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Tim Groshens

January 10, 1991 OFFICE OF APPELLATE COURTS

JAN 14 1991

FILED

Frederick Grittner
Clerk of Appellate Courts
230 State Capitol
St. Paul MN 55155

Dear Mr. Grittner:

Enclosed is the original and 13 copies of a petition requesting an amendment to the Rules of the Supreme Court for registration of attorneys for a *pro bono* reporting system.

We hereby request permission to appear before the Court through our President, Tom Tinkham, when this matter is heard.

Sincerely,

Tim Groshens
Executive Director

TG:JG
Enclosures (14)

FILE NO.
STATE OF MINNESOTA
IN THE SUPREME COURT
C9-81-1206

OFFICE OF
APPELLATE COURTS

JAN 14 1991

FILED

In Re Petition to Require Attorneys
Licensed in Minnesota to Report
Pro Bono Legal Services and
Financial Contributions for
Indigent Legal Services as a
Condition of Licensure and to
Increase Attorney Registration Fees

PETITION OF THE
MINNESOTA STATE BAR
ASSOCIATION

Petitioner, Minnesota State Bar Association (MSBA),
states:

1. Petitioner is a not-for-profit corporation of attorneys admitted to practice law before this Court.
2. This Court has the inherent and exclusive power to administer justice, protect rights guaranteed by the Constitution, prescribe conditions upon which persons may be admitted to practice in the courts of Minnesota, and supervise the conduct of attorneys admitted to practice in Minnesota.
3. The Minnesota Rules of Professional Conduct (Minnesota Rules) were adopted by the Minnesota Supreme Court, effective September 1, 1985, as the standard of professional responsibility for lawyers admitted to practice in Minnesota. The Minnesota Rules are based on the American Bar Association Model Rules of Professional Conduct.
4. Rule 6.1 of the Minnesota Rules urges lawyers to render public interest legal services as follows:

Pro Bono Publico Service. A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to

persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

5. The American Bar Association in August 1988, through a resolution adopted by its House of Delegates:

Urges all attorneys to devote a reasonable amount of time, but in no event less than 50 hours per year, to *pro bono* and other public service activities that serve those in need, or improve the law, the legal system, or the legal profession.

6. The MSBA has studied the issue of access to the legal system for low-income Minnesotans for the past several years through its Legal Assistance to the Disadvantaged (LAD) Committee. MSBA found that large numbers of people do not have counsel and are denied effective access to the civil justice system to resolve their critical legal needs because of a lack of means and that the need for critical legal services to the poor exceeds the ability of existing legal aid offices, *judicare* programs and volunteer lawyer programs to provide these services.

7. On June 28 and 30, 1990, the MSBA through its Board of Governors and General Assembly adopted an aspirational standard for *pro bono* stating that:

Each attorney in Minnesota should annually perform 50 hours of *pro bono* legal services. Of this total, the attorney should devote at least 25 hours to direct provision of legal services to the poor, without an expectation of compensation.

If an attorney is unable to provide direct legal services to the poor, the attorney should make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

8. The MSBA Board of Governors and General Assembly also adopted a resolution that the MSBA petition the Minnesota Supreme Court to require that all attorneys licensed to practice in Minnesota, as a condition of licensure, report *pro bono* services and financial contributions provided pursuant to Rule 6.1 and the aspirational standard in paragraph 7 above and that the report be made at such times and pursuant to such rules as the Minnesota Supreme Court may adopt.

9. The primary reasons for recommending *pro bono* reporting include:

- * Encouraging attorneys to increase their involvement in *pro bono*;
- * Providing data to the court, funders and planners; and
- * Providing information to the public on the charitable work of attorneys.

The attached memorandum in support of this petition expands on the public policy reasons for reporting.

10. The request to the Court contemplates requiring information about the time spent providing professional services at no fee or reduced fee to persons of limited means or to public service or charitable groups or organizations, service and activities for improving the law, the legal system or legal profession, and financial support for organizations that provide legal services to persons of limited means.

WHEREFORE, PETITIONER RESPECTFULLY REQUESTS that the court amend the Rules of the Supreme Court for Registration of Attorneys as follows:

Rule 3: Penalty for Non-Payment of Fee or Failure to File Required Report

Upon failure to pay such fee, or to file the report required by Rule 10, the right to practice law in this state shall be automatically suspended, and no individual shall be authorized to practice law in this state or to in any manner hold himself or herself out as qualified or authorized to practice law while in default in the payment of such registration fee or the filing of such report. Any individual who shall violate this rule shall be subject to all the penalties and remedies provided by law for the unauthorized practice of law in the State of Minnesota. It shall be the duty of each member of the judiciary to enjoin persons from appearing and practicing in his or her court whose failure to register has come to the attention of such court.

Rule 4: Notice

Annually one month prior to due date, the Clerk of the Appellate Courts shall mail to each individual then authorized to practice law, who has not paid such registration fee or filed such required report, at his or her last known address, a statement showing the amount of the registration fee required for the next ensuing year and a copy of the required report form. Failure to receive such notice shall not excuse payment of such fee or filing of such report. Every attorney-at-law shall immediately notify the clerk of this court of any change of address.

Rule 5: Reinstatement

The right to practice law may be reinstated by the court after suspension upon application and upon payment of all delinquent registration fees and filing of delinquent reports and the additional sum of \$5.00. This court may, in hardship cases, waive payment of delinquent fees.

Rule 6: Certificate

Upon payment of the registration fee and filing of the required report, the Clerk of the Appellate Court shall issue and deliver to the person paying and filing the same a certificate in such form as may be provided by this court showing that such individual is an attorney-at-law in good standing and authorized to practice in the State of Minnesota.

Rule 10: Pro Bono Publico Service Report

Every attorney shall file once a year with the Supreme Court, upon a form provided by the court, a report of time spent providing professional services at no fee or reduced fee to persons of limited means or to public service or charitable groups or organizations, service in activities for improving the law, the legal system or legal profession, charitable groups or organizations, and financial support for organizations that provide legal services to persons of limited means.

DATE: January 10, 1991

MINNESOTA STATE BAR ASSOCIATION

BY: Tom Tinkham
Tom Tinkham
President

BY: Larry F. Nordick
Larry Nordick, Co-Chair
1989-90 Legal Assistance to
the Disadvantaged Committee

BY: Catharine Haukedahl
Catharine Haukedahl, Co-Chair
1989-90 Legal Assistance to
the Disadvantaged Committee

**MEMORANDUM IN SUPPORT OF PETITION
FOR MANDATORY PRO BONO REPORTING**

I. The Unmet Need for Civil Legal Assistance For Indigent Persons is Serious

In 1980, the largest single source of funding for legal services for low-income Minnesotans was the national Legal Services Corporation which provided annual grants to local programs on a poverty population basis using funds appropriated by Congress. In 1981, the President attempted to persuade Congress to eliminate all federal funding for legal services for the poor in America. That attempt was rejected by Congress. However, the result of that effort was a reduction in federal funding for legal services of 25%. Despite ongoing efforts by the organized bar, in partnership with legal services programs, to get that funding restored, federal funding for legal services for the poor is still less than the 1980 appropriation level.

In the intervening years legal services programs in Minnesota, with the support and cooperation of the organized bar, have sought alternative replacement funding sources to reduce the impact of the federal funding cut. Efforts have included legislation adding surcharges onto civil filing fees as well as MSBA's successful petition to this Court to create an IOLTA program. In 1990 revenue for legal services for the poor in Minnesota generated by surcharge-related appropriations totaled approximately \$3 million statewide. The IOLTA program also generated approximately \$2 million in 1990, the overwhelming majority of which is being used to fund civil legal assistance for low-income persons in Minnesota.

In addition to statewide public sector fundraising efforts, legal services programs have explored additional funding possibilities from the private sector. For example, the legal and corporate communities in Minneapolis contribute \$200,000 per year to the Legal Aid Society of Minneapolis. A similar fundraising effort by Southern Minnesota Regional Legal Services is underway in St. Paul. Programs have sought and received increased support from other local funding sources such as United Way and foundations. Municipal and county-level funding has also been sought with some success.

In addition to fundraising efforts, legal services programs and the private bar have joined forces to increase dramatically the size and scope of volunteer attorney programs. Although such programs were in

existence before the federal funding cut, they have grown dramatically in response to the increased need and the reduced ability of legal services programs to meet that need. In 1989, rough estimates are that over 3,000 attorneys in Minnesota donated time to provide legal assistance to the poor through organized volunteer attorney programs. The estimated dollar value of that time was in excess of \$3 million.

Despite those funding and *pro bono* efforts, the unmet need for legal assistance for the poor in Minnesota is still enormous. In 1984, the Minnesota Legal Services Coalition prepared an estimate of the level of unmet need in Minnesota, based on surveys from several other parts of the country. Using conservative survey figures regarding the incidence of legal problems for the poor on a *per capita* basis, the Coalition concluded that, taking into consideration all the legal resources being brought to bear on the problem, including staff, *judicare* and *pro bono* efforts, only approximately 20% of the need was being met. In 1989, a statewide survey of the unmet need for assistance in the family law area was published by MSBA's Legal Assistance to the Disadvantaged Committee. That survey concluded that over 10,000 low-income Minnesotans go without needed family law assistance each year. This Court's Gender Fairness Task Force also found that "it is extremely difficult for poor people in Minnesota to obtain legal representation in family law matters." The conclusion is clear and unmistakable: There is a high level of unmet need for civil legal assistance for the poor in Minnesota.

II. The Bar Is Part Of The Solution To The Problem

Rule 6.1 of the Rules of Professional Conduct provides:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or at a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

This Rule expresses a policy but is not enforced through the disciplinary process. It reflects the judgment that the legal profession must play a significant part in ensuring that all Minnesotans have access to justice.

III. Mandatory Pro Bono Is Not An Appropriate Current Solution

The unmet need for civil legal assistance for the poor is a nationwide problem of major proportions. It is a society-wide problem and not just a problem of the legal profession. It would be unfair to require the legal profession to be entirely responsible for a problem that should be the responsibility of all segments of society.

Recognition of that problem has generated a lively debate around the country on the question of whether all attorneys should be required to perform *pro bono* services to help meet that need. A commission appointed by the New York Court of Appeals recommended that all attorneys in New York be required to perform *pro bono* service in the form of either time or a comparable donation of funds. In 1990, the New York Court of Appeals declined to adopt that recommendation. Instead, it gave the organized bar two years in which to demonstrate that alternative methods of increasing the supply of legal services available to the poor in New York would produce significant results.

In Minnesota, MSBA's Legal Assistance to the Disadvantaged Committee recommended in 1990 that the bar association not support imposition of mandatory *pro bono* obligations on attorneys as an appropriate current solution. The committee did recommend that, as part of a package of alternative methods of increasing the supply of legal services for the poor, lawyers in Minnesota be required to report what *pro bono* efforts, both time and money, they were undertaking to address the unmet need for legal assistance. In June 1990, the MSBA General Assembly adopted that recommendation and voted to petition this Court to require reporting of *pro bono* efforts.

Petitioner believes that it will be a significant benefit to this Court to have accurate information on a statewide basis regarding involvement of the legal profession in making justice accessible to all Minnesotans. An annual reporting requirement would provide this Court with both an annual snapshot of the current level of effort and, over a period of several years, information demonstrating a pattern of change either for better or for worse with regard to that effort. Only such information will enable this

Court to know what the profession as a whole is doing to help address the unmet need for legal assistance. At this time, there is no accurate information from any source on the basis of which this Court could make a reasoned judgment as to the level of effort by the profession.

Petitioner believes that mandatory reporting will encourage increased involvement in *pro bono* activities and increased financial support by the profession for organizations delivering legal services to indigent Minnesotans. At the MSBA convention, a delegate to the ABA noted that he had participated in the discussion and adoption by the ABA of an aspirational standard of 50 hours per year of *pro bono* activity for each attorney. The delegate noted that, since there was no system in place to remind him of that standard, he had not thought of that standard since he participated in its adoption. He argued, and Petitioner concurs, that the profession should institutionalize a periodic examination of conscience with regard to whether each attorney is meeting his or her ethical responsibility to provide *pro bono* service.

The information made available by a system of statewide mandatory reporting would also assist other current and potential funding sources, including the state legislature, local units of government and private sources, in their decisionmaking processes regarding appropriate levels of support for legal services for the poor. In the early 1980s, when the bar and legal services programs approached the legislature and private foundations for funding, the immediate response was an inquiry as to what the legal profession was doing to be part of the solution to the crisis. These questions were raised again in 1990 when, in response to the Gender Fairness Task Force report, additional legislative funding to increase access to family law services was requested.

Finally, this information will assist the profession in demonstrating to the public that it has undertaken a substantial charitable effort to meet a significant problem. It will demonstrate that lawyers consider this problem important and that the public should as well.

IV. This Court Has The Power To Require Reporting Of Pro Bono Activities

Article VI, Section 1 of the Minnesota Constitution vests the judicial power of the state in the Supreme Court and the inferior courts. It is undisputed that

this Court has the power to oversee the legal profession. In the exercise of that power, this Court adopted the Rules of Professional Conduct, Rule 6.1 of which, as noted above, imposes a responsibility on attorneys to engage in *pro bono* activities. Therefore, this Court can require attorneys to provide information regarding the extent to which they are meeting that responsibility.

V. Reporting Should Be Mandatory

The question has been raised by some as to whether a voluntary provision of information would serve the same purpose as a mandatory system. Petitioner believes that only accurate and complete information can accomplish the purposes underlying this petition. Voluntary surveys invariably produce incomplete information. Inaccurate and incomplete information would give this Court, other potential funding sources and the public no clearer picture of the response of the legal profession to the unmet need than they have today.

VI. Individual Information Should Remain Private

The public purposes underlying this Petition are served fully by aggregate data. Funding sources and the public do not need to know the extent of any individual attorney's response to the unmet need, given the fact that the Rule 6.1 is not enforceable by disciplinary proceedings. The aggregate information will be sufficient to guide funders or other planners. Petitioner strongly believes that the privacy of individual attorneys should be protected to the maximum extent possible while still carrying out the public purposes underlying this Petition. Petitioner believes that this protection can be accomplished if only aggregate data is made available. Petitioner recommends that data not be maintained by individual identifiers. If such data is not made private by current court rule, the rules should be amended to so provide.

Petitioner recommends that the portion of the attorney registration statement designed for *pro bono* reporting be severable by this Court from the remainder of the registration statement. No individual identifying information would be on that severable portion. The attorney would certify on the main registration statement that the *pro bono* reporting form had been filled out.

VII. Information Should Be Submitted Annually

Petitioner believes that the submission of annual data has several advantages over possible alternatives, such as using the CLE cycle. An annual report will provide complete information to this Court significantly sooner than any multi-year alternative. Also, if no report is required for three years, the danger of inaccurate reporting as a result of poor recordkeeping and/or memories increase significantly. An annual reporting requirement can be tied to the registration renewal process, which provides a ready enforcement mechanism.

VIII. The Information Should Be Collected Regarding All Public Interest Legal Service As Articulated In Rule 6.1

Although a major purpose underlying this Petition is to have data so that the unmet need for civil legal assistance for the poor can be better addressed, a reporting system that collected only that data would provide inaccurate information to this Court, the profession, and the public regarding *pro bono* activities by attorneys. An accurate snapshot requires all public interest legal work by attorneys to be counted. Having such data will permit analysis about how attorneys' public interest legal services are being used.

Information about financial support of legal services for the poor is important because some attorneys are barred by position or circumstances from donating time. For others, financial support is a much more cost-effective way of meeting that responsibility than a donation of time would be.

IX. License Renewal Should Be Conditioned Upon Compliance

Although Petitioner anticipates compliance by the profession with a *pro bono* reporting requirement, there should not be a requirement without a sanction for non-compliance. If the reporting requirement is a condition of license renewal, the penalty will be automatic suspension pending compliance. Petitioner believes that such a sanction would be the least complicated, and therefore least expensive, method of ensuring compliance with a *pro bono* reporting requirement.

X. The Cost Of A Pro Bono Reporting System Would Be Minimal

Although it is difficult to be certain in advance what the operating costs of a reporting system would be, initial estimates are that the costs would be approximately \$1 to \$2 per attorney. There will also be start-up costs such as computer programming and redesign of the attorney registration form. Petitioner would support a grant proposal to the Minnesota State Bar Foundation for these one-time start-up costs.

XI. Conclusion

Petitioner is confident that the profession will respond to a reporting requirement. The information collected will be valuable to this Court and others trying to ensure access to the legal system for low-income people. Petitioner believes that the profession is already devoting significant resources to pro bono activities and that a reporting requirement will provide reliable information demonstrating that fact.

Pro Bono Publico Service Reporting Form

This form is designed to report your *pro bono publico* service under Rule 6.1 of the Minnesota Rules of Professional Conduct.

I. Professional Services at No Fee or a Reduced Fee

- (a) Hours of free representation of indigents in civil and criminal matters _____ hours
- (b) Hours donated to organizations providing free legal services to the indigent (board service, fundraising, etc.); hours of free representation of public service or charitable groups or organizations (non-profit environmental groups, churches, legal advocacy organizations, etc.) and hours donated to activities for improving the law, legal system, or legal profession _____ hours
- (c) Hours devoted to partial fee representation of indigents through court appointment or judicare programs _____ hours

II. Dollars Donated

- (a) Dollars donated to organizations providing free legal services to the indigent \$ _____

Years in Practice _____ Judicial District _____