers are already doing a great deal in this area. However, with increased need for services to the poor comes increased responsibility on lawyers to help meet that need. The Committee therefore recommends that all lawyers in Minnesota give increased encouragement and support to private fundraising initiatives by the legal services and volunteer attorney programs throughout the state.

- E. Lawyer Trust Account Interest.** The MSBA and the Lawyer Trust Account Board should work together to encourage Minnesota banks to restore the interest rates on lawyers' trust accounts to earlier levels. Even a one percent increase would substantially increase the revenue available for distribution to legal services programs.

As described in Section IIIA above, the MSBA, Minnesota banks, and the Supreme Court worked together in the early 1980s to create the Interest on Lawyers Trust Account program which is administered by the Lawyer Trust Account Board. The revenue available for LTAB grants has shrunk by over 50 percent in the past four years largely due to the fall in interest rates. Interest rates paid by banks on IOLTA accounts on December 31, 1995 are approximately 20 percent of what they were in 1987, while the prime rate charged by banks is 105 percent of what it was in 1987.¹⁸ In 1993, most Minnesota banks responded favorably to a request that service charges and transaction fees on these trust accounts be waived. The Committee recommends that the MSBA and the LTAB work together to encourage Minnesota banks to restore the interest rates on lawyers' trust accounts. Even a one percent increase would substantially increase the revenue available to LTAB for distribution to legal services programs. With IOLTA income averaging just under \$1 million a year, a one percent increase would generate another \$1 million a year.

- F. Attorney Registration Fee Increase.** To ensure that all lawyers assume an increased part of the responsibility for funding legal service providers, beyond the voluntary financial contributions that many individual lawyers already make, the Supreme Court should be petitioned to increase the annual lawyer registration fee by \$50 for lawyers practicing more than three years, and \$25 for lawyers practicing three years or less, with the increase going to the Legal Services Advisory Committee for allocation to legal services providers, including volunteer attorney programs.

Although the Committee believes that lawyers are not solely responsible for meeting the unmet need for civil legal services, lawyers are the gatekeepers of justice, and should take the lead. Lawyers in effect have a monopoly, as only they can provide legal advice and represent parties before the courts. Lawyers in Minnesota are already donating over \$3.5 million in legal services each year through the Coalition programs alone, with considerably more legal services donated directly and through other organized programs. Lawyers are also already making financial contributions of over \$500,000 each year directly to legal services providers. While these contributions are impressive, the Committee believes that all lawyers should assume an increased part of the responsibility for funding legal services.

The Committee recommends that the Supreme Court adopt in 1996 an increase in lawyers' annual registration fees of \$25 for all lawyers not otherwise exempt, and \$50 for lawyers admitted over three years. The funds could be distributed through the Court's Legal Services Advisory Committee pursuant to Minn. Stat. §§ 480.24 *et seq.*, which provide that at least 85 percent of the funds go proportionately to the six programs which together serve the entire state, and the

¹⁸IOLTA rates were 5.25 percent in 1987, and 1.01 percent on December 31, 1995. The prime rates were 8.1 percent in 1987, and 8.75 percent on December 31, 1995.

balance of up to 15 percent be distributed through grants to programs serving eligible clients, including the volunteer attorney programs.

The Committee believes that all lawyers, not just those already volunteering time and/or contributing money, have an obligation to help ensure that all Minnesotans have meaningful access to justice. There are over 20,000 registered lawyers in Minnesota. Of these, over 17,000 are practicing, 2,452 are nonresidents, 755 are retired, and 100 are in the armed forces. The current registration fee is \$142; those admitted less than three years pay \$42.

In discussing the amount of the increase in registration fees, the Committee initially considered a \$100 increase. After learning of the Lawyers Professional Responsibility Board plans to petition the Court for an increase of \$20 per year to support its operations, and of other possible fee increases, the Committee scaled back its recommended increase. The Committee's recommendation of an increase in attorney registration fees of \$50 for lawyers practicing more than three years, and \$25 for those practicing for three years or less is the equivalent of only half an hour of most lawyers' billable time. This amount, a dollar a week, does not seem unreasonable. The Committee notes that it represents one percent of the aspirational standard set forth in revised Rule 6.1 of the Rules of Professional Conduct, recently adopted by the Supreme Court.

The Committee discussed the petition filed with the Supreme Court by the MSBA in 1982 for a one-time \$25 increase in the attorney registration fee, also to support civil legal services. That petition was denied by the Court without an opinion. Arguments were presented to the Court at that time with respect to the constitutionality of such a fee. The Committee recognizes that the outcome of a petition for a fee increase is uncertain. However, the Committee believes that ensuring access to justice for the poor is an integral part of the role of lawyers and judges in the judicial system. It is as essential to the integrity of the profession and the healthy functioning of the judicial branch of government as continuing education of lawyers, eliminating discrimination within the bench and bar, creating a client security fund to protect clients against theft by their lawyers, and enforcement of the disciplinary rules, all of which have been adopted by the Court, and carry mandatory direct or indirect costs for lawyers. In 1987, the Supreme Court created the Client Security Fund assessment in the face of constitutional objections similar to those raised in 1982. The Committee believes that the Supreme Court, within its constitutional responsibility to oversee the judicial branch of government, has the power to take steps to ensure that all citizens have access to that branch of government, including steps which impose a cost on lawyers, who enjoy a legal monopoly as gatekeepers to the justicial system.

The Committee does not expect to file a petition with the Supreme Court to request this increase until summer of 1996. The Committee believes that it is important for the Minnesota State Bar Association to have an opportunity to consider this report and the Committee's recommendations. While the Committee strongly supports this recommendation, the Committee recognizes that concerns exist about such a fee increase, including its possible impact on bar association memberships and on efforts to increase donations of time and money by lawyers. However, many Committee members received significant positive feedback at the local level in informal discussions before the Committee voted in favor of this recommendation. The Committee

believes that widespread discussion of the proposal at the local level, including consideration of the critical and growing unmet need for legal assistance, will generate support for the recommendation.

G. Conclusion.

Lawyers have a special responsibility to help ensure that all people have access to our system of justice. Many have demonstrated, with both time and money, that they are willing to do their part. More needs to be done, and all lawyers need to be involved. However, the entire burden cannot and should not fall on their shoulders. By way of comparison, private doctors are not expected to meet all the medical needs of the poor without pay. Access to justice is fundamental to our system of government, and all Americans have a stake in securing respect for the law. This cannot happen unless the system is both just and accessible to all citizens, rich or poor.

VII. RECOMMENDATIONS TO THE LEGISLATURE

Access to justice is a fundamental right of all citizens, rich and poor. It can be persuasively argued that this right follows very closely behind the basic human needs for safety, food, clothing, shelter and primary medical care. In fact, the mission of the legal services programs is primarily to help clients meet those basic needs.

The Committee is convinced that the judiciary, the legal services staff and volunteer programs and the private bar in Minnesota will continue to work diligently to improve the efficiency with which legal services are delivered to low-income Minnesotans and to increase the level of volunteer efforts by Minnesota lawyers. The Committee is, however, equally convinced that better-funded, stable legal services programs are essential to delivering legal services to low-income Minnesotans. To achieve the necessary level of funding to support the legal services delivery system in Minnesota, including the volunteer attorney programs, the Committee recommends a partnership effort by the lawyers of Minnesota and the Legislature. The Committee believes the following proposals provide a structure for ensuring at least a minimum level of funding for the five-year period commencing in 1996.

The Committee requests that funds appropriated from the general fund for legal services be increased as follows:

- The appropriation base for civil legal services should be increased by \$900,000 for the fiscal year which begins on July 1, 1996, bringing the annual base amount to \$5,907,000.
- The appropriation base for civil legal services should be increased by \$1,000,000 for the fiscal year which begins July 1, 1997, bringing the annual base amount to \$6,907,000.
- The appropriation base for civil legal services should be increased by \$1,500,000 for the fiscal year which begins on July 1, 1999, bringing the annual base amount to \$8,407,000.

The proposed increases, if implemented, will offset the current and pending 1996 LSC funding losses. If no further losses occur in the next few years, these increases would also significantly reduce the unmet need, which carries a serious cost to our State. They would also provide a stable funding base, leaving Minnesota's low-income citizens less vulnerable to the effects of unpredictable political changes on the national level.

Because the Committee believes that providing access to civil justice for all people, like access to criminal justice, is a fundamental responsibility of our society, the Committee does not believe that appropriations should be increased only if a new revenue source is created. The funding of the judicial system in Minnesota (Supreme Court, Court of Appeals, trial courts and civil legal assistance) represents only about one percent of the state budget. The Committee notes that the following revenue sources exist or could be created by the Legislature:

- The State has a projected surplus in the general fund in excess of \$500,000,000.
- The fee for filing certain real estate documents could be increased by \$2, as was done in 1992. This would generate \$1.8 million per fiscal year.
- The fee for filing civil court lawsuits could be increased by \$8. This would generate \$1.1 million per fiscal year.
- The renewal filing fee for professional corporations could be increased by \$75 per year. This would generate \$290,000 per fiscal year.

The Committee considered the pros and cons of several possible funding sources:

General fund surplus:

Pro: It would not require imposition of any new fee or tax. It would not require reduction of funding to any other program below current levels. Legal services efforts provide direct benefits to the taxpayers by generating revenues and by enhancing the economic self-sufficiency of many clients.

Con: The Legislature will face many competing proposals for portions of the surplus. There will be disagreement about whether the surplus should be used at all, and about whether it should be used to soften the impact of federal funding cuts.

Real estate filing fees:

Pro: A \$2 fee represents a nominal burden spread across a large number of persons. Such a small fee will not deter anyone from carrying out the transactions which are subject to the surcharge. Over 20% of legal aid cases are housing-related. Legal aid work prevents homelessness through preventing illegal evictions and preventing foreclosure of family homes. Legal aid work keeps families on their farms. Legal aid protects property values by forcing landlords to maintain their properties.

Con: These filing fees have already been raised twice to support legal aid funding. Filing fee increases are borne not by all taxpayers but only by those involved in real estate transactions.

Civil filing fees:

Pro: All the taxpayers subsidize court users. Filing fees offset only a small portion of the actual cost of a civil case. The small burden on court users is more than offset by the benefits of providing access to the judicial system to thousands of low-income Minnesotans.

Con: Filing fees have been raised significantly since 1982, and are higher than the national average. Filing fee increases are borne not by all citizens but only by court users. The Supreme Court and the Legislature in 1989 determined that a significant portion of the court system would be transferred from county to state funding. The funding source for that transfer of funding responsibility is court fees identified in Minn. Stat. § 357, including the civil filing fee.

Professional corporation renewal filing fees:

Pro: A \$75 increase would generate \$290,000 per year from groups generally able to afford it, many of whom are lawyers, and almost all of whom receive benefits from the state in excess of the filing fees they pay.

Con: This proposal would generate spirited opposition from many professional groups, making any related appropriation more controversial than legal services funding has been in the past.

Sales tax on lawyers' services:

The burden of several of the Committee's recommendations, including increased volunteer legal services, the registration fee increase, and the civil filing fee increase, will fall in whole or in part on lawyers. For this reason and others, the Committee believes that a sales tax on lawyers' services would not be a good idea. Among the Committee's concerns about a sales tax on legal services were: encouraging use of out-of-state counsel, burdening clients already in financial trouble, exempting in-house corporate counsel, and discouraging people from seeking legal advice. These concerns are addressed more fully in Appendix F.

Other possible funding sources:

The Committee believes that there may be other revenue sources and encourages the Supreme Court, the Legislature, the bar, and the legal services programs to continue to explore all possibilities.

VIII. CONCLUSION

Minnesota's longstanding tradition of supporting access to justice is deeply ingrained in the history of the state and embodied in its Constitution:

Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws. (Minnesota Constitution, Art. I, Sec. 8)

Access to a lawyer is essential to the effective and efficient functioning of our treasured system of justice. But in Minnesota, even before the anticipated federal funding cutbacks, there is less than one lawyer for every 3,000 low-income Minnesotans, while there is one lawyer for every 265 persons in the general population.

Legal services staff and volunteer attorneys, working together last year, were able to serve only about one-fourth of low-income Minnesotans who needed assistance, but their work:

- helped to stabilize families, maintain communities, and make society safer;
- saved taxpayers money;
- prevented legal problems which would otherwise further clog the courts, and increase costs; and
- helped people become self-sufficient and participate effectively in society.

Federal funding cutbacks for legal services promise to severely curtail the availability of legal counsel. Low-income Minnesotans seeking justice wait patiently, like the smallest child in line at the drinking fountain, hoping that when their turn finally comes, someone will be there to lift them up, to help them reach.

Justice is a compelling human need. When the essential becomes inaccessible, powerful forces cause adverse actions. Consequences from denials of access to justice are great: violence, multi-generational family dysfunction, increased financial and physical dependence, deprivation, depression, desperation, and death.

This Committee's members, appointed by the Supreme Court to represent the Legislature, the federal and state Judiciary, private and public lawyers, legal services staff and the public, have devised recommendations for enhancing access to justice through funding changes and actions affecting all the represented groups. The recommendations reflect both common commitment and shared sacrifice, and a partnership approach among Minnesota's lawyers, the courts, and the

Legislature to replacing funds lost through the federal funding cut backs and to meeting the legal needs of our most needy citizens.

As federal traditions alter or falter, Minnesota values remain. The Committee recommendations will help continue the state's proud principles of justice: giving protection to the vulnerable, dignity to the elderly, opportunity to the children, support to the impaired, hope to the hopeless.

Finally, the Committee recommends that the Supreme Court continue the Committee's existence, at least through 1996, to allow the Committee to work to implement its recommendations.

Respectfully submitted,

JOINT LEGAL SERVICES ACCESS AND
FUNDING COMMITTEE

APPENDIX A
Committee Members

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**APPENDIX B
MINNESOTA'S CIVIL LEGAL SERVICES PROVIDERS**

MINNESOTA LEGAL SERVICES COALITION PROGRAMS

The Coalition programs provide a full range of civil legal services to eligible clients in all 87 Minnesota counties through staff lawyers and paralegals and judicare and volunteer lawyers. All receive a portion of their funding from the federal Legal Services Corporation. The descriptions that follow do not take into account layoffs and attrition that have taken place since both because of the 1995 rescission of LSC funds and the need to anticipate the deeper 1996 cuts. See Section IIIA, page 13, for information on recent and anticipated staffing changes.

Anishinabe Legal Services (ALS) serves low-income persons who reside on the Leech Lake, Red Lake and White Earth Reservations in northern Minnesota. An estimated 14,500 people are eligible for services. The median income in five of the seven counties is at least \$5,000 below the statewide median. Most ALS clients live in remote, rural locations; many do not have telephones or transportation. Their legal needs include Indian law/Indian Child Welfare Act, tribal law/tribal courts, education, Social Security, housing, discrimination, and elder issues. First priority is given to cases that involve both poverty law and Indian law. ALS staff practice in state, federal and Tribal courts, as well as before administrative and tribal agencies.

ALS employs four lawyers, two paralegals, and two administrative/support staff. ALS closed 734 cases in 1994.

ALS has no separate volunteer attorney program because the service area overlaps those of LSNM and LASNEM. ALS often refers clients to those programs for representation. Very few private lawyers have offices on the reservations served by ALS.

ALS receives 62 percent of its financial support from LSC.

Judicare of Anoka County (JAC) serves low-income residents of Anoka County. An estimated 16,900 people are eligible for services. JAC is a combined staff and judicare program, employing two lawyers, two paralegals and two administrative/support staff. The staff administers the program (including client intake, eligibility screening and referral) and provides representation to clients in more traditional poverty law cases. The program closed 1,711 cases in 1994.

A panel of private practitioners are referred cases in which they have expertise; they are paid \$40 per hour (about one-half the usual rate) by JAC up to a set maximum. JAC has approximately 60 lawyers on its panel handling about nine cases per lawyer per year.

The local bar association asks that each member annually contribute five hours of uncompensated time or \$150 to JAC.

JAC receives 25 percent of its financial support from the LSC.

Legal Aid Service of Northeastern Minnesota (LASNEM) serves low-income residents of Northeastern Minnesota. Offices in Duluth, Brainerd, Grand Rapids, Pine City and Virginia serve an eleven-county area. An estimated 81,500 people are eligible for the program's services. A judicare panel serves Koochiching County, LASNEM's most distant county. Outreach offices are staffed in Hibbing, Ely, Mora, Walker, Inger, Squaw Lake, Ball Club, Sandstone and Cass Lake.

LASNEM staff consists of 19 lawyers, six paralegals and 18 administrative/support staff. LASNEM's judicare panel consists of nine lawyers; another 28 lawyers participate in the Brainerd office's volunteer attorney program. LASNEM closed 9,132 cases in 1994. Approximately 17 percent of LASNEM's clients are seniors, 70 percent are female-headed households, and 7 percent are members of minority groups.

In 1981, LASNEM and the 11th District Bar Association jointly organized the now separately incorporated Duluth Volunteer Attorney Program. That program won the National Legal Aid and Defender Association's Harrison Tweed award in 1982, and it continues to be recognized nationally as a model volunteer program with very high participation by local lawyers.

LASNEM receives 32 percent of its financial support from the LSC.

Legal Services of Northwest Minnesota (LSNM) serves low-income residents of 22 counties covering approximately 25,000 square miles in the rural northwest quadrant of Minnesota. An estimated 79,700 people are eligible for services. The population density overall is about 15 persons per square mile. Only three cities exceed 10,000 population. The median household income is substantially lower than the state average. Twelve counties are among the twenty poorest in the state.

Services are provided by offices located in Moorhead, Bemidji, and Alexandria. The Moorhead office provides program administration. Board-approved plans for a fourth office with four staff people to serve six northwestern counties are unlikely to go forward given the federal funding cuts.

The program provides legal services to low-income people and senior citizens through a combined staff and judicare system. Under judicare, private lawyers on the LSNM panel are reimbursed by LSNM at about 40 percent of their usual rate (\$35 per hour with maximum fees set for certain types of cases). In 1994, approximately 46 percent of the cases were handled by the judicare lawyers; the remaining 54 percent were handled by the three staffed offices.

LSNM has seven lawyers, five paralegals, and 7.5 administrative/support staff. Volunteers, law

clerks and legal assistant interns are also used extensively. Staff provides administrative support, including client intake, eligibility screening and referral. Staff do individual representation primarily in public housing, government benefits and family law cases, and provide training, support and research for panel lawyers. LSNM also provides community education through both staff and judicare lawyers.

Approximately 260 lawyers in the LSNM service area (about two-thirds of the local lawyers) participated in the LSNM judicare program in 1994, averaging 10.3 cases per lawyer. LSNM closed 5,742 cases in 1994. In the past seven years, LSNM has seen an 83 percent increase in its case load. Approximately one million dollars each year in lawyer time is donated by LSNM judicare panel members.

LSNM receives 38 percent of its financial support from the LSC.

Mid-Minnesota Legal Assistance (MMLA) provides legal advice and representation to low-income clients in 20 counties in central Minnesota, through offices in Minneapolis (3), St. Cloud, Cambridge and Willmar. An estimated 206,900 people are eligible for services. Efforts to increase access for especially disadvantaged clients have been made by securing funding for senior citizens projects, the Community Legal Education Project, the Minnesota Mental Health Law Project, the Legal Advocacy Project for Developmentally Disabled Persons, Protection and Advocacy for Individual Rights, the Housing Discrimination Law Project, and the Family Farm Law Project. One component of MMLA, the Legal Aid Society of Minneapolis, was founded in 1913. MMLA delivers services for Central Minnesota Legal Services (CMLS), the LSC grantee, on a reimbursement contract basis. MMLA currently employs 68 lawyers and 24 paralegals as well as 41.5 administrative/support staff. The statewide Legal Services Advocacy Project, which provides legislative and administrative representation, is part of MMLA.

MMLA closed 11,891 cases in 1994. Approximately 67 percent of MMLA clients are women, 32 percent are minority group members and 19 percent are senior citizens.

MMLA enjoys strong support from local bar associations, law firms and client groups. Since 1982, The Fund for the Legal Aid Society has raised over \$3.4 million from private lawyers and corporations for the Minneapolis component of MMLA. The local volunteer attorney program in Hennepin County, with over 500 active panel members, has had a referral relationship with the Legal Aid Society of Minneapolis for over 25 years. In addition, approximately 350 lawyers participate in volunteer attorney programs administered by MMLA's local offices.

MMLA receives 20 percent of its financial support from the LSC.

Southern Minnesota Regional Legal Services (SMRLS) was established in 1909 as the Legal Aid Bureau of Associated Charities in St. Paul. SMRLS provides representation to low-income residents of 33 counties in southern Minnesota and to migrant farmworkers throughout Minnesota and North Dakota, through offices in St. Paul, Mankato, Winona, Albert Lea, Worthington, Prior Lake, Fargo, N.D. and the Administrative/Program Support Office in St. Paul. An estimated

242,400 people are eligible for services. Each office has a senior citizens project and an active volunteer attorney project. Outreach offices are located in the Oficina Legal/Immigration Reform Project, the American Indian Center and the Cambodian Legal Services Project in St. Paul. SMRLS also uses a number of circuit-riding and "growing season" offices throughout Minnesota. Special efforts to address unmet needs have been made by securing funding for SMRLS's immigration, family law, farm law and Cambodian Legal Services projects. In 1994, SMRLS received new funding for the Homeless Outreach Prevention and Education Project through Americorps, and initiated the Education Legal Advocacy Project in collaboration with Hamline Law School, using Innovative Law School Clinic funds from LSC.

The Minnesota Legal Services Coalition State Support Center is part of SMRLS.

SMRLS employs 57 lawyers, 30 paralegals, and 36 administrative/support staff. SMRLS closed 14,429 cases in 1994. Approximately 64 percent of SMRLS clients are women, 15 percent are senior citizens, 24 percent are disabled persons, and 15 percent are limited English speaking. In 1994, 36 percent of SMRLS clients were minority. Other innovative SMRLS programs include the SMRLS/3M Corporate Pro Bono Program, the first of its kind in the upper Midwest; the SMRLS Futures Planning, Diversity and Priority Setting processes which are regarded as national models; and its Campaign for Legal Aid and other fundraising work.

SMRLS has strong working relationships with local bar associations, lawyers, and client groups. It has enlisted close to 600 private practitioners in its volunteer attorney programs administered locally out of each SMRLS branch office. Over 1,200 lawyers have made a financial contribution to the Campaign for Legal Aid.

SMRLS receives 35 percent of its financial support from the LSC.

OTHER VOLUNTEER AND STAFF PROGRAMS IN MINNESOTA

Several other programs in Minnesota provide legal assistance to low-income persons in civil cases through staffed offices and/or volunteer lawyers. Most provide services in single counties or to special populations. Generally, the programs actively cooperate with the Coalition programs and each other and work to eliminate duplication of services.

INDEPENDENT VOLUNTEER ATTORNEY PROGRAMS

There are five independent volunteer legal services programs in Minnesota which are not directly affiliated with the LSC-funded programs. While these organizations, receive some funding through LSC grantees, they are managerially independent and obtain funding from other sources, such as the Lawyers Trust Account Board, the Legal Services Advisory Commission and donations from lawyers and law firms. A brief description of these five programs follows:

Volunteer Lawyers Network (VLN) Founded in 1966, formerly known as The Legal Advice Clinics, Ltd., and working in association with the Hennepin County Bar Association, VLN is the primary volunteer lawyer organization in Hennepin County. VLN's mission is to reach out to the economically disadvantaged in Hennepin County and provide them with quality legal services by volunteer lawyers. VLN receives approximately 15,000 calls for assistance each year. Paid, largely non-lawyer staff screen the calls for eligibility and arrange for assignment of a volunteer lawyer. If there is not a legal problem, VLN attempts to assist the caller with a referral to an appropriate alternative agency. VLN has a roster of approximately 2,300 lawyers who have agreed to be available for various types of cases. In the fiscal year ending June 30, 1995, VLN reported that approximately 3,500 matters were accepted for referral to a lawyer, and VLN volunteers reported closing approximately 1,800 cases. VLN also provides support services to its volunteers, including regular CLE seminars in poverty law areas such as family and housing law, form books and computerized forms, mentoring and other services. VLN works closely with the Legal Aid Society of Minneapolis which provides staff and limited volunteer services in Hennepin County.

Staffing at VLN has not increased in the last eight years in spite of the increase in the need of the disadvantaged for legal services.

Legal Assistance of Olmsted County (LAOC) LAOC has been providing legal services to low-income residents of Olmsted County since 1973 through its office in Rochester. LAOC's purpose is to provide access to the judicial system to persons who would otherwise be denied it. LAOC's two full-time staff lawyers provide direct services, which consist primarily of family law (80 percent), tenants' rights (8 percent) and other cases including some government benefits (12 percent). LAOC also coordinates the volunteer lawyer program for Olmsted County. In 1994, 930 persons were served by staff. Over 100 cases were referred to the 54 volunteer lawyers on the LAOC panel, and another 200 existing volunteer cases were completed. LAOC works closely with the SMRLS office in Winona which also provides staff services in Olmsted County.

Legal Assistance of Washington County (LAWC) LAWC was founded in 1972 to provide legal services in civil matters to Washington County residents without means to retain private counsel. LAWC's in-house staff of two lawyers in Stillwater provides direct representation to clients; 78 volunteer lawyers also handle legal matters for clients. LAWC's caseload has increased dramatically. In 1993 LAWC handled 148 in-house cases; in 1994 this increased to 189. Similarly, in 1993 LAWC handled 205 volunteer and co-counsel cases; the number increased in 1994 to 265. LAWC staff also handled 434 advice-only matters in 1994. In 1994, LAWC provided 1,853 referrals, an increase of 324 from 1993. Services are primarily in the area of family law (85 percent). Other areas include Social Security, landlord/tenant and debtor's rights. LAWC works closely with SMRLS, which also provides staff services in Washington County through its St. Paul office.

Legal Assistance of Dakota County (LADC) LADC was founded by the Dakota County Bar Association in 1973 to provide free legal services to low-income residents of Dakota County through its office in Apple Valley. Since 1983, LADC has maintained the volunteer attorney program in Dakota County. Ninety-nine participating lawyers handled 49 new cases in 1994, with

22 cases carried over from 1993. The highest priority at LADC is family law problems (96 percent), including dissolution of marriage, custody and visitation, child support and domestic abuse matters. The program also handles some landlord/tenant and tort defense cases. LADC has a staff of four including two lawyers. Each year LADC closes approximately 200 contested cases. LADC works closely with SMRLS, which also provides staff services through its Prior Lake office.

Volunteer Attorney Program and Northland Mediation Service-Duluth. VAP-Duluth administers a free-standing volunteer attorney program providing the full range of civil legal services to residents of St. Louis, Cook, Lake, Itasca and Carleton Counties. There are two non-lawyer staff people. The goal of the Volunteer Attorney Program is to provide legal services to those people who cannot be represented by staff in the Legal Aid Service of Northeastern Minnesota offices in Duluth, Virginia and Grand Rapids with which VAP works closely. VAP clients are either those with whom Legal Aid has direct conflicts or clients Legal Aid cannot serve. Representation includes advice, brief service, representation before a court or administrative body, preparation of legal documents and negotiation of settlements. VAP volunteer lawyers handle approximately 550-600 cases each year. VAP-Duluth also runs Northland Mediation Service, KIDS First, and a pro se divorce program in the Duluth area.

OTHER PROGRAMS

Centro Legal provides civil legal representation to the Hispanic and low-income communities in the Twin Cities metropolitan area, and occasionally outside the Twin Cities if staff is available. All staff are bilingual. Principal areas of expertise include immigration, family law and the intersection between the two. Services are tailored to meet the legal needs of the working poor and are available either free or at very low cost based on a sliding-fee schedule. Centro's Proyecto Ayuda serves victims of domestic abuse. The new Legal Protection for Children program provides free legal services to abused or neglected Hispanic children. Centro was created in 1981, in partnership with SMRLS, in an effort to diminish the impact on Hispanic clients of reduced federal funding for legal services. SMRLS shares office space with Centro's St. Paul office. Centro also has a Minneapolis office.

Chrysalis Legal Assistance for Women in Minneapolis provides information, advice and lawyer referrals to women in the greater metropolitan area, primarily in family law. The information and advice is provided by volunteer lawyers. Referrals are to lawyers who expect to be paid for their work. Some offer reduced fees. There are no financial eligibility guidelines for clients, who are asked to make a small contribution to the program.

The Farmers' Legal Action Group in St. Paul provides free legal services statewide to financially distressed family farmers including staffing a tollfree phone advice line, publishing a quarterly substantive newsletter, and providing training and legal backup for legal aid staff, farm advocates, and lawyers who provide volunteer and reduced fee services to financially distressed family farmers. FLAG works closely with other Minnesota Family Farm Law Project staff who provide services to clients through Coalition program offices.

The **Indian Child Welfare Law Center** in Minneapolis, incorporated in 1993, focuses on preservation of Indian families by representing extended family members in proceedings governed by the Indian Child Welfare Act, Heritage Preservation Act and Indian Family Preservation Act. Legal advocacy is coordinated with Indian family services. The Center coordinates with public defender offices and other civil legal services providers as appropriate.

The **Indian Legal Assistance Program** in Duluth primarily provides representation to Native Americans residing in the Duluth area as well as on the Fond du Lac and Nett Lake Reservations in criminal and juvenile matters as an alternative to the public defender system in Northeast Minnesota. The program also offers limited civil representation.

Lao Family Community of Minnesota's Legal Aid Program in St. Paul assists low-income Southeast Asian refugees and immigrants with immigration law for the purposes of family reunification and provides some civil legal services. The program, which has a single lawyer, coordinates closely with SMRLS.

Legal Assistance to Minnesota Prisoners (LAMP) in Minneapolis provides civil legal services to inmates at Shakopee, Stillwater, St. Cloud and Sandstone prisons. Coalition programs generally do not provide legal assistance to persons incarcerated in these institutions because of the availability of the alternative LAMP program. LAMP is run by the State Public Defender's Office and involves law students in a clinical program.

Legal Rights Center, Inc. (LRC) in Minneapolis is a criminal and juvenile defense program which provides an alternative to the public defender for Hennepin County residents. There is close cooperation between LRC and the Legal Aid Society of Minneapolis.

Minneapolis Age and Opportunity Center (MAO) provides free or sliding-fee legal services to persons over 55 years of age primarily in Hennepin, Ramsey and Anoka Counties. Staff participate in the Coalition's Statewide Seniors Task Force and coordinate with Coalition programs in the metro area.

Minnesota Advocates for Human Rights in Minneapolis runs a statewide refugee and asylum project which involves volunteer lawyers in representing indigent asylum seekers who have fled persecution in their home countries. The program coordinates with other groups that provide immigration law services and with Volunteer Lawyers Network.

The **Minnesota AIDS Project Legal Program** provides legal information, advice and representation to persons with HIV-related legal issues by using volunteer lawyers coordinated by a full-time lawyer. The program works closely with Volunteer Lawyers Network and SMRLS in the metro area and with other programs throughout Minnesota as appropriate.

The **Minnesota Justice Foundation**, housed at the University of Minnesota Law School, coordinates pro bono services by students at all three Minnesota law schools. MJF provides free

law clerks to volunteer lawyers, student interns to legal aid providers and other public interest agencies, and free law student assistance with legal research and writing for volunteer lawyers and legal aid staff statewide.

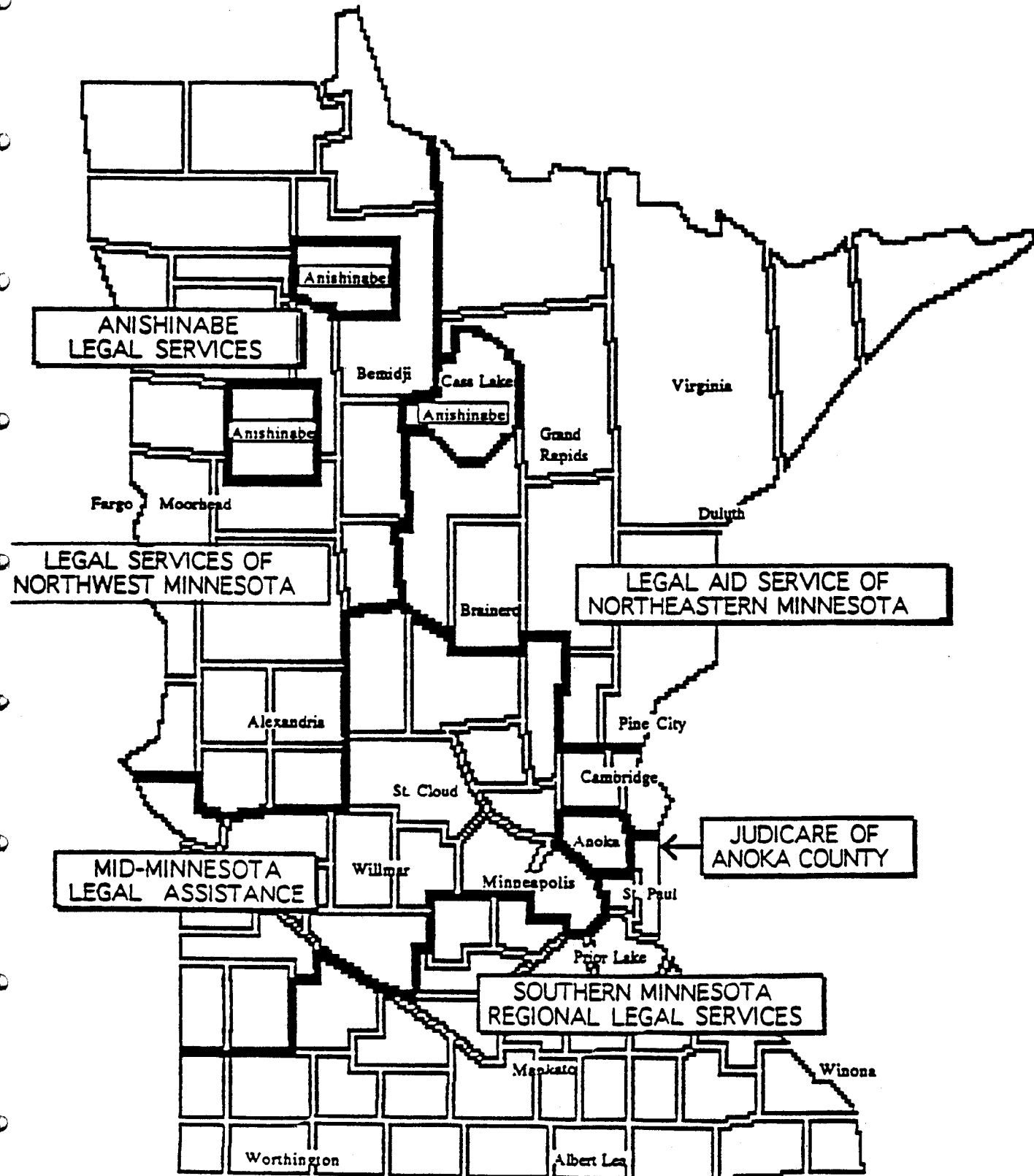
The Minnesota Volunteer Attorney Program of the Minnesota State Bar Association, housed at the MSBA's Minneapolis office, provides substantive law materials including monthly Family Law Updates, a Volunteer Attorney Desk Manual, and the twice-monthly MLSC Newsletter to volunteer and judicare lawyers statewide. MVAP also provides other technical assistance and support services to local volunteer attorney program coordinators and volunteer and judicare lawyers.

Neighborhood Justice Center, Inc. (NJC) was originally developed by community groups with the assistance of Legal Assistance of Ramsey County (now SMRLS). NJC primarily provides representation to indigent persons in criminal and juvenile matters as an alternative to the public defender system in Ramsey County.

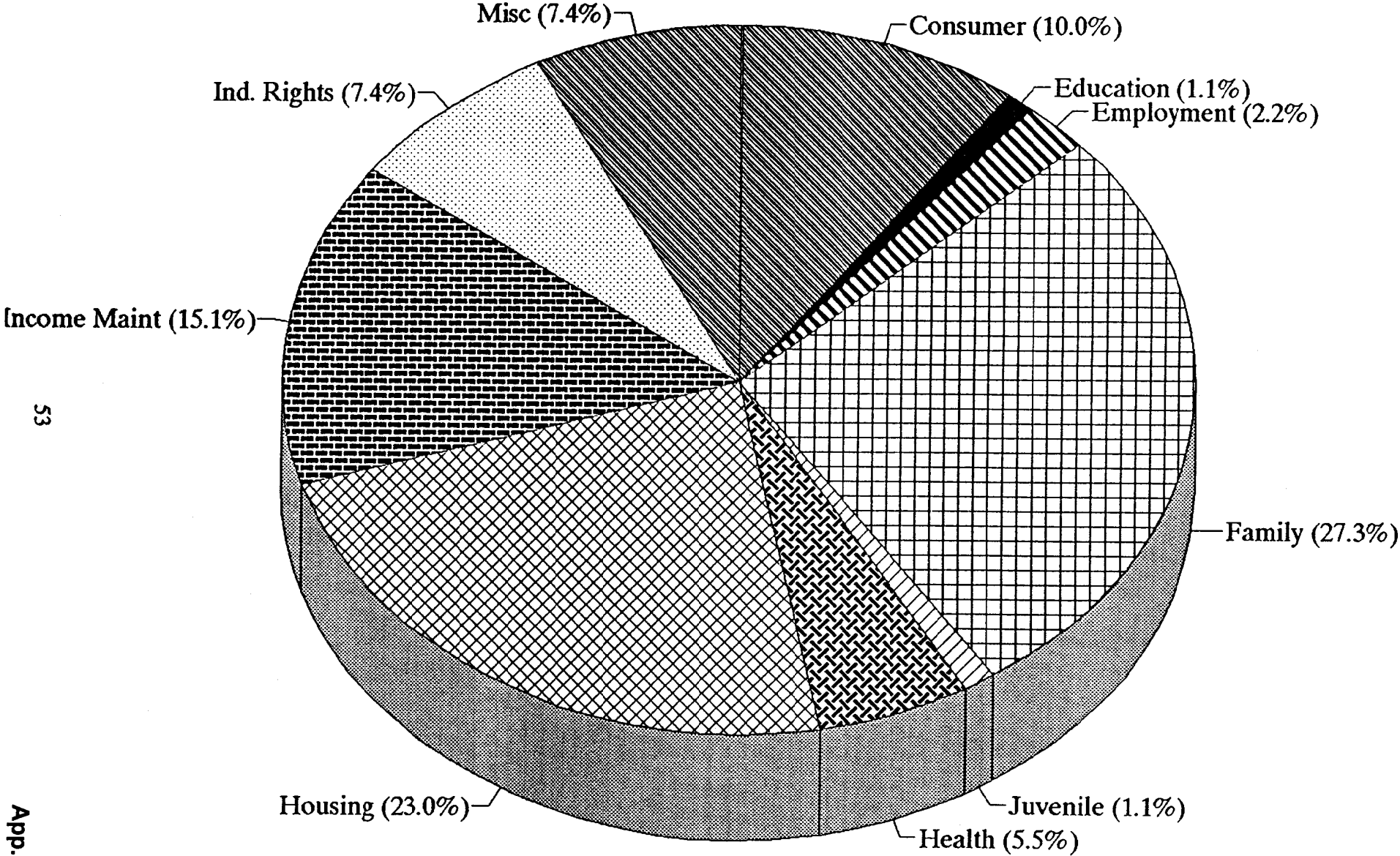
United Cambodian Association of Minnesota in St. Paul has a legal program for Cambodian families which provides civil legal services and community legal education. The program is closely coordinated with SMRLS.

The University of Minnesota Law School, William Mitchell College of Law and Hamline University Law School conduct clinical law programs for students that result in some services to low-income persons in civil matters. All three programs work cooperatively with SMRLS and the Legal Aid Society of Minneapolis.

MINNESOTA LEGAL SERVICES COALITION PROGRAMS



Types of Problems Handled by Minnesota Legal Services Coalition Programs



1994

Low-Income Population In Minnesota LSC Program Service Areas
Based on 1990 Census for Persons Below 100% of Poverty Level

	County	Persons	Total	Per Cent
		Below 100% Poverty 1990	by Program 1990	by Program 1990
Judicare of Anoka County	Anoka	12815	12815	2.667%
Legal Services of Northwestern Minnesota	Becker	4866		
	Baltrami	7770		
	Clay	7355		
	Clearwater	1841		
	Douglas	3753		
	Grant	915		
	Hubbard	2539		
	Klitson	677		
	Lake Woods	427		
	Mahnomen	1286		
	Marshall	1494		
	Norman	1120		
	OtterTall	6997		
	Pennington	2114		
	Polk	4498		
	Pope	1451		
	Red Lake	675		
	Roseau	1667		
	Stevens	2016		
Traverse	654			
Wadena	2783			
Subtotal-LSNWM	Wilkin	805	57703	12.009%
Legal Aid Service of Northeastern Minnesota	Carlton	3484		
	Cook	414		
	Kanabec	1960		
	Lake	970		
	Pine	2983		
	St.Louis	27201		
	Itasca	6362		
	Koochiching	2067		
	Aikin	2289		
	Cass	4621		
	Subtotal-LASNEM	Crow Wing	6518	58869
Mid-Minnesota Legal Assistance	Hennepin	93388		
	Benton	3028		
	Sherburne	3213		
	Stearns	13824		
	Wright	4615		
	Chisago	2336		
	Isanti	2190		
	Mille Lacs	2540		
	Morrison	4667		
	Todd	4379		
	LacQuiParle	1129		
	Lincoln	1052		
	Lyon	2737		
	YellowMedic	1692		
	Big Stone	914		
	Chippewa	1661		
	Kandiyohi	5164		
	Meeker	2199		
Renville	2233			
Subtotal-MMLA	Swift	1477	154438	32.142%

**Low-Income Population in Minnesota LSC Program Service Areas
Based on 1990 Census for Persons Below 100% of Poverty Level**

	County	Persons Below 100% Poverty	Total by Program	Per Cent by Program
		1990	1990	1990
SMRLS	Dakota	11730		
	Goodhue	3216		
	Ramsey	53897		
	Washington	6212		
	Dodge	1178		
	Fillmore	3004		
	Houston	1604		
	Olmstead	7155		
	Wabasha	1635		
	Winona	5621		
	Freeborn	3320		
	Mower	3671		
	Steele	2023		
	Carver	2288		
	Rice	3791		
	Scott	2350		
	Blue Earth	9281		
	Brown	2177		
	Faribault	1993		
	Lesueur	2027		
	Martin	2660		
	McLeod	2375		
	Nicollet	2257		
	Sibley	1476		
	Waseca	1646		
	Watonwan	1387		
Cottonwood	1701			
Jackson	1342			
Murray	1353			
Nobles	2291			
Pipestone	1506			
Redwood	2167			
Rock	1172			
Subtotal-SMRLS	Migrant*	35377	186883	38.894%
Anishinabe Legal Services	*		9782	2.036%
		470708	480490	100.000%

Estimated Migrant count adopted by Legal Services Corporation

Estimated Anishinabe count based on BIA counts.

08-Jan-96

Source: News Release, MN Planning May 29, 1992

APPENDIX C
FACTORS AFFECTING LEGAL SERVICES FOR INDIAN PEOPLE
RESIDING ON RESERVATIONS

A number of factors make it more difficult and expensive to provide legal services to low-income Indian people residing on reservations than to other populations of poor people. These factors include:

1. **Physical Isolation:** Reservation residents frequently live in geographically remote locations. People may live either by themselves, or in small, isolated villages. Many do not have telephones, reliable cars, or home mail delivery. It can sometimes take weeks to make contact with a client. Outreach efforts are particularly difficult and time consuming.
2. **Cultural Barriers:** Traditionally, many Indian people work to avoid conflict. They frequently are more likely to accept a given negative situation instead of insisting on their "rights", which could be viewed as socially unacceptable complaining. Also, Indian people may be particularly distrustful of the dominant culture's institutions, including the legal system. People are often aware of the legal system's historic role in the theft of their land and attacks on their culture. These factors make it difficult for advocates, particularly non-Indians, to develop the trust necessary to adequately represent a client. The trust issue also impacts on a legal services program's ability to develop positive community relations.
3. **Special Legal Problems:** Unlike any other minority group in the U.S., Indian people are subject to a distinct body of law known as federal Indian law. Federal Indian law is a framework of federal statutes and court decisions dating back to the founding of the country. It can impact any civil legal problem, turning an otherwise routine case into one with complex jurisdictional or other legal issues. Because Indian law is essentially federal law, certain types of cases need to be pursued in federal courts, which are often located hundreds of miles from a client's reservation. The complexities of federal Indian law are such that expertise must be developed over a period of time; it cannot be learned by reference to a legal encyclopedia or treatise. Legal services staff or private lawyers who are unfamiliar with federal Indian law will be unaware of issues that can significantly impact a client's case.
4. **Language Barriers:** Some Indian people have no or limited English fluency. Others, who may speak English, use the language in a different way than law-trained non-Indians. The result is often difficulty in communication that adversely affects representation in two ways: the client may be unable to describe the problem in a way which the advocate can readily understand. Also, the advocate may have great difficulty in explaining the legal process and the substantive issues involved in a client's case. This two-way difficulty makes it difficult for staff inexperienced in working in Indian communities to adequately represent their clients.

APPENDIX D
MINNESOTA STATUTES
LEGAL SERVICES PROGRAMS

480.24. Definitions

Subdivision 1. Terms. As used in sections 480.24 to 480.244, the terms defined in this section have the meanings given them.

Subd. 2. Eligible client. "Eligible client" means an individual that is financially unable to afford legal assistance, as determined by a recipient on the basis of eligibility guidelines established by the supreme court pursuant to section 480.243, subdivision 1.

Subd. 3. Qualified legal services program. "Qualified legal services program" means a nonprofit corporation which provides or proposes to provide legal services to eligible clients in civil matters and which is governed by a board of directors composed of attorneys-at-law and consumers of legal services. A qualified legal services program includes farm legal assistance providers that have a proven record of delivery of effective, high-quality legal assistance and have demonstrated experience and expertise in addressing legal issues affecting financially distressed family farmers throughout the state.

Subd. 4. Recipient. "Recipient" means a qualified legal services program that receives funds from the supreme court to provide legal services to eligible clients.

Subd. 5. Nonprofit regional alternative dispute resolution corporation. "Nonprofit regional alternative dispute resolution corporation" means a nonprofit corporation which trains and makes available to the public individuals who provide fact-finding, conciliation, mediation, or nonbinding or binding arbitration services.

480.242. Distribution of civil legal services funds to qualified legal services programs

Subdivision 1. Advisory committee. The supreme court shall establish an advisory committee to assist it in performing its responsibilities under sections 480.24 to 480.244. The advisory committee shall consist of 11 members appointed by the supreme court including seven attorneys-at-law who are well acquainted with the provision of legal services in civil matters, two public members who are not attorneys and two persons who would qualify as eligible clients. Four of the attorney-at-law members shall be nominated by the state bar association in the manner determined by it, and three of the attorney-at-law members shall be nominated by the programs in Minnesota providing legal services in civil matters on July 1, 1982, with funds provided by the federal Legal Services Corporation in the manner determined by them. In making the appointments of the attorney-at-law members, the supreme court shall not be bound by the nominations prescribed by this section. In making appointments to the advisory committee, the supreme court shall ensure that urban and rural areas of the state are represented. The supreme court shall adopt by rule policies and procedures for the operation of the advisory committee including, but not limited to, policies and procedures governing membership terms, removal of members, and the filling of membership vacancies.

Subd. 2. Review of applications; selection of recipients. At times and in accordance with any procedures as the supreme court adopts in the form of court rules, applications for the expenditure of civil legal services funds shall be accepted from qualified legal services programs or from local government agencies and nonprofit organization seeking to establish qualified alternative dispute resolution programs. The applications shall be reviewed by the advisory committee, and the advisory committee, subject to review by the supreme court, shall distribute the funds received pursuant to section 480.241, subdivision 2, to qualified legal services programs or to qualified alternative dispute resolution programs submitting applications. The funds shall be distributed in accordance with the following formula:

(a) Eighty-five percent of the funds distributed shall be distributed to qualified legal services programs that have demonstrated an ability as of July 1, 1982, to provide legal services to persons unable to afford private counsel with funds provided by the federal Legal Services Corporation. The allocation of funds among the programs selected shall be based upon the number of persons with incomes below the poverty level established by the United States Census Bureau who reside in the geographical area served by each program, as determined by the supreme court on the basis of the most recent national census. All funds distributed pursuant to this clause shall be used for the provision of legal services in

civil and farm legal assistance matters as prioritized by program boards of directors to eligible clients.

(b) Fifteen percent of the funds distributed may be distributed (1) to other qualified legal services programs for the provision of legal services in civil matters to eligible clients, including programs which organize members of the private bar to perform services and programs for qualified alternative dispute resolution, (2) to programs for training mediators operated by nonprofit alternative dispute resolution corporations, or (3) to qualified legal services programs to provide family farm legal assistance for financially distressed state farmers. The family farm legal assistance must be directed at farm financial problems including, but not limited to, liquidation of farm property including bankruptcy, farm foreclosure, repossession of farm assets, restructuring or discharge of farm debt, farm credit and general debtor-creditor relations, and tax considerations. If all the funds to be distributed pursuant to this clause cannot be distributed because of insufficient acceptable applications, the remaining funds shall be distributed pursuant to clause (a).

A person is eligible for legal assistance under this section if the person is an eligible client as defined in section 480.24, subdivision 2, or:

- (1) is a state resident;
- (2) is or has been a farmer or a family shareholder of a family farm corporation within the preceding 24 months;
- (3) has a debt-to-asset ratio greater than 50 percent;
- (4) has a reportable federal adjusted gross income of \$15,000 or less in the previous year; and
- (5) is financially unable to retain legal representation.

Qualifying farmers and small business operators whose bank loans are held by the Federal Deposit Insurance Corporation are eligible for legal assistance under this section.

Subd. 3. Timing of distribution of funds. The funds to be distributed to recipients selected in accordance with the provisions of subdivision 2 shall be distributed by the supreme court no less than twice per calendar year.

Subd. 4. Repealed by Laws 1989, c. 335, art. 1 § 270(a).

Subd. 5. Permissible family farm legal assistance activities. Qualified legal services programs that receive funds under the provisions of subdivision 2 may provide the following types of farm legal assistance activities:

- (1) legal backup and research support to attorneys throughout the state who represent financially distressed farmers;
- (2) direct legal advice and representation to eligible farmers in the most effective and efficient manner, giving special emphasis to enforcement of legal rights affecting large numbers of farmers;
- (3) legal information to individual farmers;
- (4) general farm related legal education and training to farmers, private attorneys, legal services staff, state and local officials, state-supported farm management advisors, and the public;
- (5) an incoming, statewide, toll-free telephone line to provide the advice and referral described in this subdivision; and
- (6) legal advice and representation to eligible persons whose bank loans are held by the Federal Deposit Insurance Corporation.

**APPENDIX E
TYPICAL MONTHLY CLIENT BUDGETS**

These clients would receive Medical Assistance or GAMC. Non-prescription drugs and some medical transportation would not be covered. Only 25-35 percent of eligible clients currently receive a housing subsidy, and housing subsidy programs are suffering significant cuts in 1996.

**Mother and Three Children (Lost her job – missed work to care for sick children)
(Monthly AFDC grant \$621 + \$310 food stamps)**

Rent	\$495
Phone and electric	60
Heat	60
Clothing (including diapers)	75
Food	320
Laundry	30
Transportation	50
Personal incidentals*	40
TOTAL	\$1,130
NET LOSS	-\$199

**Mother and Two Children
(Working 40 hours/week @ \$6/hour. Take home pay \$772/month. No benefits.)**

Rent (including heat)	\$450
Phone and electric	90
Food	200
Clothing	50
Laundry	35
Transportation (bus pass)	60
Personal incidentals*	30
Child Care (relatives)	0
Other (babysitting)	20
TOTAL	\$935
NET LOSS	-\$163

*Including toiletries and sanitary supplies, household supplies, school supplies, non-prescription medicine.

Single Disabled Person (Former construction worker with back injury)
(Monthly General Assistance grant \$203 + \$99 food stamps)

Rent (including heat & electric)*	\$180
Bus Card**	60
Clothing from garage sales/thrift	10
Personal incidentals	7
Food	99
Household furnishing/items	7
Laundry expense	17
TOTAL	\$380
NET LOSS	-\$78

Single Elderly Person in Rural Minnesota***
(Monthly Supplemental Security Income Grant: \$470 + \$111 food stamps)

Rent	\$250
Heat & electric (no phone)	100
Food	130
Clothing	10
Laundry	15
Social services (10% goes to representative payee)	45
Personal (toiletries, cleaning supplies, haircuts, hired transportation, P.O. Box, cable tv)	73
TOTAL	\$623
NET LOSS	-\$42

*Few GA recipients are able to afford a telephone.

**Because most GA recipients are unable to afford a bus card, they often need more money for clothing such as good walking shoes, boots and outerwear. In rural areas, they need to hire transportation.

***While rents may be somewhat lower in rural Minnesota, public transportation is generally not available. TV is available only on cable. There are almost no free haircutting services, very few free clothing distribution sites, and far fewer food shelves with more demands on limited resources.

APPENDIX F
SALES TAX ON LAWYERS' SERVICES

There are a number of reasons Minnesota should not adopt a sales tax on the professional services of lawyers.

●A tax on legal services would encourage clients to use professional services from outside the state. This is especially true of border communities and sophisticated clients. Legal services are "portable" and professionals performing these services can easily move to another state which does not impose a sales tax. Such a tax would give out-of-state firms a competitive advantage with the result of potential loss of jobs and income tax revenue.

●A sales tax on legal services would place a burden on those already having financial problems. Clients seeking legal advice on dissolution of marriage, bankruptcy, child support, landlord/tenant matters, debt collection and other similar cases are those who can least afford to pay an additional charge. A substantial portion of legal services are provided directly to individuals at a time of hardship in their lives. A tax on legal services would increase the hardship on individuals already faced with difficult circumstances. Moreover, a sales tax is not based on ability to pay and the burden falls more heavily on those with lower incomes, and who have the same need for legal services as wealthier individuals. The result is an inequitable tax burden on lower income individuals.

● A sales tax on legal services would discourage people from seeking legal advice. Increasing the cost of legal services may make some people less willing to seek legal advice at times when such advice is necessary. The result would be fewer people exercising their legal rights.

●The tax is a "misery" tax. Rather than taxing discretionary spending, the tax is on essential expenses. For instance, it would compel an abandoned spouse to pay a tax on a lawyer's help to win support payments for her children. It would also impose a tax on people who wish to protect their families by drawing a will. People would also have to pay the tax to recover from someone who negligently hurt them, or to obtain consumer relief. Workers' compensation benefits would be taxed, as would the buying and selling of a home. Finally, the defense of basic legal rights, whether it be in criminal or civil court, would also be taxed.

●A tax would impair pro bono services, which the government is urging lawyers to supply partly to replace tax supported legal services to the disadvantaged. To the extent lawyers lose business to in-house counsel or out-of-state firms, or are forced to lose income by absorbing the sales tax or lose income because citizens simply avoid the system and its taxes, then the time those lawyers now spend on pro bono service and other volunteer services to the community and justice system will be shifted to earning a living.

•Corporate in-house legal services would not be subject to this sales tax because of the exclusion for employee services. The result would be discrimination against small businesses which cannot afford in-house lawyers.

•The consumers or users of legal services are in the main not wealthy individuals or companies. Of the corporate consumers, the overwhelming majority are small business people.

•In the enforcement of a sales tax, the state will have to determine to what extent legal services performed are consumed within Minnesota. An effective sales tax audit would thus likely include an examination of the nature of the services performed. An audit of a lawyer's client fund account and administering the tax would violate the lawyer-client privilege.

•A sales tax has the potential of tremendous financial impact on practicing lawyers, especially if the tax is due when the client is billed.

•An individual will pay several taxes for one legal transaction, including filing fees, inheritance and transfer tax, real estate transfer tax and others.

•The American Bar Association, Sales and Use Tax Subcommittee Report, August 3, 1990, concluded that professional services, such as law, are not amenable to a sales and use tax. This is based primarily on the principles that sales and use taxes on services should treat equally the in-state and out-of-state providers of competing services, and sales and use taxes on services should follow generally defined concepts of sales and use tax law applicable to the sales and storage, use or consumption of tangible personal property.

**The Standing Committee on Pro Bono Legal Service's
Report to the Supreme Court of Florida,
The Florida Bar, and The Florida Bar Foundation**



February 1999

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INTRODUCTION AND SUMMARY

This is the fourth report of The Standing Committee on Pro Bono Legal Service ("Standing Committee") on the activities and results of the Voluntary Pro Bono Attorney Plan ("The Plan") adopted by the Supreme Court of Florida on June 23, 1993, as a part of Rule 4-6. Public Service, Rules Regulating The Florida Bar. This report provides statistical information from the required annual attorney reports on pro bono service provided July 1, 1997 through June 30, 1998. The report also provides information on the activities and accomplishments of the judicial circuit pro bono committees ("Circuit Committees") and the Standing Committee on Pro Bono Legal Service ("Standing Committee"). A summary of the legal activities regarding The Plan is provided and statistical comparisons of pro bono service since the implementation of The Plan are presented.

Attorney Report Data

In the 1997-1998 bar year:

- 24,882 lawyers reported personally providing 989,336.76 hours of pro bono legal assistance to the poor. Using the average hourly rate of members of The Florida Bar of \$ 150, the value of the services provided is \$ 148,400,514.
- 5,347 lawyers reported contributing \$ 1,861,627.52 to legal aid organizations serving the needy.
- 1,088 lawyers reported providing 195,879.71 hours of pro bono service through law firm plans.

See for more details **RESULTS OF INDIVIDUAL REPORTING** on page 2 of this report.

Comparison of Pro Bono Service Data

A review of the individual attorney reporting data since the implementation of The Plan in the 1993-1994 bar year shows an overall increase in both the number of attorneys providing and hours being provided of pro bono legal assistance to the poor. The contributions to legal aid organizations have also increased. In comparison, data from The Florida Bar Foundation ("The Foundation") shows a substantial increase in providers, hours of service and contributions in the first two years of implementation but then a leveling off of participation. See for more details **COMPARISON OF PRO BONO SERVICE DATA SINCE IMPLEMENTATION OF THE PLAN** on page 2 of this report.

Circuit Committees Activities

Seventeen of the twenty Circuit Committees provided the Standing Committee with an annual report on the pro bono services in their circuits. The Circuit Committees continue to expand opportunities for pro bono attorneys to respond to priority needs in their circuits. See for more details and specific examples of pro bono service **RESULTS FROM CIRCUIT PRO BONO COMMITTEE REPORTING** on page 5 of this report.

Standing Committee Activities

The Standing Committee on Pro Bono Legal Service has established a meeting schedule to allow representatives of Circuit Committees and representatives of government attorney pro bono programs from around the state to advise committee members on the ways the Standing Committee can further support their work and expand their pro bono programs. The first Florida Pro Bono Conference was held in conjunction with the Tobias Simon Pro Bono Service Award Ceremony on February 12, 1998 in Tallahassee. See for more detail **STANDING COMMITTEE ON PRO BONO LEGAL SERVICE ACTIVITIES** on page 8 of this report.

RESULTS OF INDIVIDUAL REPORTING

In the 1997-1998 reporting period, the number of attorneys providing pro bono legal services to the poor and the amount of donated time continued to increase. Also, the number of attorneys providing contributions to legal aid organizations and the amount of the contributions continued to increase. The value of this direct service and monetary contributions, for 1997-1998 of \$ 148,400,514.00 and \$1,861,627.52 respectively, far exceeds the aggregate direct funding for legal assistance to the poor in Florida from the federal Legal Services Corporation and The Foundation, which totaled \$ 24,996,944 in 1998. The increases were not uniform, however, and a few counties and circuits experienced decreases in pro bono participation. Appendix "A" provides the details from the individual attorney reporting.

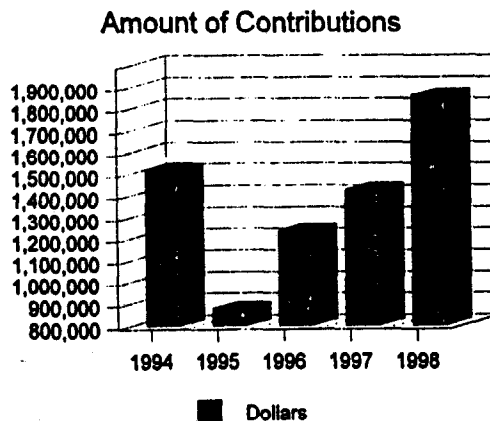
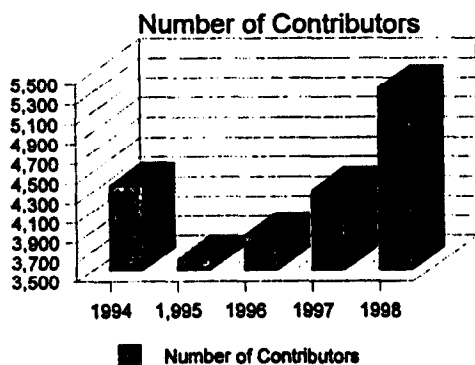
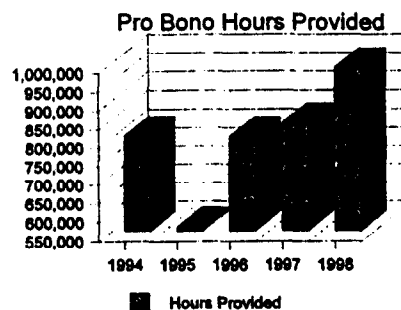
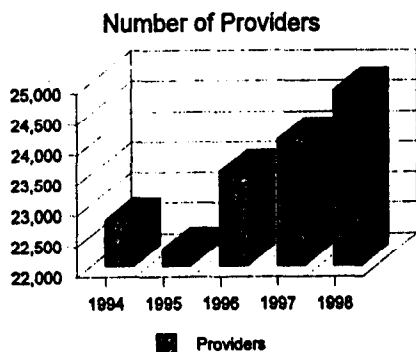
COMPARISON OF PRO BONO SERVICE DATA SINCE IMPLEMENTATION OF THE PLAN

The five years of pro bono reporting under The Plan and the pro bono activity data collected from grantees of the Florida Bar Foundation provide the opportunity to assess and compare pro bono legal service to the poor in detail since the implementation of the plan. The individual attorney pro bono data is collected based on The Florida Bar year, July 1 - June 30, while The Foundation collects information based on the calendar year so direct comparison is not possible. Also, since The Plan was implemented in the middle of the 1993 - 1994 bar year and there was a good deal of uncertainty about what to properly report under the new rule, the individual attorney

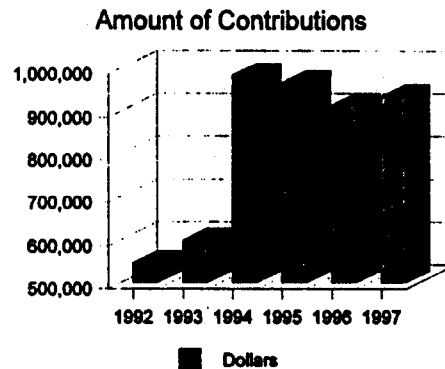
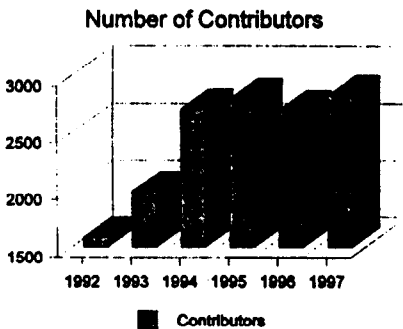
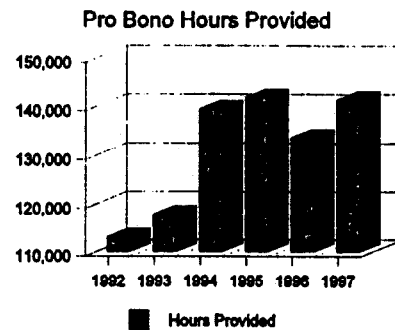
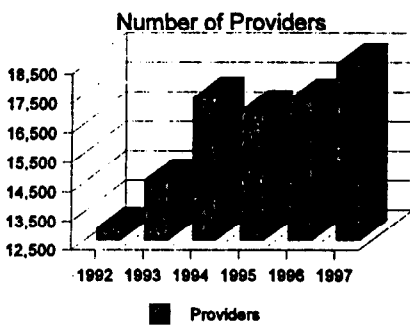
reporting statistics from the first year of reporting are not considered to be the true base year under The Plan.

If the 1994 - 1995 bar year report information is considered the base year, the number of Florida Bar members providing pro bono legal service has increased from 22,283 to 24,882, an increase of 11.66%, from the base year to the 1997-1998 bar year. During that same period, the hours of service increased substantially from 561,352 to 989,336.76, an increase of 76.24%. The number of contributors and the amount of the contributions has also increased significantly, 3,608 to 5,347 contributors (48.19% increase) and \$ 876,837.27 to \$ 1,861,627.52 in contributions (112.31% increase). In the 1997-1998 reporting year, the number of lawyers participating through law firm plans and the hours of service provided increased dramatically from the prior year, 700 to 1,088 participating attorneys and 24,354 to 195,880 hours of service. There is some concern because of the size of the increase that this may reflect a reporting error rather than a true increase in participation and pro bono service.

The following charts illustrate the growth in pro bono activity under The Plan.



The pro bono service information collected by The Foundation from the organized legal assistance to the poor programs enables a comparison between pro bono service and contributions being provided prior to and after the implementation of the plan. Appendix "B" provides the details from the reporting to The Florida Bar Foundation. The pro bono activity reported by these grantees increased substantially with the implementation of The Plan. Attorneys donating service increased from 12,931 to 18,500 (40.4%) and hours of service increased from 113,197 to 141,533 (25.03%). Contributors and contributions increased most dramatically from 1,588 to 2,836 contributors (78.58%) and from \$ 547,675 to \$ 935,935 in contributions (70.89%). The following charts illustrate the growth in pro bono activity through the grantees of the Foundation:



While the pro bono reports reflect overall growth in pro bono activity under The Plan, that growth is not uniform among the circuits. In fact the Third Judicial Circuit has experienced a decline in donated hours of legal service and contributions. On the other hand, the Ninth, Eleventh, Fifteenth, and Seventeenth Judicial Circuits have experienced considerable growth in pro bono legal service while the Fourth, Ninth, Eleventh, and Fifteenth Circuits reported significant growth in contribution. This detailed information found in Appendix "A" provides the opportunity to target renewed pro bono participation recruitment efforts and learn from the successes in the other circuits. Greater use of this information can be made to further expand pro bono participation and to provide public recognition at the local level for the volunteer legal services

being provided to the needy in the community.

RESULTS FROM CIRCUIT PRO BONO COMMITTEE REPORTING

To gain further information on the results achieved, the Circuit Committees were requested to provide an annual report to the Standing Committee. The list of the chairs of the Circuit Committees is provided in Appendix "C". The Circuit Committee reports have been received from seventeen circuits. No reports were received from the Third, Fourth and Twentieth circuits. These submitted reports reflect a vast number of legal needs, as determined in each circuit's local needs assessment, are being met. The majority of needs are in the areas of family, juvenile, consumer/finance and housing law.

The activities reflected in these reports include compelling stories of individual attorney services, of which the following are examples:

- Several tenants in the 1st circuit who rented lots at a local trailer park contacted the legal aid office about letters they had received stating the park was being sold and would close. The tenants were given notice to vacate in one year. Legal Aid found a local attorney who was willing to handle matter for all who qualified. The attorney represented park residents and was able to ensure proper procedures were followed and the tenants were all relocated to a new mobile home park.

- A client in the 5th circuit had been the victim of spouse abuse for many years and wanted to obtain an Injunction for Protection against her spouse. A pro bono attorney represented the victim and she was awarded exclusive use of the marital home, custody of her children and child support. Once that was behind her, she started counseling and regained her self-esteem which enabled her to free herself of years of abuse by filing for divorce. In addition to this, she gained enough confidence to find employment and start school in search of a better life for her and her children.

- A volunteer attorney was able to close on a real estate transaction saving the home of a Hispanic farmworking family of five in the 7th circuit. This family had tried unsuccessfully to close on their property for over a year, but due to the inappropriate dealing by the seller, who took advantage of the language barrier, this family stood a very good chance of losing their life savings. Fortunately, the attorney was able to close the transaction right before the Christmas holidays, affording the family the opportunity to truly enjoy the season with the security of owning their own home.

- A tornado victim client in the 9th circuit suffered damages to her roof which also caused severe water damage in her home. She was without electricity in most of her house. Her insurance company estimated the damages at only \$6,000 which would not cover the costs of repair. The pro bono attorney and legal services' staff were able to negotiate a settlement of \$7,000 with the client's insurance company and the client was able to make the repairs to her home successfully.

• The husband of a 24-year old client in the 10th circuit with two children on AFDC attempted to kill her. She had to flee for her life to her parents home in Ohio. A volunteer attorney was able to obtain full custody with child support for the client after working 2 ½ years on this case.

• A pro bono attorney assisted a client in the 11th circuit with a tax problem. The client was unemployed, widowed and a senior citizen. She had federal tax liens from 1987 recorded against her in excess of \$32,000. By reason of her desperate financial situation, her attorney filed an Offer-in-Compromise based on doubt as to collectibility to relieve her of all liability for a nominal amount. The financial information gathered by the 11th circuit pro bono program, Put Something Back, helped the attorney to paint an accurate description of the client's financial status to the IRS. After thorough investigation by the IRS, the Offer was formally accepted and the liens are in the process of being released.

• An elderly client in the 12th circuit had listed his mobile home for sale with a realtor. The realtor showed him another mobile home for sale which the client agreed to buy, taking a cash advance on his credit card for the \$2,000 deposit. After moving in he discovered that the mobile home was falling apart and he began to experience health problems from pest infestation. He informed the realtor that he was taking his mobile home off the market to move back into it, and sought the return of his deposit money, which was refused. After writing demand letters to the realtor and the owner of the defective mobile home, the pro bono attorney assigned to the case sued both for failure to disclose defects. The judge found that there were material defects that were not readily observable to the buyer and held that the duty to disclose them extended to mobile home sales. He gave the plaintiff a judgment of \$2,000 against the owner, which was satisfied.

• An elderly client in the 14th circuit had a home in need of extensive repair. She applied for a loan and learned she did not have clear title to her property. She sought assistance from Legal Services of North Florida and the volunteer lawyer assigned to her case discovered that the estate from which she received her home over three decades ago was never closed. After one year and a nationwide search, seven quit claim deeds were executed among several generations of client's family. The client will soon have the money needed to fix her roof and make other repairs.

• A seventy-eight year old client in the 17th circuit had a Summary Judgment entered against her, setting a foreclosure sale in sixty days. The pro bono attorney filed a Motion to Vacate Final Judgment based on the irregularities in the complaint, along with additional grounds. Plaintiff's counsel agreed to stay the sale of the property. The Motion to Vacate was heard and upon verifying discrepancies in the complaint, the judge immediately vacated the final judgment of Mortgage Foreclosure. The pro bono attorney assisted the client in a mortgage modification allowing her to reduce her monthly payment to a level that fit within her fixed income.

• A pro bono attorney assisted a senior citizen in the 18th circuit who is unable to read or write and who cares for a severely handicapped teenage grandchild. The

grandmother owns her home and wanted to be sure the home and contents would be left to her nephew. The nephew will assume care taking responsibilities for the handicapped teenager in the event of the client's death. The nephew also assists with the teen's care at the present time. The pro bono attorney prepared a Last Will & Testament, a Living Will, and a Designated Health Care Surrogate. The attorney then made a home visit to execute the documents.

The circuit committees have continued to expand the opportunities for attorneys to participate in pro bono legal assistance to the poor through special projects:

- In the 2nd circuit, eleven (11) law clerks from the Florida Supreme Court regularly went to the Tallahassee homeless shelter and provided interviews, advice and referral to over 110 homeless persons.

- Seventeen (17) volunteer attorneys in the 6th circuit participated in the H.E.L.P. project and went to community elderly housing sites and nutritional centers and provided legal assistance to over 218 low income elderly residents.

- In the 13th circuit, seventy-two (72) attorneys volunteered to be mentors and judges in the Teen Court project which served over 418 youths in efforts to divert them from delinquent behavior.

- The Café Joshua project in the 15th circuit is a unique service provided to the homeless aimed at reintegration into the community. Twenty-five (25) volunteer attorneys assisted 43 homeless persons participating in the program to remove legal impediments to their achieving reintegration.

- Appendix "D" provides examples from the 6th and 9th circuits of the wide range of special pro bono projects that have been developed on the local level.

The Circuit Committees have new ways of bringing recognition to the deserving volunteers:

- The 8th Judicial Circuit Bar Association recognizes pro bono attorneys that have provided exceptional service at each of its monthly bar luncheons.

- The 12th circuit held its Second annual Recognition dinner in April 1998. Awards were presented to three local outstanding pro bono attorneys, two retired attorneys, and a member of public for providing pro bono translation services.

- The tenth annual pro bono recognition evening was held in May 1998 in the 15th circuit. Over 1,200 people attended and \$120,000 was raised for the Legal Aid Society of Palm Beach County and its pro bono programs.

- In the 18th circuit, Brevard County Legal Aid and the Brevard County Bar Association held in annual Pro Bono Recognition Gala with Justice Major B. Harding as the guest awards presenter.

• The 19th circuit holds an annual seminar "Professionalism, the Public and You" which combines training on ethics, including pro bono obligations, pro bono recruitment, and recognition of The Florida Bar President's Pro Bono Award winner from the 19th Circuit. The judiciary closes the courts for the day to attend the seminar and to encourage all attorneys in the circuit to participate.

STANDING COMMITTEE ON PRO BONO LEGAL SERVICES ACTIVITIES

The Standing Committee was not called upon in the last year to provide any additional rule interpretations. However, the Standing Committee staff was able to respond to numerous requests for clarification from members of The Florida Bar based on the Court's decisions, the comments to the Pro Bono Rule, and the Standing Committee's prior rule interpretations. The 1998-1999 membership list of the Standing Committee is provided in Appendix "E".

The Standing Committee did respond to the requests from several Circuit Committees to conduct a conference where information on pro bono activities could be exchanged. The Standing Committee and Florida Legal Services, Inc., with funding provided by The Florida Bar Foundation through The Florida Bar, sponsored on February 12, 1998 a statewide pro bono conference, "Florida's Voluntary Pro Bono Plan - *It Does Make a Difference.*" More than 50 participants attended the conference. Members of judiciary, circuit committee chairs, legal services' staff, government and private attorneys, the Florida Pro Bono Coordinators Association, and Standing Committee members participated in workshops to discuss pro bono in Florida. Opening remarks were made by past Chair of the Standing Committee, Cynthia Everett, and the opening session concluded an in-depth overview of the voluntary pro bono attorney plan and mandatory reporting by staff of the Standing Committee. Participants then chose from panels such as judiciary's response to pro bono, effective circuit committees, pro bono in rural areas, and pro bono recruitment. Luncheon speaker, The Honorable Justice Major B. Harding of The Supreme Court of Florida, gave appreciation for the work of those attending the conference and reminded participants of the fundamental role that pro bono service plays in the practice of law as a true profession. Conference attendees adjourned to The Supreme Court for the Tobias Simon Pro Bono Service Award Ceremony.

Pro Bono Activities by Judiciary, Judicial Staffs and Government Lawyers

Rule 4-6.1(a), Rules Regulating The Florida Bar, provides that the professional responsibility to render pro bono legal service and participate in other pro bono service activity "does not apply to members of the judiciary or their staffs or to government lawyers who are prohibited from performing legal services by constitutional, statutory rule, or regulatory prohibitions." The comment to this part of the rule states that these members of The Florida Bar are not exempt, but are "deferred from participation" in the Voluntary Pro Bono Plan. In its opinion adopting amended Rule 4-6.1 and Rule 4-6.5, the Florida Supreme Court explained that the judiciary and their staffs and government lawyers were "deferred at this time from participating in

the pro bono program", but the Court "strongly encourage[d] the development of [pro bono] programs" to "allow participation ...in pro bono activities" by the judiciary, judicial staff, and government lawyers. *Amendments to Rules Regulating The Florida Bar*, 630 So. 2d 501, 504 (Fla. 1993),

Since the adoption of The Plan, the Standing Committee has learned that the degree of participation in pro bono activities by the judiciary, judicial staff and government lawyers varies widely from circuit to circuit. Many circuits have developed special pro bono projects for participation by the judiciary, judicial staff and government lawyers. In addition, many government agencies and offices have created pro bono plans and policies. For example, the Office of the Attorney General has adopted a pro bono policy which encourages pro bono legal services to the poor by government lawyers and specifically finds that the primary purpose of pro bono service is overall a public one and the reasonable use of public equipment in providing such service is permissible. The Orange County Attorney's Office has established a pro bono policy that affirms that pro bono legal work serves as an important public need and encourages government lawyers to participate in pro bono projects while allowing reasonable use of county equipment, materials and support staff. See Appendix "F" for a copy of this policy. And yet, most of the judiciary, judicial staff and government lawyers still report that they are deferred from the Rule and do not participate in pro bono legal service to the poor. However, many report that they are deferred but also report providing pro bono service and/or making contributions to a legal aid organization. See Appendix "G" for details by circuit and county.

Currently, the Standing Committee is reviewing the pro bono activities of the judiciary, judicial staff and government lawyers. The Standing Committee seeks to assist the Court and the Circuit Committees' implementation of The Plan by reviewing the practical and legal barriers to participation by the members of The Florida Bar currently deferred under the Rule. The Standing Committee is collecting information about the various types of pro bono programs adopted by various courts and government offices and facilitating the expansion of such programs to courts and government offices which do not currently offer such programs. Listed below are examples of actual pro bono projects being reported by the circuit committees:

- In the 2nd circuit, government attorneys interview, advise, and accept eligible clients at the Night Clinic Project; assist the general public with questions and answers about filing in small claims court; and represent clients at mediation hearings. Judicial clerks of the Florida Supreme Court conduct interviews and provide advice and referrals at the local homeless shelter.

- Government attorneys, judiciary, and judicial staff participate in the Lake County Teen Court in the 5th circuit.

- Nine (9) St. Petersburg City Attorneys staff the Consumer Law clinic two times a month in the 6th circuit. Over fifty (50) Pinellas Government attorneys participate in Drug Court and Teen Court Weekly. In October 1998, fourteen (14) Pasco Government Attorneys began participating in Teen Court.

• In the 9th circuit, the Orange County Attorney's office has fifteen (15) attorneys participating in the Attorneys Fighting for Seriously Ill Children project. The United States Attorney's office participates in Teen Court. Staff attorneys of The Florida Bar are involved with the Citizen Dispute Resolution program and the City of Orlando Attorney's Office provides telephone screening through the local legal aid society.

• In the 11th circuit, twenty-two (22) attorneys from the U.S. Attorneys Office handle domestic violence permanent injunctions. Thirty-eight (38) attorneys from the U.S. Attorneys Office and County Attorneys Office do guardian ad litem and child advocacy cases and appeals. Twenty-five (25) attorneys from the Public Defender's Office are involved in a mentoring program.

• In the 13th circuit, attorneys from the Public Defender's Office and the State Attorney's Office do client intake for the Volunteer Lawyers Program. The State Attorney's Office had sixty (60) of its attorneys participate in their pro bono "School Related Service Plan" which provides law related education and educational activities to over 5,300 students. A copy of the School Related service Plan is provided in Appendix "G".

• Government attorneys in the 15th circuit provide intake service for pro bono clients bi-weekly. Members of the judiciary volunteer to conduct community Drug Court.

• Nineteen (19) Broward County Attorneys in the 17th circuit handled non-conflict pro bono cases for clients. U.S. Attorney's Office attorneys handle domestic violence Injunctions for Protection cases.

• Forty-four (44) attorneys from the State Attorney's Office in the 18th circuit participated in Teen Court and legal rights and responsibilities of youths educational programs.

CONCLUSION

The information gathered by the Standing Committee continues to show positive growth in the amount and kind of pro bono service being provided by members of The Florida Bar to the needy in Florida. The Standing Committee, the Circuit Committees, the leadership of The Florida Bar and the leadership of The Florida Bar Foundation have continued to explore what are the next steps to be taken in Florida to move toward 100% participation. Substantial progress has been made on establishing the Florida Pro Bono Legal Services Director Project. The director project would have an experienced attorney and support staff work full-time with The Standing Committee, Circuit Committees, pro bono coordinators, Sections and Committees of The Florida Bar, voluntary bar associations, and law firms on new initiatives to increase participation and expand available pro bono legal assistance to the poor. Two law firms, The Florida Bar and The Florida Bar Foundation have made commitments to financially support the

project and efforts are being made to obtain support commitments from three additional law firms so that the project will be fully funded. A description of the project is provided in Appendix "I". With 23,320 members of The Florida Bar reporting that they did not provide pro bono legal assistance to the poor in the 1997-1998 bar year, there is still great potential to expand pro bono services in Florida. The Standing Committee is actively working with the Circuit Committees to encourage greater participation and remove any barriers to participation.

Florida continues to be a national leader in providing pro bono legal services. In the past year bar leaders and the judiciary from California, Utah, Colorado, Indiana and Maryland have requested detailed information on the Florida pro bono plan to assist in their consideration of adopting comprehensive pro bono plans similar to Florida's. As an example, see Appendix "J" which is an excerpt from the Legal Services/Pro Bono subcommittee of the Judicial Advisory Council in Colorado. Florida will have the opportunity to further demonstrate its leadership when the American Bar Association and the National Legal Aid and Defender Association hold their Equal Justice Conference in Palm Harbor, Florida in May, 1999. Progress towards the pro bono plan's goal of a statewide culture of pro bono within the legal community in Florida and 100% participation by members of The Florida Bar has been considerable but we are reminded that ultimate success depends on lawyers in Florida:

We realize, however, that the rules we adopt in today's opinion will not be the *prime* motivating force in making the legal system work through the provision of pro bono services - only lawyers themselves can do that. *In re Amendments to Rules Regulating The Florida Bar*, 630 So 2d 501, 502 (Fla 1993).

APPENDICES

- A. 1997-98 Attorney Report Statistics**
- B. The Florida Bar Foundation Pro Bono Statistics for IOTA Grantees - 1992-97**
- C. Circuit Pro Bono Committee Chairs**
- D. Examples of Special Pro Bono Projects**
- E. Membership of the Standing Committee on Pro Bono Legal Services.**
- F. Orange County Pro Bono Policy**
- G. 1997-98 Deferral Statistics - Members of judiciary, Judicial Staff, Government Attorneys, Inactive and Retired Bar Members reporting deferred but also reporting pro bono hours provided or contributions made.**
- H. Office of the State Attorney, Thirteenth Judicial Circuit, Florida, School Related Service Plan.**
- I. Proposed Florida Pro Bono Legal Services Director Project.**
- J. Report of the Legal Services/Pro Bono Subcommittee of the Judicial Advisory Council in Colorado**

APPENDIX "A"
1997-98 ATTORNEY REPORT STATISTICS

1998 PRO BONO STATISTICS

Circuit	PERSONALLY PROVIDED PRO BONO LEGAL SERVICES #1		LAW FIRM PLAN #2		CONTRIBUTED MONEY TO A LEGAL AID ORGANIZATION #3		DID NOT PROVIDE OR CONTRIBUTE #4	DEFERRED #5	SPECIAL MANNER #6
	Providers	Hours	Providers	Hours	Contributors	Amount	Non-Participants	Deferred	Providers
1	461	20,447.04	4	63.50	42	20,372.50	322	131	27
2	1,044	50,062.32	21	1,163.84	241	74,584.33	1,202	408	58
3	66	2,185.39	1	3	1	350.00	55	24	6
4	1,075	37,908.78	85	4,099.25	232	139,282.43	890	301	70
5	402	14,141.55	19	801.50	36	11,700.00	285	132	24
6	1,495	50,375.77	34	11,436.95	142	41,478.00	1,021	221	80
7	519	16,184.39	5	113.00	39	13,185.00	422	210	34
8	337	11,093.37	3	204.00	28	6,970.00	287	143	36
9	1,526	70,962.52	28	1,972.90	956	345,565.00	1,122	333	56
10	344	10,806.44	17	747.50	33	9,816.00	281	126	25
11	4,911	206,202.69	538	103,303.80	773	306,910.25	3,979	920	285
12	655	21,152.61	37	758.75	100	29,413.00	468	187	45
13	1,693	62,978.31	39	2,234.85	376	139,434.11	1,474	355	76
14	151	5,864.80	3	45.00	11	3,600.00	75	54	5
15	1,772	78,949.45	87	4,445.40	700	263,074.37	1,659	468	103
16	114	4,691.39	5	139.00	12	3,175.00	85	48	5
17	2,522	88,838.60	76	12,557.90	378	139,460.50	2,371	485	185
18	590	23,455.31	17	446.62	119	43,055.00	467	195	37
19	409	13,159.04	11	327.00	68	18,403.00	308	140	22
20	741	23,575.33	7	599.00	198	29,980.00	576	171	48
*OOS	4,055	176,301.66	51	50,416.95	862	221,819.03	5,971	3,425	596
TOTAL	24,882	989,336.76	1,088	195,879.71	5,347	1,861,627.52	23,320	8,477	1,823

*OOS-Out of State

RESPONSE CATEGORIES ARE:

1. Personally provided pro bono legal services.
2. Provided services through a law firm plan
3. Contributed money to a legal aid organization.
4. Did not provide services or contribute.
5. Deferred from providing services.
6. Provided services in a special manner.

1998 ATTORNEY PRO BONO REPORTS

Hours of Pro Bono Service

LOCATION	NO SUBCATEGORY MARKED		ORGANIZED PROGRAM		ON OWN		BOTH		TOTAL BY COUNTY	
	Attys	Hours	Attys	Hours	Attys	Hours	Attys	Hours	Attys	Hours
Out of State	118	7,867.91	2,878	106,987.05	737	34,337.15	273	17,031.25	4,009	173,663.16
Out of Country	2	18.00	31	1,139.50	10	1,431.00	3	50.00	46	2,638.50
TOTAL	123	15,325.71	2,909	108,126.55	747	35,768.15	276	17,081.25	4,055	176,301.66
County (17) Escambia	3	7,852.00	193	5,350.60	61	1,347.50	33	872.30	290	15,422.40
County (46) Okaloosa	5	85.75	61	2,055.19	22	538.75	37	1,179.60	125	3859.29
County (55) Santa Rosa	1	20.00	22	572.25	3	16.50	1	25.00	27	633.75
County (66) Walton			10	254.85	5	180.75	4	96.00	19	531.60
TOTAL	9	7,957.75	286	8,232.89	91	2,083.50	75	2,172.90	461	20,447.04
SECOND CIRCUIT										
County (19) Franklin			7	237.45	2	70.00	2	98.00	11	405.45
County (20) Gadsden			17	635.75	4	100.00	1	100.00	22	835.75
County (33) Jefferson			5	178.75	3	38.50	2	48.50	10	265.75
County (34) Lafayette										
County (37) Leon	43	1,747.26	473	17,768.61	355	20,448.85	121	8,145.65	992	48,110.37
County (39) Liberty										
County (65) Wakulla			5	280.00	2	75.00	2	90.00	9	445.00
TOTAL	43	1,747.26	507	19,100.56	366	20,732.35	128	8,482.15	1,044	50,062.32

LOCATION	NO SUBCATEGORY MARKED		ORGANIZED PROGRAM		ON OWN		BOTH				
	Attys	Hours	Attys	Hours	Attys	Hours	Attys	Hours			
THIRD CIRCUIT											
County (12)	Columbia		26	644.25	8	456.50	4	165.00	38	1,265.75	
County (15)	Dixie		1	50.00					1	50.00	
County (24)	Hamilton		2	70.00					2	70.00	
County (40)	Madison		6	141.64	1	120.00	1	30.00	8	291.64	
County (61)	Suwannee		8	150.75					8	150.75	
County (62)	Taylor		4	119.50	4	182.50	1	55.25	9	357.25	
	TOTAL		47	1,176.14	13	759.00	6	250.25	66	2,185.39	
FOURTH CIRCUIT											
County (10)	Clay	3	60.00	35	1,331.25	7	518.10	9	791.75	54	2,701.10
County (16)	Duval	27	696.60	612	22,068.60	247	7,051.38	115	4,249.35	1,001	34,065.93
County (45)	Nassau	2	230.00	7	236.50	6	294.00	5	381.25	20	1,141.75
	TOTAL	32	986.60	654	23,636.35	260	7,863.48	129	5,422.35	1,075	37,908.78
FIFTH CIRCUIT											
County (9)	Citrus	1	63.50	35	991.15	8	193.00	3	97.75	47	1,345.40
County (27)	Hernando	2	105.00	28	772.50	12	471.50	9	464.00	51	1,813.00
County (35)	Lake	6	164.00	74	2,443.59	10	311.25	11	361.45	101	3,280.29
County (42)	Marion	3	77.25	125	5,114.66	29	876.05	36	1,275.90	193	7,343.86
County (60)	Sumter			8	259.00	1	40.00	1	60.00	10	359.00
	TOTAL	12	409.75	270	9,580.90	60	1,891.80	60	2,259.10	402	14,141.55

LOCATION		NO SUBCATEGORY MARKED		ORGANIZED PROGRAM		ON OWN		BOTH			
		Attys	Hours	Attys	Hours	Attys	Hours	Attys	Hours		
SIXTH CIRCUIT											
County (51)	Pasco	2	29.50	88	3,714.91	23	524.50	16	1,161.35	129	5,430.26
County (52)	Pinellas	57	2,471.80	943	28,464.10	224	6,165.62	142	7,843.99	1,366	44,945.51
TOTAL		59	2,501.30	1,031	32,179.01	247	6,690.12	158	9,005.34	1,495	50,375.77
SEVENTH CIRCUIT											
County (18)	Flagler	1	10.00	9	287.75	7	152.45	8	340.50	25	790.70
County (54)	Putnam	1	36.00	12	632.50	6	187.50	10	368.10	29	1,224.10
County (58)	St. Johns	3	75.75	56	1,455.90	20	524.10	15	549.05	94	2,604.80
County (64)	Volusia	29	720.45	226	7,453.99	62	1,638.25	54	1,752.10	371	11,564.79
TOTAL		34	842.20	303	9,830.14	95	2,502.30	87	3,009.75	519	16,184.39
EIGHTH CIRCUIT											
County (1)	Alachua	7	112.40	215	7,081.72	52	1,478.25	29	964.75	303	9,637.12
County (2)	Baker			2	82.00			1	20.00	3	102.00
County (4)	Bradford	1	58.25	7	251.25	2	70.00			10	379.50
County (21)	Gilchrist			3	73.50			1	31.75	4	104.80
County (38)	Levy			15	783.50	1	34.25			16	817.75
County (63)	Union			1	52.20					1	52.20
TOTALS		8	170.65	243	8,323.72	55	1,582.50	31	1,016.50	337	11,093.37
NINTH CIRCUIT											
County (48)	Orange	108	16,608.47	542	22,210.67	641	22,766.94	177	7,727.75	1,468	69,313.83
County (49)	Osceola	1	25.00	39	1,135.75	13	351.70	5	136.24	58	1,648.69
TOTAL		109	16,633.47	581	23,346.42	654	23,118.64	182	7,863.99	1,526	70,962.52

LOCATION		NO SUBCATEGORY MARKED		ORGANIZED PROGRAM		ON OWN		BOTH			
		Attys	Hours	Attys	Hours	Attys	Hours	Attys	Hours		
TENTH CIRCUIT											
County (25)	Hardee	1	52.00	2	40.00	3	63.00	1	30.00	7	185.00
County (28)	Highlands	2	123.75	30	729.90	3	118.50	1	12.93	36	985.08
County (53)	Polk	8	251.85	210	6,939.05	49	1,216.05	34	1,229.41	301	9,636.36
TOTAL		11	427.60	242	7,708.95	55	1,397.55	36	1,272.34	344	10,806.44
ELEVENTH CIRCUIT											
County (13)	Dade	228	23,845.59	3,105	119,589.26	1,007	36,166.69	571	26,601.15	4,911	206,202.69
TOTAL		228	23,845.59	3,105	119,589.26	1,007	36,166.69	571	26,601.15	4,911	206,202.69
TWELFTH CIRCUIT											
County (14)	DeSoto	1	21.25	11	436.25	3	60.50			15	518.00
County (41)	Manatee	13	349.75	144	4,633.50	32	723.95	21	662.25	210	6,369.45
County (56)	Sarasota	9	229.25	297	9,408.41	65	2,532.15	59	2,095.35	430	14,265.16
TOTAL		23	600.25	452	14,478.16	100	3,316.60	80	2,757.60	655	21,152.61
THIRTEENTH CIRCUIT											
County (29)	Hillsborough	102	13,094.20	1,091	35,731.42	356	9,037.22	144	5,115.47	1,693	62,978.31
TOTAL		102	13,094.20	1,091	35,731.42	356	9,037.22	144	5,115.47	1,693	62,978.31
FOURTEENTH CIRCUIT (see next page for more)											
County (3)	Bay			62	2,080.95	29	1,328.60	24	854.50	115	4,264.05
County (7)	Calhoun					2	70.00	1	40.00	3	110.00
County (35)	Gulf			8	319.75			1	65.00	9	384.75
County (30)	Holmes			3	145.00	1	40.00	1	20.00	5	205.00
County (32)	Jackson			10	492.00	1	30.00	4	229.00	15	751.00

LOCATION	NO SUBCATEGORY MARKED		ORGANIZED PROGRAM		ON OWN		BOTH			
	Attys	Hours	Attys	Hours	Attys	Hours	Attys	Hours		
FOURTEENTH CIRCUIT (continued from previous page)										
County (67) Washington			3	130.00			1	20.00	4	150.00
TOTAL			86	3,167.70	33	1,468.60	32	1,228.50	151	5,864.80
FIFTEENTH CIRCUIT										
County (50) Palm Beach	66	12,009.80	965	34,100.95	466	19,887.00	275	12,951.70	1,772	78,949.45
TOTAL	66	12,009.80	965	34,100.95	466	19,887.00	275	12,951.70	1,772	78,949.45
SIXTEENTH CIRCUIT										
County (44) Monroe	2	120.00	83	3,171.64	20	969.75	9	430.00	114	4,691.39
TOTAL	2	120.00	83	3,171.64	20	969.75	9	430.00	114	4,691.39
SEVENTEENTH CIRCUIT										
County (6) Broward	81	3,430.93	1,614	54,612.16	529	18,463.19	298	12,332.32	2,522	88,838.60
TOTAL	81	3,430.93	1,614	54,612.16	529	18,463.19	298	12,332.32	2,522	88,838.60
EIGHTEENTH CIRCUIT										
County (5) Brevard	9	333.00	201	8,640.10	91	3,076/53	58	2,336.25	359	14,385.88
County (57) Seminole	6	360.25	131	4,460.98	66	2,133.45	28	2,114.75	231	9,069.43
TOTAL	15	693.25	332	13,101.08	157	5,209.98	86	4,451.00	590	23,455.31
NINETEENTH CIRCUIT										
County (31) Indian River	4	552.65	75	2,296.50	18	654.95	25	717.70	122	4,221.80
County (43) Martin	3	137.00	137	4,274.25	19	432.65	6	450.50	165	5,294.40
County (47) Okeechobee			8	171.65			1	.50	9	172.15
County (59) St. Lucie	4	172.00	80	2,274.09	16	612.60	13	412.00	113	3,470.69
TOTAL	11	861.65	300	9,016.49	53	1,700.20	45	1,580.70	409	13,159.04

LOCATION		NO SUBCATEGORY MARKED		ORGANIZED PROGRAM		ON OWN		BOTH			
		Attys	Hours	Attys	Hours	Attys	Hours	Attys	Hours		
TWENTIETH CIRCUIT											
County (8)	Charlotte	9	572.75	45	1,503.15	11	390.00	7	231.25	72	2,697.15
County (11)	Collier	13	376.80	212	6,469.50	65	1,553.54	21	975.00	311	9,374.84
County (22)	Glades										
County (26)	Hendry	2	39.38	7	467.75	3	64.50			12	571.63
County (36)	Lee	18	1,279.30	251	7,203.71	45	1,097.50	32	1,351.20	346	10,931.71
TOTAL		42	2,268.23	515	15,644.11	124	3,105.54	60	2,557.45	741	23,575.33
TOTAL (with OOS)		1010	103,926.19	15,616	553,854.60	5,488	203,714.16	2,768	127,841.81	24,882	989,336.76
TOTAL (w/o OOS)		887	88,600.48	12,707	445,728.05	4,741	167,946.01	2,492	110,760.56	20,827	813,035.10

1998 ATTORNEY PRO BONO REPORTS

LAW FIRM/HOURS/CONTRIBUTIONS/DID NOT PROVIDE/SPECIAL MANNER

LOCATION	LAW FIRM PLAN HRS		CONTRIBUTIONS		DID NOT PROVIDE	DEFERRED	SPECIAL MANNER	DID NOT REPORT
	Attys	Hours	Attys	Amt.(\$)				
Out of State	49	50,381.95	854	217,850.03	5,879	3,380	576	3,610
Out of Country	2	35.00	8	3,969.00	92	45	20	37
TOTAL	51	50,416.95	862	221,819.03	5,971	3,425	596	3,647
FIRST CIRCUIT								
County (17) Escambia	2	21.50	21	7,022.50	211	87	18	113
County (46) Okaloosa	1	30.00	18	11,250.00	70	24	7	32
County (55) Santa Rosa	1	12	2	1,750.00	28	14	1	14
County (66) Walton			1	350.00	13	6	1	2
TOTAL	4	63.50	42	20,372.50	322	131	27	161
SECOND CIRCUIT								
County (19) Franklin					2	1	3	2
County (20) Gadsden			2	700.00	21	5		4
County (33) Jefferson					4	4		2
County (34) Lafayette					1			1
County (37) Leon	21	1,163.84	1,163.84	73,509.33	1,158	394	51	311
County (39) Liberty						1		
County (65) Wakulla			2	375.00	16	3	4	1
TOTAL	21	1,163.84	241	74,584.33	1,202	408	58	321

LOCATION		LAW FIRM PLAN HRS		CONTRIBUTIONS		DID NOT PROVIDE	DEFERRED	SPECIAL MANNER	DID NOT REPORT
		Attys	Hours	Attys	Amt.(\$)				
THIRD CIRCUIT									
County (12)	Columbia	1	3.00	1	350.00	27	13	5	11
County (15)	Dixie					1			2
County (24)	Hamilton					3	1		2
County (40)	Madison					5	2	1	2
County (61)	Suwannee					16	5		8
County (62)	Taylor					3	3		3
TOTAL		1	3.00	1	350.00	55	24	6	28
FOURTH CIRCUIT									
County (10)	Clay	5	160.00	8	2,286.32	33	5	2	21
County (16)	Duval	78	3,834.25	222	135,071.11	848	291	67	408
County (45)	Nassau	2	105.00	2	1,925.00	9	5	1	7
TOTAL		85	4,099.25	232	139,282.43	890	301	70	436
FIFTH CIRCUIT									
County (9)	Citrus			6	2,000.00	33	16	2	9
County (27)	Hernando	1	15	4	1,150.00	52	18	1	8
County (35)	Lake	11	133.50	7	2,450.00	62	33	7	24
County (42)	Marion	6	643	19	6,100.00	132	60	12	45
County (60)	Sumter	1	10			6	5	2	1
TOTAL		19	801.50	36	11,700.00	285	132	24	87

LOCATION		LAW FIRM PLAN HRS		CONTRIBUTIONS		DID NOT PROVIDE	DEFERRED	SPECIAL MANNER	DID NOT REPORT
		Attys	Hours	Attys	Amt.(\$)				
SIXTH CIRCUIT									
County (51)	Pasco	2	253	8	2,475.00	79	35	8	35
County (52)	Pinellas	32	11,183.95	134	39,003.00	942	186	72	354
TOTAL		34	11,436.95	142	41,478.00	1,021	221	80	389
SEVENTH CIRCUIT									
County (18)	Flagler			1	375.00	12	6	1	7
County (54)	Putnam	1	12.00	1	350.00	28	15	3	12
County (58)	St. Johns	1	50.00	12	6,035.00	88	40	7	25
County (64)	Volusia	3	51.00	25	6,425.00	294	149	23	130
TOTAL		5	113.00	39	13,185.00	422	210	34	174
EIGHTH CIRCUIT									
County (1)	Alachua	3	204.00	26	6,570.00	267	133	32	96
County (2)	Baker					3	1	1	
County (4)	Bradford					5	1	1	6
County (21)	Gilchrist			1	50.00	1	2	1	1
County (38)	Levy			1	350.00	11	5	1	4
County (63)	Union						1		
TOTALS		3	204.00	28	6,970.00	287	143	36	107
NINTH CIRCUIT									
County (48)	Orange	27	1,964.90	955	345,215.00	1,093	306	49	475
County (49)	Osceola	1	8.00	1	350.00	29	27	7	16
TOTAL		28	1,972.90	956	345,565.00	1,122	333	56	491

LOCATION	LAW FIRM PLAN HRS		CONTRIBUTIONS		DID NOT PROVIDE	DEFERRED	SPECIAL MANNER	DID NOT REPORT	
	Attys	Hours	Attys	Amt.(\$)					
TENTH CIRCUIT									
County (25)	Hardee				4		1	1	
County (28)	Highlands			2	700.00	22	10	2	9
County (53)	Polk	17	747.50	31	9,116.00	255	116	22	96
	TOTAL	17	747.50	33	9,816.00	281	126	25	106
ELEVENTH CIRCUIT									
County (13)	Dade	538	103,303.80	773	306,910.25	3,979	920	285	2,067
	TOTAL	538	103,303.80	773	306,910.25	3,979	920	285	2,067
TWELFTH CIRCUIT									
County (14)	DeSoto			1	350.00	7	7	1	2
County (41)	Manatee	1	20.00	21	5,200.00	121	63	10	52
County (56)	Sarasota	36	738.75	76	23,863.00	340	117	34	148
	TOTAL	37	758.75	100	29,413.00	468	187	45	202
THIRTEENTH CIRCUIT									
County (29)	Hillsborough	39	2,234.85	376	139,434.11	1,474	355	76	659
	TOTAL	39	2,234.85	376	139,434.11	1,474	355	76	659
FOURTEENTH CIRCUIT (see next page for more)									
County (3)	Bay	3	45.00	10	3,250.00	58	39	5	37
County (7)	Calhoun					2			
County (35)	Gulf					2	2		1
County (30)	Holmes					1	2		2
County (32)	Jackson					9	8		4

LOCATION		LAW FIRM PLAN HRS		CONTRIBUTIONS		DID NOT PROVIDE	DEFERRED	SPECIAL MANNER	DID NOT REPORT
		Attys	Hours	Attys	Amt.(\$)				
FOURTEENTH CIRCUIT (continued from previous page)									
County (67)	Washington			1	350.00	3	3		
TOTAL		3	45.00	11	3,600.00	75	54	5	44
FIFTEENTH CIRCUIT									
County (50)	Palm Beach	87	4,445.40	700	263,074.37	1,659	468	103	817
TOTAL		87	4,445.40	700	263,074.37	1,659	468	103	817
SIXTEENTH CIRCUIT									
County (44)	Monroe	5	139.00	12	3,175.00	85	48	5	41
TOTAL		5	139.00	12	3,175.00	85	48	5	41
SEVENTEENTH CIRCUIT									
County (6)	Broward	76	12,557.90	378	139,460.50	2,371	485	185	1,143
TOTAL		76	12,557.90	378	139,460.50	2,371	485	185	1,143
EIGHTEENTH CIRCUIT									
County (5)	Brevard	14	391.12	74	24,370.00	251	128	24	114
County (57)	Seminole	3	55.50	45	18,685.00	216	67	13	96
TOTAL		17	446.62	119	43,055.00	467	195	37	210
NINETEENTH CIRCUIT									
County (31)	Indian River	8	227.00	22	6,403.00	84	33	5	28
County (43)	Martin	1	20.00	34	9,450.00	125	38	13	48
County (47)	Okeechobee	1	50.00	2	700.00	4	9		3
County (59)	St. Lucie	1	30.00	10	1,850.00	95	60	4	33
TOTAL		11	327.00	68	18,403.00	308	140	22	112

LOCATION	LAW FIRM PLAN HRS		CONTRIBUTIONS		DID NOT PROVIDE	DEFERRED	SPECIAL MANNER	DID NOT REPORT	
	Attys	Hours	Attys	Amt.(\$)					
TWENTIETH CIRCUIT									
County (8)	Charlotte		5	1,230.00	55	22	4	19	
County (11)	Collier	4	515.00	59	17,870.00	235	49	18	109
County (22)	Glades					2			
County (26)	Hendry				7	3	1	6	
County (36)	Lee	3	84.00	134	10,880.00	279	95	25	116
	TOTAL	7	599.00	198	29,980.00	576	171	48	250
TOTAL (with OOS)		1,088	195,879.21	5,347	1,861,627.52	23,320	8,477	1,823	11,530*
TOTAL (w/o OOS)		1,037	50,416.95	4,485	1,639,808.49	17,349	5,052	1,227	7,883*

*These totals include 38 persons who did not report but due to keying errors cannot be attributed to any particular county or circuit.

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APPENDIX "B"

**THE FLORIDA BAR FOUNDATION PRO BONO STATISTICS FOR
IOTA GRANTEES 1992-97**

THE FLORIDA BAR FOUNDATION
 LEGAL ASSISTANCE FOR THE POOR GRANT PROGRAM
 COMPARISON OF PRO BONO STATISTICS STATEWIDE -- CUMULATIVE 1992-1997

YEAR	PRO BONO CASES CLOSED	CASE HANDLING	OTHER PROJECTS	CASH IN LIEU OF PRO BONO	DOLLARS CONTRIBUTED IN LIEU	PRO BONO NEW CASES	HOURS CASES CLOSED	HOURS OTHER PROJECTS
LSC FUNDED PROGRAMS								
1992	6929	4418	683	144	\$46,750	3747	27757	3242
1993	8337	4711	686	283	\$95,650	4676	37866	4688
1994	7146	4680	1465	903	\$296,422	5140	44166	4347
1995	6522	4769	2192	928	\$328,607	5812	39988	6147
1996	9368	4835	1582	877	\$285,359	5220	38206	6663
1997	7133	4928	1628	879	\$224,358	6715	36434	6472
Total:	45435	28261	8156	4814	\$1,269,138	29310	223689	31479
NON LSC FUNDED PROGRAMS								
1992	12151	5979	1851	1444	\$500,925	7960	71556	10642
1993	14381	7227	1933	1705	\$494,532	8839	69821	7314
1994	11163	9243	2844	1811	\$683,731	8989	86122	4937
1995	10841	7841	2184	1877	\$646,802	8581	88829	10841
1996	10902	8565	2388	1826	\$629,833	1056	78535	10369
1997	12257	9125	2469	1957	\$711,585	1665	87898	10737
Total:	71695	47988	12789	10620	\$3,666,688	53810	481953	17032
LSC AND NON LSC FUNDED PROGRAMS COMBINED								
1992	19080	10397	2534	1588	\$547,675	11707	99313	13884
1993	22718	11938	2619	1988	\$590,182	12715	106887	11922
1994	18309	13843	3589	2714	\$988,153	14049	138288	9284
1995	17363	12618	4296	2885	\$966,609	14393	128889	13154
1996	20278	13488	3898	2783	\$915,192	15876	116741	17032
1997	19398	14853	4097	2836	\$935,935	14388	124324	17289
Total:	117138	76241	28945	14634	\$4,935,746	82328	785562	82485

APPENDIX "C "

CIRCUIT PRO BONO COMMITTEE CHAIRS

**CIRCUIT PRO BONO COMMITTEE
CHAIRS
1998/1999**

VACANT (1)

Catherine Lannon (2)
Attorney General's Office
The Capitol Room PL-01
Tallahassee FL 32399-1050

VACANT (3)

Sarah Bohr (4)
Jacksonville Area Legal Aid
126 W. Adams Street
Jacksonville FL 32202-3849

Glenn Shuman (5)
Withlacoochee Area Legal Svcs
20 South Magnolia Ave
Ocala FL 34474

Hon Nelly N Khouzam (6)
Pinellas County Criminal Justice Ctr
14250 49th Street N
Clearwater FL 34622

Frank D Upchurch III Esq (7)
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St Augustine FL 32085-3007

Philip C Beverly Jr (8)
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Gainesville FL 32601

Charles R. Stepter, Jr. Esq (9)
170 E. Washington Street
Orlando FL 32801

Hon Charles A Davis Jr (10)
P O Box 9000
Drawer J 109
Bartow FL 33831

Hon Eugene J Fierro (11)
Family Civil Dept
Dade County Courthouse
73 W Flagler St
Miami FL 33130

Hon Robert B Bennett Jr (12)
Circuit Judge
PO Box 48927
Sarasota FL 34231

Hon James M Barton II (13)
South Annex Room 204
800 Kennedy Blvd
Tampa FL 33602

Hon. Don T. Sirmons(14)
Bay County Courthouse
P. O. Box 831
Panama City, FL 32402-0831

Hon Lucy Brown (15)
South Cty Courthouse
200 W. Atlantic Ave., Rm 218
Delray FL 33444

Paulette Ettachild (16)
Legal Serv of Fla Keys
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Key West FL 33040

James S. Benjamin(17)
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Ft. Lauderdale, FL 33394-0005

Hon Thomas G Freeman Jr (18)
Seminole County Courthouse
301 N Park Ave
Sanford FL 32771

John R. Cook (19)
202 NW 5th Avenue
Okeechobee, FL 34972-4140

Hon Isaac Anderson Jr (20)
Lee County Justice Center
1700 Monroe St
Fort Myers FL 33901

APPENDIX "D "

EXAMPLES OF SPECIAL PRO BONO PROJECTS

COMMUNITY LAW PROGRAM, INC.

Community Outreach Center - PTEC St. Petersburg
3420 Eighth Ave. South, Suite 109
St. Petersburg, Florida 33711

(813) 323-7712

(813) 323-7623 fax

Volunteer Attorney Clinics

Serving financially eligible people living in southern Pinellas County (south of Ulmerton)

Advice Only Family Law Clinic

Held Thursdays from 12 noon - 1:00 p.m. at the County Courthouse in downtown St. Petersburg (150 5th Street North, Room 221). Pro bono attorneys provide low income people with advice regarding the use of the Florida Supreme Court Approved Simplified Family Law Forms in dissolution of marriage, modification and enforcement of child support, custody and visitation matters. Clients requesting an appointment should already have their forms completed to the best of their ability. Call 323-7712 for appointment.

Volunteer Attorney Advice Only Clinic

Held Tuesdays from 1:00 - 3:00 p.m. at the James B. Sanderlin Family Service Center, 2335 22nd Ave. South, St. Petersburg. Volunteer attorneys provide advice on civil legal matters including family law. Attorneys from Fisher & Sauls participate in this clinic. Appointments can be made by calling 321-9444.

St. Vincent DePaul Soup Kitchen Advice Clinic

A pro bono attorney and a legal aid paralegal are available at the soup kitchen, 787 Arlington Avenue, St. Petersburg, every Thursday from 11:00 a.m. - 12 noon to assist clients with civil legal matters. No appointment is necessary.

Sunshine Center

Senior citizens are briefed monthly by pro bono attorneys on legal topics including: Small Claims Court, Wills & Estate Planning, Tax Tips for the Elderly, Family Law in the 90's, Guardianships, Patient's Rights, Bankruptcy, Landlord/Tenant Law and Personal Injury Law. For more information, contact the Sunshine Center (330 Fifth Street North, St. Petersburg) at 893-7101.

Gulfcoast Legal Services Intake Clinic

Volunteer attorneys host an intake clinic every Wednesday from 5:30 - 7:30 p.m. at Gulfcoast Legal Services, 641 First St. South, St. Petersburg. Clients are asked to bring all relevant paperwork, and are interviewed by an attorney to determine the extent of their legal problem. For an appointment, call 821-0726.

Consumer Clinic

Volunteer attorneys are available to discuss consumer issues with clients in the Community Law Program office on the first and third Wednesday of the month from 1:00 - 3:00 p.m. Consumer issues include warranties, defective merchandise, creditors and others. Call 323-7712 for an appointment.

Housing Clinic

On first and third Friday of the month from 1:00 - 3:00 p.m., volunteer attorneys meet with clients to discuss their housing or landlord/tenant issues at Gulfcoast Legal Services, 641 First St. South, St. Petersburg. For an appointment, call 821-0726.

Courthouse Legal Assistance Project

Volunteer attorneys are available for low income people to discuss civil legal matters. Held Wednesdays from 10:00 a.m. - 12 noon at the St. Petersburg County Courthouse, room 221 (150 5th Street North). Clients are seen on a first come, first serve basis. Attorneys from Holland & Knight, LLP participate in this clinic. For more information, contact 323-7712.

H.E.L.P. - Helping the Elderly with their Legal Problems

The HELP clinic is held on the second Monday of the month for low income seniors at the Sunshine Center, 330 Fifth Street North, St. Petersburg. Attorneys from the law firm of Carlton Fields provide legal advice to the seniors. Call 892-5512 for an appointment.

HIV/AIDS Victims

Pro bono attorneys are available to assist low income people with HIV/AIDS with such legal matters as living wills, durable powers of attorney, simple wills and certain other legal problems. Appointments can be made by calling 323-7712.

Community Education

Volunteer attorneys are available to talk to groups in order to educate members of the public on their legal rights and responsibilities. For more information, call 323-7712.

Providing Pro Bono Legal Services for the Indigent
Funded by: Gulfcoast Legal Services • Florida Bar Foundation (IOTA)
Social Action Funding: City of St. Petersburg • Pinellas County
Dues • Tax-deductible Contributions

NEW!
Beginning July 22, 1998

**LEGAL AID SOCIETY OF THE ORANGE COUNTY BAR ASSOCIATION, INC.
PRO BONO PROGRAM 1998**

PROJECTS

AIDS PROJECT: A special will panel provides simple wills and related documents to persons with AIDS, ARC, and who are HIV positive. Attorneys interview clients at support groups such as AIDS Resource Alliance, Hope and Help, and Serenity House. Participation requires four sessions of interviews. A training will be offered in early 1998. 20 slots. For more information, please contact Cathy Tucker, Pro Bono Coordinator.

ATTORNEYS FIGHTING FOR SERIOUSLY ILL CHILDREN: Attorneys will provide assistance for families with children who are suffering from a critical illness. These families in crisis need help with insurance, wills, trusts, credit and bankruptcy information, review of real estate documents and other issues. Panel attorneys will not do litigation, but provide advice, counseling, negotiation, etc. A mentor panel will be available for expert assistance. Bryant Applegate, an attorney with Orange County, serves as volunteer liaison. Preference will be given to government attorneys and corporate counsel; 10 slots. For more information, please contact Cathy Tucker, Pro Bono Coordinator.

CITIZEN DISPUTE SETTLEMENT/FAMILY MEDIATION: Attorneys serve as mediators for the OCBA sponsored programs of CDS and Family Mediation. For CDS, attorneys agree to act as mediators for disputes over civil matters such as neighborhood disputes, landlord/tenant, etc. For Family Mediation, attorneys with specific training requirements act as mediators in family law matters. Preference for participation for pro bono credit is given to government attorneys and corporate counsel. There is a limited number of slots for private attorneys. Because a schedule is needed by mid-January, slots are assigned on a first come, first serve basis; 45 slots for CDS, 22 slots for Family Mediation. Attorneys should expect to be available for 10 sessions. For more information, please contact Cathy Tucker, Pro Bono Coordinator. **IF YOU WANT THIS PROJECT, SEND YOUR FORM BACK AS SOON AS POSSIBLE.**

COMMUNITY EDUCATION PANEL: Government attorneys (assistant state attorneys, public defenders, city and county attorneys) and in-house corporate counsel agree to speak to community groups and participate in community programs such as festivals and fairs that impact low income residents of Orange County. Attorneys speak on a variety of topics and discuss the Legal Aid Society as well. For more information, please contact JoAnn Tucker, Manager of Referral Services.

EARNED INCOME CREDIT/TAX ASSISTANCE PROJECT: Attorneys will provide assistance to eligible clients in preparing their tax returns, especially to obtain the earned income tax credit. Training will be provided. There will be several nights during the January-April period during which this assistance will be provided. Preference will be given to government attorneys and corporate counsel; 10 slots. For more information, please contact Alana Brenner, Project Coordinator.

HOMELESS ADVOCACY PROJECT: This project began its pro bono component in 1992. Attorneys conduct intake at a variety of food and shelter sites around the Orange County area each month. Cases identified for specific legal assistance can be handled by the interviewing attorney or referred through the pro bono panel; 45 participants are needed. There will be a training in January 1998. For more information, please contact Helaine Blum, Homeless Advocacy Project Coordinator.

TEEN COURT: This diversion program was created to help juveniles who have been accused of misdemeanors. The juveniles will appear at a teen court composed of other teens as prosecutor, defense attorney, and jury. Pro bono attorneys will serve as advisors and trainers. There are 30 slots available on a first come basis for attorneys. Preference will be given to judges, government and corporate attorneys. Attorneys should expect to be available for 12 sessions or about 30 hours. For more information, please contact Cathy Tucker, Pro Bono Coordinator. **IF YOU WANT THIS PROJECT, SEND YOUR FORM BACK AS SOON AS POSSIBLE.**

DRUG AWARENESS PROGRAM: The OCBA and Orange County Medical Society developed a program to educate 10th grade students in Orange County Schools on the legal, medical, and physical consequences of the use and abuse of alcohol and drugs. A lawyer is teamed up with a doctor and assigned to a school. The team sets up schedule with a school to speak with each 10th grade English class, at which time consequences are discussed and questions are honestly answered. Time spent 20 - 30 hours during school hours, 10 attorney slots assigned on a first come basis. Preference for government and corporate attorneys. For more information, please contact Cathy Tucker, Pro Bono Coordinator.

APPENDIX "E"

**MEMBERSHIP OF THE STANDING COMMITTEE ON PRO BONO
LEGAL SERVICES**

1998-99

STANDING COMMITTEE ON PRO BONO SERVICES

John Marshall Kest, Chair
236 S. Lucerne Circle
P.O. Box 568188
Orlando, FL 32856-8188
(407)843-7060

Richard Arthur Tanner, Vice Chair
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Montclair, NJ 07043
(201) 744-2100

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Aran Correa & Guarch
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Coral Gables, FL 33146-2602
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Baxter & Strohauer
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Raymond Ehrlich
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comm.lst 10/98

APPENDIX "F"
ORANGE COUNTY PRO BONO POLICY

NOV 7 1995

VD/CPA

RESOLUTION NO. 95-M-102

COUNTY ATTORNEY PRO BONO
LEGAL SERVICES RESOLUTION

WHEREAS, from time to time the lawyers in the Orange County Attorney's Office perform or are asked or needed to perform "pro bono" legal service (that is, providing free legal services to those who are in need and cannot afford an attorney), and the performance of such pro bono legal work serves an important public need and assists those less fortunate in Orange County; and

WHEREAS, the Florida Supreme Court has strongly encouraged government lawyers to participate in pro bono projects; and

WHEREAS, although government attorneys and judges are exempt from pro bono requirements established by the Florida Supreme Court, such service by Assistant County Attorneys helps those less fortunate and enhances the reputation of the County Attorney's Office and Orange County Government; and

WHEREAS, the ability of government lawyers to provide such pro bono legal services is greatly impeded if they are not authorized to use the equipment and receive the assistance of support staff in their place of work.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. The lawyers in the Orange County Attorney's Office are authorized to provide pro bono legal services to individuals who cannot afford legal representation, as follows:

(a) a pro bono matter may be undertaken only (i) as a result of a referral from the Orange County Legal Aid Society or (ii) with the express approval of the County Attorney;

(b) a pro bono matter may be undertaken only if it is reasonably foreseeable that (i) the matter will not interfere materially with the performance of county work by either the

assistant county attorney involved or any support staff and
(ii) the matter, together with all other *pro bono* matters
undertaken by the particular attorney, will result in an
expenditure of time by the attorney of no more than 10 hours
in any calendar month; and

(c) the assistant county attorney may use reasonable
amounts of county equipment, materials, and support staff in
the course of performing *pro bono* services.

Section 2. Nothing herein prevents Assistant County
Attorneys from performing *pro bono* services on their own
time, using their own equipment and materials and providing
their own clerical services.

Section 3. Assistant County Attorneys shall not engage
in any *pro bono* matter that constitutes a conflict of
interest with their work for Orange County.

Section 4. Effective Date. This Resolution shall take
effect immediately upon its adoption.

ADOPTED THIS 7th DAY OF November, 1995.



ORANGE COUNTY, FLORIDA

BY: [Signature]
FOR THE County Chairman Bob Freeman

DATE: NOV 7 1995

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

BY: [Signature]
Deputy Clerk

ABA686 10/16/95

APPENDIX "G"

1997-98 DEFERRAL STATISTICS

**MEMBERS OF THE JUDICIARY, JUDICIAL STAFF, GOVERNMENT
ATTORNEYS, INACTIVE, AND RETIRED BAR MEMBERS REPORTING
DEFERRED BUT ALSO REPORTING PRO BONO HOURS PROVIDED
OR CONTRIBUTIONS MADE**

**1998 Attorney Pro Bono Reports
Deferrals Reporting Hours/Contributions**

	No. Reporting Deferred	Hours Provided	Contributions Made
Out of State/County	3,425	12,490.55	\$11,076.00 ¹
First	131	40.00	160.00
Second	408	84.15	\$2,490.00
Third	24		
Fourth	301	690.70	\$63,425.00 ²
Fifth	132	40.00	
Sixth	221	25.00	\$25.00
Seventh	210	177.10	4,875.00 ³
Eighth	143	23.00	\$300.00
Ninth	333	13,018.50	\$35,000.00 ⁴
Tenth	126		
Eleventh	920	2,424.80	\$1,820.00
Twelfth	187	76.50	\$300.00
Thirteenth	355	151.75	\$810.00
Fourteenth	54	14.25	
Fifteenth	468	1,740.00	\$1,180.00
Sixteenth	48	50.00	
Seventeenth	485	443.00	\$825.00
Eighteenth	195	176.00	\$925.00
Nineteenth	140	40.25	\$25.00
Twentieth	171	24.09	\$150.00
TOTAL (w/OOS)	8,477	31,729.64	\$91,886.00
TOTAL (w/o OOS)	5,052	19,239.09	\$80,810.00

Footnotes indicate keying errors which cannot be attributed to a particular category - judiciary, judicial staff, government, retired or inactive but included in circuit totals.

¹ 1 person reported 7,309.80 hours

² 28 people reported 485.7 hours and \$63,000 in contributions

³ 2 people reported 20 hours and \$4,500 in contributions

⁴ 1 person reported 10 hours and 3,500 in contributions

1998 ATTORNEY PRO BONO REPORTS

Reporting Deferred but Indicating Hours Provided or Contributions Made

LOCATION	REPORTED DEFERRED	JUDICIARY			JUDICIAL STAFF			GOV'T ATTORNEY			RETIRED			INACTIVE		
		No.	Hours	Contributions	No.	Hours	Contributions	No.	Hours	Contributions	No.	Hours	Contributions	No.	Hours	Contributions
Out of State	3,380	115	220.0	25.00	96	15.0	150.00	868	1,791.5	7,316.00	151		330.00	2,149	3,006.25	3,255.00
Out of Country	45	1			1			5	100.0		4			34		8.0
TOTAL	3,425	116	220.0	25.00	97	15.0	150.00	873	1,891.50	7,316.00	155	330.00	2,183	3,014.25	3,255.00	
FIRST CIRCUIT																
County (17) Escambia	87	14			12			41	4		10		60.00	10		
County (46) Okaloosa	24	5						13			5	16	100.00	1		
County (55) Santa Rosa	14	2						9			1			2		
County (66) Walton	6	2			1			2	20					1		
TOTAL	131	23			13			65	24		16	16	160.00	14		
SECOND CIRCUIT																
County (19) Franklin	1	1														
County (20) Gadsden	5							4			1					
County (33) Jefferson	4	1						2			1					
County (34) Lafayette																
County (37) Leon	394	33	17.4	500.00	54	19	140.00	246	47.75	1,325.00	25		500.00	36		
County (39) Liberty	1	1														
County (65) Wakulla	3	1						2		25.00						
TOTAL	408	37	17.4	500.00	54	19	140.00	254	47.75	1,350.00	27	500.00	36			
THIRD CIRCUIT																
County (12) Columbia	13	1			1			11								
County (15) Dixie																

LOCATION	REPORTED DEFERRED	JUDICIARY		JUDICIAL STAFF			GOV'T ATTORNEY			RETIRED			INACTIVE		
		No.	Hours Contributions	No.	Hours Contributions	No.	Hours Contributions	No.	Hours Contributions	No.	Hours Contributions				
County (24) Hamilton	1	1													
County (40) Madison	2					2									
County (61) Suwannee	5	2				2			1						
County (62) Taylor	3	1				2									
TOTAL	24	5		1		17			1						
FOURTH CIRCUIT															
County (10) Clay	5	3				2									
County (16) Duval	291	47	100	17		132	5	350.00	28		25.00	39			
County (45) Nassau	5					1			1			3		50.00	
TOTAL	301	60	100	17		135	5	350.00	29		25.00	42		50.00	
FIFTH CIRCUIT															
County (9) Citrus	16	6		1	10	5			2			2			
County (27) Hernando	18	2		1		11	10		3			1			
County (35) Lake	33	3		1		15			8			6	5		
County (42) Marion	60	6				41	15		7			6			
County (60) Sumter	5	1				3						1			
TOTAL	132	18		3	10	75	25		20			16	5		
SIXTH CIRCUIT															
County (51) Pasco	35	11		2		13			4			5			
County (52) Pinellas	186	46		13		47	15		35	10		45		25.00	
TOTAL	221	57		15		60	15		39	10		50		25.00	
SEVENTH CIRCUIT															
County (18) Flagler	6					5						1			
County (54) Putnam	15	4		1		7			1			2			

LOCATION	REPORTED DEFERRED	JUDICIARY		JUDICIAL STAFF		GOV'T ATTORNEY			RETIRED			INACTIVE		
		No.	Hours Contributions	No.	Hours Contributions	No.	Hours Contributions	No.	Hours Contributions	No.	Hours Contributions			
County (58) St Johns	40	5		1		18		6		8				
County (64) Volusia	149	21		17	18	81	139	16		14	10			
TOTAL	210	30		19	18	111	139	23		25	10		375.00	
EIGHTH CIRCUIT														
County (1) Alachua	133	15		5	20	81		11	300.00	21	3			
County (2) Baker	1	1												
County (4) Bradford	1					1								
County (21) Gilchrist	2	1				1								
County (38) Levy	5	1		1		1		2						
County (63) Union	1	1												
TOTALS	143	19		6	20	84		13	300.00	21	3			
NINTH CIRCUIT														
County (48) Orange	306	37	60	21		171	12,918.5	31	24	45				
County (49) Osceola	27	4				16	6	4		3				
TOTAL	333	41	60	21		187	12,924.5	35	24	48				
TENTH CIRCUIT														
County (25) Hardee														
County (28) Highlands	10	2				5		3						
County (53) Polk	116	24		4		72		5		11				
TOTAL	126	26		4		77		8		11				
ELEVENTH CIRCUIT														
County (13) Dade	920	132	55.5	300.00	54	5	449	107.5	1,325.00	116	255	125.00	169	70.00
TOTAL	920	132	55.5	300.00	54	5	449	107.5	1,325.00	116	255	125.00	169	70.00
TWELFTH CIRCUIT														
County (14) DeSoto	7	2				4				1				

LOCATION	REPORTED DEFERRED	JUDICIARY			JUDICIAL STAFF			GOV'T ATTORNEY			RETIRED			INACTIVE		
		No.	Hours	Contributions	No.	Hours	Contributions	No.	Hours	Contributions	No.	Hours	Contributions			
County (41) Manatee	63	8			1			40	30.5		8			6		
County (56) Sarasota	117	11	26	300.00	8	20		65			10			23		
TOTAL	187	21	26	300.00	9	20		109	30.5		18			30		
THIRTEENTH CIRCUIT																
County (29) Hillsborough	355	60	70		30			182	71.75	810.00	24			59	10	
TOTAL	355	60	70		30			182	71.75	810.00	24			59	10	
FOURTEENTH CIRCUIT																
County (3) Bay	39	9						21	4.25		3			6	5	
County (7) Calhoun																
County (23) Gulf	2							2	5							
County (30) Holmes	2													1		
County (32) Jackson	8	1			2			4			1					
County (67) Washington	3	1						1			1					
TOTAL	54	11			2			29	9.25		6			7	5	
FIFTEENTH CIRCUIT																
County (50) Palm Beach	468	52	45	480.00	22			244	90	350.00	72	20		78	1,535	350.00
TOTAL	468	52	45	480.00	22			244	90	350.00	72	20		78	1,535	350.00
SIXTEENTH CIRCUIT																
County (44) Monroe	48	4	50					33			2			9		
TOTAL	48	4	50					33			2			9		
SEVENTEENTH CIRCUIT																
County (6) Broward	485	75	10		26	40	25.00	211	213	100.00	68	170	700.00	105	10	
TOTAL	485	75	10		26	40	25.00	211	213	100.00	68	170	700.00	105	10	

LOCATION	REPORTED DEFERRED	JUDICIARY			JUDICIAL STAFF			GOV'T ATTORNEY			RETIRED			INACTIVE		
		No.	Hours	Contributions	No.	Hours	Contributions	No.	Hours	Contributions	No.	Hours	Contributions	No.	Hours	Contributions
EIGHTEENTH CIRCUIT																
County (5) Brevard	128	22			7			70	100	350.00	12	10	350.00	17	20	
County (57) Seminole	67	12		200.00	6			36	46	25.00	7			6		
TOTAL	195	34		200.00	13			106	146	375.00	19	10	350.00	23	20	
NINETEENTH CIRCUIT																
County (31) Indian River	33	5						17			4			7		
County (43) Martin	38	6			1			17	15.25		6		25.00	8	25	
County (47) Okeechobee	9	2						6			1					
County (59) St. Lucie	60	6			7			43			1			3		
TOTAL	140	19			8			83	15.25		12		25.00	18	25	
TWENTIETH CIRCUIT																
County (8) Charlotte	22	1						19						2		
County (11) Collier	49	4						25	13.25	100.00	11	59	50.00	9		
County (22) Glades	2	2														
County (26) Hendry	3							2						1		
County (36) Lee	95	13			2			63	4		8	6.25		9		
TOTAL	171	20			2			109	17.25	100.00	19	6.84	50.00	21		
TOTAL (w/OOS)	8,477	850	653.9	\$1,805.00	416	147	\$315.00	3,493	15,772.25	\$12,076.00	721	511.84	\$2,565.00	2,965	4,627.35	\$4,125.00
TOTAL (w/o OOS)	5,052	734	433.9	\$1,780.00	319	132	\$165.00	2,620	13,880.75	\$4,760.00	566	511.84	\$2,235.00	782	1,613.10	\$870.00

APPENDIX "H"

**OFFICE OF THE STATE ATTORNEY, THIRTEENTH JUDICIAL
CIRCUIT, FLORIDA, SCHOOL RELATED SERVICE PLAN**

SCHOOL RELATED SERVICE PLAN

**OFFICE OF THE STATE ATTORNEY
THIRTEENTH JUDICIAL CIRCUIT, FLORIDA**

PART I

GENERAL POLICIES ON PRO BONO SERVICES BY THE STAFF OF THE OFFICE OF THE STATE ATTORNEY 13TH JUDICIAL CIRCUIT, FLORIDA

Introduction

The mission, values, and vision of the State Attorney's office, 13th Judicial Circuit, contemplate involvement by personnel of the office in community service and in participation in activities of the Florida Bar. This involvement is encouraged as it fosters the enhancement of prosecutorial, managerial and interpersonal relationship capabilities.

Pro bono legal services is such an involvement. It is highly encouraged but must be undertaken in a manner consistent with the primary obligation of an Assistant State Attorney's oath of office and assigned duties. The Florida Supreme Court has established as "aspirational" the goal of involvement by all attorneys in pro bono services. Although participation in pro bono legal services is encouraged by the Office, participation is entirely voluntary. Since an Assistant State Attorney's first obligation is to the state, the providing of pro bono legal services must be accomplished without detracting from that obligation. Therefore: (1) the establishment of an attorney-client relationship that could result in a prosecutor being disqualified from prosecuting any criminal or juvenile case must be avoided; (2) the providing of pro bono legal services should also be under such circumstances that a

prosecutor would not be a party to communications which any other party would reasonably be entitled to expect to be privileged or confidential and not fully admissible into evidence in a civil or criminal case, as well as evidence which could be discovered as the fruit of such communications; and, (3) the services must not create any other type of conflict of interest or the appearance thereof.

Definition of Pro Bono Legal Services to the Poor

The pro bono legal services referred to in this document are legal services to the poor, which as defined by the Florida Supreme Court 630 So.2d 501, dated June 23, 1993, (See Attachment "A") amending Rule 4.6, Rules Regulating the Florida Bar, include legal services to the poor and other pro bono service activities that directly relate to the legal needs of the poor. The Court further stated their intention that "poor" applies to indigent individuals as well as the "working poor".

Participation in Pro Bono Legal Services

Of the various service opportunities listed under Rule 4-6.5(c)(2), Rules Regulating the Florida Bar, paragraph 6.H, "making presentations to groups of poor persons regarding their rights and obligations under the law" appears to be the activity with the least probability of the creation of conflicts with the obligations

of office duties by assumption of attorney-client obligations or by being involved in activities which impose, or appear to impose confidentiality limitations. This type activity also appears to be most suitable to the fulfillment of the mission, values and vision of this office.

To assist Assistant State Attorneys in fulfilling their aspirational responsibilities under Rule 4.6, this office will develop and implement a program with pro bono service opportunities, the School Related Service Plan.

PART II

PRO BONO LEGAL SERVICES PROGRAMS OFFICE OF THE STATE ATTORNEY 13TH JUDICIAL CIRCUIT, FLORIDA

Initial Sponsored Program Through State Attorney's Office

Because the office of the State Attorney is dedicated to work in partnership with the community and our school system in providing preventive education programs for juveniles, we will sponsor a program to participate with the school system in offering law related education and educational activities designed to inform the children of the target group about the legal rights, responsibilities, and benefits available in our society. This program may involve either individual or group (team) participation, depending upon the needs of the specific activity.

The program will involve classroom lectures, field trips to court

and other public law-related facilities, competitions between representatives of different schools, and mentoring services. All Assistant State Attorneys are invited to participate in this program. Since this participation will occur primarily during normal office and courtroom hours, time will be authorized as needed and consistent with the duties of the individual attorney and the division involved.

Commencement and Operation of School Related Service Plan

In establishing the plan of service with the school system and individual school administrators, initial contact with school personnel will be made by persons designated by the State Attorney. It is anticipated that each grade level will entail different content of lecture type presentations and different sequences of other type of activities. School personnel will counsel personnel of this office about the content, nature and scope of the presentations. The designated coordinator, in cooperation with the responsible school staff or faculty member, will strive to provide services to the individual classes in a content and participation progression that assures the development of citizenship awareness as well as advancing the understanding of the rights, remedies, and procedures of the judicial system.

For the purposes of this program, the Pro Bono Coordinators for the Hillsborough County State Attorney's Office are Julia Kite-Powell and Sandra Spoto.

State Attorney's Office Coordinators will establish liaison with the appropriate school authorities, promote participation by attorneys in the program and obtain administrative support where needed.

Reporting of Pro Bono Service Time to Pro Bono Coordinator

In addition to the mandatory time reporting requirements provided in the Rules Regulating the Florida Bar, volunteering Assistant State Attorney are also requested to report to the Pro Bono Coordinator their Pro Bono hours monthly on the form that will be provided for that purpose.

APPENDIX "I"

**PROPOSED FLORIDA PRO BONO LEGAL SERVICES DIRECTOR
PROJECT**

PROPOSED FLORIDA PRO BONO LEGAL SERVICES DIRECTOR PROJECT
(1998)

Pro Bono Legal Services in Florida

Since the implementation of Florida's Pro Bono Legal Services Plan in 1992, there has been a significant increase in pro bono legal services, as evidenced by individual attorney reports to The Florida Bar under the plan and reports from pro bono legal assistance programs to The Florida Bar Foundation. These reports illustrate:

- An 83% statewide increase in lawyer participation (from 11,988 in 1992 to 21,919 in 1996); the 13th Judicial Circuit recorded a 400% increase (The Florida Bar Foundation reports)
- A 50% increase in pro bono hours (561,352 hours in 1994-95 to 842,305 hours in 1996-97) (The Florida Bar reports)
- A 141% increase in contributions to legal assistance programs by lawyers (from \$395,150 in 1992 to \$955,886 in 1996) (The Florida Bar Foundation reports)

On the other hand, the reports to The Florida Bar Foundation on organized pro bono reflect that such success may not have been uniform throughout the state and growth may be levelling off:

- from 1995 to 1996 organized pro bono legal assistance hours increased only slightly - 142,484 to 143,707
- in several circuits attorney participation rates remain around 10%
- in a significant number of circuits the average number of hours contributed by each volunteer attorney hovers in the 4-10 range, far short of the aspirational goal of 20 hours

These statistics, and comments from local pro bono leaders on the judicial circuit committees, indicate that further support and leadership for the pro bono plan could achieve additional significant gains. The need for a new initiative in pro bono legal services development has also been intensified by significant federal funding cutbacks and federal restrictions, which bar federally funded staff programs from representing certain groups of needy clients and prohibit certain forms of litigation on behalf of eligible clients, as well as the continued stagnation of Florida IOTA revenues.

Proposed Position:

Florida Pro Bono Legal Services Director, an experienced attorney position at Florida Legal Services. The person filling this position should be an enthusiastic believer in the importance of pro bono legal services for the poor who enjoys working with private attorneys, local bar associations, the judiciary, The Florida Bar, bar sections and divisions, The Florida Bar Foundation, pro bono coordinators, and project directors to increase and strengthen pro bono legal services to the poor.

Goals:

1. To assist pro bono legal services programs, pro bono circuit committees, the judiciary, and bar associations in the development of increased attorney participation in Florida's pro bono legal services plan, particularly in terms of numbers of attorneys participating, hours contributed, and increase effective volunteer attorney utilization.
2. To develop, in coordination with local pro bono legal services programs and circuit committees, appropriate statewide pro bono legal services programs, including law firm projects, and bar section and division programs, to respond to the many and diverse legal needs faced by the poor and groups of low income people through the utilization of all appropriate legal strategies.
3. To act as the staff director and assist the Standing Committee of Pro Bono Legal Services in the performance of its activities of oversight and promotion of Florida's Pro Bono Legal Services Plan.
4. To develop recommendations from time to time for consideration by The Florida Bar and The Florida Bar Foundation to increase and strengthen pro bono legal services under Florida's Pro Bono Legal Services Plan through funding decisions and promotional activities.
5. To develop and implement an annual statewide pro bono legal services conference for attorneys, judges, and pro bono legal services coordinators to share pro bono legal services program experiences and successes, explore the implementation of new or replicable pro bono initiatives and provide current information as to the status and progress of Florida's Pro Bono Legal Services Plan.

Projected Funding:

Annual funding of \$150,000 for two years will be sought from The Florida Bar Foundation, The Florida Bar, and private firms. Funds would support the director position, a support position, an annual pro bono legal services conference, start up costs for new pro bono project initiatives, and other non-personnel expenses.

Projected Starting Date:

October 1998

APPENDIX "J"

**REPORT OF THE LEGAL SERVICES/PRO BONO SUBCOMMITTEE OF
THE JUDICIAL ADVISORY COUNCIL IN COLORADO**

**REPORT OF THE
LEGAL SERVICES/PRO BONO
SUBCOMMITTEE**

OF THE

**JUDICIAL ADVISORY COUNCIL
IN COLORADO**

MARCH 1998

C. MANDATORY PRO BONO REPORTING

Whether or not the Supreme Court decides to require lawyers to perform pro bono service, the Council recommends that the Supreme Court promulgate a rule requiring lawyers to report annually the number of hours of pro bono service they perform. At present, there is no uniform source of information concerning the extent of pro bono work done by Colorado lawyers. Although COLTAF obtains some information from bar association sponsored pro bono programs, such information is incomplete and of uneven quality.

Additionally, there is no mechanism for identifying other pro bono providers, such as the Colorado Lawyers Committee, nor for such programs to report in any way the amount of pro bono service they receive.

An additional difficulty is that the term "pro bono service" is understood in various ways by lawyers throughout the state. Many lawyers believe the term refers only to free legal services provided to low income clients, while others believe that the term includes the provision of services at a substantially reduced fee. Still others conclude that pro bono service includes free or low cost service provided to non-profit organizations. Further, while both Colo. RPC 6.1 and ABA Model

Rule 6.1 include bar association work as pro bono service, many lawyers do not consider such work to be pro bono service.

Additionally, lawyers frequently ask whether representation of clients who have agreed to pay a fee, but do not, may be considered as pro bono service.

Because of these disparate understandings of pro bono service, it would be helpful for the Supreme Court to establish a uniform definition of pro bono service and, using that definition, require that Colorado lawyers report annually on the number of hours of pro bono service they have performed.

Consistent with the discussion above concerning required pro bono service, the Council believes that the ABA Model Rule provides a comprehensive definition of pro bono service which could be used easily as a basis for considering whether legal work done may be considered as pro bono service.

Mindful of the numerous demands on attorneys' time, the Council urges the Supreme Court to adopt a simple reporting form which would allow lawyers to report the number of hours of pro bono service provided to low income clients, the number of hours of pro bono service otherwise provided, and the total hours of pro bono service provided.¹⁰⁴

¹⁰⁴The estimated first-year cost for adding a pro bono reporting requirement to the annual attorney registration process is \$6,000, plus computer programming costs and the cost of printing the forms. Because this estimate includes the cost of purchasing a scanner to input the report, the cost would be lower after the first year. See Mac Danford, Clerk of the Supreme

To date, Florida is the only state which has required lawyers to report annually the amount of pro bono service they provide.¹⁰⁵ Because pro bono service is not required in Florida, lawyers may report that they have done no pro bono service during the past year. However, Florida's ethics rules include an aspirational provision of twenty hours per year of pro bono service for low income people, so the mandatory reporting requirement provides a basis for determining the extent to which that aspirational provision is being met.

Two recent decisions have upheld the Florida mandatory pro bono reporting rule. In Amendments to Rule 4-6.1 of Rules Regulating the Florida Bar - Pro Bono Public Service, 696 So.2d 734 (Fla. 1997), the Florida Supreme Court denied an application by the Florida bar to amend the mandatory reporting rule and replace it with a provision that would have made reporting largely voluntary. More recently, in Schwarz v. Kogan, ___ F.3d ___ (No. 96-3276, 11th Cir., January 12, 1998), the court rejected a constitutional challenge to Florida's mandatory pro bono reporting rule, as well as other aspects of the Florida pro bono rule. The Eleventh Circuit concluded that "there is a constitutionally sound basis for expecting bar members to report

Court, Memorandum dated February 19, 1998 (on file with Judicial Advisory Council).

¹⁰⁵ ABA center for Pro Bono, The Law of Pro Bono: Mandatory, Assigned Counsel and Other Legal Issues, p. 2 (1994).

their compliance with the Rule's aspirational goals." The court approved the rationale of the Florida Supreme Court that "accurate reporting is essential for evaluating the delivery of legal services to the poor and for determining where such services are not being provided."

The Florida pro bono reporting form has been modified since its inception about five years ago, but is very simple and not time consuming to complete. Similarly, about five or six other states have employed similar forms to enable their states' lawyers to report annual pro bono service on a voluntary basis.¹⁰⁶

One potential benefit of a mandatory reporting of pro bono service rule is that it would enable bar leaders to report to the public the amount of volunteer services provided by lawyers and the value of such service. Thus, if ten thousand lawyers each provided fifty hours of pro bono service, and such service were valued at \$100 per hour, it could be accurately reported that Colorado lawyers had donated five million dollars worth of legal services during the past year. Such reporting would be helpful to change the current perception, noted above, that Colorado lawyers are more interested in getting rich than representing clients who need legal representation.

(Discussion Point: Reasons for opposing mandatory reporting of pro bono service. Mandatory reporting of pro bono service is

¹⁰⁶ See generally, Cassie Diaz Bello, Information on Voluntary Reporting of Pro Bono (ABA 1997).

unnecessary and unwarranted. Lawyers should do pro bono work out of a spirit of volunteerism. A mandatory reporting rule is really a thinly veiled method to persuade or shame lawyers into doing pro bono work. Further, if we had a mandatory pro bono reporting rule, judicial aspirants could be asked unfairly to indicate how much pro bono work they had reported in past years. If there is to be any reporting of pro bono work, it should only be done on a voluntary basis.)