STATE OF MINNESOTA

IN SUPREME COURT

C9-81-1206

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO RULES FOR REGISTRATION OF ATTORNEYS

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on April 18, 1991 at 9:00 a.m., to consider the petition of the Minnesota State Bar Association to amend Rules 3,4,5,6 and 10 of the Rules of the Supreme Court for Registration of Attorneys, to require the reporting of *pro bono* legal services. A copy of the petition is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before April 15, 1991 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before April 15, 1991.

Dated: February 7, 1991

BY THE COURT:

A.M. Keith
Chief Justice

OFFICE OF
APPELLATE COURTS

FEB 7 1991

FILED

WILLIAM S. GLEW
ATTORNEY AT LAW
SUITE 1710 FIRST BANK PLACE WEST
120 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402

TELEPHONE (612) 339-3100
FAX (612) 339-7898

April 19, 1991

Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St Paul, MN 55155

Re: Pro Bono Reporting

To the Supreme Court:

I request that the Court consider the following argument as a supplement to the short memorandum which I previously submitted on April 15.

The petitioners wrongly invite the Court to assume there is presently an obligation to perform pro bono work. There is no such obligation. It is quite clear from the language of Rule 6.1 of the Rules of Professional Conduct and the extensive debate preceding adoption of that rule that it provides only an "aspirational standard"; it is precatory, not mandatory.

In the absence of an obligation, reporting could serve no purpose requiring the attention and energies of this Court.

The objectives ostensibly sought by the petitioners could as well or better be accomplished by making mandatory reporting of pro bono work a condition for membership in the Minnesota State Bar Association.

Sincerely,

William S. Glew

WSG/mg

STATE OF MINNESOTA
IN THE SUPREME COURT

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

MEMORANDUM OPPOSING PETITION FOR MANDATORY REPORTING OF PRO BONO WORK

The undersigned, William S. Glew, a member or the Minnesota Bar, and a member of the Minnesota State Bar Association, submits this memorandum in opposition to the petition of the Minnesota State Bar Association for amendment of the Rule of the Supreme Court for Registration of Attorneys.

The essence of petitioner's argument is found in paragraph 9 of its petition where the reasons for recommending pro bono reporting are succinctly stated. None of the reasons alleged are valid.

Reporting will not encourage pro bono work

Mandatory reporting is not an effective or efficient way to encourage lawyers to engage in pro bono work. It is not effective because it is a negative instead of a positive inducement; it is coercion instead of reward. It is not efficient because there are other, obvious, ways to publicize the need for such work, and those ways are at least as effective and much less expensive than mandatory reporting, for example, regular reports in bar publications, or even direct mail. A lawyer who wishes to be reminded of his or her commitment to such work need not invoke the services of this Court for that reminder. There is no need for this Court to take on another burdensome and expensive administrative task.

Reporting is irrelevant to legislative funding

Mandatory reporting of pro bono work is irrelevant to legislative funding of legal services to the poor. Whatever may be the level of pro bono work now being done by the bar, it is a fact that there is an unmet need for legal services to the poor. This fact will not be changed by mandatory reporting. Thus, whether the private bar is doing a lot or a little pro bono work is irrelevant

to the need for legislative action. The legislative interest in private pro bono work could only be relevant if such work were required of attorneys, so that the legislature could properly look first to the efforts of the private bar to meet the need. But such work is not required; pro bono work is not mandated, and even the petitioners say it should not be mandated. The unmet need of the poor for legal service is not a matter to be solved by this Court. It is a problem for the legislature. Society must provide for legal services to the poor by legislative action, just as it provides food, housing, education, and medical care to the needy.

Mandatory reporting cannot be supported as a public relations device.

Mandatory reporting of pro bono work will not enhance the public perception of attorneys. Effort to improve the public opinion of attorneys should be directed to the cause of the present poor opinion. That cause is not a failure to do pro bono work. That cause is misappropriation of client's funds, sharp practices, incivility, and advertising bordering on champerty. Mandatory reporting of pro bono work could only be a bandage to cover but not cure these cancers. Even if the if the drab statistical data of our pro bono work were to be noticed by the public it would be more likely to generate cynicism than respect, for none will admire a person who makes a deliberate effort to brag of his good works.

Conclusion

Mandatory reporting by itself serves no purpose. It could only be useful as an implementation of mandatory service. While the petition is carefully phrased to deny that it is now a proposal for mandatory service, there are many who believe the true purpose of the present petition is to begin movement toward imposition of a rule for mandatory service. The petition should be denied.

April 15, 1991

William S. Glew (35427)
1710 First Bank Place West
Minneapolis, MN 55402
Telephone (612)339-3100

FILE NO. C9-81-1206

STATE OF MINNESOTA
IN THE SUPREME COURT

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	**REQUEST OF HENNEPIN COUNTY BAR ASSOCIATION-LEGAL ADVICE CLINICS, LTD. TO MAKE ORAL PRESENTATION**

The undersigned, on behalf of Hennepin County Bar Association-Legal Advice Clinics, Ltd. ("LAC"), requests the opportunity to make an oral presentation on April 18, 1991, regarding the above Petition of the Minnesota State Bar Association. We request that Richard R. Crowl, Chair of LAC Mandatory Pro Bono Subcommittee, be permitted to speak.

A copy of the Written Statement of Legal Advice Clinics, Ltd. is attached hereto.

Dated: April 15, 1991.

Joseph T. Dixon

Joseph T. Dixon, Chair
Hennepin County Bar Association-
Legal Advice Clinics, Ltd.
430 Marquette Avenue, Suite 400
Minneapolis, Minnesota 55401
Attorney License #23139

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

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

WRITTEN STATEMENT OF LEGAL ADVICE CLINICS, LTD.

Legal Advice Clinics, Ltd. ("LAC") is pleased to comment on the Petition submitted by the Minnesota State Bar Association to require attorneys licensed in Minnesota to report *pro bono* legal services provided and financial contributions made on behalf of indigent clients ("Petition"). LAC is, and for the past 25 years has been, exclusively devoted to the provision of *pro bono* legal services to indigent residents of Hennepin County. As a result of this experience, LAC is uniquely qualified to comment on the Petition.

LAC is a Minnesota non-profit corporation organized in 1966. LAC is affiliated with, and receives contributions from, the Hennepin County Bar Association, but exists as a separate entity with its own Board of Directors and professional staff for the sole purpose of providing *pro bono* legal services to indigent residents of Hennepin County. LAC functions as a "clearing house", matching volunteer attorneys with its indigent clients. As of April 1, 1991, LAC maintained a roster of 1,902 volunteer attorneys. In 1990, LAC handled 18,265 incoming requests for legal advice. Of that number, approximately 3,265 cases were referred to LAC's volunteer attorneys who provided advice and services to these low income clients.

LAC strongly supports the Minnesota State Bar Association's objective of "...encouraging attorneys to increase their involvement in *pro bono*". LAC shares this objective, but

would like to express its concerns as to (1) whether the necessary infrastructure exists to enable volunteer attorneys to effectively deliver such services, and (2) whether the Bar is positioned to provide services in the areas of greatest need.

Through its 25 years of operations, LAC has learned a great deal about the provision of legal services through volunteer attorneys. LAC's principal functions include the following:

1. Client Identification and Screening. LAC fosters and maintains relationships with numerous social and governmental agencies in Hennepin County to alert indigent clients of their legal rights and of the availability of free legal services. LAC maintains a professional staff of five client intake counsellors whose role is to respond to requests for legal assistance. These requests must be evaluated to determine (a) whether the requestor has a legal problem; (b) whether LAC volunteers are the appropriate vehicle for the provision of the requested services; and (c) to verify that the individual meets the economic qualifications for free services. LAC also maintains 10 "clinic" locations where indigent clients have the opportunity to consult with and, if required, seek representation from the volunteer attorneys.

2. Match the Volunteer Lawyer with the Client. LAC maintains a database which enables it to identify the specialties and availabilities of its member attorneys. The staff contacts the volunteer attorneys and verifies their willingness to take a case and makes the necessary arrangements to get the volunteer attorney and indigent client together.

3. Quality Control. LAC maintains a committee of directors which has established procedures to assure that pro bono clients receive quality legal services. Client complaint handling and recordkeeping are important components to this function. LAC also maintains panels of experts in specialized areas of the law to assist the volunteer attorneys on technical matters outside of the volunteers' areas of expertise. Additionally, LAC conducts a variety of programs of continuing legal education each year in order to keep the volunteer attorneys current in areas of law they are likely to encounter.

4. Legal Malpractice Insurance. LAC maintains a policy of primary legal malpractice insurance. LAC has determined that law firms are reluctant to incur legal malpractice exposure arising from the volunteer activities of the members of their firms. Further, attorneys employed by corporations and government generally do not maintain malpractice insurance and are reluctant to handle cases in the absence of legal malpractice insurance availability.

The provision of *pro bono* legal services is the exclusive purpose of LAC. While we fully endorse the Minnesota State Bar Association's goal of increasing the general level of *pro bono* activities, we have some reservations as to the potential efficacy of this effort absent additional efforts and commitment in related areas. LAC respectfully urges the Court to consider the following issues relative to the adoption of the proposed rule:

1. Is there an adequate infrastructure in place to enable volunteer attorneys to effectively deliver *pro bono* services to indigent Minnesota residents?

LAC's experience is that it can be very difficult for an attorney who wishes to provide *pro bono* services to locate an appropriate *pro bono* client. We are concerned that absent an efficient infrastructure for the delivery of volunteer services, the volunteer lawyers will not be efficiently matched with the needy clients. A doubling of LAC's volunteer base would not, without additional resources, result in a doubling in the number of cases handled and services provided. Additional staff and general administrative support would be essential to utilize efficiently and effectively substantial numbers of new volunteers.

2. Will the establishment of the reporting procedures increase the availability of legal services in those areas where the need is the greatest?

The need for legal services for the indigent residents of Minnesota is well documented. Unfortunately, LAC has found that both the professional expertise and the professional interests of its volunteer attorneys are not matched with the needs of low income clients. A large portion of the unmet legal needs involve matters of family law, landlord-tenant problems and public benefit law. Only a small percentage of Minnesota attorneys are experienced and currently practice in these specialties. While Legal Services Corporation maintains expertise in these areas, its resources are limited and it is unable to meet even a small portion of the current demand. In the absence of appropriate training, relevant CLE programs, and "clearing houses" such as LAC to match low income clients with volunteer attorneys having the necessary skills, it is unlikely that the reporting

procedures will significantly affect these unmet needs of Minnesota's indigent population.

3. Are sufficient funds available to fund organizations which provide the necessary attorney-client interface?

While LAC is proud of the amount and quality of legal services that it provides, we recognize that there are substantial unmet needs in Hennepin County and throughout Minnesota. The current annual budget of LAC is $215,000.00. These funds are currently raised through fundraising efforts of LAC's Board of Directors. While the Hennepin County Bar Association and the United Way are substantial contributors, a significant portion of the budget is raised through contributions of law firms, corporations and individuals. Despite aggressive fundraising efforts, it is a struggle each year to meet budget. In the absence of increased funding, LAC cannot significantly increase the number of low income clients and volunteer attorneys it is able to serve.

RECOMMENDATION

We urge the Court to take steps to enhance both the opportunities and the efficiency of the desired *pro bono* legal services. We would specifically recommend the appointment of a select committee to study, evaluate and report back to the Court on:

1. The sources and the adequacy of funding for service organizations, such as LAC, which provide an infrastructure for the delivery of pro bono services by Minnesota attorneys.

2. The training and support available to volunteer attorneys to assure that the members of the Minnesota Bar are adequately prepared to address the most pressing needs of the Minnesota indigent population.

Respectfully submitted,

LEGAL ADVICE CLINICS, LTD.

By: _____
Joseph T. Dixon, Chair

By: _____
Richard R. Crowl, Chair of
LAC Mandatory Pro Bono Subcommittee

Hauer and Fargione, P. A.
ATTORNEYS AT LAW

MICHAEL FARGIONE
ROBERT J. HAUER, JR.
ROBIN S. LANDY
BRIAN J. LOVE*

* ALSO ADMITTED IN WISCONSIN

SUITE 526
PARKDALE PLAZA
1660 SOUTH HIGHWAY 100
MINNEAPOLIS, MINNESOTA 55416-1549

Telephone (612) 544-5501
TTY (612) 544-5420
FACSIMILE (612) 591-0682
TOLL FREE 1-800-544-9575

April 12, 1991

C9-81-1206

HAND DELIVERED

Clerk of Court
MINNESOTA JUDICIAL CENTER
Room 245
St. Paul, MN 55101

Dear Sir/Madam:

Enclosed for filing please find the original and 11 copies of a Statement in Support of Pro Bono Reporting.

Sincerely,

HAUER AND FARGIONE, P.A.

M. Fargione

Michael Fargione

MF:ph
Enclosure

STATEMENT IN SUPPORT OF PRO BONO REPORTING

The undersigned are members of the Minnesota Trial Lawyers Association Board of Governors. The majority of the Board of Governors of our organization has submitted a position paper in opposition to the proposal for pro bono reporting. We believe that the position taken by the majority in our organization is not well-founded and wish to express an opposing view.

There are two legitimate concerns expressed by the Trial Lawyers. First, it may be difficult for attorneys with a very specialized practice to provide competent representation to low income people in areas outside of the lawyer's expertise. This problem is probably shared by many corporate and tax specialists.

The second difficulty with the existing proposal is related to the first. Many people in our organization do dedicate time to free services which are for the public good. However, these free public services will not necessarily fit into the limited pro bono categories set forth in the Bar proposal. At the very least, a reporting attorney should be given an open-ended category in which to describe the hours dedicated to free public service, if these hours do not fit into the limited categories proposed by the Bar.

While we believe that these two problems should be addressed, we also believe that the idea of a reporting requirement should be supported. Reporting will have two benefits. First, it will provide some data to the Supreme Court and to Bar organizations concerning the resources available to provide legal services to low income people. Second, it does put some pressure on members of the Bar to engage in pro bono activity. If the reporting requirement does nothing more than provide an annual prod to the collective conscience of the Bar, it will have served a useful purpose.

In our judgment, the majority of arguments against reporting which have been submitted by the Minnesota Trial Lawyers Association

are not well-founded. Certainly an organization of plaintiffs' attorneys is not in a position to argue that its members are too modest to make a public disclosure of the good deeds which they have done.

The practice of law is a very demanding profession. Unless a conscious effort is made to carve out time for pro bono activities, they will not be done. The reporting requirement will raise the awareness of the Bar concerning the need for pro bono legal services. The proposal should be adopted.

Dated: 4/12, 1991.

HAUER AND FARGIONE, P.A.

Michael Fargione #28253

Robert J. Hauer, Jr. #42286

1660 South Highway 100, #526
Minneapolis, MN 55416-1549
(612)544-5501

STEPHEN J. DAVIS
ATTORNEY AT LAW
3910 MULTIFOODS TOWER
33 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402

MARGARET M. BOISVERT
LEGAL ASSISTANT

TELEPHONE (612) 341-0300
TELECOPIER (612) 337-5554

April 11, 1991

Mr. Fredrick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Order for Hearing to
Consider Proposed
Amendments to Rules
for Registration of
Attorneys
C9-81-1206

Dear Mr. Grittner:

Enclosed please find twelve copies of my letter to the Court with respect to the Petition of the Minnesota State Bar Association to amend Rules 3, 4, 5, 6 and 10 of the Rules of the Supreme Court for Registration of Attorneys, to require the reporting of pro bono legal services.

Yours very truly,

Stephen J. Davis

SJD/lli

Enclosures

STEPHEN J. DAVIS
ATTORNEY AT LAW
3910 MULTIFOODS TOWER
33 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402

MARGARET M. BOISVERT
LEGAL ASSISTANT

TELEPHONE (612) 341-0300
TELECOPIER (612) 337-5554

April 11, 1991

Supreme Court
State of Minnesota
Courtroom 300
Minnesota Judicial Center
St. Paul, MN 55155

Re: Order for Hearing to
Consider Proposed
Amendments to Rules
for Registration of
Attorneys
C9-81-1206

To The Court:

It has come to my attention that the Court is considering a Petition of the Minnesota State Bar Association to amend Rules 3, 4, 5, 6 and 10 of the Rules of the Supreme Court for Registration of Attorneys to require the reporting of pro bono legal services. With all due respect to the Court, I do hereby object to the Petition described above.

At the outset, please let me state that I believe it is our duty as citizens who have the opportunity to live in our society, and also as attorneys privileged to practice therein, to contribute to the society's betterment both financially and otherwise in order to provide a legacy for future generations.

For that reason, in each of my years of practice I have made substantial financial contributions to various charities, and particularly over the last ten years, have contributed in excess of 25 hours a month to providing leadership to organizations involved in health care. I state the foregoing so that the Court understands that my objection to the Petition is not based on any desire to avoid my community responsibilities.

My objection to the Petition is based on the following:

1. Primary to our society, is the freedom of choice. This includes not only the freedom for each of us to choose our profession, but also the freedom to endorse those charitable or community related activities we wish to support.

2. The amount of that support, whether in terms of contribution of money or time, should not be imposed on any individual, by either judicial or legislative mandate, just by reason of his chosen profession.

3. Imposition of required contributions of pro bono legal service, or a financial contribution in lieu thereof, will reduce the level of support that members of the profession contribute to other equally worthwhile community activities.

4. Unless the contribution of pro bono legal services is required, there is no justification for the expenditure of time and money that will result from the reporting called for by the Petition.

For these reasons, I respectfully request that the Petition be denied.

Yours very truly,

Stephen J. Davis

SJD/lli

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, DC 20310-2700

March 25, 1991

REPLY TO
ATTENTION OF

Personnel, Plans, and
Training Office

Honorable A.M. Keith
Chief Justice
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: In re Petition to Require Attorneys Licensed in Minnesota to Report Pro Bono Services (File No. C9-81-1296)

Dear Chief Justice Keith:

We received the above-captioned petition from Army Reserve judge advocates in Minnesota. We understand that, if approved, the petition would require Minnesota attorneys to report annually their pro bono work and financial contributions for indigent legal services. We also understand that the proposed rule will not require Minnesota attorneys to perform pro bono work or to make financial contributions to organizations that provide indigent legal services.

The Judge Advocate General's Corps is interested in requirements imposed by state bar associations on its judge advocates. Thirty-nine active Army judge advocates are members of the Minnesota Bar. While we take no position regarding the pro bono reporting requirement, we did want to inform you that a number of Minnesota attorneys are serving on active duty with the Judge Advocate General's Corps and, due to location, duties and regulatory prohibitions, are unable to perform pro bono work. We want to ensure that these judge advocates are not penalized because they chose to practice law in the service of the nation's armed forces.

The Army has no active component installations in Minnesota. All Minnesota judge advocates serve in other states or in foreign countries. Indeed, Minnesota judge advocates are stationed throughout the world, from Kuwait and Saudi Arabia to Germany and Korea. Because these judge advocates are not members of the bar in the states or foreign countries to which they are sent, they cannot--outside the context of their military practices--provide legal advice or representation. This includes legal services for the poor. Moreover, Army regulations prohibit judge advocates from engaging in the private practice of law while on active duty.

Although Army judge advocates cannot provide traditional pro bono services, they do give, without charge, legal aide to soldiers, military retirees, and their families. Regardless of income, every soldier, family member, and retiree is entitled to free legal assistance.

Again, the Judge Advocate General's Corps takes no position with respect to the pro bono petition. We ask, however, that Minnesota judge advocates not be forgotten when the final pro bono requirements are drafted.

Thank you for your consideration.

Sincerely,

Dennis M. Corrigan
Colonel, Judge Advocate
Chief, Personnel, Plans,
and Training Office

McCULLOUGH, SMITH & WRIGHT, P.A.
ATTORNEYS AT LAW
MAPLE HILLS OFFICE CENTER
905 PARKWAY DRIVE
ST. PAUL, MINNESOTA 55106-1098
(612) 772-3446
FAX (612) 772-2177

D. PATRICK McCULLOUGH*†
JEFFREY M. SMITH
DIANNE WRIGHT**
JOHN R. KEMPE
PAUL-BRYAN J. ZENKE

OFFICE MANAGER
MARGARET A. CORBO

LAW CLERK
DOUGLAS J. SCHILTZ

March 20, 1991

Mr. Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Mandatory Reporting of Pro Bono Legal Services

Dear Mr. Grittner:

The undersigned, as President of the Minnesota Chapter of the American Academy of Matrimonial Lawyers, respectfully requests that I be allowed to make an oral presentation at the hearing on this matter before the Minnesota Supreme Court on April 18, 1991.

I enclose twelve copies of a written statement concerning the subject matter. Thank you for your consideration.

Very truly yours,

D. Patrick McCullough, President
Minnesota Chapter, A.A.M.L.

DPM:ck

Enclosures

*CERTIFIED AS CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY
†FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
**ALSO ADMITTED IN WISCONSIN

AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

to encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law, to the end that the welfare of the family and society be preserved.

Minnesota Chapter

STATEMENT OF POLICY BY
THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
(MINNESOTA CHAPTER)
REGARDING MANDATORY REPORTING OF PRO BONO PROVISIONS

The American Academy of Matrimonial Lawyers (Minnesota Chapter) has historically and presently takes a position that its members perform pro bono publico services; however, we strongly believe that pro bono service should be totally and strictly voluntary and not mandated either directly or indirectly.

It appears that the proposal by the Minnesota State Bar Association could be in conflict with Rule 6.01 of the Minnesota Rules of Professional Conduct. The comments to said Rule make it clear that pro bono work - "is not intended to be enforced through disciplinary process".

Proponents of the new proposed requirement of reporting pro bono legal services could argue that the reporting of pro bono services will not result in disciplinary action; however, the requirement of reporting as a condition of licensure may very well potentially impose the ultimate discipline on a lawyer, the loss of his or her license.

The Academy also feels that the imposition upon lawyers to report pro bono services as a condition of licensure is discriminatory as it appears that this type of requirement is not imposed upon all other professionals as a requirement to maintain their licensure or to practice their profession.

Although it is laudatory and a good idea for lawyers to contribute to charities, there should be no requirement that they report to any agency as to which charities they contribute. Not only would that be improper, but it would partially negate the reason for the contribution.

We are also concerned that the requirement of reporting pro bono services could obligate family law attorneys to practice in areas where they are not competent and it further could affect not only our malpractice insurance, but also we could be cited for ethical misconduct by performing services in a practice area in which we are not competent to render qualified legal services.

We are confident that even though it would be extremely difficult to outline and determine what exactly would be considered as qualifying as pro bono services, sufficient criteria could be established. Nevertheless, we do not believe we should ever get to that issue. Mandatory pro bono services should not be required by any profession. We respectfully suggest that family law attorneys would equal or exceed the percentage of pro bono services provided to clients as compared to any other area of specialization in the law. Would the family law attorney meet the criteria of pro bono services on cases where part of the fees was forgiven in a family law case? What if there is a question as to whether or not the forgiveness of part of the attorneys' fees and costs was voluntary on the part of the family law practitioner or merely uncollectible? There is a myriad of questions which would ultimately have to be answered, and as a practical matter no one could ever really answer all of these questions because part of the answer would be relative to the state of mind of the lawyer and the individual client.

The family law practitioners have already been taken to task by the court of appeals relative to prolonged litigation which results in "excessive fees and costs". It has already been well established that clients who must directly pay for the services rendered in a family law case are less likely to "fight for principle" as opposed to a client who continues to require that the attorney litigate a matter that probably should be resolved when that client does not have to pay for the continued services.

The A.A.M.L. (Minnesota Chapter) has carefully reviewed the position taken by the Minnesota Trial Lawyers Association regarding the issues of mandatory reporting of pro bono services and we respectfully adopt their position.

The Academy of Matrimonial Lawyers (Minnesota Chapter) respectfully continues to urge its members and all members of the Minnesota Bar Association to provide pro bono services; however, we respectfully urge the Minnesota Supreme Court to reject the recommendation by the Minnesota State Bar Association relative to the requirement of reporting pro bono services.

Respectfully submitted,

D. Patrick McCullough, President
A.A.M.L. Minnesota Chapter

DPM:ck

DONALD R. BETZOLD
ATTORNEY AT LAW
6160 SUMMIT DRIVE NORTH
SUITE 425
BROOKDALE CORPORATE CENTER
BROOKLYN CENTER, MINNESOTA 55430-2196
TELEPHONE (612) 566-8800
TELECOPIER (612) 566-3436

March 8, 1991

Chief Justice A. M. Keith
Minnesota Supreme Court
25 Constitution Avenue
Saint Paul MN 55155

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

File C9-81-1206

Dear Chief Justice Keith and Associate Justices of the Minnesota Supreme Court:

I wish to express my position on the Minnesota State Bar Association's petition to require Minnesota attorneys to provide pro bono services as a condition of licensure.

I am well aware of the problem which the bar association is addressing. From 1981 through 1986, I served on the Board of Directors of Judicare of Anoka County, which administers the legal services program for that county. Those were very difficult times. Our Legal Services Corporation funding was reduced significantly, and we did not know whether funding for the program was going to be eliminated entirely.

During those bleak years, each Judicare budget meeting was worse that the previous. Over time, we had to eliminate staff positions, reduce wages, curtail services, and require our panel attorneys to take on increasing work loads at less compensation. Our executive director had to spend less time administering the program and more time raising money and handling cases previously assigned to others. We had to establish priorities for our services, knowing that many indigent clients with critical needs would not receive legal assistance.

I can well appreciate the desire of the bar association to require all attorneys to participate in a program which will provide justice for those who cannot afford legal counsel. Such a program would have resolved the above described problems. Yet, I am opposed to the proposal which would mandate lawyers to provide legal services or financial support for such programs.

First, I am concerned that a legal services program with vast resources would be counterproductive. Although many deserving Judicare clients appreciated our program, I noted many abuses from those indigent clients who took advantage of the fact that they had a "free" lawyer. Such clients made countless and unreasonable demands of their "free" lawyer (e.g. demanding to litigate or appeal instead of settling their cases) which they would not have made if they had been required to pay for the lawyer's time.

More important, I philosophically oppose any requirement which tells me how to spend my time. Like many lawyers, I (too often) offer my services without charge to numerous civic organizations and causes. I left the Judicare Board to spend more time as a volunteer member of the Fridley Planning Commission. I also serve on the Fridley charter commission, chaired the bar association's Bar-Media Committee, and chair my condominium association's Rules and Regulations committee.

My many volunteer activities detract from my law practice because I have to spend office hours working on them when I could be generating billable hours. But I do it because I want to. However, the amount of time I can volunteer has its limits. If I am required to spend time on pro bono legal assistance cases, I must reduce the amount of time that I now devote to other volunteer activities which I consider worthwhile.

But I would also oppose any proposal which would expand the definition of mandated "pro bono" service to include the forms of public services I now provide. I am proud of my public and unpaid private services. As noted above, all of it is done because I choose to share my skills with others, not because I am required to do so. If the Court were to require me to perform the same community services, that would detract from my own satisfaction of providing voluntary service. It may also cause others in the community to think that I only offer my legal skills because I am required to do so.

Likewise, if all lawyers are required to provide pro bono service, but are allowed to satisfy the requirement by some community service, then community leaders like me may have to put up with malcontent "volunteer" lawyers who only join our worthy causes because the Minnesota Supreme Court told them to do so. I don't need people like that working with me.

In summary, the petition before the Court represents an easy, but unfair, solution to an important problem. Legal assistance to the indigent is a laudable program, but it is only one problem and one method of community service. I don't think this problem

deserves more attention and financial support than all others, and I don't think the Court should have to tell me that I should try to improve our society, or how I should so it.

The Court should deny the petition.

Thank you for your consideration of my views.

Sincerely,

Donald R. Betzold

MEDARD B. KAISERSHOT
ATTORNEY AT LAW

5701 KENTUCKY AVE. NORTH, SUITE 180
CRYSTAL, MINNESOTA 55428
612/535-9027

February 28, 1991

Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: MSBA Petition to Require Attorneys to Report Pro Bono Legal Services as a Condition of Licensure
Court File No. C9-81-1206

To the Honorable Supreme Court:

Although I support the aspirational standard that attorneys should annually perform 50 hours of pro bono legal services, I am unequivocally opposed to a mandatory reporting requirement of such services as a condition of licensure. I would be opposed to a required reporting even if it were not a requirement of licensure. I submit the following arguments in opposition to the petition:

I am a sole practitioner engaged in the general practice of law, serving predominantly individual clients as compared to business clients. My livelihood is dependent upon the legal fee income that I can generate and collect.

It is critical for the court to remember, in considering the above-referenced petition, that while the practice of law is a noble profession, it is simultaneously an economic source of livelihood for its practitioners. This court must avoid taking action which would seemingly enhance the public image of the "profession" but would simultaneously interfere with the lawyer's right or ability to earn a fair living.

It is also critical that the court recognize that the "high profile" attorneys and major law firms who enjoy the ability to charge above average rates for their legal fees are not the "norm" for the profession as a whole. Mandatory performance and reporting of pro bono services would cause proportionately greater hardship to the small law office in relation to the effect on a large office or in relation to the high profile practitioners.

While the petition appears superficially to be a "motherhood and apple pie" issue to be eagerly embraced, a closer look will show potential, if not real, risks of unwarranted invasion of privacy, of unwarranted interference in a practitioner's ability to earn a fair income, of potentially constitutionally impermissive involuntary servitude under the guise of an aspirational professional standard, of causing undue hardship in a practitioner's attempt to earn a fair financial income and in burdening the legal profession with a problem that is really a problem for the society as a whole to resolve.

The mandatory reporting of voluntary pro bono services would only be a "foot- in-the-door" to making pro bono services a mandatory duty rather than an aspirational standard. I do not believe that there is anyone who has the authority to tell me how I should use my time as long as I am conducting myself lawfully and professionally. And, I do not believe that there is anyone who has the right to direct or to monitor what charitable or benevolent activities that I choose to support. It would result in an invasion of my privacy.

The definition of "pro bono publico services" gives a very broad latitude to an attorney in selecting the kind of activities that he/she desires to perform and which meet the standards of pro bono services. However, that same wide latitude poses at least two problems if a mandatory reporting system were required. For the less than conscientious attorney, it would be very simple to apply some creativity in identifying alleged pro bono services to make that attorney look good when in fact that attorney has done nothing within the spirit of the aspirational standard.

The other problem is that whatever contributions or pro bono services that I perform within what I regard as my ability to render are going to become subject to scrutiny by some other person whose interpretation of what constitutes pro bono services is likely to differ from mine; I do not believe that any attorney should be subject to that kind of "Monday morning quarter backing" of what constitutes pro bono services or what constitutes "adequate" pro bono services.

The proposal that an attorney contribute time or money is of unequal and therefore unfair consequences to the profession. To some attorneys, particularly to those who have no other financial commitments to other charitable, religious or social activities, they might find that making a monetary contribution may salve their conscience and fulfill their duty; they also can take a charitable deduction on their income tax return. The attorney who contributes services is not entitled to a charitable deduction on an income tax return for contribution of services.

The aspirational standard of 50 hours per year converts to approximately $500.00 per month or more of services rendered or cash contributions. Office overhead of 50% or more of revenues collected is not an untypical situation; an overhead obligation of an additional $500.00 or more per month for pro bono services or a correspondingly decreased income would be a definite hardship. Additionally, the attorney would have to devote additional reporting and recording time in order to document those hours which means that the attorney would have to devote something more than 50 hours a year in order to document the achievement as well as to

perform and report the service. The hours that I have to devote to administrative office duties as compared to "billable services" is already a formidable part of my workday in relation to the larger firms where all that an attorney has to do is to practice law; forcing me to allocate more of my workday away from billable client activities would interfere with my ability to service my paying clients which relates directly to my economic survival as a practicing attorney.

The concept of being mandatorily required to disclose how I devote my time smacks of an Orwellian "big brother" concept which I find to be inconsistent with our democratic principles. I fully endorse the authority of the Supreme Court to supervise the conduct of the attorneys admitted to practice, which up to now has been confined to the aspect of protecting the public from the harmful or illegal acts of attorneys. The MSBA petition would seek to expand the role of the Supreme Court to requiring an attorney to disclose what they have done "for the public good" and then by inference, to sit in judgment or to delegate some entity to sit in judgment of whether the reporting attorney's activities measure up to someone else's yardstick.

While I have chosen to practice as a sole practitioner, I have to pay twice as much social security tax on my income as does a salaried employee, 15.30% as compared to 7.65%. My social security tax obligation already makes my total tax obligation a formidable challenge. I need all the income I can generate to have enough after tax income for the support of me and my family, and I don't need to be told to prepare to give away another four hours a month of my available work time.

The problem of legal services for the poor and the indigent is no more acute than is the problem of medical services or other social services which becomes a problem for society as a whole and not just for the practicing bar to be responsible for the solution thereof. The aspirational standards for pro bono legal services provides sufficient incentive, for the conscientious attorney, of the professional challenges and opportunities that the practicing bar faces. Beyond that, I urge this court to dismiss or deny the pending petition and to tell the bar association, of which I am a member, that the court does not intend to monitor the private lives of the practicing bar.

Respectfully submitted,

Medard B. Kaisershot

Medard B. Kaisershot
Attorney Registration No. 53235

/emb
cc: Minnesota State Bar Association

BERGESON, LANDER & MEGARRY, P.A.

Attorneys at Law

CAROLE M. MEGARRY
MICHAEL L. LANDER
STEVE L. BERGESON
KURT M. ANDERSON

DONNA M. WILL
FRANCINE M. PAWELK
JOANNE M. FURST
PARALEGALS

MARY E. McCORMICK
OF COUNSEL

REPLY TO: Bloomington

March 12, 1991

Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: MSBA Petition, No. C9-81-1206

To Whom It May Concern:

Enclosed for filing are an original and 11 copies of a memorandum in opposition to the MSBA petition in the above matter. I am sending a courtesy copy of this letter and one copy of the enclosure to Catharine Haukedahl.

Very truly yours,

KURT M. ANDERSON

KMA/
Enclosures

cc: Catharine Haukedahl

5270 WEST 84TH STREET, SUITE 450
BLOOMINGTON, MINNESOTA 55437
(612) 835-7815
FACSIMILE (612) 835-9705

111 SOUTH BROADWAY
JORDAN, MINNESOTA 55352
(612) 492-2800

STATE OF MINNESOTA
IN SUPREME COURT
C9-81-1206

In re Petition to Require Attorneys Licensed in Minnesota to Report *Pro Bono* Legal Services, etc.

MEMORANDUM IN OPPOSITION TO PETITION

I am submitting this memorandum in opposition to the Petition of the Minnesota State Bar Association (MSBA) for a mandatory *pro bono* reporting system. For the reasons stated herein, the petition should be denied.

1. My background.

My active involvement in providing legal services to the poor and disadvantaged spans my entire legal career. I entered practice as a staff attorney with St. Cloud Area Legal Services and subsequently set up and managed Western Minnesota Legal Services, a 10-county legal services program in the Willmar, Marshall, and Montevideo areas. Since leaving legal services, a substantial portion of my practice has consisted of representing farm debtors, a classic case of unmet need for legal services. I served with Ms. Haukedahl on the MSBA-Attorney General Task Force on the Delivery of Legal Services to Farmers in 1985 and 1988, and I am on the judicare attorney panel for Northwest Minnesota Legal Services, Mr. Nordick's former program. Despite my involvement in public service and *pro bono* or reduced fee activities, and my great respect for the work of Mr. Nordick and

Ms. Haukedahl and their committee, I oppose the petition for the following reasons.

2. Argument.

The power of the Court to require *pro bono* reporting is, for the most part[1], conceded for purposes of this memorandum. However, the petition should be denied, for two reasons. Firstly, the stated rationale for inaugurating the program does not justify the cost of the reporting requirement and the intrusion into the privacy of individual attorneys and clients. One concern is the burden of reporting. Attorneys frequently are disciplined for false certifications regarding their trust accounts. A high standard is properly imposed in this regard. If the information on *pro bono* service is to be reliable, similarly high standards of recordkeeping and reporting will have to be imposed on attorneys. Anything less would render the program useless. A prudent attorney would be careful not to overstate the amount of service provided in a year, and would feel compelled to add *pro bono* service to her timekeeping system, at significant overhead cost.[2] Another concern is the intrusiveness of the reporting requirement. Fundamentally the

1 Some persons may have a valid conscientious objection to reporting, protected by the First Amendment. *See, e.g.*, NEW AMERICAN BIBLE, Matthew 6:1-4 (1970).

2 Considering that no minimum amount of *pro bono* service is required, and the potential burdens of documenting the reported service, an attorney may choose to falsely certify that he provided no *pro bono* service. Would this subject the attorney to discipline? A further question, if we move toward mandatory *pro bono*, is what activities would qualify. At some point we may require a CLE-type board to certify programs for credit.

decision to volunteer one's services, whether the services are public or private, is very much a personal matter. The process of systematically turning in the data as a part of a mandatory reporting process greatly devalues this decision.

Furthermore, although the petition does not request the institution of mandatory *pro bono* service, it nevertheless reflects and encourages the flawed assumption that society should look primarily to the volunteer efforts of lawyers to ameliorate the systemic problems in our legal system and the correlates of those systemic problems in our economic and social systems. As a practical matter, we long ago discarded the notion that the medical profession has the burden of providing health care to the indigent through voluntary services. Instead, our society as a whole pays the cost of the relatively comprehensive Medicaid and Medicare programs. There is no reason to take a different approach with regard to legal services. If there is an unmet need for service, legal services funding should be increased; if bad or poorly conceived laws result in increased demand for services in some cases, the laws should be changed in the legal equivalent of a public health program.

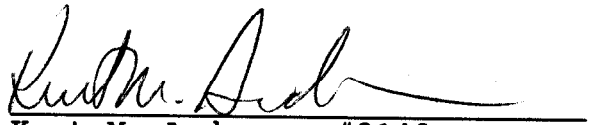
Underlying this whole issue is the tenacious problem of public squalor amid private affluence. Perhaps, in lieu of the MSBA proposal, the Court should require attorneys to report how many hours per year they spend lobbying the legislature and

Congress to raise taxes on the average salary received in the profession.[3]

3. Conclusion

Despite the understandable desire to publicize the volunteer efforts of members of our profession, our best course as a group is to follow the above-cited injunction in Matthew. Those who are inclined to contribute their professional services will do so without the annual reminder that the anonymous ABA delegate from Minnesota said he needed. The Court should deny the petition.

Respectfully submitted,



Kurt M. Anderson #2148
Pro se
5270 West 84th Street Suite 450
Bloomington, Minnesota 55437
(612) 835-7815

3 The MSBA could further demonstrate its commitment, which I acknowledge is already substantial, to legal services for the poor by providing reduced membership fees for full-time legal services attorneys, as it now does for government attorneys. I understand that the MSBA has tentatively moved in this direction.

KARON, JEPSEN & DALY, P.A.
TRIAL ATTORNEYS
AMERICAN NATIONAL BANK BUILDING
FIFTH & MINNESOTA STREET, SUITE 1600
ST. PAUL, MINNESOTA 55101

TELEPHONE 612-292-0044
FACSIMILE 612-223-5645

Stanley E. Karon
William E. Jepsen
Leo M. Daly

Cindy Geving
Legal Assistant
Terry Petrik
Investigator

March 18, 1991

Frederick K. Grittner
Supreme Court Administrator
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155

Re: File No. C9-81-1206
Pro Bone Legal Services

Dear Mr. Grittner:

Enclosed for filing in the above matter is the original and twelve (12) copies of REQUEST OF MTLA TO MAKE ORAL PRESENTATION.

Sincerely yours,

KARON, JEPSEN & DALY, P.A.

William E. Jepsen

cyz
Enclosures
cc: James H. Manahan
Jane Tschida
Kathleen Worner Kissoon
Daniel B. O'Leary
Peter W. Riley
Brian Zotaley
Karla R. Wahl

FILE NO. C9-81-1206

STATE OF MINNESOTA
IN THE SUPREME COURT

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

REQUEST OF MTLA TO MAKE ORAL PRESENTATION

The undersigned, on behalf of Minnesota Trial Lawyers Association (MTLA), requests the opportunity to make an oral presentation on April 18, 1991, in opposition to the Petition of the Minnesota State Bar Association. We request that the following members of MTLA be permitted to speak: William E. Jepsen, President of MTLA; James H. Manahan, Chair of MTLA Pro Bono Committee; and Daniel B. O'Leary, member of MTLA Pro Bono Committee.

A copy of the Statement of Policy by the Minnesota Trial Lawyers Association Regarding Mandatory Reporting of Pro Bono Provisions is attached hereto.

Dated: 3-11-91

William E. Jepsen, President
Minnesota Trial Lawyers Association
906 Midwest Plaza East
Eighth and Marquette
Minneapolis, MN 55402
Attorney License #

STATEMENT OF POLICY BY THE MINNESOTA TRIAL LAWYERS ASSOCIATION REGARDING MANDATORY REPORTING OF PRO BONO PROVISIONS

First and foremost, it must be clearly understood that the Minnesota Trial Lawyers Association (MTLA) strongly advocates pro bono publico service! As an organization, we are dedicated to promoting such work among all of our members.

Minnesota Rules of Professional Conduct, Rule 6.01 states:

> "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."

The MTLA believes that all of its members abide by the above stated rule. In fact, the MTLA is aware that many of its members go above and beyond the call of duty and render tremendous pro bono legal service to the public.

Note should be taken of the comments to Minnesota Rules of Professional Conduct, Rule 6.01 which in part states:

> "This rule expresses that policy [responsibility of each lawyer to perform pro bono work] but is not intended to be enforced through disciplinary process." (Emphasis added)

The proposal by the Minnesota State Bar Association (MSBA) to require reporting as a condition of licensure could in fact potentially impose the ultimate discipline on a lawyer, the loss of his or her license, and thus violate the intention of Minnesota Rules of Professional Conduct, Rule 6.01.

The MTLA has grave concerns regarding the MSBA's proposal that the MSBA should recommend to the Minnesota Supreme Court that, as a condition of licensure, all attorneys licensed to practice in Minnesota be required to report pro bono legal services and financial contributions provided pursuant to the aspirational standard. (At least 50 hours per year, with at least 25 of those hours being devoted to direct provision of legal services to low-income people; or as an alternative to some or all of those 25 hours, equivalent financial contributions to organizations that provide legal services to low-income Minnesotans.)

The basis for the Minnesota Trial Lawyers Association's concerns is as follows:

1. Constitutionality

The MTLA believes that the constitutionality of requiring this reporting as a condition of licensure is seriously in question. As lawyers, we would be aghast if some other group of professionals were singled out and required as a condition of their licensure to perform free services or were required to report any free services they performed as a condition of their licensure.

The Supreme Court of the United States has already

ruled that lawyers must be treated the same as other professionals and that they are entitled to the same constitutional protections as other professionals when they ruled that lawyers are entitled to advertise.

It has been claimed by others who have discussed this issue that mandatory pro bono imposes "involuntary servitude" on lawyers. By requiring mandatory reporting of pro bono work, as a condition of licensure, the effect is the same on lawyers. Until society is prepared to require pro bono work on all professionals, it cannot single out lawyers for such a requirement to maintain their licensure to practice their profession.

2. Invasion of Privacy and Personal Morality

It is important to note that each lawyer must search his or her conscience as to their own rendering of public interest legal service. It is an invasion of their privacy and their own personal morality for the Supreme Court, as a condition of licensure to require mandatory pro bono reporting.

While it may be a good idea for lawyers to go to church, it would obviously be improper to require

them to go to church, and equally improper to require them to report whether they do so and how often.

The MSBA in adopting aspirational standards, also defines certain categories which they believe the pro bono work should be accomplished within. Individual lawyers could honestly and sincerely differ with the categories set forth by the Bar Association and could wind up with their license in jeopardy because of a privately held conviction or belief. To place an attorney in such a position is improper and against his or her constitutional rights of due process and equal protection under the laws.

3. Conflict in Setting the Standards

As indicated in number 2 above, since pro bono work is so inherently personal, there is tremendous potential for conflict in the standards that are set. The MTLA committee members who discussed this matter in depth concluded that there were all kinds of problems inherent in trying to set standards on someone else's morality. For instance, the exact same conduct by two different lawyers can result in completely different results depending on the

intention of the lawyer involved. One lawyer can honestly and sincerely believe that they will perform the services of an arbitrator under the American Arbitration Association system for the purpose of performing pro bono services. They know that they will be inadequately paid for such services but perform them anyway with the intention that they are doing it for the public good. Another lawyer may perform the exact same services as an arbitrator but have the intention of doing it because they like being considered judicious in their communities; they believe that they will have greater exposure to obtain more referrals either from other lawyers or from the claimants themselves; they believe that they will obtain better settlements from opposing attorneys who are familiar with their role as an arbitrator and other similar type intentions. Similarly, an attorney can spend a couple of hours explaining the law to a client whose case they have decided not to accept. That attorney may honestly and sincerely intend to take that time solely in the interest of public good to help that client understand why their case may have no merit or is not one that should be pursued. Another lawyer may take the same couple of hours but have the intention that they wish to do it in order to have that particular client like

them and refer business to the lawyer in the future or refer other clients to the lawyer.

The Constitution of the United States already separates church and state. It is because there is a recognition that one cannot legislate what another citizen should believe. Similarly, the Supreme Court of Minnesota should not be legislating what a lawyer should believe. By requiring mandatory reporting of pro bono work, the Supreme Court will in effect be mandating what each and every lawyer considers pro bono work. It is thus possible that a lawyer could lose their license to practice if they refused to list what pro bono work they have done and if they listed pro bono work which they felt was appropriate but which the Supreme Court or other governing body determined was not pro bono work.

4. Competency

The Minnesota Trial Lawyers Association adamantly opposes forcing lawyers to do pro bono work in areas in which they are incompetent. The areas frequently cited by the various commissions who have looked at the problems of legal services for the poor include poverty law, civil rights law,

public rights law, family, criminal and landlord/tenant areas. The lawyers of our association have spent years developing excellent legal skills in narrow areas of the law. There are numerous opportunities to do pro bono work within these specialties and thus utilize the competence and skill of our lawyers. However, the aspirational standards as proposed by the Minnesota State Bar Association could require our members to work in areas with which they are totally unfamiliar.

The Minnesota Rules of Professional Conduct, Rule 1.1 states:

> "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Thus, our own rules of professional conduct require us to be competent in our representation of clients. In discussing this matter with our members, there is grave concern that they may well be forced to handle cases in areas where their lack of knowledge and skill will cause them to misrepresent their client. We strongly object to the idea that any lawyer at all is better than no

lawyer. Ultimately, that would be perceived by the public as a fraud and would lead to greater distrust of the legal profession. Just because an individual is not paying for the legal services does not mean that they should receive incompetent legal services.

5. Capacity

The MTLA is further concerned with the MSBA's usage of the word "indigent". The Minnesota Rules of Professional Conduct, Rule 6.01 specifically states; "provide legal services to persons of limited means". (Emphasis added) Persons of limited means may well be offended by designating them as "indigent". The MSBA's change in nomenclature to "indigent" besides being potentially offensive, also too narrowly construes the group to which Minnesota Rules of Professional Conduct, Rule 6.01 encourages lawyers to assist.

Minnesota Rules of Professional Conduct, Rule 6.01 basically outlines four areas which would discharge a lawyer's responsibility to render public interest legal service:

1. Provide professional services at no fee or a reduced fee to persons of limited means;
2. Providing professional services at no fee or a reduced fee to public service or charitable groups or organizations;
3. Service and activities for improving the law, the legal system or the legal profession; and
4. Financial support for organizations that provide legal services to persons of limited means.

The focus from the MSBA proposal as shown in their aspirational standards is on services to indigents. (See their reporting form attached hereto as Exhibit A.) Thus, the MSBA underplays the other areas set forth in Minnesota Rules of Professional Conduct, Rule 6.01.

Our organization supports Minnesota Rules of Professional Conduct, Rule 6.01. The MTLA believes that rule was carefully thought out and was worded in such a fashion as to accomplish the most amount of good to the public.

The MTLA has serious concerns that lawyers in today's society have only so much capacity for the amount of work that must be accomplished. Most

lawyers currently work well in excess of 40 hours per week. If we are to require lawyers to do pro bono activities in areas set forth by the MSBA's aspirational standards, these same lawyers will have to cut back services in other areas. There are only so many hours in a week and only a certain capacity of lawyers to perform their work in pro bono activities. There could be a drastic effect on pro bono activities as defined in Minnesota Rules of Professional Conduct, Rule 6.01 if in fact the much more restrictive aspirational standards as proposed by the MSBA are adopted.

Lawyers may determine that they can no longer perform civic work on charitable committees assisting them with their legal knowledge on a pro bono basis. Those lawyers may determine that they must do work for "indigent" persons since that is the aspirational standards adopted by the MSBA and realize that they have only so much capacity and must cut other pro bono activities to which they were better suited and more inclined. The MTLA has great concern that there may be a drastic and unexpected effect on society as a whole by requiring certain pro bono activities rather than allowing each individual attorney to abide by Minnesota Rules of Professional Conduct, Rule 6.01

as their individual consciences direct them.

An additional concern of the MTLA regarding the capacity of attorneys to handle pro bono work is the implied requirement that at least 50 hours of pro bono work must be done each and every year. We are aware that several of our attorneys have spent hundreds of hours pursuing a case on a pro bono basis in a given year. Once those attorneys have devoted that much time and effort to pro bono activities in a given year, they are obligated to make up for some of the production loss to their law firms in the following year or years. Thus, a given attorney may spend 300 hours in one year pursuing a trial and appeal on a pro bono basis for a client. They then promise their partners that the next two years they will devote almost exclusively to law firm activities which generate income. Thus, they would average 100 hours a year of pro bono activities when you average over a three year period of time. However, if they were reporting their pro bono activities to the Supreme Court, it would appear as if they did no pro bono activities in years 2 and 3, thus giving a false picture of the actual pro bono activities of the attorney.

By having a mandatory reporting requirement, attorneys could become more inclined to handle smaller pro bono cases which would be confined to smaller hours within a year rather than taking on a larger, more complex pro bono case. It will be natural for attorneys not to wish to put a zero down under mandatory pro bono reporting requirements. This could seriously affect a person of limited means from being able to obtain representation on a complex matter. That would clearly be contrary to the intention and purposes of Minnesota Rules of Professional Conduct, Rule 6.01.

6. Professional Liability Problems

The MTLA is concerned that if the mandatory reporting is required under the standards as currently proposed and some of our members are forced to work in areas in which they are imcompetent, there will obviously be mistakes which could lead to a professional liability judgment against that attorney. Due to the status of professional liability coverage, an attorney who has one or two claims may be cancelled by his or her professional liability carrier. It may thus become impossible to get other professional

liability coverage, or, if coverage can be obtained, the price could be prohibitive. By forcing an attorney to work in areas in which they are unfamiliar, the likelihood of professional malpractice increases dramatically. Therefore, if there is to be mandatory pro bono reporting, there should be provisions for either the State of Minnesota or the Minnesota Bar Association to provide professional liability coverage for any claims brought about as a result of an attorney performing pro bono work.

In the alternative, legislation could be passed to provide immunity to lawyers performing pro bono work. However, again the public may perceive such action as being against their interests and the entire benefit behind pro bono work could be lost.

Additionally, there was much discussion among our members that in many cases where people "expect" pro bono assistance, they will abuse that privilege. There are cases where people are receiving pro bono assistance and wind up refusing to negotiate on items such as who will get the Christmas ornaments in a divorce case. If those same persons were paying for legal services, they would immediately recognize the ridiculousness of

their positions and the fact that they are wasting too much money in arguing over emotional matters. When a lawyer chooses to represent a particular client in a pro bono fashion, he or she can still exert control by explaining to the client if they do not remain reasonable the lawyer cannot continue to offer them pro bono service. Once the public perceives that there is mandatory pro bono, which they will perceive if there is mandatory pro bono reporting, the attitude of some will become; "our principle on your time and money."

7. Integrity

In discussing this situation with our members, perhaps the most insistent objection to the program is the fact that mandatory reporting of pro bono work attacks the integrity and good conscience of the bar. A person may receive great benefit from doing charitable works. If they are forced to broadcast or list such charitable works, it changes the entire nature and feeling of the activity. What was once a matter of great personal pride in performing pro bono work for the public, now becomes an onerous requirement of reporting under the auspices of an organization or institution which sets standards for the individual lawyer's

morality. It is difficult for our members to see how this change in attitude will not be felt by the public and be resented by the public. It is feared that the quality of the pro bono work currently being accomplished would suffer by forcing attorneys to work in areas in which they are incompetent, but which they are sure will fit somebody else's idea of pro bono work.

Minnesota Trial Lawyers Association Position

For all the above stated reasons, the Minnesota Trial Lawyers Association would strongly oppose any recommendation to the Minnesota Supreme Court that, as a condition of licensure, all attorneys licensed to practice in Minnesota be required to report pro bono legal service and financial contributions provided pursuant to the aspirational standards set forth by the Minnesota State Bar Association.

It should be noted that there are various other requirements under the Minnesota Rules of Professional Conduct for which no mandatory reporting is required as a condition of licensure by the Supreme Court.

Alternative Suggestions

The Minnesota Trial Lawyers Association proposes that the Minnesota State Bar Association, the Minnesota Trial Lawyers

Association, the Minnesota Defense Lawyers Association, the various county bar associations and other similar lawyers' organizations within the state develop programs to assist those members who wish to have the convenience of a structured pro bono program available. A separate list of examples is being prepared within the various areas of expertise of our members. One example of such a program is the "Forfeiture Representation Project". This was a project suggested by John Stuart, the State Public Defender, to assist persons of limited means with the recovery of their property, who have had their property wrongfully taken from them "by being in the area" of a person arrested for drug dealing. Other programs for the benefit of persons of limited means in the family law and landlord/tenant law, civil rights area and poverty law areas could be set up.

All bar associations should assist in identifying the specific areas of need as set forth in Minnesota Rules of Professional Conduct, Rule 6.01 in which their members are skilled to help persons of limited means.

All bar associations should be encouraged as a group to send voluntary surveys to their members to ascertain the areas and amount of time spent in performing pro bono services. The results of those surveys should be given to the Minnesota Supreme Court for dissemination to the public or other usage which they may deem appropriate.

Additionally, the above organizations should continually promote and urge their members to participate in worthwhile pro bono activities.

12/434

FREDRIKSON & BYRON
A PROFESSIONAL ASSOCIATION

1100 International Centre
900 Second Avenue South
Minneapolis, MN 55402-3397
(612) 347-7000
FAX (612) 347-7077

(612) 347-7013

April 15, 1991

The Honorable A. M. Keith
Chief Justice
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155

Re: In Re Petition to Require Attorneys Licensed in Minnesota to Report Pro Bono Services (File No. C9-81-1296)

Dear Chief Justice Keith:

The purpose of this letter is to support the proposed pro bono reporting system. I am a former member of the Board of Directors and Chairperson of Legal Advice Clinics, Ltd.; former Vice-Chair of the Board of Directors of Central Minnesota Legal Services; and a former member and Chairperson of the Legal Services Advisory Committee to this Court. Of course in expressing the views in this letter I do not proport to speak for any of those organizations or for my law firm.

The opposition to the reporting system is based upon an apparent (but erroneous) assumption that the reporting system constitutes an implied mandatory pro bono requirement. In making that argument they assume or imply that there is no other reason for the reporting. To the contrary, beyond the very salutory effect of reminding lawyers on an annual basis of their pro bono responsibilities, there are very important practical reasons to adopt this reporting procedure.

The comment to Rule 6.1 of the Rules of Professional Responsibility includes the following language:

> The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet

> the need. Thus it has been necessary for the profession and the government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed by the profession and the government. Every lawyer should support all proper efforts to meet this need for legal services.

Efforts to obtain funding through the Minnesota Legislature, the federal Legal Services Corporation, United Way and private foundations is almost always met first with the question of what the profession itself is doing. At the Minnesota State Bar Association Convention two legislators arose to speak in favor of the reporting procedure now under consideration by this Court by making the same point. One of the problems in answering that question is that while we believe that pro bono legal services is quite substantial, it is difficult to either verify or quantify that belief. We are reaching the point where neither platitudes nor general statements of support will do. The result of the reporting will probably be to show that a very substantial amount of money and pro bono services are provided by Minnesota lawyers; this will aid considerably in seeking funding from other sources.

When I chaired Legal Advice Clinics in 1981 we undertook for the first time a rough effort to quantify the services rendered through that organization. The purpose was not only the purpose described above, to be able to give that information to funding sources, but to serve as a baseline to measure the continuing efforts to improve the quality and the quantity of the services. The Minnesota State Bar Association and other organizations, have and are attempting to meet these legal services needs on an ongoing and continuing basis. The availability of information concerning the legal services that are actually being provided in Minnesota will provide a baseline against which to measure future efforts to increase those services. I hope that future leaders of the Bar Associations, members of its Legal Assistance to the Disadvantaged Committee, leaders of local bar associations, and leaders of segments of the private bar (including the MTLA and the Academy of Matrimonial Lawyers), as well as law firms and especially each individual lawyer, will undertake, as they set out their goals and standards by which they hope their own stewardship will have been measured, that they will do so by including pro bono legal services as a very high priority.

As stated above, platitudes and general statements of support are no longer sufficient. We need to be willing to assess ourselves, to measure the results of our efforts, to accept criticism when those efforts fall short, and to take pride where those efforts are successful. We need to have a continuing effort by lawyers individually and by the Bar Association, with the support of the Minnesota Supreme Court, to meet the standards of Rule 6.1 of the Rules of Professional Responsibility in a meaningful way.

Very truly yours,

James L. Baillie

JLB:rs
7559n

LAW OFFICES

NELSON, OYEN, TORVIK, MINGE & GILBERTSON

221 NORTH FIRST STREET
P.O. BOX 656
MONTEVIDEO, MINNESOTA 56265
612-269-6461
FAX 612-269-8024

1020 TENTH AVENUE
P.O. BOX 656
CLARKFIELD, MINNESOTA 56223
612-669-4447

STEPHEN TORVIK
DAVID MINGE
DAVID M. GILBERTSON
JANICE M. NELSON
KEVIN STROUP

JOHN P. NELSON, Retired
SIGVALD B. OYEN, Retired

April 11, 1991

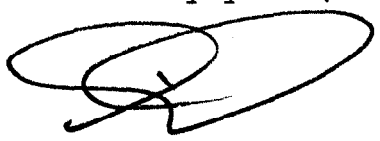
REPLY TO MONTEVIDEO

Mr. Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Dear Mr. Grittner:

Enclosed are 12 copies of Comments on Proposed Amendment to Require Reporting of Pro Bono Legal Services in connection with a hearing scheduled on this matter for April 18, 1991 at 9:00 a.m.

Sincerely yours,



David Minge
Chair of Chippewa County
Bar Association

DM/bd
Enclosures

STATE OF MINNESOTA
IN COURT OF APPEALS
C9-81-1206

COMMENTS ON PROPOSED AMENDMENT TO REQUIRE
REPORTING OF PRO BONO LEGAL SERVICES

These comments are filed on behalf of the Chippewa County Bar Association to object to the proposed rule changes that would require attorneys to report hours spent on pro bono activities as a condition of licensure. There are three basic reasons for the objection and related comments.

First, the incremental recordkeeping responsibility that is placed upon law offices by any reporting requirement including this one is burdensome. Attorneys must take the time to record hours spent on a project, categorize the type of hours, determine to what extent any fee collected creates a fractional pro bono contribution, have reports typed, and submit them to the Supreme Court. If this were the only record that had to be kept and report that had to be filed, the objection would be trite and beyond mention. However, it is far from being the only one. CLE reporting, tax recordkeeping, and a plethora of other types of reports, documents, and records creates a substantial burden on the practice of law. Demanding such recordkeeping or reporting should only occur when vitally needed information is sought.

I would like to give an example of the adverse affect of recordkeeping and reporting. Every law firm in Chippewa County participates in the Volunteer Attorney Program (VAP) sponsored by Western Minnesota Legal Services. As a part of this program, attorneys take cases of low income people who are unable to

obtain representation through the legal services program. The VAP coordinator refers such cases to the attorneys. As a part of the program, attorneys are required to keep records of the work done, report the status and disposition of the case to the VAP office, and otherwise participate in oversight of the VAP program. The staff person urges attorneys to refer any pro bono work that would otherwise come to them directly to the VAP office so that the office can refer the case back. This process both qualifies the client and the attorney for certain support services and cost reimbursement and it enables the VAP program to report the actual volume of work done in the area. The most frequently heard objection from attorneys to both the VAP program and the suggestion that we refer cases that come to us directly is the paperwork involved. This is enough of a nuisance that some attorneys refuse to refer such work and some claim to be reluctant to engage in pro bono work through the VAP program.

In making the foregoing comment about the VAP program I wish to emphasize that the reporting and recordkeeping requirements are very modest. Also, I do not wish to detract from the program itself. However, the negative attitude nonetheless exists.

The second objection to the reporting requirement is the underlying philosophy of pro bono work that is embodied in the proposal. Pro bono work as it is frequently discussed in legal materials and as it is perceived in these court rules fits the mold of an urban, downtown law firm practice. I make this comment with some reluctance. I was an associate in one of the major law firms in Minneapolis and helped organize the legal

advice clinic program in Hennepin County in the 1960s. However, it is easy to see the difference between that practice and the one that exists in most of the rest of the state. Large metropolitan practices are organized to attract and serve major fee generating clients. Many others are legal boutiques. Well trained telephone operators and secretaries shield attorneys from calls and appointments with anyone who is not in sync with the law firm's income generating goals. The location and decor of the offices and the demeanor of the receptionists are such that walk-in business simply does not exist - especially walk in business of legal service type clients. It takes a special effort for attorneys in these classic settings to do pro bono work. Their professional life is compartmentalized. As a result, when they switch from an SEC registration to a Chapter 11 business bankruptcy, or some other such work it is easy to identify when the pro bono activity starts. Time keeping is easy. Full rate is charged on the regular work, pro bono work is done on an entirely different basis.

Life in a rural area or a smaller law firm is different. Work is not compartmentalized. The retired person that one knows from church comes in for a Will. You do not say "I do not do Wills." You do not say "It will cost you $160 an hour." You spend time, you do the work, and you charge a fee that it is appropriate to the situation. Or, you take the case of a low income person and run it through the office as a regular file determining as you go whether a charge will be made at all or if a minimal charge is appropriate. The bulk of the rural practice

is conducted in this fashion. Occasionally no fee is charged. Pro bono work is built into the system. The entire concept of pro bono reporting is rendered more complex for the rural attorney.

A third reason for the objection is the flexible concept of pro bono work. We perceive that it is molded to fit the egos of the members of the legal profession. Is membership on the Guthrie or the Symphony or Boys' Club board pro bono just because the attorney uses his or her legal talents during and after board meetings to minimize the need for retaining counsel or to handle certain types of problems? Is helping your church establish an endowment or acquire land pro bono work? Is reduced fee work for people with a modest income pro bono? Judged by the reporting standards in form, it appears that pro bono work is in the eye of the beholder. It will be a rare attorney who cannot qualify enough time. Maybe this is as it should be. However, query what we have gained by reporting or, going to the logical extreme, requiring pro bono work. The cynic will obtain pro bono hours conducting seminars on estate planning in Edina churches or on public policy for state legislators.

Our County Bar Association perceives that the requirement of reporting pro bono hours has the laudable goals of both identifying how much pro bono work is actually being done by Minnesota attorneys and pushing attorneys to serve the needs of the low income community. We support these goals. However, we strongly object to an ongoing mandatory reporting requirement. We urge that if the court finds that there is an overriding and important

need for data, that it undertake a one year survey of pro bono work. This could include reporting hours spent on a one year basis. After the results are analyzed, the court could consider requiring such a report once every five years. That should provide ample data for determining whether new programs need to be instituted. We feel that going any further is both unjustified and burdensome.

Dated: April 11, 1991.

Respectfully submitted,

David Minge
Chair of Chippewa County
Bar Association