

DIALOGUE

Winter 2010
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Judge Advocates Have Key Role In Helping to Prevent Servicemember Suicides

By David M. Bizar

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Americans with Disabilities Act Requirements for LRIS Programs and Panel Attorneys: An Update on Serving Deaf and Hard of Hearing Clients

By Clara Schwabe

In 1991, the Americans with Disabilities Act (ADA) became law. Almost 20 years later, many solo practitioners and small firms, the bulk of the LRIS community of panel members, are unaware of the requirements of that law with respect to deaf and hard-of-hearing clients. [Read more...](#)

From the Chair... **By Sheldon Warren**

At the beginning of every new year, we reflect on the events of the previous 12 months and speculate about what is likely to occur in the coming 12 months. Last year was one of the most difficult economic periods this country and the legal profession has seen since the Great Depression. Across the economy, people lost their jobs, homes and retirement savings. [Read more...](#)

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CLE Credit for Pro Bono: An Innovative Pro Bono Strategy **By Jamie Hochman-Herz**

For the past decade, certain states have permitted attorneys who take pro bono cases to earn credit toward mandatory continuing legal education (CLE) requirements. The purpose of these rules is to encourage more attorneys to take pro bono cases, to reward attorneys who serve the poor, and to acknowledge that many attorneys who take these cases receive practical training that can be comparable to what is taught in a typical CLE session. [Read more...](#)



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From the Chair...

By A. Michael Pratt

2009 National Celebration of Pro Bono a Major Success

When the Standing Committee on Pro Bono and Public Service announced its plans for the first National Celebration of Pro Bono, many questions were raised about the value of a nationally coordinated strategy for recognizing pro bono across the country. Under the leadership of then Chairman Mark Schickman, the Committee believed that the initiative, modeled after the ABA's Law Week strategy—dependent on local projects held during a designated timeframe—would capture the interest and energy of the legal community. [Read more...](#)



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IOLTA

Access to Justice Commissions and IOLTA Programs: Helping One Another to Help More Clients

By Bob Echols

The growth of state Access to Justice (ATJ) commissions has been one of the most striking and consequential justice-related developments of the past decade. As of early 2010, 24 states and the District of Columbia have established one of these blue-ribbon commissions. [Read more...](#)

From the Chair...

By Lora J. Livingston

In spite of challenging times, the Interest on Lawyers' Trust Accounts (IOLTA) community has accomplished much over the last year to diversify sources of funding for civil legal aid to the poor, to develop and implement IOLTA rule revisions, and to share ideas and resources with one another.

[Read more...](#)

Grantee Spotlight: Iowa Legal Aid's Legal Hotline for Older Iowans

By Dennis Groenenboom

The nursing home where George's¹ wife resided had decided she was not their ideal patient, and with Medicaid making her payments, they would rather transfer her elsewhere. The elsewhere they had in mind was more than 40 miles away and would mean the end of George's daily visits to care for her and maintain, as best he could, the relationship they had spent a lifetime building. **[Read more...](#)**

News and Notes

IOLTA Rate Comparability Update

Three more states have recently joined the list of jurisdictions that have adopted IOLTA rate comparability. South Carolina and Washington were added in December 2009, and in January 2010, rule revisions were adopted in North Carolina. **[Read more...](#)**

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Servicemember suicide is at an all-time high. The Congressional Quarterly has reported that in the past year the American military has lost more active duty and reservists to suicide than to combat deaths in the same time period in Afghanistan and Iraq combined. Servicemembers often turn to Judge Advocates (JAs) for help with their personal issues, which can be more debilitating to them than battlefield stress. Indeed, servicemembers may be more likely to reveal their innermost struggles to JAs than to anyone else because of the attorney-client privilege.

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While an attorney's role is to give sound legal advice, servicemembers can require more than just legal help. In 1995, when I was a legal assistance attorney fresh out of law school serving with the 1st Cavalry Division, a soldier visited me with a tragic family problem for which there was no legal cure. The soldier left my office looking every bit as solid as a recruiting photo, but on the inside, he was feeling utterly dejected and lost. Within a few hours, he tried to end his life. Thankfully, a point on which I reflect back often, he did not succeed and his commander ensured that he got the help that he needed. One of my superiors was not so fortunate. Years earlier, he had had an eerily similar episode in which hours after he gave grim legal advice to a soldier, the soldier killed himself with a shotgun. Our shared experience was one that neither of us wished we had in common.

Red Flags

While it would be neither realistic nor fair to expect Judge Advocates to have the diagnostic skills of trained mental health professionals, JAs must be trained to identify the patent warning signs and steer at risk servicemembers to the appropriate resources. The Army has reported to Congress that more than seventy percent of Army suicides are committed by servicemembers experiencing strain, failure, or loss of intimate personal relationships. Other motives for suicide may include financial and occupational problems, as well as legal problems generally. Deployed servicemembers particularly are less able to cope with caring for distressed

family members and attending to their and their loved one's troubles back home. Relationship problems are such a prevalent cause of severe stress that the Army is now placing military family life consultants in units at the battalion level.

Every case is different, but there are common red flags. People who are despondent, ignoring their personal property and affairs, suddenly disposing of their property, expressing thoughts about death, or otherwise behaving erratically are particularly at risk for suicide. When speaking with servicemembers, JAs should listen carefully for expressions of loneliness, worthlessness, hopelessness, helplessness, guilt, shame or depression. Depression generally can include decreased pleasure in one's life activities, changing appetite and weight, anxiety, low self-esteem, agitation, increase in drug or alcohol consumption, disturbed sleep patterns, mental or physical fatigue, and memory and concentration problems.

Seeking Help

Judge Advocates should suggest that distressed servicemembers consider seeing a military counselor, particularly when the JAs are the bearers of bad or worse news to servicemembers who are experiencing trauma in their personal lives. JAs can also facilitate servicemembers' desires to obtain mental health counseling by helping them understand that they may need it and that accepting counseling does not affect one's status in the military. If servicemembers appear to pose an imminent risk of serious bodily injury or certain death to themselves or others, depending upon their particular service regulatory and state bar ethical constraints, the JAs may also have the option, or the obligation, to divulge privileged information in order to prevent such harm. For example, Rule 1.6(b)(1) of the American Bar Association's Model Rules on Professional Conduct states that "[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm." And consistent with such ethical and legal constraints, JAs may advocate directly that these at-risk servicemembers receive all necessary and appropriate care.

A major obstacle to servicemembers receiving care is that they may feel that their acceptance of mental health care is a sign of weakness that can lead to separation from the service or denial of promotion, loss of security clearance and job function, and the loss of the respect of their superiors and peers. The military is attacking this stigma through educational programs about mental health, but some servicemembers may still be unwilling to advocate for themselves because they think they will be stigmatized. Overcoming this fear is where JAs can help most.

Education and Prevention

The Army, the hardest-hit branch of the military, has several policy documents on suicide (see, [Army Suicide Prevention Program](#),

[Policy Page](#)). Many of the regulations outline the important role that commanders play in suicide prevention. For example, under Army Regulation 600-63 and Department of the Army Pamphlet 600-24, commanders at every level are required to be sensitive and responsive to soldiers, Army civilians, family members, and retirees. This in turn helps to reduce the stigma associated with asking for mental health assistance, refer potentially at risk soldiers to appropriate mental health resources, and implement training and resource programs on suicide awareness. The Army's policy encourages an open and resourceful environment. Judge Advocates are uniquely situated to ensure that local command and unit practices coincide with military policy.

For more information on each military branch's programs, policies, and services concerning suicide prevention, please access the following web sites:

- [Army Suicide Prevention Program](#)
- [Marine Corps Suicide Prevention Program](#)
- [Air Force Suicide Prevention Program](#)
- [Navy Suicide Prevention Program](#)
- [Coast Guard Suicide Prevention Program](#)

David M. Bizar is a partner of *McCarter & English, LLP* in Boston Massachusetts and a member of the American Bar Association's Standing Committee on Legal Assistance for Military Personnel.

Rachel E. D. Churchill, an associate of *McCarter & English, LLP*, assisted in the preparation of this article.

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From the Chair...



By Donald J. Guter, RADM JAGC USN (Ret.)

Standing Committee on Legal Assistance for Military Personnel

The proposition that low-income American service men and women should be statutorily entitled to civil legal assistance services is bedrock ABA policy, reaffirmed by the House of Delegates in 2007 and adopted as a top ABA legislative priority in conjunction with ABA Day activities in 2009.

Underlying that policy is the association's recognition that in today's environment, adequate and reasonably available personal legal services, delivered by lawyers and backed by other legal resources, are as essential to a servicemember's well-being as routine medical or dental care or adequate housing. Our armed services have long observed the nexus between our fighting forces' morale and fitness to go to war undistracted by personal legal issues, on the one hand, and the availability of civil legal assistance to our warriors, on the other.

Yet, with the important recent exception of the Army legal leadership, the services remain reluctant to support new federal law that would elevate military legal assistance from a benefit left to the discretion of the service secretaries, to an entitlement mandated under an amended 10 U.S.C. § 1044. The services historically pointed to concern that an unfunded legal-assistance mandate would saddle them with the obligation to spend more on legal assistance staffing and programming without new funds necessary to do the job, thus forcing them to divert money from other essential services.

I would submit that, in the wake of seven years of draining military engagement in Iraq and Afghanistan, it is time for fresh thinking on the question of whether we as a nation can afford to guarantee that those whom we place in harm's way will have reasonable access to civil legal services, as a matter of right. The better question, in my view, is whether we can afford *not* to guarantee, in our laws, that these Americans serving and defending their country have reasonable access to civil justice. What

would it say about us, as a nation of laws and a nation deeply in debt to those who serve, if we do not take this minimal step toward ensuring access to civil legal services for our servicemembers?

Of late, a chorus of political observers of every stripe has noted that doing the right thing seems out of style -- if not out of sight -- on Capitol Hill, with partisan posturing trumping statesmanship. But I have faith that Congress can be persuaded to do the right thing by our service men and women in this area, if only we advocates can do our jobs by effectively framing the issue as a question of right – a question of entitlement. Cost concerns are palpable, as they must be in this time of out-of-control deficits. But I, as well as other former Judge Advocates General, do not believe that significant additional budget allocations need flow from enactment of a legal assistance entitlement statute. That said, a statutory entitlement would accomplish the critical mission of setting minimally adequate standards to ensure that our warriors have lawyers to help them through difficult personal legal challenges – from landlord disputes to dissolution of marriage and child support, to creditor disputes – while they carry the fight for the rest of us.

Significantly, the largest legal assistance provider, the Army, not only now supports legal assistance entitlement, and has done so for several years, it would not even limit that entitlement to lower-income enlisted personnel.

A statutory mandate would ensure some minimum level of consistency, in the quality and quantity of legal assistance across the services. The notion that a member of one service might have markedly better access to effective legal help than a member of another service defies reason and right, and is outdated. An entitlement statute would even the playing field in that respect.

While I have heard it suggested that legal assistance entitlement would create a significant cost burden by compelling the deployment of judge advocates to every remote military housing so much as a handful of service personnel, that is a lawyer's argument that rings hollow in this era of instant global communication. Modern technology allows remote, secure, confidential communications between lawyer and client whenever face-to-face consultations, though preferable, are unavailable due to distance. I cannot envision any re-shuffling of JAG assignments being necessitated by enactment of a military legal assistance entitlement statute.

The evidence is overwhelming that this generation of servicemembers is operating under enormous personal strain as a result of our interminable Middle East engagements. The accompanying article by my fellow LAMP Committee member David Bizar, on the problem of soldier suicide and what Judge Advocates might do to try to mitigate it, speaks to one terrible manifestation of that strain. For huge numbers of service women and men, the personal problems generated by long years away from home and job have become trying legal problems. The need to address those legal issues

is great, and not easily met. We as a nation owe it to our servicemembers to make minimally adequate legal services available to assist them with their civil legal challenges, which in so many instances exist as a direct consequence of their long, hard service to country.

The question is not and cannot be whether the minimal dollar outlay required by a statutory mandate is affordable. It is simply a question of codifying at long last what we who are in, or from, the military know to be right and true: Our service men and women are entitled to it, for they have earned it by their service, and it is integral to effective military performance in this era.

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By Clara Schwabe

In 1991, the Americans with Disabilities Act (ADA) became law. Almost 20 years later, many solo practitioners and small firms, the bulk of the LRIS community of panel members, are unaware of the requirements of that law with respect to deaf and hard-of-hearing clients.

From the Chair

It is clear that law firms and legal referral services are public accommodations within the meaning of the law and are required to meet the requirements of the ADA. Many LRIS programs have established policies and, in some cases, Communications Access Funds (CAFs) in order to be prepared when there is a request for services.

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It is important to recognize that the obligation to provide services is an "interactive process," guiding the extent of the service's or lawyer's obligation. In other words, because of the wide spectrum of communication problems experienced by the deaf, hard-of-hearing and deaf-blind community, the deaf client needs to request the specific type of accommodation necessary to ensure effective communication. This usually means hiring an American Sign Language interpreter.

IOLTA

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In [ADA Requirements for LRIS Programs and Panel Attorneys: Accommodations for the Deaf and Hard of Hearing](#), (*Dialogue* Summer 2007, Vol. 11, No. 3), Jennifer Pesek of the California Center for Law and the Deaf recommended that LRIS programs:

"...Plan ahead by budgeting some funds for ADA accommodations. Codify your intention to follow the interactive process of the ADA by designating a staff member to respond to ADA requests. Educate your front-line staff to recognize an ADA request, as a refusal to provide accommodations, even in ignorance of the ADA, is still considered a violation. Find service providers, interpreters and

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captioners of your choice so that a system is in place when the request comes. Finally make sure your policy reflects the interactive process required by the ADA which will allow for the individual to receive effective communication.”

At the 2009 LRIS Conference in Baltimore, Marc Charmatz of the National Association of the Deaf Law and Advocacy Center enlightened participants on recent developments for referral services and panel members. Two cases in particular bring home the wisdom of planning ahead.

The first case was initiated by a deaf woman in Rochester, New York. According to the 2004 [settlement agreement](#) with the Justice Department, the complainant used sign language and lip reading as her principal means of communication. The attorney, Gregg Tirone, represented her in a divorce proceeding involving domestic violence, custody and visitation and restraining orders. In court Mr. Tirone used the services of the court’s interpreter; otherwise, he relied on pen and paper, fax, lip reading and use of the National Relay Service when communicating by phone. The complainant stated she did not always understand him. The attorney asserted that he believes she did understand him. The settlement stated that lawyers are a public accommodation and must provide sign language interpreters when necessary to provide effective communication and that family members, friends and close associates are not considered qualified interpreters and generally should not be used. To end the Department of Justice investigation and avoid civil suit, Mr. Tirone agreed to:

1. Post a statement in the local newspaper that his office welcomes clients with disabilities particularly clients with hearing disabilities, that he will provide an interpreter qualified to interpret legal terms when requested to do so and the client will not be charged for this service;
2. Post a similar notice in his office;
3. Pay the complainant \$2,200 and forego any fees due him; and
4. For any subsequent violations the Department of Justice, without any waiting period for Mr. Tirone to cure a subsequent violation, may institute a civil action against him for alleged violations.

In August 2007 the Justice Department settled another matter involving attorney Joseph David Comacho in Albuquerque, New Mexico. That case was filed by the National Association of the Deaf Law and Advocacy Center on behalf of a deaf woman and alleged that the attorney failed to secure a qualified sign language interpreter when necessary to ensure effective communication. According to the [settlement agreement](#), the deaf woman was suing a hospital for failing to provide a sign language interpreter. In representing her, Mr. Comacho failed to provide the client with an interpreter and wrote to her as follows:

“...It is my understanding that you refuse to cooperate [answer interrogatories and other disclosure requests] unless I

provide you with an interpreter, which will cost me approximately eighty dollars an hour. I have never had to pay to converse with my own client. It would be different if you did not have anyone to translate for you. However, you have a very intelligent son who can do it for you. It appears that we are not able to work together. I believe you should find another attorney as I am going to withdraw from this case.”

Mr. Comacho’s motion to withdraw was granted and the client’s case was subsequently dismissed for failure to respond to discovery. In the settlement agreement with the Department of Justice, Mr. Comacho agreed to pay \$1,000 in compensatory damages and to post in his office and on his website his willingness to comply with the requirements of the Americans with Disabilities Act.

Clearly, panel members need to be made aware of their obligations under the ADA. Prospective and existing panel members should be advised in writing of their obligations and LRIS policy regarding the ADA.

The National Association of the Deaf, in an April, 2008 [advocacy statement](#) prepared by it’s Board of Directors, has called for the creation of Communications Access Funds (CAFs) by bar associations in each state. The statement enunciates five goals for these funds:

1. CAFs should cover 100% of the expenses for the provision of auxiliary aids and services;
2. CAFs should be administered by the fee collecting agency in each state. Statewide coverage ensures that every private attorney licensed in the state contributes to and has access to the fund;
3. To ensure the longevity of the fund, the fee collecting agency should require each licensed attorney to pay a nominal amount of dues to generate revenues for the CAF, Alternatively, the state may enact state legislation requiring a state funded CAF, as in the state of Maine;
4. CAFs should cover all the auxiliary aids and services necessary to meet the diverse needs of the deaf community; and
5. The administering agency should couple the CAF with information educating attorneys about the ADA requirements and how to work with people who are deaf.

In [Tips for More Effective Advocacy](#), the National Association of the Deaf recommends that the deaf person be specific about the accommodation needed. There is a wide spectrum of need in the deaf community. In some extreme cases two interpreters may be needed. If the deaf person does not use American Sign Language and does not lip read, it may be necessary to have an additional interpreter from the deaf community to interpret “home” signs to the American Sign Language interpreter. It is often hard for a hearing person to conceptualize the communications gap. American Sign Language is not English, and “home” signs developed by a deaf person to

communicate with family members are not American Sign Language.

Further, the deaf person may not be literate in English. Add to this the complex legal vocabulary and concepts and the emotional issues in litigation and there is an extraordinary problem of providing - or rather, "ensuring" - equal access to legal services for the deaf community.

Federal Communications Commission regulations require telephone companies to provide telephone relay services, which involve the deaf person typing and a telephone operator speaking to the person called. LRIS programs nationwide are familiar with this service. Now there is a video relay service, which involves a deaf person using a [video monitor](#) to sign to an American Sign Language interpreter. The interpreter then speaks to the person called. These technologies have increased the ability of deaf and hard of hearing individuals to communicate with family, friends and service providers.

What do these technological developments mean for LRIS programs and panel attorneys? In conversations with a representative of the New York Society for the Deaf, it was clear to this author that relay services and the new video technology, while expanding the ability of the deaf and hard of hearing to communicate with the hearing world cannot be used to bridge the gap in communicating confidentially in the privacy of the attorney's office.

In New York City, the LRIS of the New York City Bar Association and the New York County Lawyers Association will provide a sign language interpreter for the initial consultation. Many other programs provide an interpreter or reimburse costs for the initial consultation in order to meet the legal obligation of the LRIS. However, this is only one step in implementing the goals of the statute and without further advocacy and information, panel members may unintentionally fail to comply with provisions of the ADA.

This past year, our service received numerous calls for assistance via video relay services. For the first time, we also received a request for a referral to sue two non-panel attorneys for failure to provide sign language interpreters when requested.

It is time for the legal community to become proactive in providing individual attorneys with the means of complying with their obligations under the Americans with Disabilities Act and that LRIS programs take the lead in informing their bar executives and panel members of the obligations and liabilities that exist.

Clara Schwabe is Managing Attorney of the Legal Referral Service of the New York City Bar Association and an ABA PAR consultant.

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From the Chair...



By Sheldon Warren

Standing Committee on Lawyer Referral and Information Service

At the beginning of every new year, we reflect on the events of the previous 12 months and speculate about what is likely to occur in the coming 12 months. Last year was one of the most difficult economic periods this country and the legal profession has seen since the Great Depression. Across the economy, people lost their jobs, homes and retirement savings.

In the legal profession, "Big Law" shed existing jobs like a snake sheds its skin and deferred or withdrew previously extended job offers to newly admitted attorneys. As a result, thousands of lawyers joined the ranks of the "suddenly solo." Small and mid-sized firms saw many of their existing clients either go out of business or downsize to a point where the need for legal assistance was nearly non-existent.

While most economic indicators seem to predict a recovery this year, there is no doubt that the legal profession has undergone a change that many believe to be permanent.

So, how did the events of the past 12 months affect the Lawyer Referral and Information Service (LRIS) world? While 2009 brought more than its share of challenges, it also brought opportunities. As discussed in an earlier column, the suddenly solo phenomenon provided referral services across the country with a unique pool of potential panel members. While far from scientific, anecdotal reports from LRIS directors on the ABA LRIS LISTSERV list appear to confirm that the services that have reached out to these attorneys have seen a marked increase in the number of applications for panel membership.

While it is always rewarding to have attorneys anxious to join one's service (rather than having to go hat in hand and plead with them to do so), increased panel membership obviously brings with it the need to increase the number of quality referrals the service has available to make. In this

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regard, I found the results of a new survey conducted by a prominent legal information website to be informative. A summary of the survey was recently posted on the LRIS LISTSERV list. According to the survey, 22% of respondents indicated that they had a legal issue with which they may have required legal assistance in the past year, while 12% - just over half of those needing legal assistance - indicated that they hired an attorney in 2009. Additionally, 5% indicated they had chosen to represent themselves.

People who indicated they had problems for which legal assistance may have been required were most likely to hire attorneys for divorce, estate planning and housing issues. Respondents indicated they were least likely to hire a lawyer for civil actions, such as personal injury or discrimination.

The above results confirm that the need for the services offered by legitimate lawyer referral and information services remains substantial. Further, I believe these results also indicate that this need is going unmet, notwithstanding the continuing proliferation of entities on the web offering to "hook up" attorneys with potential clients.

Obviously, public service oriented referral services are never going to have the capital available to compete from a marketing standpoint with purely commercial enterprises. However, an LRIS that uses the ABA Model LRIS Rules as its operational guide will, in my opinion, be offering a "better product" to those in need of legal services as well as to attorneys willing to provide those services. I believe offering the better product continues to be the best recipe for success, regardless of your marketing budget. It bears repeating (as I regularly do in this column) that legitimate public service oriented lawyer referral and information services across the country continue to operate profitably.

One of the means by which an LRIS can maximize its potential is to take advantage of the ABA's Program of Assistance and Review (PAR). While I intend to talk more about PAR in a future column, a recent discussion on the LRIS listserv reminded me of the importance of making sure, on a regular basis, that the lawyer referral community is aware of this program. That same discussion also reminded me that while we all have the same goal, i.e. making quality referrals of individuals with a legal need to qualified attorneys, every LRIS is obviously unique. The PAR consultants who volunteer their time are sensitive to this and make their "best practice" recommendations to each LRIS they visit with these unique characteristics in mind. Again, though, I'll talk more about PAR as we get further into 2010.

Finally, I would like to remind you again about the [2010 ABA LRIS Workshop](#), which will be held in Portland, Oregon from October 27 through October 30. Portland is a fun city (with no sales tax) and the program the LRIS Standing Committee is working on will be both interesting and helpful to you. I hope to see you there.

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By Richard Cassidy

Standing Committee on the Delivery of Legal Services

I am proud to announce the recipients of the 2010 Louis M. Brown Award. The recipients joined the Standing Committee on the Delivery of Legal Services both at a presentation at the ABA Midyear Meeting and at the Committee's business meeting. I will devote my next column to those who were honored. Suffice it to say for now that Illinois Legal Aid Online received meritorious recognition, Richard Granat was honored for Lifetime Achieve and the 2010 Brown Award was presented to the CUNY School of Law's Community Legal Resource Network. All are extraordinarily worthy of this honor and add to the prestige of the Award.

In this column, I'd like to focus on some additional nominees, all of which exemplify the spirit of the Louis M. Brown Award by exploring innovations in the delivery of legal services to those of moderate incomes. The Brown Award is unusual because its nominees come from so many sources. This year, we received a total of 19 nominations, from bar associations, law schools, non-profit programs, practitioners and entrepreneurs.

Some programs are highly targeted and focused on niche needs that are often difficult to address otherwise. For example, the Center for California Homeowner Association Law provides resources to the residents of condos, mobile homes and subdivisions that are managed by the 46,000 homeowner associations in the state. Many of the residents are elderly and/or people of moderate incomes. When they have an association dispute, they face an institutional adversary that typically has far greater resources. The Center provides workshops, web-based training and materials, and lawyers who provide coaching services so that people are able to level the playing field when trying to resolve their disputes.

The Texas Shared Parenting Project is an example of a program serving a niche, doing so in a collaborative way. The Texas Access to Justice Foundation and the Attorney General have teamed on this program to

resolve co-parenting disputes. It provides a statewide Access & Visitation Hotline and Parenting Order Legal Clinics to both avoid and resolve disputes.

This year, the Committee received nominations from Canada for the first time, including an initiative from the University of Toronto on middle income access to the civil justice system in Ontario. The project, which is unfolding in 2010, will include academic research and a policy paper, a law school research course, education courses for the public, think tank discussions, an international conference in the fall of 2010 and development of a pilot delivery model as a student program. After this program has advanced, the Delivery Committee hopes to look for opportunities to replicate it in the US.

While some nominees address much needed but narrowly focused legal needs, others are much broader and potentially transformative. The National Center for Technology and Dispute Resolution, lead by Prof. Ethan Katsh, has advanced Online Dispute Resolution (ODR) tools that enable tens of millions of dispute to be resolved through technology every year. It appears we have come to a point where more disputes are resolved online than through the American judicial system. Through various outlets, ODR has not only become a crucial part of the infrastructure of the Internet, but also of dispute resolution. The Center has led this transformation.

These programs illustrate the breadth of work that is being done to improve access to justice in innovative ways. We thank them for their involvement in the Brown Award and look forward to their continued successes.

Further information about the Brown Award, including details on each nominee, is available at <http://www.abalegalservices.org/delivery/brown.html>.

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CLE Credit for Pro Bono: An Innovative Pro Bono Strategy

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By Jamie Hochman-Herz, Assistant Committee Counsel, ABA Standing Committee on Pro Bono and Public Service

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CLE Credit for Pro Bono

From the Chair

For the past decade, certain states have permitted attorneys who take pro bono cases to earn credit toward mandatory continuing legal education (CLE) requirements. The purpose of these rules is to encourage more attorneys to take pro bono cases, to reward attorneys who serve the poor, and to acknowledge that many attorneys who take these cases receive practical training that can be comparable to what is taught in a typical CLE session. To date, there are six states that have adopted these rules. This article will review the basics of these rules, will discuss their overall benefit and will encourage individuals in other mandatory CLE states to consider the adoption of such rules.

IOLTA

How and Why Do States Propose a CLE for Pro Bono Rule?

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In many states in which there is a CLE credit for pro bono hours rule, direct leadership from the court or the bar was instrumental in ensuring its passage. In Tennessee, a CLE Commission was appointed by the Supreme Court and one of its leaders promoted the rule as a way to recognize lawyers who do pro bono work. In New York, the rule was supported by the Chief Judge and approved by the Administrative Board of the Courts due to a survey the court system had done in 1998 which found that less than half of attorneys were doing pro bono for the poor, a primary reason cited being a lack of time. The judge felt that by passing the rule, more attorneys would be inclined to do pro bono. In Wyoming, the Board of CLE drafted the rule in a way to encourage pro bono participation among attorneys. After years of negotiation, the Board finally submitted the rule to the Supreme Court for approval and the Court accepted it without reservation.

How Many Pro Bono Hours Does One Have to Complete to Receive CLE Credit?

The number of pro bono hours that an attorney has to complete to receive CLE credit varies depending on a state's particular rule. For example, states have designated one CLE credit for every five hours (CO, WY and TN) or for

every six hours (DE, NY). Washington State has a slightly different pro bono hour to CLE credit ratio—its rule states that attorneys can receive six hours of CLE credit if they complete two hours of training and four hours of pro bono representation in a given year. In addition, there are some states that have limits on the number of pro bono CLE credits an attorney can receive in a given year while there are others that do not.

How Does One Receive CLE Credit for Pro Bono?

In order to receive CLE credit for pro bono, states require that the attorney report the number of pro bono hours performed for CLE credit directly, or that the pro bono program with which the attorney worked reports the number of hours. For example, in Wyoming, attorneys receive an application form and are responsible for filling out the number of hours and returning it. The attorneys also have to provide documentation that supports their application- e.g. a notice of appearance- in order to confirm their pro bono work. In Tennessee, it is the responsibility of the entities for which the attorneys work to file the report of pro bono hours conducted. In New York, programs provide attorneys with a letter of participation, dates of assignment and the name of the providers which the attorney must then keep for four years. Attorneys must also provide a statement about the number of credits of pro bono they have performed and the programs have to maintain a list of attorneys who have participated in pro bono along with the number of hours and credits earned by each participant. The programs then have to submit a yearly report to the CLE Board with this information.

What is Qualifying Pro Bono Work for CLE Credit?

States also vary in terms of what may be considered as qualifying pro bono work. For example, in Colorado, to be eligible for CLE credit, the civil pro bono legal matter in which a lawyer provides representation must have been assigned to the lawyer by one of the following: 1) a court; 2) a bar association or local Access to Justice Committee-sponsored program; 3) an organized nonprofit entity - whose purpose is or includes the provision of pro bono representation to indigent or near-indigent persons in civil legal matters; or 4) a law school. Some states also allow CLE credit for pro bono in situations in which a lawyer mentors another lawyer who does pro bono work.

What are the Arguments for Adoption of a CLE for Pro Bono Rule?

It's a Recruitment Tool

Many states have experienced a positive attorney reaction to implementation of the rule and perceive it to be a good recruitment tool. States have experienced implementation of the rule as a way to incentivize attorney participation in pro bono, especially for those attorneys who feel unable to engage in pro bono due to a perceived lack of time. In Tennessee, for example, there has been over a 200% increase in the number of

attorneys who have participated in pro bono. Although it is not clear how much influence the rule has had on this rise in participation, there has been a clear increase over time in the number of attorneys who have received CLE credit for pro bono.

It's of Value to Individuals Already Doing Pro Bono

Having a CLE credit for pro bono rule can also act as a perk or additional benefit to those who already do pro bono. Implementation of the rule is an additional means of recognizing attorneys who do pro bono work, makes it less burdensome for these attorneys to obtain additional CLE credit, and recognizes the service that these attorneys provide. It also is a key retention tool as it keeps individuals who are already doing pro bono likely to continue to provide service.

What are the Arguments against Adoption of a CLE for Pro Bono Rule?

Potential for Abuse

Some states were reluctant to pass a CLE for Pro Bono Rule because of a concern about attorney reporting. In Wyoming, for example, which relies on attorneys' self-reports of their pro bono work, there was a concern that attorneys would be misleading in reporting the actual number of pro bono hours conducted. But, because attorneys are also responsible for filling out forms indicating the regular CLE training that they've received during the year, this reporting was ultimately seen as no different and the concern of the CLE Board was alleviated.

Lack of an Educational Component

Another obstacle to ensuring passage of a CLE for pro bono rule was the concern that there was no educational component involved in the conducting of pro bono for CLE credit. Washington is one state that encountered obstacles from the CLE Board for this reason. After much negotiation, the Board finally agreed to pass the rule by constructing an educational component in the regulation. For every six pro bono CLE credits, a mandated two hours of education is required. The other four hours are for the actual pro bono service.

How Does a State Promote its CLE Credit for Pro Bono Program?

Some states market their CLE programs by including language about CLE credit for pro bono on the attorneys' annual CLE statements. Other states provide this information as part of their overall pro bono recruitment strategy—including this information in materials and speeches about the availability of free malpractice insurance and in advertisements about other no-cost/low-cost CLE programs that are provided in exchange for pro bono

legal services, for example. In addition, some states have developed an on-line system to walk attorneys through the process of reporting and have also made sure that programs are aware of this option. States have also had to educate attorneys that pro bono service outside of programs often does not qualify under state rules. Other types of marketing have included providing information on the program placed in various bar news publications, on CLE licensing forms and on state bar licensing forms.

Conclusion

Providing CLE credit for pro bono is one of the more innovative tools that states have to encourage and support attorneys who are interested in doing pro bono work. It allows attorneys who are pressed for time to obtain CLE credit while also fulfilling their professional responsibility to provide pro bono. It is also a particularly useful strategy for rural programs to recruit pro bono attorneys because attorneys in less populated areas often have less access to more formalized CLE programs and there tend to be fewer pro bono providers to meet the needs of the poor. The rule has led to an increase in participation in pro bono in many of the states in which it has been implemented and is viewed as an effective tool to address attorney barriers to providing pro bono and acknowledging the very important work of pro bono attorneys.

For more information about the specific state rules on CLE credit for pro bono, see <http://www.abanet.org/legalservices/probono/clerules.html>

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From the Chair...

By A. Michael Pratt

Standing Committee on Pro Bono and Public Service

2009 National Celebration of Pro Bono a Major Success

2009 Review

When the Standing Committee on Pro Bono and Public Service announced its plans for the first National Celebration of Pro Bono, many questions were raised about the value of a nationally coordinated strategy for recognizing pro bono across the country. Under the leadership of then Chairman Mark Schickman, the Committee believed that the initiative, modeled after the ABA's Law Week strategy—dependent on local projects held during a designated timeframe—would capture the interest and energy of the legal community. That confidence bore fruit during the week of October 25-31, 2009 with hundreds of event sponsors and individuals supporting and coordinating more than 600 exciting and well-attended events in 48 states, Puerto Rico, the District of Columbia and Canada.

The confluence of two circumstances made the timing of the National Celebration of Pro Bono particularly important: the increasing need for pro bono services as economic conditions worsened, and the unprecedented response of attorneys to meet this need. Although national in breadth, this initiative provided an opportunity for legal organizations across the country to commemorate collaboratively the vitally important contributions of America's lawyers and to recruit the many additional volunteers required to meet the growing demand.

The Pro Bono Committee undertook this initiative to provide a format for showcasing the incredible difference that pro bono lawyers make to our nation, to our system of justice, to our communities and, most of all, to the clients they serve. With the enthusiastic involvement of national, statewide and local partners, from all components of the legal profession, the National Pro Bono Celebration created a wave of positive energy about the pro bono

movement in this country. Pro bono lawyers were recruited and trained, new projects were started, volunteers were recognized for their outstanding service, law students were exposed to the power of pro bono and new partnerships were developed. To top it off, there was an outpouring of positive media exposure in the printed press and on radio, television and the internet.

Here are some important statistics regarding the diversity of sponsors and the scope of Celebration event types:

Sponsors	
Law Schools	96
Bar Associations	134
Pro Bono Programs	105
Legal Services Programs	126
Law Firms	21
Others (corporate law departments, government attorney offices, courts, other non-profits)	25

Event Types (overview)	
Continuing Legal Education Program	111
Fundraiser	13
Governmental Proclamations	15
Legal Clinic	130
Media	18
New Initiative Kick-off	7
Planning Session	5
Recognition Event	55
Recruitment Event	59
Social Event (no recognition component)	42
Seminar	63
Webinar	6

These statistics reflect the depth of interest, the creativity and the thoughtfulness of the legal community and, most of all, indicates the profession's incredible commitment to pro bono.

2010 National Celebration of Pro Bono

*Start planning **now** for the 2010 Celebration – October 24-30.*

Immediately following the 2009 Celebration we surveyed our many constituents – those who participated and those who did not – to assess

whether to go forward with the National Celebration of Pro Bono on an annual basis and, if so, during what week. The results are in and the overwhelming consensus is to go forward each year during the last week of October. There is no perfect time that will work for everyone and we heard the collective message that, with early notice and promotional assistance, groups will do all they can to make it work.

In the next few weeks the Celebration website – www.celebrateprobono.org – will be updated with new resources, materials, ideas and other tools that will help you move forward with your 2010 Celebration planning. The revamped website will make available additional planning tips; more samples of proclamations, press releases and op-eds; categorized access to last year's Celebration events; an upgraded Celebration store and much more. You can also sign up on the website to receive regular updates about Celebration planning activities.

We learned many lessons from the inaugural National Pro Bono Celebration, two of which I want to share with you here. First, work together whenever possible. Those groups who coordinated their activities, and planned and scheduled collaboratively, reported having the most overall success. Second, and a corollary to the first, is to be diversified in your planning in the context of what your community needs. Is recruitment a priority? Training? Client service through clinics? Reviewing and assessing your program, court and community pro bono needs will result in a more dynamic overall Celebration.

Thank you for Celebrating with the Standing Committee on Pro Bono and Public Service in 2009. We look forward to seeing how the pro bono community celebrates in 2010.

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**Access to Justice Commissions and IOLTA Programs:
Helping One Another to Help More Clients**

[LRIS](#)

By Bob Echols

[Delivery](#)

The growth of state Access to Justice (ATJ) commissions has been one of the most striking and consequential justice-related developments of the past decade. As of early 2010, 24 states and the District of Columbia have established one of these blue-ribbon commissions. With a few exceptions, these commissions were all created in the past decade—the majority in the past five years. Several more states are in the planning phase.

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**ATJ and
IOLTA Partner
to Increase
Access to Civil
Justice**

The idea of the organized bar, the courts, legal aid providers, funders, and other stakeholders working together to expand access to civil justice for low-income and disadvantaged people is not new. What is novel about ATJ commissions is that they institutionalize these relationships, typically under the aegis of the state supreme court, providing the group's recommendations with built-in visibility and credibility and facilitating their implementation.

From the Chair

**Grantee
Spotlight**

Interest on Lawyers' Trust Accounts (IOLTA) programs have played a key role in the development of many existing ATJ commissions, sometimes providing important seed funding to get a commission going. In many states they collaborate closely with the commission on an ongoing basis. Often they are directly or indirectly represented on the commission. This article provides some examples of how ATJ commissions and IOLTA programs are working in tandem to expand access to civil justice in their states.

**News and
Notes**

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Shared Goal, Different Roles

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Although they share fundamental goals, ATJ commissions and IOLTA programs have different missions and roles. Speaking broadly, commissions have a "big picture" charge: to convene the key players; to assess needs; to identify gaps in the system; to make recommendations about ways to fill those gaps and expand access to civil justice; to promote and support efforts to do so; and to serve as a voice constantly reinforcing the principle of equal justice.

While commissions have no formal authority, other than whatever may be specifically granted to them by the state's supreme court, they are typically accorded a high level of "moral authority" by stakeholders, who defer to and act consistently with the commission's goals and recommendations.

IOLTA programs, in contrast, have specific program funding, oversight and evaluation missions and authority, as well as professional expertise in these areas. As a result, they can have a direct impact on the provider community.

IOLTA programs also frequently have responsibilities relating to needs assessment, planning and public awareness, areas that relate to the commission's charge. Indeed, in states without commissions, the IOLTA program may be taking the lead in these areas, as well as in seeking additional resources for civil legal aid. In states where IOLTA programs have initiated the effort to launch a commission, their decision to do so usually resulted from a recognition that a commission would provide higher visibility and more effectiveness for such efforts.

Ideally, a state's ATJ commission and IOLTA program will work synergistically, with each entity complementing the role of the other, thereby reinforcing its mission and maximizing the impact of what it does.

One caveat: *every state is different*. This may seem like a truism, but in fact the relationships among the various entities involved in ATJ efforts play out so differently in every state that there is no single ideal model that applies everywhere. Nevertheless, there are useful lessons to be learned from the collaborative efforts described below.

"Show Me the Money"

Some of the biggest successes of ATJ commissions have been in helping to increase funding for civil legal aid, which is, after all, a core mission of IOLTA. Commissions have been extremely active in advocacy for state legislative funding (appropriations and filing fee and fine add-ons), attorney registration fee/bar dues surcharges, *cy pres* rules, and *pro hac vice* fees. With their supreme court, bar, and legislative connections, commissions are ideally situated to undertake this role. In California alone, efforts led by the ATJ Commission have resulted in new funding that has totaled more than \$100 million over a decade. Recently – in Arkansas and Texas, for example – commissions have successfully led efforts to obtain state funding to make up for potentially devastating IOLTA shortfalls.

IOLTA programs have been key partners in many of these efforts, including the recent Texas campaign. (In states without commissions, they have sometimes taken the leading role themselves, as with several recent funding successes in Pennsylvania.) Often the newly generated revenues

are routed to the IOLTA program for distribution through its grantmaking process. This has been the case in Texas, California, and the District of Columbia, where the ATJ Commission led the effort that resulted in a new \$3.2 million appropriation from the City Council beginning in 2006 (subsequently increased, but reduced in the current funding cycle).

In a number of states (recently, Maine and Texas), commissions partnered with IOLTA programs in leading the effort for new rules to expand IOLTA participation and enhance revenues such as conversion to mandatory IOLTA and adoption of interest rate comparability. As part of their public awareness efforts, commissions can also help to educate attorneys about the importance of IOLTA and its grantees.

Commissions and IOLTA programs have also worked together on private bar fundraising. In California, the Access to Justice Commission and the IOLTA program jointly oversee the outreach campaign for the Justice Gap Fund, which solicits voluntary contributions to the IOLTA program as part of bar dues payments. Maine's Justice Action Group launched a highly successful statewide, coordinated private bar fundraising campaign in 2004. However, while they may lend their prestige and contacts to such campaigns, commissions are not structured to run the campaigns themselves, and are likely to spin them off as a separate entity, as was the case in Maine. The IOLTA program can be of assistance in developing the campaign – as the Maine Bar Foundation was – and indeed might operate the campaign itself.

Commissions have also worked with IOLTA programs to mobilize and maximize the legal community's financial and in-kind support for civil aid. For example, in Texas, the ATJ commission obtained pro bono services from the chief information officers of leading law firms, who spent more than a year surveying legal aid organizations about their technology programs and creating a technology plan to address the deficits. Based on the group's recommendations, the Texas Access to Justice Foundation (the IOLTA program) purchased the necessary equipment in bulk and donated it to the legal aid offices. In the District of Columbia, the D.C. Bar Foundation (the IOLTA program) has secured the pro bono services of a prominent policy firm to support the ATJ commission's communications and public funding agenda.

Getting the Message Out

ATJ commissions also seek to raise awareness about civil legal needs, barriers to the justice system, and the benefits of civil legal aid, through regional hearings, reports, press events, editorial campaigns, videos and other communications efforts. These efforts have been coordinated with and/or supported by IOLTA programs. In Texas, the ATJ commission and the ATJ Foundation (IOLTA) jointly adopted a communications plan, and communications efforts are staffed out of the Foundation. In Hawaii, the ATJ Commission recently sponsored a "Summit Conference" on ATJ issues, funded by the Hawaii Bar Foundation (IOLTA). ATJ Commissioners and

IOLTA staff have written short articles for Hawaii State Bar news publications on individual legal service programs, activities of the Commission, financial issues facing legal service providers, and law firm pledges for 100 percent pro bono participation.

By involving more private attorneys in the delivery of civil legal aid, increased pro bono participation also helps to get the Access to Justice message out and build support for legal aid among the bar, thereby furthering the goals of IOLTA. Virtually every ATJ commission has been active in efforts to expand pro bono participation and services, through new rules, recruitment campaigns and recognition awards, support programs for volunteers, and similar measures. Sometimes these pro bono efforts can result in powerful new allies for IOLTA: for example, members of the Texas ATJ Commission's Corporate Counsel Committee, which seeks to expand pro bono service and financial support for legal aid by corporate counsel, were extremely influential in the successful legislative campaign to obtain state funding to replace the IOLTA shortfall.

While many states are facing a crisis in legal aid, the good news is that interest in Access to Justice issues on the part of the bar and the courts (and in some cases, the state legislature) has never been higher. The growth of state ATJ commissions, their communications efforts, and the support of those efforts in many states by IOLTA programs has been a key factor in this development.

Delivery System Planning and Innovation

ATJ commissions and IOLTA programs both have important roles to play in the area of delivery system planning, but these roles are fundamentally different and should be mutually reinforcing: the commission works at the "big picture" end of the spectrum; the IOLTA program functions at the programmatic end. The IOLTA program can provide valuable input to any planning process and is essential to implementing the commission's recommendations. It is critically important that the two entities coordinate their efforts to avoid duplication and conflicting messages.

In Washington State, the IOLTA program formally adopts the commission's state delivery plan as its own, to use as the basis of its funding decisions. In 2007-2008, the New Hampshire Bar Foundation (the IOLTA program) was an active participant in a delivery system planning process involving the three principal providers, convened by the ATJ commission, which resulted in a consensus about ways the programs could rethink their division of labor.

IOLTA programs have supported commission goals by funding innovative pilot projects or by carrying out specific initiatives themselves with IOLTA staff.¹ In the District of Columbia, the ATJ Commission has encouraged providers to streamline intake and referral across the legal services network; the D.C. Bar Foundation has made a grant to a few providers to develop a joint proposal for a shared hotline. In Massachusetts, the IOLTA program, through its staff, has supported a collaborative pilot project

involving the courts, the bar, and legal services providers, to promote “unbundled” legal services, an initiative supported by the Massachusetts ATJ Commission. Specifically, IOLTA staff led the effort to develop training manuals and events for participating attorneys. The Massachusetts ATJ Commission and IOLTA program have also collaborated on “civil Gideon” initiatives. The IOLTA director was the Vice-Chair of the bar’s Civil Right to Counsel Task Force, and a pilot project recommended by the Task Force and supported by the Commission has been launched with IOLTA funding.

IOLTA programs have also provided funding or in-kind support for particular commission activities or projects such as planning processes and reports or legal needs studies. The Maine Bar Foundation provided in-kind support for the state’s long-term planning process and report. Alabama’s legal needs study, originally undertaken and funded by the Alabama Law Foundation (an IOLTA program), was released under the imprimatur of the Access to Justice Commission.

Staffing and Other Fiscal Support for ATJ Commissions

Experience has shown that permanent staffing makes a major difference in the effectiveness of the commission. In a number of states, ATJ staff is funded by, and works out of, the bar or the courts. Where full funding is not available from these sources, IOLTA has sometimes stepped in to fund this key delivery system function, in whole or in part, as it does in Maine, North Carolina, and South Carolina.² In the District of Columbia, the D.C. Bar Foundation helped to obtain funding and in-kind support for Commission staffing from major law firms.

In addition, IOLTA programs can assist by serving as the fiscal agent for the commission, since most commissions do not have a formal corporate status. The Maine Bar Foundation provides this service for the Justice Action Group. And, in Texas, the ATJ Foundation (IOLTA) regularly receives donations to fund ATJ Commission initiatives.³

Synergism at Work

With their roles clearly defined, with a shared vision and values, working together in coordination, a state’s Access to Justice commission and IOLTA program can maximize their effectiveness in expanding access to civil justice in their state. It’s a two-way street: both entities will benefit. Most importantly, clients will benefit, as more services are made available to more people.

¹ Some IOLTA programs are limited by statute or rule to a specific funding formula, and thus may not be able to fund Commission initiatives.

² While some IOLTA programs may have concerns about providing funds for a staff person who does not serve clients directly, the record of success in states with established ATJ commissions makes it clear that this investment will be paid back many times over.

³ Conversely, the Foundation serves as the charity of choice for the proceeds from Commission fundraising events, such as a gala dinner held in May 2009.

Bob Echols is State Support Consultant for the ABA Resource Center for Access to Justice Initiatives.

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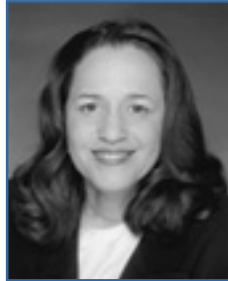
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From the Chair...



By Lora Livingston

Commission on Interest on Lawyers' Trust Accounts

In spite of challenging times, the Interest on Lawyers' Trust Accounts (IOLTA) community has accomplished much over the last year to diversify sources of funding for civil legal aid to the poor, to develop and implement IOLTA rule revisions, and to share ideas and resources with one another. The Commission has been proud to work with the National Association of IOLTA Programs (NAIP) and through its joint committees to support and facilitate these efforts and exchanges.

IOLTA news from around the country suggests that while IOLTA revenue losses remain substantial in most states, many IOLTA program trustees and staff, together with other access to justice advocates, continue to successfully generate new sources of funding. In Washington state, Bar President Mark Johnson called the bar's attention to the devastating loss in IOLTA income and urged bar support for IOLTA. As a result, the Washington State Bar ultimately made a grant of \$1.5 million to the Legal Foundation of Washington (LFW), the state's IOLTA program. LFW also obtained \$3 million over three years in new grant funding for the support of civil legal aid to the poor from the Bill and Melinda Gates Foundation. In Pennsylvania, the IOLTA program and its allies achieved both a temporary filing fee increase and a temporary increase in attorney registration fees, which together are expected to offset about one-half of IOLTA revenue losses over the past two years. These are just a few of the new funding initiatives that have recently been achieved by IOLTA programs and their partners. These efforts are a true testament to the extraordinary creativity and commitment of the IOLTA community and its leaders.

The Commission held its fall meeting in St. Louis, Missouri, and had the opportunity to meet with the executive director and trustees of the Missouri Trust Account Foundation, as well as representatives from the Missouri Bar and the Missouri Supreme Court. We learned a great deal about the enormity of what has been achieved to advance IOLTA in Missouri over the past few years, including critical technology updates and the 2008

implementation of mandatory IOLTA and interest rate comparability. Several additional jurisdictions have made similar rule changes over the past year; as of January 1, 2010, 41 states will have mandatory IOLTA and 31 states will have adopted interest rate comparability.

The Commission, and in particular, the Joint Technical Assistance Committee of the Commission on IOLTA and NAIP are available to provide input and assistance on a wide range of IOLTA-related issues. Please contact [Bev Groudine](#), Commission Counsel, or call 312/988-5771, if you should need any assistance.

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Grantee Spotlight: Iowa Legal Aid's Legal Hotline for Older Iowans

By Dennis Groenenboom

The nursing home where George's¹ wife resided had decided she was not their ideal patient, and with Medicaid making her payments, they would rather transfer her elsewhere. The elsewhere they had in mind was more than 40 miles away and would mean the end of George's daily visits to care for her and maintain, as best he could, the relationship they had spent a lifetime building. The nursing home was well on the way to making the transfer when George discovered Iowa Legal Aid's Legal Hotline for Older Iowans ("Hotline"). The Hotline attorneys intervened, and George's wife stayed in the home, with an admonishment from the judge, to the nursing home, that she was to be well cared for.

"I was taking care of my wife who had Alzheimer's at home. It got to be too much and she had to go to a nursing home. Later, they tried to discharge my wife. I could never have afforded a lawyer to fight these people; that's how I came in contact with Iowa Legal Aid."

George is typical of many elderly Iowans, either unaware of the civil legal protections or public benefits available to them, or without the resources to secure them, or both.

From its inception in 1998, the Hotline has provided legal assistance to a growing, but often underserved, segment of Iowa's population. In the first year of the program, 900 households with older Iowans were served by the Hotline staff. That number has increased to a projected 3,800 cases being handled in 2009, with an estimated 5,170 individuals assisted.

The Hotline is designed to meet the legal needs of Iowans over the age of 60. It does not employ a means test, but most clients have low incomes, with fully a third below the poverty level. A typical household of two contacting the Hotline for assistance has an annual income below \$20,000. They are generally Iowans who have had a long life of hard work, followed by a retirement funded by meager Social Security incomes and minimal, or non-existent pensions. Approximately 70% of people who call the Hotline are elderly women.

Often such Iowans, living uncomfortably close to the edge, will experience a single event that pushes them toward disaster. John, a 64-year-old Northwest Iowa man, faced a hospital bill in excess of \$160,000. He did not have a Medicare supplemental policy. The debt far eclipsed his net worth; he would never have been able to pay it off from his annual income of less than \$12,000. On advice from a Hotline attorney, and with a follow-up from the Hotline staff, John appealed to the hospital's charitable care program and had the entire debt written off.

IOLTA Provides a Lifeline

In the late 1990's, Iowa Legal Aid became increasingly aware of the special and growing needs of Iowa's substantial elderly population. At the same time, federal funding was being provided to address this issue nationwide. The Hotline was initially funded by a grant from the U.S. Administration on Aging however, after two grant cycles the funding had ended. Iowa's Lawyer Trust Account Commission (IOLTA) became a critical new source of funding and has continued to sustain the Hotline. IOLTA had already been a key source of funding for the general programs of Iowa Legal Aid, and considers providing legal assistance to Iowa's aging population as a mission of special importance.

Paul Wieck, Director of the Office of Professional Regulation of the Iowa Judiciary and administrator of Iowa's IOLTA program, recognizes the continuing value of this project. "The Hotline is one of the most cost-effective grants funded by the Iowa IOLTA program. This program is particularly effective because it offers services virtually on-demand to senior citizens in every corner of Iowa," says Wieck.

IOLTA provides approximately 30% of the Hotline's funding, which supports three full-time attorneys, one part-time attorney and one full-time intake person who provide the legal assistance to older Iowans. IOLTA also provides valuable resources through its support of the Poverty Law Internship Program operated by Drake University Law School in Des Moines and the University of Iowa College of Law in Iowa City. The internship program usually provides 12-15 interns per year to support Iowa Legal Aid's staff attorneys, including the Hotline attorneys.

Addressing Healthcare and Related Concerns

Not surprisingly, given the ages of the Hotline's clients, the largest number of calls to the Hotline are prompted by healthcare concerns. In addition, the Hotline frequently provides advice or refers elderly clients to resources to help them protect their assets.

Consider the case of Marjorie. Marjorie's husband's had suffered from Alzheimer's for seven years before she felt his best interests would be

served by moving him to a nursing home. At the time that her husband entered the nursing home, their life savings amounted to \$40,000. Not realizing that her husband might be eligible for Medicaid to pay his nursing home bills, they spent \$30,000 of their savings during the next few years for his care. Marjorie, who was only 68, began to wonder how she was going to pay her own expenses for the rest of her life if their savings were all used for nursing home bills. She contacted the Alzheimer's Association, which referred her to the Hotline. The Hotline advised her to immediately apply for Medicaid since her husband had been eligible for Medicaid benefits since he had first entered the nursing home. This simple advice protected her remaining assets from further erosion, but unfortunately, could not restore the \$30,000 she had already spent.

Resolving Consumer and Related Problems

In addition to health related questions and asset management, the Hotline assists its elderly clients with consumer concerns. The Hotline often fields questions from an elderly client, frequently a widow or widower who has amassed significant credit card debt, sometimes as much as \$20,000. Of course, many Hotline clients assume responsibility for their debts and struggle to make minimum payments. But in many of these cases, the debts will likely last for the remainder of the client's lifetime and will force the client to forego food, medicine and other necessities. The Hotline is frequently able to recommend a course of action, which may leave some debts unpaid, but will secure a tolerable future for the older Iowan, as in the case of Betty.

Betty was being sued by a collection agency for her \$15,000 credit card debt. Social Security was her only income. The Hotline attorney informed the collection agency that Betty was "collection proof" and intervened to prevent any garnishment of her bank account, which consisted solely of Social Security income. The service to Betty did not end there. Hotline staff helped her apply for Iowa's Rent Reimbursement program and enroll in the Low-Income Home Energy Assistance Program to assist with her heat bills in the frigid Iowa winter.

As with Betty, the work of the Hotline is often less about direct legal representation and more about connecting people to resources. Clients will call with a question or an issue, and in the course of conversation, Hotline staff will recognize the clients' eligibility for assistance programs that will extend their limited income.

While discussing an unrelated issue with Sarah, a Hotline attorney discovered that she was spending \$300 of her monthly income of \$600 on medical and related expenses, all of which were eligible for reimbursement. The attorney's advice on how to receive reimbursement for these expenses effectively doubled Sarah's monthly income.

Preventative Education

“Elder Law Seminars” have become a mainstay of the Hotline’s efforts to preserve the quality of life among older Iowans by helping them prevent legal problems. In the past year, five such seminars were aired over the Iowa Communications Network in 25 locations around Iowa with more than a thousand Iowans in attendance. Although directed at older Iowans, the seminars also draw providers from a wide range of social services agencies, thereby magnifying the impact and empowerment of the information. Topics are timely and include life planning issues, health care and public benefits, Medicaid eligibility, substitute decision making and consumer issues.

Likewise, the Hotline provides Continuing Legal Education to the legal community through seminars and bar association meetings. By doing so, it further educates the profession to the unique needs and challenges of elderly clients.

Hope, Dignity and Justice

The attorneys who staff Iowa Legal Aid’s Hotline for Older Iowans are dedicated to securing access to justice and preserving hope for Iowa’s most marginalized citizens. While this is of course true of all of Iowa Legal Aid attorneys, Hotline attorneys have a special understanding of the barriers to justice faced by older Iowans. The work of the Hotline is driven by the conviction that a lifetime of often hard and physical work should, at a minimum, lead to adequate health care, a safe and warm home and other basic necessities of life. It is this belief that compels funders, staff and attorneys to help older Iowans live their final years with dignity with the assistance of the Legal Hotline for Older Iowans.

¹ All clients’ names have been changed.

Dennis Groenenboom is Executive Director of Iowa Legal Aid.

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DIALOGUE

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News and Notes

LAMP

IOLTA Rate Comparability Update

LRIS

Three more states have recently joined the list of jurisdictions that have adopted IOLTA rate comparability. South Carolina and Washington were added in December 2009, and in January 2010, rule revisions were adopted in North Carolina. The revisions became effective immediately in Washington and will become effective in South Carolina on June 15, 2010, and in North Carolina on July 1, 2010.

Delivery

Pro Bono

IOLTA

Between January 2009 and January 2010, seven state supreme courts approved comparability rule revisions, bringing the total to 31 U.S. jurisdictions. This revenue enhancement strategy requires lawyers to place their IOLTA accounts only in a financial institution that pays those accounts the highest interest rate or dividend generally available to other customers of the institution when IOLTA accounts meet the same minimum balance or other qualifications.

**ATJ and
IOLTA Partner
to Increase
Access to Civil
Justice**

Assistance in exploring, drafting, and implementing an IOLTA interest rate comparability requirement is available through the Commission on IOLTA and National Association of IOLTA Programs Joint Technical Assistance Committee. Contact [Bev Groudine](#), Commission Counsel, or call 312/988-5771 for more information.

From the Chair

**Grantee
Spotlight**

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Notes**

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