



1990

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Recommended Citation

Welch, Suzanne Kirby and Kelehan, Kevin J. (1990) "Pro Bono for the Non-Litigator," *University of Baltimore Law Forum*: Vol. 20 : No. 2, Article 3.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol20/iss2/3>

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Pro Bono For The Non-Litigator

A model for recruiting business and real estate lawyers in Maryland for needed *pro bono* legal services

by Suzanne Kirby Welch and
Kevin J. Kelehan

*On Wall Street, he and a few others . . . had become Masters of the Universe. There was . . . no limit whatsoever. A Master of the Universe, a young man still in the season of the risingsap, deserve(s) more from time to time.*¹

Sadly, in many quarters the perception of the commercial and real estate attorney reflects this description of Sherman McCoy, the philandering bond trader who takes much more than he gives, only to receive his comeuppance in Tom Wolfe's novel, *The Bonfire of the Vanities*.

Few members of the general public are aware of the ethical directions to attorneys not to deserve more from time to time but to *give* more, from time to time.

While all lawyers are encouraged by the Maryland Rules of Professional Conduct to perform a certain level of *pro bono* service² much of the traditional substance of *pro bono* work (wills for the elderly, small claims or misdemeanor trial work) have little to do with the daily experience of the general business, tax or real estate attorney.

In the fall of 1988, a new *pro bono* project was endorsed by the Bar Association of Baltimore City with the stated purpose of recruiting commercial and real estate attorneys who express an interest in performing commercial and real estate *pro bono* work and marrying those attorneys to non-profit development and community organizations. The project is called "The Lawyers Clearinghouse" (Clearinghouse), formerly the Real Estate and Business Lawyers Clearinghouse. The Clearinghouse provides unique opportunities for attorneys to assist, on a no fee or a reduced fee basis, organizations dedicated to creating opportunities for housing and other needed development in the community.

The Clearinghouse promises to be one of the few *pro bono* projects in the state in which non-litigators can volunteer in their area of expertise and help to achieve community-wide results.

Overview of the Need in Maryland

One can hardly open a legal periodical today without seeing an article on the need for *pro bono* services and a debate on the ethical obligation of lawyers to provide those services. The need for legal services in Maryland was most notably addressed in the *Action Plan for Legal Services to the Maryland's Poor* proposed by the Advisory Council to The Maryland Legal Services Corporation (MLSC).³ In 1987, the Advisory Council evaluated the state's provision of civil legal services to low income populations. The researchers conducted a phone survey of low income households and a mail survey of judges, bar association leaders and attorneys in legal services programs. The MLSC study used a maximum family income standard of \$14,000 per year for a family of four, with a base figure of approximately 750,000 Maryland residents below the income level. The Advisory Council found that less than twenty percent of Maryland's low income population is able to afford effective legal assistance.

The study further showed approximately 144 attorneys working full-time in nonprofit legal organizations and practicing in the civil litigation area. According to the study:

[T]he Legal Aid Bureau, Inc. is the largest non-profit civil program, with fourteen offices, 110 attorneys, and an annual budget of approximately \$7.3 million. The other major staffed program is the Maryland Disability Law Center (formerly the

Maryland Advocacy Unit for the Developmentally Disabled), with three offices, 14 attorneys and an annual budget of approximately \$1.3 million. Smaller programs include the House of Ruth's Domestic Violence Legal Clinic, with two attorneys and one office; the Maryland New Directions project to provide legal assistance to women in prison, with one office, two staff people, and part-time retained legal counsel; and the recently opened Community Law Center, with one office, and one staff person. In addition to staff resources, the House of Ruth, Homeless Persons Representation Project, Maryland New Directions and the Community Law Center each depend somewhat on recruited *pro bono* attorneys for their services.⁴

Of the over 13,500 attorneys eligible at the time of the study to practice in Maryland, the MLSC study found that approximately 3,370 attorneys participated in one of four organized *pro bono* legal services programs in Maryland: the Maryland Volunteer Lawyer Service; the Montgomery County Bar Foundation; the Prince George's County Bar Association; and the Baltimore City Bar Association *pro bono* programs.

MLSC Report Recommendations

The report recommended a broad range of actions to be undertaken by federal and state governments, Maryland Legal Services Program (Judicare), local legal services programs, law schools, bar associations, corporations and private practitioners. The most controversial recommendation, now under consideration by the Court of Appeals of Maryland, is the adoption of mandatory *pro bono*

service. The proposal for a twenty-five dollar annual attorney assessment is also under consideration by the Court of Appeals of Maryland as well as waiver of filing fees for all indigent parties. The Advisory Council also recommends a comprehensive and mandatory program known as Interest on Lawyers Trust Accounts (IOLTA) and a filing fee surcharge on civil cases. According to the report, the four programs could generate an estimated additional \$4,000,000 to \$7,000,000 annually (depending upon the level and nature of possible filing fee surcharges in the District Courts of Maryland) while substantially expanding *pro bono* services.

Specific actions recommended by MLSC for bar associations were the following:

1. In coordination with legal services programs and others, expand private attorney *pro bono* delivery of civil legal assistance to low income persons through direct services, participation with legal services programs, training, community legal education, legal counsel to organizations serving low income persons and other appropriate approaches.

2. In cooperation with legal services organizations, assist in developing and providing increased community legal education, public information and outreach programs to better inform low income persons of their legal rights and available services.

3. Recruit panels of attorneys to provide legal services at a reduced fee to income eligible persons who are above the poverty level but below the MLSC eligibility level (or higher local standard) in legal problems that are underserved by existing legal services programs in the jurisdiction, supplying lists of such panel attorneys to any "access" program or legal services program in that county for attorney selection following determinations of financial and service eligibility.

4. Conduct activities to increase the understanding of the mutual roles of private attorneys and legal services programs in providing legal services to the poor.³

The needs referred to in the report have been addressed by the Maryland General Assembly. In 1988 and 1989, mandatory IOLTA legislation was introduced into the General Assembly by members of the Advisory Council, and was passed in April 1989. Unlike the prior voluntary IOLTA program, which included only three thousand attorneys statewide, the new IOLTA law requires

attorneys to place certain small and short-term client trust funds into an IOLTA type of account. The interest earned from the account, which is expected to be as much as \$2,000,000 annually, will be used to fund grants and programs to support civil litigation for poor and disabled persons.

Existing Pro Bono Programs

Most of the referral programs that exist involve litigation. The recent *Guide to Legal Services In Maryland* proposed by the Maryland State Bar Association Section Council on Delivery of Legal Services and the Community Law Center listed over eighty-five free and reduced fee legal services available throughout the state.⁶ The projects listed in the *Guide* included community relations commissions, lawyer referral services, eviction prevention and homeless programs, senior citizens programs, law school legal clinics and sexual assault and domestic violence programs. The majority of these programs involve litigation.

"[T]he new IOLTA law requires attorneys to place certain...client trust funds into an IOLTA type of account."

Although the MLSC study addressed the most pressing need of the low income population, pursuing legal rights through litigation, there is another vacuum in *pro bono* services which can be filled by a large, untapped pool of legal talent. Lawyers with limited courtroom expertise can respond to the need for *pro bono* services by providing legal services to nonprofit organizations which administer to the needs of the low income population.

According to the 1988 records of the Maryland State Bar Association, approximately 2,700 of its 13,700 members were listed as real estate, general business or tax attorneys. A need exists to channel the talents of such attorneys to serve the needs of low income persons. For the real estate, tax or business law attorney, it may be difficult to become involved in *pro bono* work because most *pro bono* projects involve litigation, an area in which that attorney generally has little or

no expertise. However, attorneys specializing in the real estate and business areas have the skills required by many nonprofit organizations to solve their real estate, business or tax problems.

The *Guide* listed few programs to assist the corporate, tax and real estate practitioner who is willing to commit part of his time in his area of expertise to assist indigents. Two projects listed in the *Guide* that provide an alternative for the non-litigator are the Speakers Bureau of the Baltimore City Bar Association, Young Lawyers Section and the Speakers Bureau for the Maryland Bar Association. Both provide speakers and materials to community groups on a broad range of subjects, some of which are non-litigation in nature.

Another organization listed in the *Guide* is the Community Law Center. The Community Law Center provides legal services to nonprofit organizations to assist them in addressing the concerns of their neighborhoods. These neighborhoods are predominantly the same neighborhoods populated by the MLSC's "low income populations." These neighborhood organizations address the housing and economic development needs of their constituents and are organized to create home improvement repair programs, neighborhood food banks, shelters, recreational centers and other housing and economic development projects.

Additionally, there is a referral program initiated in 1988 by the Young Lawyer's Section of the Baltimore City Bar in conjunction with the United Way. This program assists United Way organizations in obtaining legal services in a wide range of needs.

The Clearinghouse Model: Pro Bono for Non-Litigators

In the summer of 1988, the Community Law Center undertook development of a lawyer referral project similar to projects in other cities. With the active participation of the Baltimore City Bar Association and the Young Lawyers Section of the City Bar Association and with support from the ABA Young Lawyers Section local representative, the Real Estate and Business Lawyers Clearinghouse was created in late 1988 (later to be known as The Lawyers Clearinghouse). Through the recently established Clearinghouse, non-traditional *pro bono* services operate successfully to deliver needed legal services to nonprofit organizations. The Clearinghouse project is modeled after similar projects in Chicago, Boston and New York and is sponsored by the Baltimore City Bar

Association and the Young Lawyers Section. Representatives from each serve on the oversight committee of the organization. Other members of the oversight committee include representatives from major law firms and area law schools.

The purpose of the Clearinghouse is to recruit corporate, tax and real estate attorneys and to target efficiently their *pro bono* or reduced fee services to the non-profit organizations who are providing housing to low income or homeless people and who need legal counsel or representation. A few specific examples of needed *pro bono* services that have been addressed by the Clearinghouse are:

Rehabilitation of Vacant Houses: A nonprofit organization affiliated with Habitat for Humanity plans on acquiring vacant properties, rehabilitating them with a combination of low interest financing and sweat equity, and then selling the houses to local low income residents. A variety of legal services are needed in the areas of acquisition of vacant properties, preparation of construction and sales contracts and general advice regarding state licensing requirements as it relates to the sweat equity portion of the project.

Financing for a Single Room Occupancy (SRO) Project: A transitional housing program for women has obtained state financing for the rehabilitation of a building into 13 SRO units. The needed legal services involve purchasing the property and closing the financing with the state.

Creation of a Neighborhood Based Home Repair Program: A sophisticated neighborhood organization wants to start a home maintenance service for low income elderly and handicapped residents based on a minimum annual fee. The organization will employ persons skilled in home repairs. An attorney is needed to advise them on state licensing requirements, insurance and indemnity issues and to draft needed organizational documents and service contracts.

Obtaining Proper Zoning for a Property to be Acquired for Use as a Shelter: A church affiliated organization wants to purchase a building, rehabilitate the property and use the property as a group home for those persons who have been evicted and are otherwise homeless. An attorney is needed to evaluate if the property is properly zoned, negotiate the purchase contract and close on the acquisition of the property.

In addition to the examples outlined above, the Housing Law Clinic of the University of Baltimore School of Law represents a limited number of low income tenants and neighborhood associations in Baltimore as well as individual tenants. Volunteer attorneys are needed to serve as a resource and as mentors in the clinic on the real estate development issues that arise.

The Clearinghouse project could not operate without a link to the nonprofit organizations. The Community Law Center is responsible for this link. The Community Law Center provides organizations and individuals with advice and counsel in seeking legal services and acts as the direct contact with the nonprofit organizations for the Clearinghouse. The Clearinghouse has received \$12,000 in start up grants from the Baltimore Bar Foundation. While other clearinghouse programs such as the one in Boston operate on an annual budget of over \$60,000, the Clearinghouse hopes to operate on a budget of one-third that amount, utilizing the joint efforts of the

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Community Law Center and funding from the state and local bar foundations, contributions and other related *pro bono* funding.

The Clearinghouse model is not unique to Baltimore and is one that could be replicated in other communities of Maryland. What is required is an interested local bar association, neighborhood nonprofit organizations, an organization to serve as a link to the nonprofit organizations, seed funding from local bar associations and long term funding from MLSC law schools also play an important role in clearinghouse projects. While students may not be prepared for the representation of indigent clients in very complex legal issues, they can effectively perform the research and observation portion of housing court and rent court studies, represent tenants in these

forums, conduct analysis of pending legislation, and perform data collection and court document preparation for a receivership action on vacant houses.

Conclusion

As the availability of legal service to low-income clients drifts farther away from the client base due to decreased state and federal funding, it has become increasingly incumbent upon the bar association to develop and implement programs for delivery of such services in all areas including non-litigation areas. With the cooperation of the commercial and real estate attorneys and local bar associations, the Clearinghouse will grow and continue to serve the needs of worthwhile organizations.

Endnotes

¹T. Wolfe, *The Bonfire of the Vanities* (1987).

²Md. Rules of Professional Conduct 6. 1.

³*Action Plan for Legal Services to Maryland's Poor*, Maryland Services Corporation, published by The Interest of Lawyer Trust Account Program (January, 1988).

⁴*Id.* at 13.

⁵*Id.* at 34.

⁶*Guide to Legal Services in Maryland*, Maryland State Bar Association, Inc. Section Council on Delivery of Legal Services and Community Law Center (May 1989).

For more information on the Clearinghouse, feel free to call Anne Blumenberg of the Community Law Center at 366-0922 or Suzanne Kirby Welch at 992-6393.

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