

ALBERTO O. MIERA
JUDGE, SECOND JUDICIAL DISTRICT

OFFICE OF
APPELLATE COURTS

NOV 27 1989

FILED

November 22, 1989

Frederick K. Grittner
Supreme Court Administrator and
Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

C4-85-697

Dear Mr. Grittner:

Would you please distribute the enclosed to each of the justices of the Supreme Court as well as the Appellate Court judges. As I am intending to have the attached letter sent to every member of the Board, I thought it would be more efficient and cost effective to ask your assistance in distribution of the same.

Thank you in advance for your assistance.

Sincerely,


Alberto O. Miera

AOM/mjh

Enclosures

Chambers 1539
15 W. Kellogg Boulevard
Saint Paul, Minnesota 55102

(612) 292-7101



ALBERTO O. MIERA

JUDGE, SECOND JUDICIAL DISTRICT

DATE: November 22, 1989

TO: Minnesota Judges

RE: Proposed Changes In Canon 5F of the Code of Judicial Conduct.

Dear Minnesota Judges:

At no time since before the creation of the Legal Services Corporation has such a need existed in the provision of legal assistance to the poor and disadvantaged in our society. Budget cuts instituted during the "Reagan Revolution" have left most legal aid programs without the resources to handle even a fraction of the needs which exist in the areas of family law, housing law and the special needs of the elderly. Special attention must be given to lobbying for fairer budgets and, more realistically, to increasing pro bono participation by attorneys. The enclosed Tribune article published on August 14, 1989 more fully presents the reality of this issue in Minnesota. It, for instance, points out that low-income Minnesotans are provided with legal representation in only a fifth of the cases where they have legal problems by the legal services programs currently in place.

The Judiciary could play an important role in encouraging both the Bar and the political process to address this dire need by considering changing Canon 5F of the Code of Judicial Conduct. This Canon currently prohibits judges from any practice of law. I would like to propose that we discuss and consider whether judges should be allowed to do pro bono work on a voluntary basis during evenings or vacation periods that they would like to donate for this purpose. Judges yearly receive six weeks of vacation; I would be willing to utilize some of this time for pro bono work, I am confident other judges would likewise be so inclined. Allowing judges to represent the disadvantaged during their own time would send a strong message to the entire legal establishment and general public that the Judiciary views this problem with the sense of urgency it demands.

I recognize that there are some legitimate concerns as to potential conflicts and problems such a limited rule change might

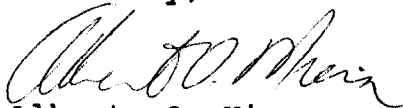
Chambers 1539
15 W. Kellogg Boulevard
Saint Paul, Minnesota 55102

(612) 292-7101

page 2
MN Judges

precipitate. Some could be more easily addressed than others -- for instance, "metro" area judges could volunteer in an adjoining county/district with little inconvenience; furthermore, as is the case with the Attorney General's volunteer attorneys, judges might take on "advice only" matters. Of course, there would have to be a detailed set of guidelines which would address these concerns. I believe there are no insurmountable obstacles to changing the rule, and would be willing to assist in any way possible so that we can address this important issue.

Sincerely,



Alberto O. Miera

AOM/mjh

Enclosure

cc: Board of Judicial Standards
Supreme Court Justices

Bar pleads its case for more lawyers to donate their time

By Chuck Haga
Staff Writer

The elderly woman on the phone told Larry Nordick that her husband had died recently. She needed to sell her house, but there were problems with the title.

Crying, she asked for help. She had no money to hire a lawyer, she said.

Nordick, director of the Northwest

Minnesota Legal Services office in Moorhead, had to turn her down. "She's living below the poverty level," he said. "But we just don't have the bodies and money to help everybody who qualifies."

The woman may find a private attorney willing to take her case *pro bono*. But the odds are against it.

The full phrase is *pro bono publico*, a Latin term that means "for the public

good." It represents the legal profession's commitment to serve the poor, a largely voluntary and individual effort encouraged by the state bar to supplement government-funded legal aid programs.

But in Minnesota and in the rest of the country, experts agree, the commitment falls far short of meeting the need, and the need is growing. An

Pro Bono continued on page 6A.

6A e

Pro bono Continued fr

alternative — mandatory pro bono commitments for all practicing lawyers — may get a trial soon in New York, and lawyers everywhere will watch to see how it works.

Last month, a New York panel recommended that each of the state's 88,000 lawyers be required to work at least 20 pro bono hours a year. It cited reductions in government funding for legal aid, the failure of voluntary efforts and the growing number of people without access to counsel in domestic and other civil cases.

"A crisis now exists which jeopardizes both the welfare of poor persons and the legitimacy of the legal system itself," the task force stated. "The poor need legal help to obtain basic human requirements and to an appalling degree cannot get it."

Nordick's agency is one of six regional programs that provide civil legal services to low-income Minnesotans. The woman on the phone last week met the agency's income guidelines. Her case didn't sound complicated, Nordick said, but it could cost her \$500 in legal fees.

"I'd say we're meeting about a fourth of the need," he said.

Cathy Haukedahl, solicitor general in the state attorney general's office, co-chairs the Minnesota State Bar Association's committee on legal assistance to the disadvantaged. She said the problem is worsening in Minnesota even though the poor are better served here than elsewhere.

"The feeling in Minnesota is that we have a very responsible bar here," she said. "But I don't think there's anyone I've talked to who denies that there is a real need to do more."

Under the New York proposal, lawyers practicing alone or in small firms could satisfy the requirement by paying \$1,000 each to legal services and public interest groups. Lawyers in large firms could pool their pro bono requirements and assign it to one or two members of the firm.

The obligation could be imposed as a court rule, according to the New York task force report, which described voluntary efforts as "disappointingly low," despite recent exhortations from within the profession.

In a joint editorial published late in 1987 by the journals of the American Bar Association and the American Medical Association, the nation's doctors and attorneys were urged to donate at least 50 hours a year to poor people.

Laurence Bodine, the ABA Journal editor, estimated that 90,000 U.S. lawyers participate in organized pro bono programs. But "Even if every lawyer were to work 50 hours for the poor (a year), it would really only cover a small fraction," he said.

"The privilege to practice law or medicine has carried with it the obligation to serve the poor without pay," the editorial said. "Doctors and lawyers today have tended to become overly concerned with their professional incomes and practice efficiencies, but they must not forget their higher duties."

The Minnesota bar has taken no stand on mandatory pro bono, but the New York proposal "is a hot item," said Roger Stageberg, secretary of the 11,000-member association. "It's as specific as anything that's been proposed."

It will take time to implement, he said, and constitutional challenges are likely before the experiment could be graded. "That could take a couple of years. I would say that Minnesota is one state that might be able to rationalize waiting that time because we do have a good volunteer program, and it's getting better."

Stageberg said about 3,300 Minnesota lawyers participate in the state bar's volunteer programs. In addition, many lawyers take pro bono clients on a more informal basis.

"I personally believe that at some point we will have some form of mandatory pro bono in Minnesota," he said. "But there are problems with it. The most obvious one is the 50-year-old probate lawyer from a large downtown firm who for his mandatory pro bono case is asked to interpret complex (welfare) regulations for some client. That probate lawyer may spend half of his 20 hours just wading through the regulations."

A trained legal aid attorney, paid with public funds, might handle the same case in a few hours, he said.

"There is an argument that this is a society problem that society should pay for, as it does with the public defenders in the criminal system."

At the federal level, public funding for civil legal aid declined throughout the Reagan years: from \$321 million in 1981 to \$308.6 million last year. In Minnesota, according to the state bar's legal assistance committee, there are 10 percent fewer legal services attorneys available to help the poor than there were in 1981.

The state's legal services programs

recently estimated that low-income Minnesotans have more than 160,000 legal problems a year but that legal services and volunteer lawyer programs provide representation in only a fifth of those cases.

The problem is especially acute in the area of family law, according to a report released in February by the bar's legal assistance committee.

Despite publicly funded legal services and volunteer attorney programs, "thousands of low-income people are unable to get needed legal assistance with family law problems," the report stated. "Nearly one-half of the income-eligible persons who contacted the programs during the survey were turned away," including people who needed help with cases involving abuse, contested custody and child support.

The legal assistance committee tries to increase pro bono activity in several ways, Haukedahl said. Members meet with law students and summer interns "to get them thinking about it before they're even practicing."

The committee is developing model pro bono policies for law firms and encouraging law schools to adopt loan-forgiveness programs to steer

graduates toward legal aid jobs.

Haukedahl said about 30 percent of the lawyers who work in the attorney general's office participate in a volunteer telephone advice program she helped set up. They answer fairly simple questions in such areas as tenant rights.

Why don't more attorneys participate? "Some people do other kinds of service activities," she said. "Others feel a time pressure from work. Some just aren't interested."

Nordick said he hears lawyers in rural areas object that they're already doing too much pro bono work. "The thing is, they may not be doing the pro bono for the right people," he said. "They're talking about the people who know them and walk into their offices and ask for free advice."

About 20 unemployed or underemployed attorneys in the Twin Cities are involved in a program, sponsored by the bar's legal assistance committee, which connects the lawyers with people who need legal help.

Lawyers who do pro bono work when they first start practicing law tend to continue. "They find that they're meeting a real need," Hauke-

dahl said.

Peter N. Thompson, acting dean at Hamline University's School of Law, said students need to learn "the obligation to serve" early. "We think that once they're introduced to it, they realize the obligation and they see it's important to the profession."

Thompson said Minnesota lawyers are better than average at serving the poor, but he would favor a mandatory system of pro bono work here. "It would set the right tone," he said. "It would distinguish the profession, and make it clear to those who go into it that the legal profession is a service profession."

Haukedahl said one common argument against mandatory pro bono is that quality would suffer. "If people are forced to do it, they may not do as good a job," she said. "Also, people do volunteer work in a number of ways. What is community service? Is it only direct legal services for a poor person? Do you count legal services for the Sierra Club, for a private school?"

Thompson cited a more basic objection to mandatory pro bono: "Lawyers are like anyone else. They don't like to be told what to do."

Monday Aug. 14, 1989