



Supreme Court of Missouri
Post Office Box 150
Jefferson City, Missouri
65102

CHAMBERS OF
MARY R. RUSSELL

March 10, 2011

Dear Friends,

In these tough economic times, as you are asked to continue to do more with less, I thank you for the difficult work you do in administering justice in your circuit.

Unfortunately, the number of people who no longer can afford to pay for the legal services they desperately need is ever-increasing. I know you are well aware of this problem as you frequently observe people with legitimate causes of actions who unsuccessfully attempt to represent themselves when they need an attorney's expertise. Perhaps they are trying to force a former spouse to pay for their children's uncovered medical expenses, or they are faced with being homeless as they are evicted from their home without adequate notice.

In a recent survey in Missouri, 77 percent of low-income households (190,000) faced at least one legal problem each year. The average number of legal issues per household was 6.28. As we know, Legal Services and other related agencies are able to serve only 25 percent of those in need. Based on this report, more than 63,000 households each year experience at least one legal problem needing an attorney, and more than 47,000 (75 percent) do not receive an attorney's help – and this number does not include those who do not meet Legal Services' eligibility criteria. The simple fact is there is a great need to address the problem of access to justice for many needy households.

What can you do to help? Pursuant to our Canon 4, as judicial officers, we are encouraged to contribute to the improvement of the administration of justice. You can encourage your local bar to take on more *pro bono* work. Local needs are best served in the local community, and you and the attorneys in your area are the best sources for recognizing and filling the *pro bono* needs.

On behalf of my colleagues and as judicial liaison to the Committee on Access to Family Courts, I am asking for your help. The next time there is a circuit bar meeting, a law day or other event where many local bar members are gathered, make a plea for additional *pro bono* volunteers. I know attorneys have busy schedules and personal lives too, but a plea from you to give a little extra time – even an hour or two a week – would be of tremendous help.

The ***Judges' Tool Kit on Pro Bono Legal Assistance*** has been designed especially for you. The tool kit provides judicial officers with resources to assist in motivating attorneys to provide *pro bono* services. The tool kit now is available on the JEWELS website. Below you will find instructions about how to access the tool kit on JEWELS. The tool kit also is available from the judicial website at www.courts.mo.gov under “News & Publications,” “Publications,” “Handbooks & Manuals.” I encourage you to visit the tool kit and view the numerous resources.

Thank you for helping me spread the word. When I was a practicing attorney, the *pro bono* work I did was some of the most meaningful of all my cases. Although some states have gone to mandatory *pro bono* hours, I am confident the Show-Me State can meet the needs on a voluntary basis. Let's all encourage more *pro bono* activities and set the standard for other states to follow.

Yours very truly,

A handwritten signature in black ink that reads "Mary Russell". The signature is written in a cursive, flowing style.

Mary Russell

Instructions for accessing *The Judges' Tool Kit on Pro Bono Legal Assistance*:

1. Log into JEWELS using your username and password. Your “Learner Home” page then will appear.
2. On the left side of your “Welcome Page,” you will see a “Catalog Search” field. Type “*Pro Bono*” in the search field and click the “GO” button.
3. When the search results screen appears, click the “Start” button to the left of *The Judges' Tool Kit on Pro Bono Legal Assistance*.

The Judges' Tool Kit on Pro Bono Legal Assistance

The goal of this tool kit is to increase access to justice for people living at the margins of society by providing you, the judges of Missouri, with the tools and incentives to encourage and support pro bono legal representation.

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Letter of Welcome from the Supreme Court

Our Duty

- Assuring access to justice for the disadvantaged is a professional responsibility of lawyers. Judges have a unique role in encouraging attorneys to engage in *pro bono* representation.

The Need

- Annually about 50,000 households have legal problems, cannot afford an attorney or cannot receive services from existing programs. Access to justice is essential to peace and order in our communities.

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- Limited Scope Representation (LSR), also known as unbundled legal services, is a way to provide legal representation, which is affordable to attorney and client.

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- Many rural counties in Missouri have very few lawyers. *Pro bono* representation is a greater challenge because of the limited attorney pool in those communities.

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- Who can you call for help? The Supreme Court Committee on Access to Family Courts is here to help. Also numerous regional *pro bono* programs can share their experiences.

Acknowledgment of Contributors

Bibliography of Resources

- Administrative rules, books, court rules, essays, ethics opinions, forms and maps
- Reports & deskbooks, resolutions and statutes
- Videos and websites

Our Duty

Providing access to justice especially for the poor and disadvantaged is a centuries old tradition of the legal profession. It is embedded in our codes of professional conduct and in who we are and what we do. We are challenged to live up to our traditions.

"I will practice law to the best of my knowledge and ability and with consideration of the defenseless and oppressed."

- Attorney's Oath of Admission, Rule 8.15

"A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf."

- Preamble, Rule 4, Rules of Professional Conduct

"A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or 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 professions; and by financial support for organizations that provide legal services to person of limited means."

COMMENT

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"[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules, and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

*"[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provisions of legal services to the disadvantaged. **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 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 government. Every lawyer should support all proper efforts to meet this need for legal services.**" (Emphasis added.)*

- Rule 4-6.1: Voluntary *Pro Bono Publico* Service

"As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of ... the administration of justice. ... a judge is encouraged to do so..."

- Rule 2.03, Canon 4, commentary, Code of Judicial Conduct

“[T]he Judicial Branch, in our constitutional structure, shoulders primary leadership responsibility to preserve and protect equal justice and take action necessary to ensure access to the justice system for

those who face impediments they are unable to surmount on their own.”

- Conference of Chief Justices, Resolution 23, 2001

The Conference of Chief Justices has called on all judges to encourage *pro bono* services.

- Resolution VII - Encouraging *Pro bono* Services in Civil Matters, February 1997

The phrase "*Pro bono publico*" means for the good of the people. "For the welfare of the whole" (Blacks Law Dictionary). We most frequently leave off the word "*publico*" but it is essential to the proper understanding. It is not just for an individual's good that lawyers serve needy persons, but for the "public" good, for the welfare of the whole community.

If we really want a just, peaceful, ordered society, we must provide the means of access to the system of justice. "*If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.*"

- Learned Hand

The Need

In their 2007 study Legal Services Corporation described a national “Justice Gap.” The study confirm(ed) “the existence of a major gap between the legal needs of low-income people and the legal help that they receive. ...Only a very small percentage of the legal problems experienced by low-income people (one in five or less) are addressed with the assistance of either a private attorney (*pro bono* or paid) or a legal aid lawyer" (*Documenting the Justice Gap in America*, Legal Services Corporation, 2007).

A comparable study by Professor Greg Casey of UMC for Legal Services in Missouri found that more than 63,000 low-income households each year have at least one legal problem needing an attorney and more than 47,000 (75 percent) do not receive an attorney’s help. Note: The 47,000 does not count persons who where outside of Legal Services eligibility. **The simple fact is there is a great need to address the problem of access to justice for many needy households.** (Summary of Casey report.)

The state of Indiana did a comprehensive study of the legal needs of the poor. They found, "The insufficient number of *pro bono* and public service attorneys representing the poor in comparison to the need for legal assistance was a theme throughout the responses to the various surveys, questionnaires, and focus groups making up the study" (Unequal Access to Justice).

The recent economic downturn has increased the need of the poor for legal help (Civil Legal Services: Low-Income Clients Have Nowhere to Turn Amid the Economic Crisis, Brennan Center for Justice 2010).

Statistics, while helpful, do not put a human face on those injured by lack of access to justice. As a judge, you know from your own experience in the courtroom each day the number of parties who are unable to afford legal representation and the problems this adds to their lives, the workload of the courts and the efficient administration of justice. For examples from real cases see "Who are the Needy?"

The person seeking but lacking access to justice is only the beginning of a chain of negative events for families, neighbors and society.

The consequences of inadequate access to the courts affect not just the individuals directly involved, but also society as large. When families are evicted from their homes because they cannot obtain counsel in a housing proceeding, for example, their resultant homelessness costs taxpayers in the form of public services. In New York City, the average cost of sheltering a single homeless adult is \$23,000 annually - far more than providing counsel to prevent an eviction. Medical and other costs rise, too, when individuals, particularly senior citizens, lose their homes because they lack access to a lawyer. When victims of domestic violence are unable to obtain help, the health care, criminal justice and social welfare systems bear the strain. Employers, too, suffer from decreased productivity and increased absenteeism. Many of these societal costs could be ameliorated if low-income individuals had access to counsel to assist them in resolving their legal problems.

- Access to Justice: Opening the Courthouse Door, p. 6, David Udell and Rebekah Diller, Brannan Center for Justice at New York University School of Law (2007)

The *pro se* problem: The increasing number of *pro se* litigants is burdening the court system as well as worsening outcomes for the *pro se* litigants. This year the Coalition for Justice, an arm of the ABA that focuses on access to the courts, conducted a survey of about 1,000 judges. The judges were asked to compare representation in their courts in 2009 to representation in previous years. Sixty percent of judges said fewer parties had lawyers, while 3 percent said representation had increased. The rest said they saw no change.

Asked how the lack of representation affects the parties, 62 percent of all judges said the outcomes are worse for a litigant when he represents himself, while 3 percent said they were better. The rest said there was no impact. The judges who saw worse outcomes said the most common problems for *pro se* litigants are failure to present necessary evidence, procedural errors, ineffective witness examination and failure to object to evidence properly.

Announcing the survey results, ABA President Carolyn Lamm said that lack of representation causes problems for the rest of the court system by, among other things, consuming more of judges' time. "Parties not being represented in fact delays the proceedings in the court," Lamm said. "They slow down the ability of the court to hear cases" (ABA Announcement, July 15, 2010). Lawyers seeking trial settings and other court action find their cases delayed by the time taken with *pro se* litigants.

Pro se litigants create a "catch-22" for judges and clerks. If the litigant is doing something wrong, the court can do little to help since they cannot practice law and must be neutral. The result is a disgruntled litigant who often believes the court system failed him or her. In circuits where judges are elected, he or she is also a disgruntled voter. Being able to refer such litigants to a *pro bono* program solves the "catch-22" situation.

In short, the need is not only that of the low-income litigant but also of the judges, clerks and lawyers. More *pro bono* representation will benefit all.

Ethical Guidelines

What are the ethical guidelines for judges' promotion of *pro bono*? The Code of Judicial Ethics recognizes the unique position of the judge in improving the administration of justice and encourages judges to contribute their leadership and skills. *Pro bono* representation is key to access to justice for those who live at the margins of our society (Rule 2.03, Canon 4, commentary, Code of Judicial Conduct).

There are only two relevant advisory opinions of the Missouri Commission on Retirement, Removal and Discipline. Opinion 128 (1986) approving judges participating in media campaign to recruit foster families and Opinion 157 (1991) approving judges efforts to improve the administration of justice by publicly recognizing *pro bono* attorneys.

The methods employed to encourage and recognize *pro bono* representation must be designed to allow judges to:

- Maintain their integrity and impartiality (Canon 2).
- Insure that every person who has a legal interest in a proceeding or that person's lawyer, has the right to be heard according to law (Canon 3B(7)).
- Dispose of all matters promptly, efficiently and fairly (Canon 3B(8)).

Direct fundraising for *pro bono* organizations should not be engaged in by judges. They may participate in planning fundraising events, make recommendations regarding grants, etc. For detailed guidance, see Rule 2.03, Canon 4C(3)(b).

For further discussion of ethical advisory opinions from other states see ABA Center for *Pro bono* Judicial Promotion of Pro bono and *Expanding Pro bono: The Judiciary's Power to Open Doors* by The Honorable Judith Billings and Jenny M. McMahon (ABA *Dialogue*, Spring 1998).

Existing *Pro Bono* Programs in Missouri

There are a variety of *pro bono* programs in Missouri. Some are funded by state and federal funds such as the four Legal Services Corporation programs, some are affiliated with social service agencies, some are affiliated with circuit courts, some are limited in scope such as disaster response, some are affiliated with law schools, and some are affiliated with a single church or local agency usually involving one volunteer attorney.

The Supreme Court Committee on Access to Family Courts (CAFC) and The Missouri Bar Delivery of Legal Services Committee is attempting to locate these various agencies so they can share information and resources. The Missouri Bar has developed a website where they can describe their programs and needs and opportunities for *pro bono* volunteering. The website is www.mobarprobono.org. Check this site for developing information about additional agencies.

Presently to our knowledge, no local bar association has a *pro bono* panel or referral program. A 2008 survey of all circuit clerks by CAFC found that only five had a list of *pro bono* attorneys.

Presently, all of the existing agencies together are able to serve less than 30 percent of the needy. This leaves tens of thousands of poor families with legal problems who are unassisted. For more information, see *The Need*. Our challenge to multiply resources to meet this need is very great.

Below you will find more detailed information about existing programs.

Legal Services Programs

The four regional not-for-profit Legal Services programs across Missouri have operated organized *pro bono* or *judicare* (reduced-fee) programs since 1982. Each program sets its own case priorities, but in general, services include legal assistance in the areas of marriage, dissolutions and child custody (usually when violence is involved), orders of protection, guardianship for minors, landlord-tenant disputes, bankruptcy, foreclosure prevention, consumer credit and other consumer matters, public benefits, education and specialized projects. For their contributions, volunteer attorneys are afforded a variety of benefits, such as malpractice insurance coverage, reimbursement of out-of-pocket expenses, mentoring and co-counseling opportunities, case monitoring and follow-up, free CLE programs and volunteer recognition. Other benefits include meeting space and no cost or low cost professional services - court reporters, real estate appraisers, title searches, handwriting experts, etc.

Case referrals made to the *pro bono* programs are first screened for eligibility and legal merit by the sponsoring legal services offices. Because these *pro bono* programs are part of the legal services programs and are not separate entities, their case priorities and client eligibility requirements are the same. **APPLICANTS SEEKING ASSISTANCE SHOULD CALL THE LEGAL SERVICES PROGRAM IN THEIR AREA** (see map). Legal Services also has a statewide website.

While these programs have made significant strides in bridging the gap between legal needs and services, a large unmet need still exists. In their ongoing efforts to meet this challenge, the programs must continually recruit volunteers. The programs have developed the insight to successfully create opportunities that match the desires and needs of its volunteers with *pro bono* clients for a mutually fulfilling experience. These programs are:

- **Legal Services of Eastern Missouri**, headquartered in St. Louis, operates the **Volunteer Lawyers**

Program (VLP). The VLP relies on its panel of outstanding volunteer attorneys in 20 counties of eastern Missouri to refer critical housing, consumer, immigration, guardianship and domestic violence matters. The VLP offers training, support and malpractice coverage for its volunteers. For more information, click here.

Contact information:

Office address: 4232 Forest Park Ave., St. Louis, MO 63108
phone: (314) 534-4200
facsimile: (314) 534-1425
e-mail: info@lsem.org
website: www.lsem.org

Areas of law in which legal assistance is offered: Priority areas include consumer, community and economic development, disability, education, elderly, family, health, housing, immigration, income maintenance, public benefits, limited probate matters (to avoid homelessness or impoverishment, limited tax matters (when home or employment is affected)

Income Eligibility Criteria: 125% of federal poverty levels (ex., gross annual income for a family of four = \$27,563)

• **Legal Aid of Western Missouri** operates the **Volunteer Attorney Project (VAP)**. Currently consisting of more than 900 enrolled volunteer attorneys, VAP provides services in a 40-county area of western Missouri. Its services include specialized programs that focus on victims of abuse, the homeless and the elderly.

Contact information:

Office address: 1125 Grand Boulevard, Suite 1900, Kansas City, MO 64134
phone: (816) 421-8020
facsimile: (816) 474-1578
e-mail: lscott@lawmo.org
website: www.lawmo.org

Areas of law in which legal assistance is offered: dissolution of marriage, guardianships of minor children, Chapter 7 bankruptcy, drafting of beneficiary deeds and consumer matters including credit card collection defense, defective auto sales contracts and other contract disputes, public and private landlord-tenant disputes, education, representing victims of predatory mortgage lending and other housing matters

Income Eligibility Criteria: 125% of federal poverty guidelines (in exceptional circumstances up to 200% of federal poverty guidelines)

• **Legal Services of Southern Missouri**

Contact information:

Deanna Scott, Director of Litigation
Office address: 809 N. Campbell Ave., Springfield, MO 65802
phone: (417) 881-1397
facsimile: (417) 881-2159
e-mail: deanna.scott@lsosm.org

website: www.lsosm.org

Areas of law in which legal assistance is offered: consumer law, domestic/sexual violence, elder law, family law, housing, income maintenance, individual rights. public benefits, wills/guardianships

Income Eligibility Criteria: 125% federal poverty guidelines with some exceptions

• **Mid-Missouri Legal Services**, with offices in Columbia and Jefferson City, administers a Volunteer Lawyers Program that provides legal services in its 11-county area in central Missouri. VLP attorneys may provide extended services in contested cases and/or limited services in clinic or project settings in many civil practice areas, but primarily housing, consumer, family and elder law. MMLS offers its VLP attorneys training, support and mentoring. For more information, [click here](#).

Other Programs

• **Gateway Legal Services** focuses primarily on SSI and social security disability cases. They also assist with veteran's benefits. For handling applications and appeals for benefits they receive a reduced contingent fee; however, there is no fee for handling cases terminating benefits or collecting overpayment of benefits. Paid staff handles such cases *pro bono* but Gateway would welcome the assistance of volunteer attorneys to help with such cases.

Contact information:

office address: 200 N. Broadway, Suite 950, St. Louis, MO 63102

phone: (314) 534-0404

facsimile: (314) 652-8308

e-mail: mferry@gatewaylegal.org

website: www.gatewaylegal.org

Geographic service area: statewide

Areas of law in which assistance is offered: social security, SSI and veteran's benefits

Income Eligibility Criteria: The program is primarily for persons whose household income is at or below 200% of federal poverty but exceptions can be made.

• **The Samaritan Center Legal Care:** Legal Care began in 2003. The program is affiliated with the Samaritan Center, a multi-service charitable agency providing food, clothing, utility assistance, free medicine assistance, dental clinic, medical clinic and other services. All attorneys and secretaries are volunteers.

Contact information:

Office address: 1310 E. McCarty St., Jefferson City, MO 65101

phone: (573) 634-7776

facsimile: (573) 761-4856

e-mail: LegalCare@MidMoSamaritan.org

website for attorneys: www.midmosamaritan.org/legalcare

Geographic service area: Primarily counties surrounding Jefferson City including Cole, Moniteau, Miller, Osage, Maries and Callaway

Areas of law in which assistance is offered: All civil matters. No criminal or traffic matters.

Income Eligibility Criteria: The program primarily is for persons whose household income is at or below 150% of federal poverty level.

Expenses: It is Legal Care's goal that attorneys and mediators who provide free or reduced-fee services to persons referred by the program will not have out-of-pocket expenses. Legal Care will pay expenses from the donated funds, which are pre-approved. Donations to the Legal Care fund are tax deductible.

Support resources: The facilities of the Samaritan Center are available to volunteer attorneys accepting clients from Legal Care for conferences during times that staff is present, i.e. 8 a.m. to 4 p.m. Monday, Wednesday and Friday, 8 a.m. to 6 p.m. Tuesday and Thursday. Contact Jackie Mathews at (573) 634-7776 for scheduling.

Mentors: Experienced volunteer attorneys are available to mentor less experienced attorneys on legal matters.

Mediation: Legal Care encourages mediation where appropriate. Volunteer lawyers and non-lawyer mediators are available to work with attorneys and clients.

Forms library: Forms are available especially for limited scope representation matters.

Malpractice coverage: Legal Care is approved to participate in the free malpractice coverage provided by the state of Missouri. We will assist you in registering for the coverage.

Language translation: Spanish translators are available through El Puente.

Free MCLE: In appreciation for the contributions of volunteer attorneys and to develop skills for pro bono representation, Legal Care provides free MCLE programs. Legal Care is approved by Mo Bar as a MCLE sponsor.

Social services support: Legal Care is a program of the Samaritan Center. The Center provides numerous services to needy persons including: food, clothing, furniture, a dental and medical clinic, assistance with obtaining free medications from drug companies, state and federal tax assistance, utility assistance, rent assistance and other monetary assistance. Frequently when assisting a pro bono client, the client has need for basic services. Samaritan Center can help with these allowing the attorney to take a holistic view of the client's needs.

Tax assistance: Through volunteers, Legal Care provides assistance to low-income persons on federal and Missouri income returns to help them obtain the credits (e.g. Earned Income Tax credit and Missouri Property/Renter Tax Credit) and refunds they are entitled to.

• The **Mid-Missouri Access to Justice Project** began in 2010. The program is affiliated with the 13th Judicial Circuit Court and collaborates with Mid-Mo Legal Services. Currently, the program is focused on family law and housing matters. For more information, [click here](#).

Contact information:

Office address: 400 Wilkes, Columbia, MO 65203
phone: (573) 874-2292

facsimile: (573) 874-2292
e-mail: midmoaccesstojustice@centurytel.net

Geographic service area: Boone and Callaway counties

Areas of law in which assistance is offered: civil matters, primarily family law and housing

Income Eligibility Criteria: The program is primarily for persons whose household income is at or below 150% of federal poverty level.

- The **Catholic Legal Assistance Ministry (CLAM)** is affiliated with Catholic Charities of the Archdiocese of St. Louis. Director is Marie Kenyon.

Contact information:

Office address: 321 N. Spring, St. Louis, MO 63108
phone: (314) 977-3993
e-mail: kenyonm@slu.edu
website: <http://www.ccstl.org/services/family-and-community/149-catholic-legal-assistance-ministry.html>

Geographic service area: counties in the Archdiocese of St. Louis

Areas of law in which assistance is offered: CLAM helps victims of domestic violence and domestic law matters, paternity, orders of protection, guardianship and abuse. CLAM also offers services for immigrant populations

Income Eligibility Criteria: The program primarily is for persons whose household income is at or below 150% of federal poverty level.

- The **Missouri Trial Lawyers Association (MATA)** has developed a program in collaboration with the Red Cross to provide volunteer attorneys to assist disaster victims. The program is limited to officially declared disasters.

Contact information:

Office address: 243 East High St., Suite 300, Jefferson City, MO 65101
phone: (573) 635-5215
facsimile: (573) 634-6282
e-mail: mata@socket.net
website: <http://www.matanet.org/index.cfm?ph=DisasterRelief>

Also, a variety of pro bono programs throughout the state focus on a particular area of the law or a specific group of people. The **Lawyers and Accountants for the Arts**, with offices in St. Louis and Kansas City for example provides *pro bono* legal and accounting assistance to qualifying artists and arts organizations from all creative disciplines.

Recruiting Volunteer Attorneys

How can judges recruit *pro bono* attorneys?

Judges are especially well-suited for direct recruitment of *pro bono* program volunteers. In many jurisdictions, judges sign letters urging members of the bar to join a program. This is a particularly effective strategy for increasing the numbers of *pro bono* program volunteers.

The 2009 ABA study of *pro bono* found that "encouraged by a judge" was among the top three incentives for attorneys to do *pro bono* representation (*Supporting Justice II: A Report on the Pro bono Work of America's Lawyers*, The ABA Standing Committee on *Pro bono* and Public Service, February 2009).

Examples of recruitment activities are:

- Sending **periodic reminders** to encourage attorneys to participate in volunteer attorney panels.
- **Writing editorials**, opinion pieces or articles for newspapers, magazines or bar publications about the need for volunteer attorneys and about the aspirational standard of ABA Model Rule 6.1 of the Rules of Professional Conduct.
- **Making presentations** about the need for volunteers when speaking at various events, including swearing-in ceremonies and bar association annual meetings;
- Assisting in the recruitment of law firms, corporate law departments or government law offices by making individual presentations to them.
- Collaborating with the **local bar** association for annual recruitment events.
- Encouraging the heads of **local government** attorney offices, such as the prosecuting attorney's and county or agency counsel's offices, to promote *pro bono* service among their staff attorneys. There are ways for government attorneys to contribute *pro bono* services without creating potential conflicts of interest.
- Encouraging firms to create ***pro bono* teams**, in which several firm attorneys take on a *pro bono* project together.
- Encouraging **corporate counsel** to do *pro bono* representation. Inform them of the new limited scope representation rules and how they make it easier for corporate attorneys to do *pro bono*. Also inform them of the free malpractice coverage provided by the state.
- **Court employees**: "Finally, courts can set an example for the bar by encouraging their own lawyer-employees to do *pro bono* work. These lawyers are subject to the rules of professional responsibility where they are admitted to practice, and they should have the opportunity to engage in *pro bono* and public service work. Lawyers who are court employees engage in a wide range of *pro bono* work, including estate planning, benefit counseling, landlord-tenant disputes, and debtor-creditor issues. Naturally, such matters should be carefully screened to ensure that the lawyer's *pro bono* work does not create conflicts of interest" (ABA Resolution

Further see, *Expanding Pro Bono: The Judiciary's Power to Open Doors* (ABA Dialogue, Spring 1998), p.3.

Accommodating *Pro Bono* Practice

The only compensation *pro bono* attorneys receive, if any, is appreciation. Saving time reduces the cost of *pro bono* representation. "While this might appear to 'favor' one side 'against' another, it is nothing more than courtesy shown to a member of the profession who is fulfilling his or her professional obligation." *A Rule To Show Cause On the Courts: How the Judiciary Can Help Pro Bono - Part I* by Carl "Tobey" Oxholm (ABA Dialogue, Winter 1999), pp. 15+.

How can judges accommodate *pro bono* volunteers? Some examples include:

- **Giving priority to *pro bono* cases:** If your court holds "motion days" or other events at which many cases are listed for activity at the same time, the court can recognize the public service that *pro bono* counsel is rendering, and it also reduce, where possible, the amount of time spent waiting for that counsel's case to be called.
- Every effort should be made to honor the *pro bono* counsel's scheduling requests, and the court should give greater latitude to *pro bono* counsel who makes continuance requests.
- Hear *pro bono* cases first on the daily calendar.
- Grant docket time close to times the *pro bono* attorneys are appearing on other matters.
- Organize the calendar so that all matters from *pro bono* programs will be heard by the same judicial officer at the same time each week.
- Set *pro bono* cases at specific, non-standard times and at non-standard places.
- Allow *pro bono* attorneys to attend routine hearings by conference call.
- Offer courthouse space for meeting clients and *pro bono* clinics.
- Encourage court personnel to be cooperative with volunteer attorneys.
- **Help with training:** Often attorneys need training in family law, landlord/tenant and other areas of law in which they don't practice but for which there is a large need. Volunteer to help with training and offer free CLE programs. Not only will this improve the attorney's work, but it demonstrates the court supports *pro bono* volunteering.
- **"Little Red Schoolhouse Seminars:"** One judge opens his courtroom during downtime to meet with attorneys to discuss *pro bono* issues to hold free CLE seminars on *pro bono* relevant topics such as review of local rules relevant to *pro bono* practice and limited scope representation (LSR).
- **Review local rules.** Are local court rules and practices *pro bono* friendly?
- **Set aspirational goals:** Adopt a local rule that defines an expectation or aspirational goal that each member of the local bar will provide 20-40 hours of *pro bono* services annually. (Note: This does not call for mandatory *pro bono* need help from the outside. In most

- **Limited Scope Representation:** Review the new Supreme Court Rules on LSR. If needed, adopt local rules, forms and practices, which facilitate and support LSR practice.
- **IFP applications:** Are procedures for in forma pauperis applications simple and expedient? Consider using the Office of State Courts Administrator in forma pauperis application form.
- **Discovery:** Simplify discovery procedures in *pro bono* cases.
- **Reducing costs:** How can costs be reduced in *pro bono* matters?

Collaborating with *Pro Bono* Providers

How should judges and *pro bono* providers communicate and collaborate? *Pro bono* programs that communicate with members of the judiciary on a regular basis benefit significantly. For example:

- Program managers or board members frequently should write, visit or call judges to keep them informed about the program and to solicit their input and assistance. Many times judges initiate this contact.
- Judges also may contribute to *pro bono* programs through service as board members, which allows them to take part actively in developments and to be easily accessible to offer guidance and assistance.
- Including notices on formal court forms, handouts at the clerk's office, or posters in the courthouse about how indigent parties may obtain legal assistance helps *pro bono* providers connect with needy persons.

Reducing *Pro Bono* Case Expenses

Attorneys who work for free should not be out of pocket for expenses. This is especially true for retired, corporate, government, solo and small firm *pro bono* attorneys. While large firms may be able to absorb expenses in *pro bono* cases, it is likely a significant impediment for smaller firms and solo practitioners. *Pro bono* programs must be creative in finding ways to eliminate or minimize the costs of volunteer services. Access to justice should not be through a toll gate. How can expenses for *pro bono* cases be kept to a minimum? How can unavoidable expenses for *pro bono* be funded?

- **In forma pauperis (IFP)** is the basic tool to reduce expenses in *pro bono* cases. Supreme Court Rule 77.03 and Section 514.040, RSMo address *in forma pauperis*. Section 514.040.3 provides for Legal Services Corporation programs to certify low-income litigants. For other *pro bono* attorneys, the first step is filing an *in forma pauperis* application. For further discussion of *in forma pauperis* see "*in forma pauperis*, Section 514.040, A Practical User's Guide for Attorneys," Christine Rollins, Missouri Bar Journal, May-June 2010, p. 146.
- Are clerks informed on expeditious handling of IFP applications, the scope of costs covered and filing of pleadings pending determination of *in forma pauperis* status?
- **Publications** may be required. Consider editing orders to the minimum requirements to reduce publication costs.
- **Discovery:** How can judges reduce discovery costs in *pro bono* cases?
 - Simplify and use standard form discovery (e.g., family law income and expense statements), which are issued *sua sponte* on filing *pro se*.
 - Develop model local rules.
 - Consider permitting the taking of depositions without a stenographic record.
 - Consider permitting the taking of depositions "by telephone or other remote electronic means."
 - Recruit court reporters to do *pro bono* work.
 - Further see, *A Rule to Show Cause On The Courts: How The Judiciary Can Help Pro Bono - Part I*, by Carl "Tobey" Oxholm (ABA Dialogue, Winter 1999), pp. 15+.
- **The pre-trial and trial schedules.** A very significant "cost" can be imposed or avoided depending on the court's sensitivity in establishing pre-trial and trial schedules and in responding to requests for continuances. See Oxholm, Part 1, *supra*, p. 15.
- **Panel of volunteer stenographers.** "*Pro bono* is not just for lawyers. There is no reason that the court could not maintain a panel of *pro bono* reporters. Court reporters who serve their courts for "paying cases" should be encouraged to enroll as panel members. These volunteers only agree to provide one copy of the transcript for free to the attorney representing an indigent party *pro bono* (they may charge their standard fees to all other parties)." See Oxholm, Part 1, *supra*, p. 15.
- **Professional associations.** Some associations of certified shorthand professionals have adopted policies encouraging their members to serve *pro bono* in any case where the requesting counsel is serving *pro bono*. When a lawyer (or law firm) regularly uses a specific reporter (or agency), a request to share in the burden of *pro bono* is appropriate.

Funding *Pro Bono* Expenses

Establishing a fund to cover expenses of *pro bono* attorneys will empower more retired, governmental, corporate, solo and small firm attorneys to volunteer. The fund could be administered by the court, the local bar association or a *pro bono* provider agency.

Different **models for raising funds** for *pro bono*:

- *Cy pres* cases: When the court has cases that require application of *cy pres* doctrine consider applying some of these funds to a *pro bono* expense fund, which benefits the needy of the community. *Cy pres* funds are also used to fund federal Legal Services programs.
- Part of local bar dues: Encourage the local bar association to establish a *pro bono* expenses account funded by bar dues or donations.
- Fundraising events: Attend fundraising events organized by local community leaders, civic organizations, ect.
- Grants: Apply to IOLTA, family courts, Mo Bar Plan Foundation, etc.
- Conduct MCLE programs presented by the court, local bar association or *pro bono* provider agency. The training programs can be free or reduced cost for *pro bono* attorneys. But also a fee can be charged to attorneys not engaged in *pro bono* service, which money can then be put in a fund to reimburse *pro bono* counsel for expenses. See *A Rule To Show Cause On The Courts: How The Judiciary Can Help Pro Bono - Part II*, by Carl "Tobey" Oxholm (ABA Dialogue, Spring 1999, pp. 3+).

In-kind contributions of resources will empower more volunteers. Examples are:

- Making rooms at the courthouse available to *pro bono* attorneys.
- Providing copying of documents, faxing, etc.
- Encouraging larger law firms to make equipment, libraries and other resources available to *pro bono* attorneys.
- Making law books available to *pro bono* programs.
 - This could merely be passing on outdated editions from the court's library or recruiting law firms to do so.
 - Using the court's library fund to buy basic practice books for *pro bono* programs.
 - Buying books for the court's library that are especially helpful to *pro bono* attorneys and making them available for loan to *pro bono* attorneys.

For the possibility of using Neighborhood Assistance Program (NAP) grants for funding *pro bono* programs, see, *Tax-Based Pro Bono Incentive Legislation: A New Recruiting Tool?*, Cassie Diaz-Bello (ABA Dialogue, Fall 1998, pp. 11+).

Recognizing *Pro Bono* Attorneys

Recognition is a form of appreciation and compensation for volunteers. Courts actively should seek ways to reward volunteers - i.e., lawyers, shorthand reporters, experts, etc., who provide *pro bono* services. "Thanks from the bench" may not see like much, but it is. Volunteer attorneys handle these cases for a variety of reasons. They know, up front, they are not getting paid, and most of them don't expect remuneration of any kind - monetary, verbal or otherwise. **But everyone wants and needs to be appreciated.** And public recognition from a judge - an acknowledgment and an appreciation of your hard work - is significant. How can courts recognize and reward *pro bono* volunteers?

- **Publicly recognize the contributions** of *pro bono* attorneys at bar functions or social settings. Try to acknowledge his or her contributions in front of other people.
- **Words spoken in open court.** Recognition of an individual attorney for *pro bono* services expressed by a judge in open court when his or her colleagues are present not only rewards that attorney but restates the expectation of all professionals to serve the needy.
- A **letter of thanks** from the court for volunteering or performing *pro bono* services.
- Words of **praise at meetings** of the local bar association or at meetings of civic organizations.
- Recognition on the **court's website**.
- **Reserved parking space** for *pro bono* attorney of the month.
- A **plaque**, certificate or other memento especially one suitable for displaying in the attorney's office for his clients and colleagues to see.
- A letter of praise and appreciation **to the senior partner of the attorney's firm** with special appreciation to the firm if they are allowing the attorney to consider *pro bono* time as billable hours or underwriting the expenses.
- Annual **appreciation ceremonies** in collaboration with the local bar association. This also creates an incentive for others to participate.
- A **special annual reception** with all members of the court limited to attorneys who have volunteered for *pro bono* service.
- Keep in mind that *pro bono* attorneys frequently volunteer in high-volume need areas that are **outside of their regular field**, e.g., a skilled corporate attorney may be volunteering in his or her first family law matter. Expressing special appreciation for this extra effort is in order.
- Record a YouTube **video** expressing appreciation to *pro bono* attorneys and link it to your court or local bar website. Click here for an example.
- For examples from **other states** of what judges can do see ABA Center for *Pro Bono* Judicial Promotion of *Pro Bono*.

Models for Organizing or Expanding *Pro Bono* Programs

This section presents multiple models for creating or expanding *pro bono* programs from inside Missouri and across the nation.

Except for Legal Services Corporation agencies, very likely you do not have a *pro bono* provider agency in your county or circuit. In Missouri there are very few organized *pro bono* programs. While the four regional Legal Services programs provide services statewide and the Samaritan Center Legal Care program, Catholic Legal Assistance Ministry, Mid-Missouri Access to Justice program and similar programs operate regionally, all existing programs are only able to serve about 25 percent of low-income persons needing legal assistance.

Expanding existing or organizing additional *pro bono* provider agencies in your community has several advantages. It provides a defined place for clerks and judges to refer *pro se* litigants and others in need of help, and also it provides a systematic means for recruiting and training volunteer attorneys, for prescreening applicants for help, for funding *pro bono* expenses, for providing malpractice coverage through the state program, and in general, increasing access to justice.

There are a variety of models for organizing *pro bono* programs:

• Large Firm Coordinator Model

Many large firms have a *pro bono* coordinator. These coordinators prescreen needy clients and refer them to appropriate attorneys within the firm. Most firms give *pro bono* attorneys in the firm credit for "billable hours" when working on a *pro bono* case. Contact the large firms and build a list of these coordinators and use it to refer needy persons for help. Keep in mind that many large firms operate statewide (some nationwide). Look beyond the boundaries of your circuit for large firm coordinators. The *Pro Bono* Institute manages the Law Firm *Pro Bono* Project nationwide. From their website you can obtain a list of major law firms that are participating in their "*pro bono* challenge."

• Lend-a-Lawyer Model

Encourage law firms to place lawyers in fellowships with Legal Services or other *pro bono* programs for several months or for particular projects. This is sometimes know as rotation of volunteer lawyers or "lend-a-lawyer" and has been done successfully in several places around the country.

• Social Service Agency Integrated Model

Social service agencies are already in contact with needy persons. They have established systems for screening financial need, maintaining records and matching clients to appropriate services. With basic training and guidelines about categorizing legal problems, they can readily provide the pre-screening of applicants and matching of them appropriately to volunteer attorneys. Marginalized persons are served by a variety of governmental and private (non-governmental) agencies. Examples of such agencies are public and law libraries, abuse shelters, Department of Social Services offices, Department of Health and Senior Services offices, Department of Mental Health offices, area agencies on aging, United Way agencies, Salvation Army, Red Cross, Catholic Charities, Lutheran Family Services, Jewish Community Services and community action agencies. Needy persons usually show up at such agencies first because they are hungry, homeless, cold or otherwise in need. Applicants to these

agencies come with social-economic problems but also frequently these problems are caused by or intertwined with legal problems.

Low-income persons with legal problems most likely have other immediate needs for housing, clothing, food, utilities and more. Partnering with social service agencies links the volunteer attorney to the means of addressing these needs while he or she addresses the legal problems. Lawyers collaborating with social service agencies can look at the client more holistically. In the long run, solving the legal problems may well reduce the economic problems, but in short run, people need food and shelter.

The Legal Care program of the Samaritan Center in Jefferson City is such a program and willing to provide more information about how to establish a similar program in your community. Contact legalcare@midmosamaritan.org.

• **Limited Scope Representation Panel Model**

The 7th Judicial Circuit (Clay County) has established a referral list to connect family law litigants of modest means with lawyers offering limited scope representation.

Pro se litigants often have little knowledge about the variety of ways they can obtain the assistance of a lawyer and frequently assume they cannot afford legal services without paying a significant retainer up front. Rule 4 now facilitates the ability of the lawyer and client to enter financial arrangements for legal services in a number of ways, making legal services accessible to people of more modest means. Connecting people seeking legal assistance with lawyers willing to consider engagement for performance of discrete tasks was a problem. The 7th circuit's court services division in collaboration with the Clay County Bar Association created a list of lawyers who would consider limited scope representation of clients. Compliance requirements under Rule 4-9.1 were discussed with the Office of Chief Disciplinary Counsel. The concept was supported by local bar leadership for development of a list administered by court services. The list was created in the summer of 2009.

To be eligible for a listing, a lawyer must be licensed and in good standing as a member of The Missouri Bar and maintain an office address in Clay County. No fee is charged for a listing, administration of the list, or referrals. Lawyers may indicate whether they are offering services in any or all of four categories: office consultation, document preparation and review, representation for specific tasks or issues, and full representation. The lawyer establishes his or her own fees. Litigants provided with the list are encouraged to engage in frank discussion of fees with the lawyer.

The list is distributed in a number of ways. The list is made available to *pro se* litigants during their appearance for their pre-trial conference. The list is provided on request to persons contacting court services seeking legal assistance. The list may be obtained by making a request on the circuit courts' website.

Since August 2009, some legal services were retained in 43 percent of dissolution cases originally filed *pro se*. A limited appearance in court was made by counsel in about one-third of the cases. During the period ending in February 2010, the percentage of *pro se* dissolutions reaching completion climbed to 56 percent.

For more information about the Clay County Limited Scope Representation Panel, contact Kathleen

Bird, Director, Office of Dispute Resolution, 7th Judicial Circuit, 351 East Kansas St., Liberty, MO 64068, at (816) 736-8402 or kathleen.bird@courts.mo.gov.

• **Lawyer For The Day Model**

Using limited scope representation, lawyers volunteer to perform a discreet task for a needy client with the representation being limited to one day. Examples include negotiating resolution of an eviction, preparing a parenting plan, or negotiating settlement of a consumer debt. For a detailed description of such programs including recruitment, training, procedures, forms and more see *Best Practices for the Administration of Court-Sponsored Volunteer Lawyer For The Day Programs*, Access to Justice, New York State Courts (2010).

A similar program has begun in the 13th Judicial Circuit (Boone and Callaway counties) by the Mid-Missouri Access to Justice program. For more information, e-mail the program at midmoaccesstojustice@centurlylink.net.

For other examples from other states see the following:

- Fair Debt Collection Courtroom Lawyer for the Day in the Boston Municipal Court
- Suffolk Probate and Family Court Limited Assistance Representation Courtroom Lawyer for the Day Project.

• **Legal Services Corporation Volunteer Attorney Projects**

Volunteer attorney programs are operated by most Legal Services Corporation agencies. The programs recruit and train volunteer attorneys and screen and refer low-income clients who meet federal guidelines. They should be part of your overall *pro bono* plan. To contact Legal Services, visit www.lsmo.org.

• **Community Non-Profit Corporation Model**

This model is in operation in the 13th Judicial Circuit (Boone and Callaway counties). With the leadership of the court, a diverse group formed a non-profit corporation to provide legal help to low-income persons who are not eligible for Legal Service Corporation programs. The court appointed a planning team. Grant funds were obtained. A part-time coordinator was employed. Judges of the circuit and Supreme Court of Missouri invited all members of the local bar to a kick-off recruitment event.

• **Maryland Needs Assessment Model**

Comprehensive suggestions and tools for conducting a local needs assessment are available as part of the *Pro Bono Resource Manual* developed by the *Pro Bono* Resource Center of Maryland, Inc. The manual contains a "How To" guide including suggestions about public hearings, personal interviews and focus groups (pages 37+), a "Needs Assessment Model" (pages 42+), a survey form for legal service providers (pages 45+), a social service agency needs survey form (pages 50+), a client needs assessment survey form (pages 56+), and a template for a local *pro bono* action plan (pages 61+). The survey forms are useful models for doing a comprehensive needs assessment.

• Do-It-Yourself Model

As they say, "If all else fails, do it yourself." Maintain your own panel or list of volunteer attorneys for *pro bono* appointment. Keep it handy on the bench. To build the list, make announcements in your courtroom about the importance of *pro bono* service, ask any counsel representing clients *pro bono* that day to register with your clerk, and/or ask for volunteers to sign up. Be sure to get the lawyer's area of practice on the list so they can be appropriately matched with the legal problem of needy clients. Click here for a sample sign up form. Design a simple rotation system so all attorneys share the load fairly. Note: Attorneys accepting cases through a court program are eligible for the free malpractice coverage provided by the state.

Some common principles apply to all models. Keep the following in mind:

- **The critical importance of screening.** Successful *pro bono* programs screen their cases with care before referring them to private counsel. Over the last decade, there has been a significant increase in the number of *pro bono* programs across the country. The ABA Center for *Pro Bono* studies programs that have succeeded and those that have failed. It has learned that a critical ingredient in *pro bono* program operation is screening. Volunteers take cases because they want to help clients. Their time, however, is precious, and they do not want to spend it on a case that has no merit or where the client is not responsive. **Successful programs screen their cases with care before referring them to private counsel.** In addition, the program carefully interviews clients in order to reveal essential facts and to make an informed judgment about whether there is a good faith basis for asserting claims or defenses. If the program asks a volunteer attorney to take a no-merit case, the likelihood is exceedingly high that he or she never will volunteer again and share the bad experience with his or her firm and other volunteers. See *A Rule to Show Cause On The Courts: How The Judiciary Can Help Pro Bono - Part I* by Carl "Tobey" Oxholm (ABA *Dialogue*, Winter 1999).
- **Give clients responsibilities.** What does the client have invested in the matter? *Pro bono* clients usually do not pay a fee, so they do not have money invested. However, they can invest time and responsible action. For example, have the client contact the attorney to schedule the first appointment, not vice versa. Make the client responsible for his or her own documents. These kinds of steps ensure at least a minimum level of commitment to the outcome. Convey the message, "The first one to help you when you are in need it you to the extent you are able."
- Attorneys are more likely to volunteer if **the applicant is financially needy**. A matching or pre-screening process screens applicants as to their financial need as well as the nature of their legal problem.
- **Assess the community needs** for *pro bono* services. See Maryland model: Local *Pro Bono* Committee Resource Manual, Standing Committee on *Pro Bono* Legal Service, *Pro Bono* Resource Center of Maryland, Inc. (2003).
- **Be inclusive in developing your program.** Invite participation from the local bar, court staff, local social service/community service organization, law schools (if available), etc.
- Both clients and attorneys should know what is expected of them. **Clear written information** should be provided to both.

The focus of this Took Kit is on the needs of civil litigants but the needs in the criminal area also

should not be overlooked. For information about the Missouri State Public Defenders System, [click here](#). For information about the Midwest Innocence Project, [click here](#).

Malpractice Protection for *Pro Bono* Attorneys

For retired, government and corporate attorneys, lack of malpractice insurance is a major barrier to volunteering (*Supporting Justice II, A Report on the Pro Bono Work of America's Lawyers*, The ABA Standing Committee on *Pro Bono* and Public Service, February 2009).

The state of Missouri provides free malpractice protection for *pro bono* attorneys. The attorney must work through a government or charitable tax-exempt agency and must not receive any compensation. See Section 105.711.2(5), RSMo and the Attorney General's regulations (15 CSR 60.14.010-030) applicable to the program. Since government agencies are included, attorneys receiving *pro bono* clients through a court-sponsored program would be eligible for coverage. Malpractice coverage is also provided by Legal Services Corporation programs for volunteer attorneys.

- An enrollment form has been approved by the Attorney General.
- More information on the malpractice coverage for *pro bono* attorneys is available in the online Deskbook for Pro Bono Attorneys.

Federal law, the Volunteer Protection Act (VPA), 42 USC Sections 14501-05, also provides protection for volunteers.

- A volunteer is not personally liable for negligence if they are:
 - Not compensated (except for expenses).
 - Acting in scope of responsibilities of a 501(c)(3) charity or government entity.
 - Properly licensed.
 - Not acting willfully, criminally, with gross negligence recklessly, or consciously/flagrantly.
 - Not operating a vehicle.
- A volunteer is personally liable for a federal crime, a hate crime, a sexual offense, a civil rights violation, or harm caused while under the influence of alcohol or drugs.
- For application of VPA to federal law, see *Armendarez v. Glendale Youth Center, Inc.*, D.Ariz., 265 F. Supp.2d 1136 (2003). The VPA conditionally provides that no volunteer of a non-profit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity, does not preempt only state law, but also precludes federal claims such as those arising under the Fair Labor Standards Act (FLSA); the text of the statute cannot be interpreted to prevent its application to federal law, though its central focus is preemption of state law.

Missouri law also provides immunity to officers and directors of tax-exempt charitable organizations (Section 537.117, RSMo).

Limited Scope Representation and *Pro Bono* Practice

Many low-income persons with legal problems have the choice of suffering without access to justice or attempting to present their own case to the court. The increasing number of *pro se* litigants is a growing burden to the courts, which creates confusion for litigants, delay for judges and attorneys, and frustration for all. All would agree that litigants are better prepared and better served with the representation of an attorney. The participation of an attorney makes the justice system run smoother for all. Limited scope representation (LSR), also known as "unbundled legal services," is an efficient way for clients of modest or no means to obtain the services of an attorney. The attorney may provide LSR *pro bono* or change their normal hourly rate or fee for services performed. A 2009 ABA study found "giving the attorney the ability to define the scope of the engagement (was one of) ... the most powerful incentives to encourage greater *pro bono* activity" (*Supporting Justice II, A Report on the Pro Bono Work of America's Lawyers*, The ABA Standing Committee on Pro Bono and Public Service, February 2009).

Nutshell Summary of Limited Scope Representation Rules

The new Supreme Court Rules on LSR give the attorney and client more control over the defining of the scope of representation. This allows a more efficient "division of labor" resulting in saved time for the attorney and saved expense for the client. For modest income clients it may make the difference between affording a lawyer's help or going *pro se*. For *pro bono* attorneys it may make the difference in finding the time to help a client who cannot afford to pay. LSR provides an *à la carte* menu of legal services.

With the consent of the client a lawyer may limit the scope of representation. The agreement must be in writing and signed by the client except for *pro bono* services offered through a non-profit organization, court program, bar association, law school or Legal Services Corporation program. The initial consultation is not included in the requirements of writing. A LSR agreement does not exempt the attorney from the duty to provide competent representation (Rule 4-1.2(c) & (d)).

The opposing attorney may communicate with the LSR client unless the LSR attorney gives written notice to communicate only with the LSR attorney (Rule 4-1.2(e)). Service shall be made on the LSR client unless the LSR attorney serves the opposing counsel and court with notice of limited appearance then service shall be made on the self-represented person, and until the attorney files a termination of limited appearance, the attorney (Rule 43.01(b), effective July 1, 2010).

An attorney who assists an LSR client in the preparation of a pleading or motion, etc., is not required to sign the document (Rule 55.03(a)). If an LSR attorney signs a pleading, etc. or makes a written appearance, the attorney has made a general appearance unless the attorney files a notice of limited appearance (Rule 55.03(b)(3)).

An LSR attorney withdraws when the attorney has "fulfilled the duties set forth in the notice" and has filed a "termination of limited appearance" with the court (Rule 55.03(b)(3)).

A full discussion of the LSR rules is available in the online *Pro Bono Attorneys Deskbook*.

What can judicial officers do to encourage attorneys to provide *pro bono* limited scope representation?

Support for the General Idea

- **Make positive comments** about limited scope representation and how it's great to have attorneys providing people of modest means with access to legal services - you appreciate getting forms you can understand, orders you can enforce, and having attorneys for court appearances. Let it be known that you think it is not only okay, but beneficial for attorneys to provide LSR, and that you appreciate their involvement. Let litigants know that if they are unable to afford (or choose not to have) full representation, limited scope assistance is an option. LSR is a win/win/win (court, litigant and attorney) - it helps everyone, if handled correctly.
- **Hold a training** for other judicial officers about the issue of LSR. Encourage the local bar to conduct training about LSR and participate in the training. Like any other new procedure, there will be a "learning curve" with LSR. Consider an annual training in LSR put on by the local bar in each county so that new forms, procedures and "bugs" can be addressed. Training can also serve as a vehicle to address concerns that arise between bench and bar.
- When doing **public speaking** to lawyers or the public, mention LSR when you discuss *pro bono*.
- Encourage your local Bar Association to set up a **limited representation panel** and retain a listing of persons who are willing to provide LSR services, especially for low-income clients.
- **Educate.** Make positive suggestions to help counsel improve the quality of the 'package' of services they supply in certain areas.
- Make it known that you understand and believe that LSR is helpful to the court.

Courtroom Conduct

- If the client has agreed to limited representation and counsel has notified the court that representation is limited, **you've got to let the attorney out once the scope of the representation is completed** (Rule 55.03(b)). This is a contractual matter between the client and the attorney pursuant to Rule 4-1.2. Support attorneys who practice before you by honoring the terms of the limited attorney-client relationship. Everyone benefits by some involvement of attorneys. They are unlikely to provide this service if you do not support their efforts.
- If an attorney is appearing on only one issue in a matter, **hold a bifurcated hearing** so that the attorney isn't either sitting through issues he or she is not authorized to address (and not getting paid for). If the attorney decides that he or she can't keep quiet on these other issues, consider taking a break in the hearing and giving the attorney the opportunity to revise the scope of the representation with his or her client.
- **Recognize that clients who have consulted with an attorney may not present that attorney's advice fully or even accurately.** Trust that it is unlikely that the attorney told them "not to bother with service" or similar misconceptions. If there appear to be consistent problems, consider addressing them as general issues with the local bar.
- Resist attempts by opposing counsel to broaden the scope of the representation.

- **Be open to discussing clarification of the issues with counsel**, when necessary, so that opposing counsel will know which issues require contact through counsel and which issues permit contact with the client. New Rule 4-1.2 provides, "An otherwise unrepresented party to whom limited representation is being provided or has been provided is considered to be unrepresented for purposes of communication under Rules 4-4.2 and 4-4.3 except to the extent the lawyer acting in the scope of limited representation provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented." Rule 43.01(b), effective July 1, 2010, states, "If an attorney has filed and entry of limited appearance for an otherwise self-represented person, service shall be made on 1) The self-represented person, and 2) Until the attorney files a termination of limited appearance, the attorney."

Forms, Papers and Processes

- **Review your local rules** to modify any rule that may be inconsistent with limited scope of representation rules. Emphasize the notice requirement for an attorney making a limited appearance.
- **Work out procedures with the court clerk's office** to make sure they know how to reflect the representational status of the litigant in their case management system. They are on the front line in dealing with many of the issues surrounding limited scope representation and need to be aware of the issues and familiar with techniques for dealing with them.
- **Work with the local bar** to develop practical solutions when problems arise. For example, if you want to be sure that settlement conferences do not have to be continued so the self-represented litigant can consult with their LSR counsel, let them know that they are responsible for notifying their LSR counsel and making arrangements for them to be available on standby or otherwise as appropriate. It is most effective if you meet periodically with the bar to discuss these issues and work out solutions, which work for both of you. It will reinforce the fact that you are all working together to make the process more effective.
- **Let the Supreme Court Committee on Access to Family Courts (CAFC) know** as issues and problems arise so they can be considered and addressed. E-mail comments and questions to CAFC@courts.mo.gov.

Encourage Quality

- **Encourage and participate in meetings of the local bar** and legal services providers and other *pro bono* programs to discuss LSR and suggest they have a working group to develop standards of care, informational materials for litigants, fee agreements and office tools, and develop working relationships, referral systems and protocols.

Financial Issues

- **Award attorneys fees** for limited scope services when otherwise appropriate and let attorneys know what forms or information they need to provide to substantiate the claim for fees. This is especially important if the attorney is not appearing at hearings, but is assisting in the preparation of forms, declarations and the like.
- **Be sensitive to the economic issues.** For example, if an attorney is in court for limited scope, even a routine continuance can impose a real hardship by pricing the service outside the client's reach. If counsel is *pro bono*, delays may discourage his or her volunteering in the future. If

(Above points are adapted from *20 Things Judicial Officers Can Do To Encourage Attorneys to Provide Limited Scope Representation.*)

For more resources about LSR, visit the ABA *Pro Se*/Unbundling Resource Center.

Special Needs of Rural Areas

Many rural counties in Missouri have very few lawyers. Forty counties in Missouri have 10 or fewer licensed attorneys. *Pro bono* representation is a greater challenge because of the limited attorney pool in the community.

- **Limited scope representation (LSR)** offers a means to increase legal services in such communities. In an appropriate case, LSR rules allow legal representation without appearing in court. With modern communication tools, an attorney in any part of the state can consult with a needy client, prepare pleadings and other documents, and instruct the client about how to proceed in court without having to travel to the court room.
- **Pairing urban and rural attorneys:** Some cases will require an attorney in the court room to interrogate witnesses, etc. But in such cases, LSR still allows for one attorney (not necessarily local) to prepare pleadings while another attorney presents the matter in court. Thus, both attorneys reduce the amount of time given to *pro bono* representation, yet the client is represented and the court avoids a *pro se* litigant situation.
- The **Internet** can bring rural and urban attorneys into one community. Several existing tools facilitate sharing information, forms, etc. Making attorneys who practice before you aware of these tools increases the total legal resources for your community. A **special list serve** has been established for *pro bono* attorneys to communicate statewide. [Click here](#) for instructions about how to join. Also see MoBar Circle. The online Deskbook for Pro bono Attorneys provides specific information for *pro bono* attorneys and numerous tips and forms.
- Local rules and practices should facilitate use of LSR especially in rural areas.

Talking Points

When speaking to lawyers or the public consider the following:

The need: Annually 50,000 households have legal problems, cannot afford an attorney and cannot be served by the existing legal services programs. For more see The Need.

Tip: Statistics inform, stories motivate. Tell stories from your own experience as to how needy persons were denied justice because of lack of representation or receive justice thanks to *pro bono* representation. For true stories, see below.

Share the load: The more attorneys who participate in *pro bono*, the lighter the load on each.

Ethical duty: “A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf.” - Preamble, Rule 4, Rules of Professional Conduct. For more see Our Duty.

There is no peace without justice: If we really want a just, peaceful, ordered society, we must provide the means of access to the system of justice. The legal system is intended to provide just, orderly and peaceful means to resolve disputes. Lack of access to the administration of justice can lead to self-help, which may lead to confrontation and even violence. *Pro bono* legal service increases access to the legal system and promotes peaceful resolution of problems.

Professionalism: “The term [professionalism] refers to a group pursuing a learned art as a common calling in the spirit of public service - no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.” Pound, Roscoe (1953). *The Lawyer from Antiquity to Modern Times*. St. Paul, Minn.: West Publishing Co., p. 5.

Professional satisfaction: If you are a lawyer who, in addition to earning a good income for yourself and family, have a commitment to a free and just community and take satisfaction from solving or preventing problems for others - especially those most in need – then you will find personal satisfaction in *pro bono* legal service.

You are not alone: The courts are doing their part in supporting and recognizing *pro bono* legal services.

- List what your local court is doing to help and recognize *pro bono* attorneys.
- Note what the Supreme Court is doing:
 - Of significant support are the new rules on limited scope representation. The new rules make *pro bono* representation much more efficient by conserving the attorney's times.
 - The Court has appointed the Committee on Access to Family Courts (CAFC) to focus on both *pro se* and *pro bono* needs.
 - The CAFC has created a virtual *Pro Bono* Attorneys Deskbook available on the web.
- Most legal service corporation agencies, Samaritan Center Legal Care and other *pro bono* agencies provide training, free CLEs, etc., for volunteer attorneys.

Pro se is not the best answer: Many of the needy households try to help themselves by becoming *pro se* litigants. Some become victims of Internet or mail-order forms factories, which take their money while giving them nothing of value. *Pro se* litigants are not familiar with pleading requirements or court procedures and seek help from court personnel. Clerks and judges are in a "catch-22" since they must be impartial and cannot give legal advice to the litigants. As a result, hearing dockets get delayed as judges attempt to explain basic processes to them, cases get repeatedly continued, or their pleadings get dismissed without resolving the legal problems.

Without access to justice, people live wounded lives: A sick or injured person who does not have access to a doctor or hospital does not cease to suffer. The legal problems of persons who cannot get access to lawyers or the courts do not simply cease to exist. The persons lead dysfunctional lives. Children go without support. Parents wrangle over custody. Families lose their housing.

Pro bono benefits the whole community: Lack of access to the system of justice harms not only the marginalized but the whole community.

- Without access to just resolutions persons resort to self-help solutions, which on occasion results in confrontation and violence to the parties and innocent bystanders.
- Lack of timely legal advice may lead to costly mistakes, which may increase demand for public welfare assistance and services.
- Frequently an explanation of legal responsibilities of both parties can result in a consensus without confrontation or litigation. Lack of legal advice creates unnecessary litigation adding to the burden on courts and lawyers.

Tips: Use metaphors: Just as one picture is worth a thousand words, a well chosen metaphor implants an image in the listener's mind that continues to illustrate your point.

Who are the needy? Below are brief summaries of real cases where needy persons received *pro bono* legal representation. You may find them useful in your talking points.

- She is a widow living on Social Security with a mentally retarded son who will become 18 soon. She needs guardianship to be able to continue to care for his needs.
- They are a black couple living in a house not fit for human habitation and their landlord has used eviction and lies to get a default judgment and manipulate them into signing a new lease at a higher rent.
- She is an American citizen of Hispanic descent. Her brother lost his business and came to live with her. He was "getting life back together," riding a bicycle to work each day. Even though her lease contained no restriction, the landlord threatened to evict her if she did not kick her brother out.
- They are victims of "zombie collectors" who buy up debts from creditors where the statute of limitations has run then file suits on the odds that the victims will not know their rights and default.
- He was only 24 but facing a terminal brain tumor. Unable to work he needed legal services – a durable power of attorney for health care so that someone could make decisions for him in his final days.
- Their mother owned a Habitat for Humanities' house and died without a will. The daughters needed legal help to transfer title to their home.
- She is a terminally ill mother of a mentally retarded daughter. She was served legal papers threatening her daughter's disability payments.

- He valued freedom so much that he tried to swim from Cuba to the U.S. with only the help of an inner tube. Cuban authorities imprisoned him for a year. Eventually he made it to the U.S. through Mexico and works as a carpenter, but legal problems threatened his ability to get support back to the child he left behind with his mother in Cuba.
- They were a young married couple in a new town. After a friend's business went under they were left jobless. He was recovering from throat cancer and seeking Social Security disability.
- He got behind on a credit card. Interest and fees multiplied and the creditor garnished his wages. Unfortunately his employer misread the law and over time \$500 was improperly withheld from his minimum-wage job. He needed help to get his money back.
- She was only 19 and caring for two younger brothers, keeping them in school and safeguarding them from an abusive father. She needed legal custody to protect them.
- When his young wife was dying he promised her that he would care for her preschool age daughter of another father. He wanted to adopt her.
- Unable to work after a construction job injury left him with reoccurring dizziness, his debts became overwhelming. Bankruptcy gave him a fresh start.
- Her 19-year-old daughter was suicidal; without guardianship she was without legal power to provide for her protective institutionalization.

For other talking point ideas, view the One Client One Attorney One Promise video from Florida. Also the California Judicial Conference talking points for judges.

Directory of Helpful Agencies

The Committee on Access to Family Courts (CAFC)

cafc@mo.courts.gov

Samaritan Center Legal Care

Serves the mid-Missouri counties of Cole, Callaway, Moniteau, Miller, Maries, Osage

legalcare@midmosamaritan.org

www.midmosamaritan.org/legalcare

Mid-Missouri Legal Services

Susan Lutton, Director

lutton@mmls.org

Click here to see the mid-Missouri counties served

Legal Services of Southern Missouri

Deanna Scott, Director of Litigation

Deanna.Scott@lsosm.org

Click here to see the southern Missouri counties served

Legal Aid of Western Missouri

Latricia Scott, Director, Volunteer Attorneys Project

lscott@lawmo.org

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Legal Services of Eastern Missouri

Jim Guest, Director, Volunteer Attorneys Program

jhguest@lsem.org

Click here to see the eastern Missouri counties served

The Missouri Bar

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ewilson@mobar.org

Mid-Missouri Access to Justice Project

Serves Boone and Callaway counties

midmoaccesstojustice@centurytel.net

http://www.courts.mo.gov/page.jsp?id=36677

Catholic Legal Assistance Ministry

Marie Kenyon, Director

kenyonm@slu.edu

Serves counties in the Archdiocese of St. Louis

ABA Justice Center

Peter Koelling, Director

koellinp@staff.abanet.org

(312) 988-5687

321 North Clark Street, 19th Floor, Chicago, Illinois 60654-7598
<http://new.abanet.org/JusticeCenter/Pages/default.aspx>

ABA Center for *Pro Bono*

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<http://www.abanet.org/legalservices/probono>

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