Virginia Access to Justice Commission
Pro Bono Subcommittee

The Case for a Policy of Self-Reporting of Pro Bono Work Hours in Virginia

I. Introduction

On August 10, 1976 Justice Lewis Powell, a former president of the American Bar Association, delivered an address entitled "Legal Services to the Poor-Looking Ahead." To the assembled lawyers, judges and dignitaries, Justice Powell recalled his role in creating an ABA Special Committee on the Availability of Legal Services in 1965. He stated that a motivation was the perception of a Columbia professor, Elliott Cheatum, that, in "industrial terminology," the "product of the legal profession is superior, but its distribution to the consumer is woefully inadequate."[1] In that speech, Justice Powell saluted the establishment by Congress in 1975 of the Legal Services Corporation to deliver "access to justice."[2] Justice Powell conceded there was still much work to be done.

The availability of civil legal aid to the underserved through the Legal Services Corporation was no doubt a boost to service "distribution." The demand for affordable counsel has still nonetheless surged ahead of supply. In the October 2014 edition of *Virginia Lawyer*, Jim Sandman, former managing partner of Arnold & Porter and the current president of the LSC, reported that "[s]tudies consistently show that only 20 percent of the civil legal needs of low income people are met...."[3] Studies also show the substantial disparity in success rates when a litigant is represented by counsel, as opposed to being without counsel. In their thorough survey of studies of lawyer-involvement outcomes, covering work spanning domestic violence to civil litigation matters, Executive Director of Blue Ridge Legal Services John Whitfield concludes that "outcomes for unrepresented litigants are often far less favorable than those for represented litigants...."[4] Because our system of justice depends on two adversarial sides forcing out facts to be weighed by a neutral judge or jury, disparity in representation matters greatly.

The twin realities that 1) lawyers make a qualitative difference in outcomes, and 2) people in need cannot sufficiently connect with lawyers, are at the heart of what the Supreme Court of Virginia in 2013 termed the "Justice Gap."[5]

One of the obvious antidotes to the Justice Gap is the availability of substantially more no-cost legal service through the provision of pro bono legal help. In the Preamble to the

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[1] Lewis F. Powell, Jr., Legal Services Revisited, Address at the ABA Annual Meeting (August 10, 1976), available at http://scholarly commons.law.wlu.edu/powellspeeches
[2] *Id.* at 13.
[3] Virginia Lawyer, vol. 63, October 2014 at 28
[4] Virginia Lawyer, vol. 63, October 2014 at 36
[5] Virginia Lawyer, vol. 63, October 2014 at 30-31

Virginia Rules of Professional Conduct ("Virginia Rules"), in a section entitled "A Lawyer's Responsibilities," it reads: "A lawyer should be mindful of the deficiencies in the administration of justice, and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. "[6]

The Virginia Rules thus built into the Commonwealth's legal practice standards the aspiration that lawyers in the Commonwealth will contribute 2% of their professional time to the underserved. Virginia Rule 6.1. reads as follows:

Rule 6.1. Voluntary Pro Bono Publico Service

(a) A lawyer should render at least two percent per year of the lawyer's professional time to pro bono publico legal services. Pro bono publico services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services.

(b) A law firm or other group of lawyers may satisfy their responsibility collectively under this Rule.

(c) Direct financial support of programs that provide direct delivery of legal services to meet the needs described in (a) above is an alternative method for fulfilling a lawyer's responsibility under this Rule.

Since the time the 2% standard appeared in the Rules, the performance level of Virginia attorneys regarding pro bono work have been hard to discern. Research by Mr. Whitfield and Joanna Suyes, Chair of the Virginia State Bar Special Committee on Access to Legal Services, demonstrates that Virginia lawyers appear to document only one twenty-fifth of what would be a reasonable projection of their annual professional time.[7] However, this data came largely from legal aid and freestanding pro bono programs' case closing reports and other learned studies on what lawyers were likely doing.[8] There is likely a considerable amount of pro bono legal work being done on an ad hoc basis, as well as pro bono work that is performed for non-profit organizations, on referrals from specialty legal rights organizations, through advice-only engagements, and other sources. The Whitfield/Suyes study readily concedes challenges in collecting reliable data on pro bono services, noting that as a bar "we have no mechanism in place for tracking the amount of pro bono being undertaken by Virginia lawyers outside of organized pro bono programs.[9]

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[6] Rules of the Supreme Court of Virginia,Pt.6, Section II, 2014 Ed. at 516.
[7] *Virginia Lawyer*, vol. 63, October 2014 at 30.
[8] *Virginia Lawyer*, vol. 62, February 2014 at 47.
[9] *Id.* at 47-48.

The Preamble to the Virginia Rules makes this observation: "The legal profession is largely self-governing." To self-regulate the obligation of Virginia lawyers to the poor, the Pro Bono Subcommittee of the Access to Justice Commission believes a more reliable stream of pro bono data is required.

II. The Benefits of a Self-Reporting Policy

The experience of other states suggests that self-reporting of pro bono hours at the time of license renewal would be beneficial to Virginia's legal practice. Florida has the longest duration of experience with required self-reporting of pro bono hours, having adopted a policy in 1993. The Florida bar reports a rise from 806,874 pro bono hours in 1993 to 1,701,503 in 2013, and an elevation from $1,518,781 to $4,852,888 in legal aid donations by Florida lawyers over that same span.[10] Florida rules make failure to report hours annually upon licensee renewal a violation subject to bar discipline.[11] The Florida self-reporting rule was challenged as an unlawful imposition on lawyers, but upheld in both federal and state courts.[12] In the Eleventh Circuit opinion, the court quoted the Florida Supreme Court's decision as follows: "[L]awyers have been granted a special boon by the State of Florida—they in effect have a monopoly on the public justice system. In return, lawyers are ethically bound to help the State's poor gain access to that system." *Schwarz v. Kogan*, 132 F.3d 1387, 1391 (11th. Cir. 1998).

After appreciable debate, Indiana just adopted self-reporting rule in 2014, effective January 1, 2015, becoming the tenth state to do so.[13] This suggests there is a trend toward self-reporting. No state that embraced required self-reporting of pro bono hours later rescinded the practice for reasons, suggesting the state accommodated any substantive discontent, or administrative burden.

There are at least three reasons self-reporting of pro bono hours would help Virginia's system of justice.

First, accurate reporting would allow for monitoring of how Virginia State Bar members are really doing against already-accepted aspirations for professional conduct, and would permit Bar and Court leaders to exhort compliance with pro bono standards from the vantage point of a more exacting foundation. Virginia long ago committed to requesting 2% of a lawyers' practice time as qualified pro bono work. Measuring the standard would promote a sense among the general public that attorneys care to measure themselves against self-established standards.

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[10] http://www.floridabar.org/DIVCOM/PI/BIPS2001.nsf/1119bd38ae090a748525676f0053b606/a8e811c59073e9f68525669e004d21f6!OpenDocument

[11] http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html

[12] *See Schwarz v. Kogan*, 132 F.3d 1387 (11th Cir. 1998); *Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar -- Pro Bono Public Service*, 696 So.2d 734 (Fla. 1997), *rehearing denied*, (Fla. July 9, 1997).

[13] See *www.theindianalawyer*.com/article/print?articleid=32634

Second, an annual self-reporting requirement would focus each Virginia lawyer cyclically on their professional obligation to perform pro bono work, and would provide them a chance to evaluate annually their own contribution in the face of that obligation. The lesson of other states that require annual lawyer self-reporting is that pro bono hours tend to rise as a result,[14] although, in fairness, the Pro Bono Institute concedes there has yet been longitudinal studies that can empirically prove cause and effect.[15] The perceived connection between reporting and performance rise is likely attributable to one of a few reasons. It could be that that filling out annual reporting forms builds awareness of the problem and a lawyer's opportunity to serve. It could be that lawyers do not want to self-report performance below the aspiration of professional conduct standards, and thus the lawyers improve. It could be that members self-reporting pro bono performance just re-commit to the best ideals of the profession.

Third, self-reporting would increase the perceived importance, and therefore volume, of pro bono work. A sage once said, "if you aim at nothing, you hit it every time." Efforts to measure performance enhance the belief that leaders care about achieving the stated outcome, thus validating the importance of the requested pro bono contributions. Additionally, being measured boosts the morale of the performers. In the famous Hawthorne experiments, a manufacturer raised the illumination in a Massachusetts factory and piecework productivity consequently rose. To affirm the nexus of atmosphere to productivity, researchers then lowered the light, but worker output surprisingly rose again. The researchers came to realize it was the act of being evaluated that raised the performers' motivation, not as much the environmental factors. Because the work suddenly mattered more, the workers performed it better.[16]

The states that require self-reporting indicate little downside to the tabulation process. After all, bar members have to report annually on their Continuing Legal Education hours and pay renewal dues. Adding another data field to the annual renewal process does not seem to present significant challenge.

For a more detailed discussion of the progress of self reporting efforts around the country, the Pro Bono Committee adopts and attaches hereto as Exhibit I the research report prepared by University of Richmond law student Brittany Burns, an intern with the Greater Richmond Bar Foundation.

The major hurdles to self-reporting pro bono work seem to be in defining the types of work that qualify as reportable pro bono, and in conditioning lawyers by advance

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[14] See http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html

[15] See Pro Bono: To Report or Not to Report, New Jersey Law Journal Vol. 23, No. 4, July 2013

[16] McCarney R, Warner J, Iliffe S, van Haselen R, Griffin M, Fisher P; Warner; Iliffe; Van Haselen; Griffin; Fisher (2007). "The Hawthorne Effect: a randomised, controlled trial,"*BMC Med Res Methodol* 7: 30. doi:10.1186/1471-2288-7-30

communication to create an easy-to-understand system of recording qualifying pro bono hours for reliable measurement.

Given that self-reporting of pro bono hours is employed with good success in other states, that self-reporting would boost lawyer accountability, and that it can help close the Justice Gap, Virginia has an opportunity to begin documenting lawyer achievement of an important ideal of professional practice.

Required reporting of voluntary pro bono service is a policy that balances practical realities. On the one hand, compelling contributed services might present constitutional and other legal complications. The performance of pro bono service is and should remain a voluntary obligation of Virginia State Bar members. On the other hand, serving at the bar is a privilege accorded only to the licensed few, and Virginia lawyers should be exhorted to perform pro bono service, and every effort to promote better pro bono service should be explored.

In endorsing pro bono self reporting, the Committee in no way endorses the mandatory performance of pro bono services by members of the Virginia State Bar, and this self-reporting proposal should not in any way be construed to be a precursor to a proposal for mandatory performance of pro bono legal service.

Exhibit I

Closing the Justice Gap: Pro Bono Reporting in Virginia

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Table of Contents

I. Introduction 2

II. The Justice Gap in Virginia and in the United States 4

III. How Financial Contributions Can Help Close the Gap 6

- A. Declining Financial Resources 6
- B. Staff Attorneys Compare to Private Pro Bono Attorneys 7
- C. Raising Financial Contributions 8

IV. Pro Bono Reporting 10

- A. Arguments for Pro Bono Reporting 11
- B. Arguments against Pro Bono Reporting 12

V. The Impact of Reporting Requirements 14

- A. Florida 15
- B. Illinois 16
- C. Maryland 18
- D. Voluntary/No Reporting States 19

VI. Hurdles to Adopting a Pro Bono Reporting Requirement in Virginia 20

VII. Conclusion 23

Appendixes

Appendix A: Florida Pro Bono Hours Donated and Dollars Contributed to Legal Aid 24

Appendix B: Illinois Pro Bono Hours Donated and Dollars Contributed to Legal Aid 25

Appendix C: Illinois Report on Pro Bono Hours 2008-2012 26

Appendix D: Maryland Pro Bono Hours Donated and Dollars Contributed to Legal Aid 27

I. Introduction[1]

Every day, thousands of low income Virginians rely on legal service organizations and pro bono attorneys to meet their legal needs. However, there are not enough attorneys providing representation to low income individuals in Virginia. The gap between indigent people who need representation and attorneys providing representation is widening. This growth has a societal impact, making justice and representation available only to those who are fortunate enough to not be swallowed in the chasm.

This chasm is more commonly known as the "justice gap," the space where those who are in need of legal services fall when they cannot afford to access the courts. The gap is widening in the United States, with about 61.4 million people qualifying for civil legal assistance in 2012, an increase of over 10 million people since 2007.[2] This increase in demand for free legal services, combined with the cuts to Legal Service Corporation ("LSC") programs and the economic downturn, has resulted in non-profit agencies having to turn away almost 50 percent of those seeking help.[3] According to the American Bar Association, attorneys have a professional responsibility to help close this gap.

The American Bar Association has adopted the *Model Rules of Professional Conduct* ("Model Rules") to help guide attorneys in their professional and ethical duties. These rules also serve as a model for most State Rules of Ethics. Under Rule 6.1 of the ABA Model Rules, "every lawyer has a professional

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[1] *This report was prepared for the Greater Richmond Bar Foundation. The mission of the foundation is to expand public access to the justice system in central Virginia by facilitating the delivery of pro bono services and service projects. Through strategic planning, centralized communications and support, the foundation helps the central Virginia region with its priority needs for pro bono services and helps lawyers connect with clients.*

[2] *Introduction: The Current Crisis in Legal Services*, LEGAL SERVICES CORPORATION, http://www.lsc.gov/introduction-current-crisis-legal-services (last visited Dec. 7, 2014).

[3] LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET NEEDS OF LOW-INCOME AMERICANS 4 (2009) [hereinafter *Documenting the Justice Gap*], *available at* http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

responsibility to provide legal services to those unable to pay."[4] However, most attorneys are not fulfilling this responsibility for different reasons, including lack of time, lack of training, fear of failing, and pressure to meet billable hours.[5] The question then becomes, what is the best way to narrow this justice gap? Are increased efforts to encourage pro bono participation the best solution? Or do financial contributions have a greater impact on the ability to provide legal services?

In reality, closing the gap is going to take a combination of financial contributions and increased private pro bono participation. Financial contributions help legal service organizations hire specially trained poverty attorneys that work exclusively for indigent clients. These attorneys are able to focus on the needs of the poor and help a much larger population than private pro bono attorneys. However, private participation is integral as well, as it connects attorneys with their communities and allows private attorneys to handle complex indigent cases that are outside the specialty of a regular legal aid attorney. To close the justice gap, both financial contributions and private pro bono participation must be increased. The best way to increase both financial contributions and pro bono participation is by implementing a pro bono reporting requirement.

This memo discusses how pro bono reporting can help close the justice gap, and why Virginia should adopt a reporting requirement. To understand the need for pro bono reporting, it is necessary to first explore the extent of the justice gap in Virginia and in the United States. Then, it is crucial to understand the impact financial contributions have on legal organizations and their ability to serve the poor. After discussing both of these points, it will become evident that the best way to close the justice gap is by increasing financial contributions as well as pro bono participation.

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[4] *Rule 6.1: Voluntary Pro Bono Publico Service*, A.B.A., http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service.html (last visited Dec. 7, 2014) [hereinafter "ABA Model Rules-Rule 6.1"].

[5] A.B.A STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE, SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 26 (2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf.

The best way to increase both financial contributions and pro bono participation is a pro bono reporting requirement. Sections IV discuss some of the arguments for and against a pro bono reporting requirement. Section V offers data from three states with pro bono reporting requirements, Florida, Illinois and Maryland, to show the impact the requirement has had on the delivery of legal services and financial contributions. Finally, the memo concludes with a look ahead at probable hurdles to implementation and a suggested roll out.

II. The Justice Gap in Virginia and in the United States[6]

There is a justice gap across the United States, and Virginia is no exception. A study done by John Whitfield of Blue Ridge Legal Services and Joanna Suyes of the Special Committee on Access to Legal Services for the Virginia State Bar found that Virginia's pro bono participation rates are dismal.[7] The study sought to look at the difference between the aspirational goal the state set out in Rule 6.1 of the Virginia Rules of Professional Conduct[8] and what active Virginia attorneys were performing. If the active Virginia bar of 23,478 members met the minimum aspirational goal of Rule 6.1, they would produce 939,120 hours of pro bono services annually.[9] Collecting data from both LSC funded programs and independent pro bono programs, the report found that 2,093 Virginia attorneys donated an estimated 36,698 hours of legal services in 2012.[10] This equates to less than 9 percent of Virginia attorneys performing 3.9 percent of the aspirational hours recommended in Rule 6.1.[11]

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[6] The Suyes & Whitfield study discussed in this section is the most comprehensive information available regarding Virginia pro bono participation. However, the study has discrepancies and is not a complete look at the pro bono climate in Virginia. Nevertheless, without pro bono reporting, studies such as this are the only thing nonprofits, legal aid, lawmakers, and attorneys have to look to when measuring pro bono participation.

[7] Joanna L. Suyes & John E. Whitfield, *Is there a Pro Bono Gap in Virginia?*, 62 VA LAWYER MAGAZINE 46, 46 (Feb. 2014), *available at* http://www.vsb.org/docs/valawyermagazine/vl0214-pro-bono.pdf.

[8] *Id.* ("Rule 6.1 of the Rules of Professional Conduct provides that every Virginia lawyer should render at least 2 percent per year of her or his professional time to pro bono legal services. Assuming 2,000 hours worked per year, this results in a goal of at least 40 hours of pro bono legal services annually per attorney").

[9] *Id.*

[10] *Id.* at 47.

[11] *Id.* at 47 (2,093 Virginia attorneys/ 23,478 active Virginia bar members= .089 = 8.9% ; 36,698 donated hours/939,120 aspirational goal=.039 = 3.9%)

The study noted that there were discrepancies in the data collected, especially since attorneys doing pro bono "ad hoc" were difficult to quantify. The survey estimated that some 52 percent of pro bono work goes uncounted because it is done ad hoc.[12] Ad hoc cases are "cases informally referred by other lawyers, family, friends, judges, religious organizations and other sources."[13] However, even if it is assumed that 50 percent of the pro bono done in Virginia is done ad hoc, and thus not quantified by the study and we double the number of hours donated to pro bono to cover this omission, only 8 percent of the aspirational goal would be met.[14]

Virginia is not the only state dealing with a dearth in pro bono participation and a growing justice gap. Since 2000, the money appropriated by Congress to the Legal Services Corporation has fallen 17 percent.[15] The number of Americans eligible for LSC-funded assistance[16], however, has grown by 18.5 million people, an increase of 41 percent.[17] In addition, because of the Great Recession, a large surge of this increase came between 2007 and 2013, when the number of Americans eligible for assistance grew from 50.8 million to 63.6, an increase of 26 percent.[18] Because of these changes and reductions in staff, the number of cases closed by LSC funded programs has dropped from 873, 199 in 2000 to 648,026 in 2013, a

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[12] SUYES & WHITFIELD, *supra* note 6, at 48.
[13] *Id.*
[14] *Id.*
[15] *2013 Legal Services Corporation By the Numbers: The Data Underlying Legal Aid Programs*, LEGAL SERVS. CORP., http://www.lsc.gov/about/lsc-numbers-2013 (last visited Dec. 7, 2014) [hereinafter *LSC by the Numbers*] (2000 appropriations converted to 2013 value for comparison).
[16] *Id.* (Those living at or below 125 percent of the federal poverty guideline).
[17] ALEMAYEHU BISHAW, POVERTY: 2002-2012 AMERICAN COMMUNITY SURVEY BRIEFS 9 (Sept. 2013), *available at* https://www.census.gov/prod/2013pubs/acsbr12-01.pdf.
[18] *LSC by the Numbers, supra* note 14, at "Constituents Eligible for LSC-Funded Legal Aid".

decrease of 26 percent.[19] As a second blow, the number of cases closed by pro bono attorneys for LSC funded programs decreased from 121,030 to 96,427, a decrease of 20 percent.[20]

The Virginia and LSC data shows the growing issue of the justice gap. An increase in pro bono participation from private attorneys could help fill the 902,422-hour deficit.[21] However, pro bono participation is not enough, and data suggest that financial contributions may be the key to closing the justice gap.

III. The Impact of Financial Contributions on the Justice Gap

A. Declining Financial Resources

Declining Interest on Lawyer Trust Accounts (IOLTA) revenues and federal funding correlate with the downturn in legal services offered to the indigent. IOLTA accounts are used to hold client funds received by an attorney when "the funds cannot otherwise earn enough income for the client to be more than the cost of securing that income."[22] The interest earned on these accounts is collected to provide civil legal aid.[23] In 2006, Virginia IOLTA was producing over $500,000 a month in revenue for Legal Services Corporation of Virginia, who would then distribute the money to legal aid organizations throughout the commonwealth.[24] By 2012, however, IOLTA was producing less than $50,000 a month.[25]

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[19] *LSC by the Numbers*, *supra* note 14, at "Client Services" (The number of cases closed is not a reflection on the competency of a program but a reflection of the effect of outside influences on a program (i.e. financial cuts, pro bono participation, etc.)).
[20] *Id.*
[21] SUYES & WHITFIELD, *supra* note 6, at 47.
[22] *What is IOLTA?*, IOLTA.ORG, http://www.iolta.org/what-is-iolta (last visited Dec. 7, 2014).
[23] *See id.*
[24] Presentation: JOHN E. WHITFIELD, *Closing the Justice Gap: Rule 6.1 and Pro Bono*, VIRGINIA STATE BAR PRO BONO CONFERENCE at 31 (Oct. 22, 2014) (on file with author).
[25] *Id.*

In addition, since 1976, Legal Services Corporation funding has dropped 29 percent.[26] This funding is used to support civil legal aid organizations throughout the United States.[27] Because of these cuts, legal service organizations are feeling the pinch. Virginia estimates that it lost 20 percent of its total legal aid funding.[28] As a result, Virginia's legal aid programs have cut 61 positions across the state (19 percent of the total staff compared to 2009), including 34 attorneys (21 percent of the total attorney staff).[29] These reductions have led to legal aid programs having to turn away an estimated 50 percent of those who reach out for representation.[30]

B. Staff Attorneys Compared to Private Pro Bono Attorneys

This cut back in staff and attorneys has had a major impact on the number of cases being handled in legal aid offices across Virginia. To best illustrate the need for more funding, and thus more attorneys, it is helpful to look at the comparison between pro bono attorneys and legal aid attorneys. In 2012, 96 attorneys at LSC-sponsored nonprofits closed 25,686 cases.[31] This averaged out to about 268 cases closed per LSC staff attorney, per year. In comparison, 2,093 attorneys donating their time pro bono to legal aid closed 5,363 cases.[32] This averages out to about 2.5 cases per private pro bono attorney, per year. If pro bono continued at this rate, it would take one LSC staff attorney to do the work of 96 pro bono attorneys. It

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[26] *LSC by the Numbers*, *supra* note 14.
[27] *About LSC*, LEGAL SERVS. CORP., http://www.lsc.gov/about/what-is-lsc (last visited Dec. 7, 2014).
[28] WHITFIELD, *supra* note 23, at 32.
[29] *Id.*
[30] *Documenting the Justice Gap*, *supra* note 3 at 4.
[31] *LSC Funded Programs in Virginia*, LEGAL SERVS. CORP., www.lsc.gov/local-programs/state-profile?st=VA&Printable=True (last visited Dec. 7, 2014).
[32] WHITFIELD & SUYES, *supra* note 6 at 47.

would take only 20 LSC staff attorneys to close the same number of cases (5,363) as the 2,093 pro bono attorneys.

While hiring more legal aid attorneys to help close the justice gap seems like a good solution, it is an unreachable goal considering the current financial state of legal service organizations. A study done by the National Association for Law Placement found that the salaries for civil legal attorneys range, by experience, from $42,800 to $64,900.[33] Looking at the low end of that spectrum, it would cost an estimated $856,000 to hire 20 LSC staff attorneys, the amount needed to equal what the pro bono attorneys were donating.

A better illustration of this would be to look at Blue Ridge Legal Services. The LSC-funded program has 13 attorneys that closed 1,635 cases last year, averaging to about 126 cases per attorney, per year.[34] In addition, private pro bono attorneys closed 485 cases.[35] It would take an additional four staff attorneys to close the number of cases closed by the pro bono attorneys. In 2013, $704, 215 was appropriated to legal wages at BRLS, averaging to about $54, 170 per attorney.[36] Thus, it would cost about $216,681.52, over 30 percent of the BRLS legal wage budget, to add four attorneys. With a decline in LSC funding and IOLTA revenue, this option is unrealistic.

C. Raising Financial Contributions

Financial contributions can play a major role in closing the justice gap in Virginia. As shown above with the LSC figures, legal service attorneys trained in poverty law and

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[33] *New Public Interest and Public Sector Salary Figures from NALP Show Little Growth Since 2004*, NAT'L ASS'N FOR LAW PLACEMENT, http://www.nalp.org/2012_pubint_salaries (Oct. 18, 2012).
[34] BLUE RIDGE LEGAL SERVS., INC., STATISTICAL CASE SERVICES AND OUTCOMES REPORT FOR 2013, *available at* http://www.brls.org/SiteAssets/additional-program-information/BRLS%20case%20services%20and%20outcomes%20report%202013.pdf (2013).
[35] *Id.*
[36] *Id.*

responsible only for serving the indigent, close 379 percent more cases than those attorneys who donate time to legal service organizations.[37] However, with LSC funding and IOLTA revenue decreasing, the ability to hire these attorneys is becoming more unlikely. Increasing financial contributions from the community, firms and other attorneys can lead to the hiring of more legal aid staff attorneys, which could help Virginia move one step closer to closing the justice gap.

One way Virginia can increase financial contributions to legal aid is through a mandatory Interest on Lawyer Trust Accounts (IOLTA) program. Currently, 44 jurisdictions have mandatory IOLTA programs.[38] Virginia, along with only three other jurisdictions, has an opt-out program in which attorneys participate automatically, unless they decide to opt out.[39] As of 2012, Virginia had 5,200 of its 29,000 attorneys participating in the IOLTA program.[40] Implementing mandatory IOLTA programs may help bridge the justice gap, but revenues from IOLTA are dropping steadily, due to interest rates remaining around zero on the accounts after the financial crisis of 2008.[41] While more attorneys participating will result in a slight increase in financial contributions to legal aid, a more effective implementation would be a pro bono reporting requirement.

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[37] *See LSC Funded Programs in Va.*, *supra* note 30; SUYES & WHITFIELD, *supra* note 6 at 47.
[38] *Status of IOLTA Programs*, A.B.A., http://www.americanbar.org/groups/interest_lawyers_trust_accounts/resources/status_of_iolta_programs.html (last visited Dec. 7, 2014).
[39] *Id.*
[40] DAWN CHASE, *Legal Aid Appeal: Consider IOLTA*, (Jan. 26, 2012), http://www.vsb.org/site/news/item/consider-iolta.
[41] *See* Robert J. Derocher, *The IOLTA Crash: Fallout for Foundations*, 37 B. Leader 1 (2012), *available at* http://www.americanbar.org/publications/bar_leader/2012_13/september_october/iolta_crash_fallout_foundations.html.

A pro bono reporting requirement is the best way to increase financial contributions to legal aid. There is a correlation between implementing a reporting rule and an increase in financial contributions. The reporting requirement serves as a reminder for attorneys of their professional responsibility to give back to legal aid. In addition, there is also a correlation between applying a pro bono reporting rule and an increase in pro bono participation. Performing pro bono may establish a personal connection with the organization, thus increasing the likelihood of charitable giving. Whether it is a personal connection, a little friendly peer pressure, or just a needed reminder of an attorney's professional responsibility, a pro bono reporting requirement can help raise financial contributions.

IV. Pro Bono Reporting

The best way to increase pro bono participation and financial contributions is by implementing a pro bono reporting requirement. A pro bono **reporting** requirement differs from a mandatory pro bono **participation** requirement. Under a reporting requirement, attorneys are required to report the number of hours donated or amount of money contributed to legal aid in the past year. There is no penalty for reporting "0" and there is no mandate to donate pro bono hours or money.

Even though data shows that pro bono reporting can increase pro bono participation and financial contributions, many states have faced fierce opposition when trying to implement a pro bono reporting requirement. Only nine states (Florida, Hawaii, Illinois, Indiana, Maryland, Mississippi, Nevada, New Mexico and New York) have adopted a pro bono reporting

requirement.[42] With many of these states seeing an increase in pro bono hours, as well as other benefits, one may wonder why more states have not jumped on the bandwagon. While some have fought ferociously against adopting a pro bono reporting requirement, the advantages of a reporting requirement far outweigh the costs.

A. Arguments for Pro Bono Reporting

Pro bono reporting has many positive effects, some quantitative and others societal. First, as will be discussed, pro bono reporting can result in more pro bono hours provided to the indigent community and more financial contributions to benefit legal aid. In addition, to measure the success of plans and policies put forth by legal aid organizations, the courts, and the Access to Justice Commission[43], there needs to be a bar against which to measure.

Another benefit of pro bono reporting is that attorneys are reminded of their professional responsibility to provide legal services to those unable to pay. With work, personal responsibilities and time constraints, attorneys may forget about their professional responsibility or feel too constrained to donate pro bono hours. By being required to report hours or contributions, attorneys may feel more of a pressure to "make time" to provide pro bono services. In addition, when it is time to report, those who have not done any pro bono in the past year may feel obligated to fulfill their responsibility through financial contributions.

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[42] *See* FL. RULES OF PROF'L RESPONSIBILITY R. 4-6.1 (1998); HI. SUPREME COURT R. 17(d) (2007); Ill. Supreme Court R. 756(f); IN. RULES OF PROF'L CONDUCT R. 6.7; MD. RULE OF PROCEDURE R. 16-903; MS. RULES OF PROF'L CONDUCT R. 6.1(e) & 6.1(f); NV. RULES OF PROF'L CONDUCT R. 6.1(b); RULE GOVERNING THE NM. B. R. 24-108(c); RULES OF THE CHIEF ADMIN. JUDGE R. 118.1(e)(14).

[43] *See Virginia Access to Justice Commission*, VIRGINIA JUDICIAL SYSTEM, http://www.courts.state.va.us/programs/vajc/home.html (last visited on Dec. 7, 2014) (The Access to Justice Commission was established in Virginia in 2013. The Commission is compromised of attorneys, judges, and others, and it's mission is to "promote equal justice in Virginia, with particular emphasis on the civil legal needs of Virginia residents.)

Opponents to pro bono reporting proffer some arguments against the requirement. However, these arguments can be dispelled by looking to the states that have had success with the program in the past.

B. Arguments against Pro Bono Reporting

One of the most common arguments against pro bono **reporting** is that it is the first step toward mandatory pro bono **participation**.[44] Opponents to pro bono reporting argue that a reporting requirement is a slippery slope that will lead to mandatory pro bono participation. Mandatory participation, opponents argue, is a violation of their 13th amendment right to be free from involuntary servitude and is a violation of the Takings Clause. However, Florida dispels this argument. As discussed in section V, part A, the state has had pro bono reporting for 20 years and has yet to adopt mandatory pro bono participation. There have been increases in both pro bono participation and financial donations, demonstrating the success of the reporting requirement and eliminating the need to consider mandatory participation. In addition, the Supreme Court held in *Mallard v. United States District Court for Southern District* that 42 U.S.C.S §1983 "does not authorize a federal court to require an unwilling attorney to represent an indigent litigant in a civil case."[45] The experience in Florida, combined with the holding in *Mallard*, makes mandatory pro bono participation seem unlikely.

Another argument is that the administrative burden of collecting the data would be greater than the benefits that would result from pro bono reporting.[46] However, looking to Florida, again, can dispel this argument. An ABA report estimated that it costs Florida $10,000 a

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[44] *Arguments For and Against Pro Bono Reporting*, A.B.A. http://www.americanbar.org/groups/probono_public_service/policy/arguments.html (last visited on Dec. 7, 2014)
[45] Mallard v. United States Dist. Court for Southern Dist., 490 U.S. 296, 296 (1989).
[46] *Arguments*, *supra* note 44.

year to collect and evaluate the data, modify the annual membership fee form, distribute information to committees and answer questions.[47] While reporting would add a small administrative cost, its benefits would greatly outweigh this cost. One idea is to follow in the footsteps of Florida. The Virginia State Bar, which is mandatory, already collects dues from Virginia attorneys each year via an online portal. An extra page could be added to this due collection form that requires you to report your hours or financial contributions for the year before submitting. The burden would be minimal but the benefits would be great, as discussed below.

In addition, some argue that enforcing pro bono reporting would be costly and difficult. Again, Maryland's experience can dispel this argument. Attorneys report in Maryland over the internet or through the mail.[48] Those attorneys who do not report their pro bono hours before the deadline are decertified from practicing law in the state of Maryland.[49] Shortly after July 1, the Court of Appeals is provided with a list of the attorneys who did not comply with the reporting requirement.[50] The Court then issues an order decertifying the attorneys, and the decertified attorney's burden to complete the necessary paper work to be recertified.[51] Because of this strict penalty and the cooperation of the courts, Maryland has a 99.6 percent reporting compliance rate.[52]

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[47] *Resources on Reporting Policies*, A.B.A., http://apps.americanbar.org/legalservices/probono/reportingguide.html (2002).
[48] *Pro Bono Service Report and IOLTA Report*, MD. COURT OF APPEALS, http://www.anasys-apr.com/probono/reporting_options.html (last visited on Dec. 7, 2014).
[49] *Id.*
[50] *Maryland Pro Bono: Frequently Asked Questions*, MD. COURTS, http://www.courts.state.md.us/probono/faqs.html (last visited Dec. 7, 2014).
[51] *Id.*
[52] MD. ACCESS TO JUSTICE COMM'N. & COURT OF APPEALS STANDING COMM. ON PRO BONO SERV., LONGITUDINAL ANALYSIS OF PRO BONO REPORTING: 2002-2012 3 (2014), *available at*

Finally, some opponents to reporting argue that the data could be collected through a voluntary reporting system, in which attorneys who want to report have the option, but are not required. This system would be a waste of Virginia's time and resources. Voluntary reporting has proven, in most cases, to be not effective, rendering so little data that it becomes useless. For example, Maryland had voluntary pro bono reporting for almost a decade. However, due to low response rates, no significant data could be collected, and the voluntary venture proved a waste of time and resources.[53] If enacted with strict penalties like Maryland's, reporting could collect viable data that would allow the State Bar and legal aid providers to measure the success of their programs.

V. The Impact of Reporting Requirements

Even if the reporting of pro bono hours yielded no higher return in financial contributions and hours donated, there is still a benefit in collecting the data. By having the data to compare, Virginia can measure the success and failure of new pro bono recruitment and programs implemented. However, the data suggests that mandatory pro bono reporting could have some impact on financial contributions and pro bono hours donated.

It is important to note that there is not sufficient data to measure the exact impact that the reporting requirement had on those states that have adopted it. To measure the real impact of the reporting requirement, it would have helped to know the amount of pro bono that was being done *before* implementation of the requirement and then to compare that to what was being done *after* the requirement went into effect. Unfortunately, before reporting

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http://www.courts.state.md.us/mdatjc/pdfs/longitudinalanalysisprobonopracticerepor2014accessible.pdf. [hereinafter *Md. Pro Bono Report*]

[53] *Id.*

requirements, states either: (1) did not collect data or (2) the data collected was so small and incomplete that the information was not statistically significant. These restrictions make it impossible to compare the pre-requirement pro bono levels with the post requirement levels, since there is no pre-requirement data.

However, after implementation of pro bono reporting, there is a trend of higher pro bono participation rates and growing financial contributions. These benefits could be looked at positively compared to Virginia's dismal rates. To illustrate the trend of post-implementation growth I selected three states to survey: Florida, Maryland and Illinois. Florida was chosen because it has had its pro bono program for 20 years and has a wealth of data to analyze. Maryland was chosen for its high compliance rates and strict penalties. Illinois was chosen for its data availability.[54] The following three states illustrate the positive impact pro bono reporting has had on the rise of financial contributions and pro bono participation.

A. Florida

The Supreme Court of Florida adopted pro bono reporting in 1993, becoming the first state to do so.[55] On June 23, 1993, the court adopted the Voluntary Pro Bono Plan, which "requires Florida bar members to annually report pro bono work and established an aspirational goal to annually provide at least 20 pro bono hours or contribute at least $350 to a

[54] Of the 9 states with a pro bono reporting, only 3 were chosen for the survey. Indiana and New York implemented pro bono reporting in 2013 and 2014, respectively, and thus there was not sufficient data available after implementation. Mississippi, Hawaii, Nevada, and New Mexico all seem to be collecting the data and not doing much with it. After looking at their bar and court websites and reaching out to pro bono representatives from the state, I was not able to receive any studies or data since implementation of the reporting requirement. This information may exist, however it seems to not be available as a report to the public.

[55] *Pro Bono Publico*, THE FLORIDA BAR, https://www.floridabar.org/DIVCOM/PI/BIPS2001.nsf/1119bd38ae090a748525676f0053b606/a8e811c59073e9f68525669e004d21f6?OpenDocument#Thepercent20Standingpercent20Committeepercent20onpercent20Properceent20Bon (2014).

legal aid organization."[56] The information is collected on the Florida Bar due statements and began in bar year 1994/1995.

Florida has had great success in growing pro bono participation and financial contributions since enacting the reporting requirement. As shown in Appendix A, the number of pro bono hours donated has increased from 806,874 hours in 1993/1994 to 1,701,503 in 2012/2013, an increase of 111 percent.[57] In addition, financial contributions to legal services organizations have increased from $1,519,781 in 1993/1994 to $4,852,888 in 2012/2013, an increase of 220 percent.[58] Not reporting pro bono hours is a disciplinary offense under the Florida rule; however a specific penalty is not laid out and neither the Florida Bar, the Florida Bar Foundation nor the Standing Committee on Pro Bono Services have a report listing the compliance rates of Florida Attorneys. Even without the compliance numbers, Florida's success is evident from their large increases in both pro bono hours donated and financial contributions.

B. Illinois

The Supreme Court of Illinois adopted Rule 756(f) in 2007, requiring that attorneys report the "approximate amount of his or her pro bono legal service and the amount of qualified legal contributions."[59] Failure to report pro bono hours is punishable by removal from the master roll and the attorney is deemed "not registered."[60] As shown in Appendix B, Illinois has had increases in pro bono participation 3 out of the past 5 years since initiating the

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[56] *Id.*
[57] *Id.; see* Appendix A.
[58] *Id.; see* Appendix A.
[59] *Rules Governing the Legal Profession and Judiciary in Illinois*, ILLINOIS ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION, https://www.iardc.org/rulessct.html#Rule756 (2013).
[60] *Id.*

reporting requirement.[61] In the two years that pro bono participation decreased—2011 and 2012-- the overall attorney population decreased at the same rate.[62] Furthermore, as seen in the data from Florida (*Appendix A*), downturn and growth are regular flows of a reporting system. Also, during the same time period, financial contributions grew almost 8 percent, from $14,779,088 to $15,919,963.

In addition, while overall pro bono hours decreased slightly from 2008-2012, "legal services provided to persons of limited means" and "legal services to enumerated organizations designed to address needs of persons of limited means" grew a combined 20 percent.[63] These services better capture the spirit of pro bono, providing legal aid to those of limited means or to organizations serving indigent individuals. The decrease in participation came from "legal services to enumerated organizations in furtherance of their purposes" and "training intended to benefit legal service organizations or lawyers providing *pro bono* services."[64] These services can include ones to organizations—such as a church, the symphony, etc.—that do not provide legal aid to those in need. While the later services are important and valuable, they do not capture the spirit of pro bono as wholly as the previous services. Although growth across the board would be ideal, the areas seeing growth better serve the purpose of pro bono, to serve the poor who cannot afford representation.

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[61] ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, ANNUAL REPORT OF 2012 at 7-8 (2012), *available at* www.iardc.org/annualreport2012.pdf.

[62] *American Bar Association National Lawyer Population by State*, A.B.A., http://www.americanbar.org/content/dam/aba/administrative/market_research/2013natl_lawyer10_year_trends.authcheckdam.pdf (2013).

[63] ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, ANNUAL REPORT OF 2012 at 7-8 (2012), *available at* www.iardc.org/annualreport2012.pdf.

[64] *Id.*; *see* Appendix C.

Data collection allows legal service organizations to track trends in pro bono participation and donations and to monitor the success of new programs. In addition, it allows organizations to fix programs that are negatively affecting the organization and to notice downward trends sooner. For example, there was down turn in pro bono participation of 4.9 percent from 2011-2012. With this data, the Illinois State Bar can monitor this slump and decide the best course of action, if any, needed. Without the collected data, the bar must wait until it noticed a lack of services in the community, a problem that would be more expensive and difficult to fix on the backside than implementing new programs on the front.

C. Maryland

Maryland Rule 16-903 requires each attorney licensed in Maryland to file a Pro Bono Legal Service Report Form with the Administrative Office of the Courts annually.[65] The rule took effect July 1, 2002 and now experiences a 99.6 percent compliance rate.[66] The compliance rate can be credited to Maryland's strict penalty for default: the decertification of the attorney.[67] Until an attorney submits his or her pro bono form, he is not certified. Thus, the data collected is as complete a picture as possible.

Since 2002, the percentage of full time lawyers meeting the 50-hour aspirational goal of Rule 16-903 has grown from 17.70 percent to 22.20 percent, an increase of 25 percent.[68] While the percentage of full time attorneys participating in pro bono decreased slightly (-1.89 percent), the hours provided by attorneys in Maryland have increased 16.74 percent since

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[65] MD. RULES OF PROCEDURE R. 6.1, *available at* http://probonomd.org/about-us/md-pro-bono-rules/.

[66] MD. ACCESS TO JUSTICE COMM'N. & COURT OF APPEALS STANDING COMM. ON PRO BONO SERV., LONGITUDINAL ANALYSIS OF PRO BONO REPORTING: 2002-2012 3 (2014), *available at* http://www.courts.state.md.us/mdatjc/pdfs/longitudinalanalysisprobonopracticerepor2014accessible.pdf. [hereinafter *Md. Pro Bono Report*].

[67] *See supra* note 64.

[68] *Md. Pro Bono Report*, *supra* note 65 at 15.

2002.[69] In addition, financial contributions to legal aid have increased 89.07 percent.[70] This trend helps support the argument for pro bono that reporting raises awareness of an attorney's professional responsibility to serve the poor and help the legal aid community. Even though the percentage of attorneys participating in pro bono projects has decreased slightly, overall attorneys that are participating are donating more hours, hitting the aspirational goal at a higher percentage, and donating more money to legal aid.

D. Voluntary/No Reporting States

It is difficult to compare the pro bono participation rates in states that have voluntary and no pro bono reporting requirements because the data either is not collected or collected at such a small rate that it is not statistically significant. States with voluntary pro bono have low response rates ranging from 8 percent to 20 percent.[71] Even in states like Virginia, where a study was undertaken specifically to measure pro bono participation, the study was not fully indicative of the complete pro bono climate because it did not measure those attorneys who do pro bono ad hoc.[72]

However, looking to Maryland "pre-requirement reporting", the inefficiencies in voluntary pro bono reporting are apparent. For almost a decade, Maryland mailed voluntary pro bono reports to attorneys with their Client's Security Trust Fund dues.[73] During this period, the highest response rate received was 7 percent, which did not allow for statistical analysis. In

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[69] *Md. Pro Bono Report, supra* note 65 at 14, 24.
[70] *Md. Pro Bono Report, supra* note 65; *See* Appendix D.
[71] *State Reporting Policies*, A.B.A. http://www.americanbar.org/groups/probono_public_service/policy/reporting_of_pro_bono_service.html (last updated Oct. 2, 2014).
[72] *See supra* note 6.
[73] *Maryland Pro Bono: Frequently Asked Questions*, MD. COURTS, http://www.courts.state.md.us/probono/faqs.html (last visited Dec. 7, 2014).

2007, Maryland implemented a pro bono reporting requirement, and now enjoys a response rate of over 99 percent.[74] Maryland's journey from voluntary reporting should serve as a warning for Virginia to not waste time, resources and money on implementing an inefficient voluntary reporting requirement.

Looking at the positive results in Florida, Illinois and Maryland, Virginia should consider adopting a pro bono reporting requirement to help close the justice gap. Even with the benefits of the reporting requirement, there will still be some major barriers to cross before rolling out the pro bono reporting system. However, once these hurdles are cleared, the roll out should work in a seamless and effective manner.

VI. Hurdles to Adopting a Pro Bono Reporting Requirement in Virginia

The two biggest hurdles to adopting a reporting requirement in Virginia are confidentiality and mandatory pro bono **service**. To please the opposition and move Virginia closer to being a pro bono reporting state, advocates of the reporting requirement must address these issues.

First, for Virginia to consider adopting a reporting requirement, it will be necessary to keep the information confidential. The threat of having one's name attached to acts (or lack thereof) of charity will create backlash from those interested in running for public office who do not want their lack of charity on display as well as attorneys who do not want to participate in pro bono. Keeping reports confidential should not be an issue in reaching the goals that pro bono reporting strives to achieve.

[74] *Md. Pro Bono Report, supra* note 65 at 3.

Maryland keeps their findings private and does not require attorneys to divulge the names of recipients of services and donations. Even with this confidentiality provision, Maryland has still seen an increase in financial contributions and pro bono participation. By keeping the names and recipients private, Virginia could still meet their goal of encouraging pro bono participation and financial contributions as well as collecting data to measure the success of programs.

A second necessity when proposing a reporting requirement is to squash the argument that a reporting requirement is just the first step toward mandatory participation. As mentioned before, Florida has had their reporting system in place for 20 years and have not yet adopted mandatory pro bono service. In addition, while one of the goals is to increase pro bono participation and financial contributions, the second, and equally important goal, is to collect reliable, consistent and accurate data. This goal can be met without mandatory pro bono participation, but will require a reporting requirement.

Finally, it would be beneficial to address the reasons why mandatory pro bono **participation** is not in the best interest of legal aid organizations and Virginia. These include attorneys having to take on cases not in their specialty, the administrative burden of tracking and enforcing the mandate, and the fear that attorneys will not zealously represent clients. While there are many arguments for mandatory pro bono, if Virginia wants a chance of implementing a reporting requirement, a proposal will have to lay out that it is no way seeking mandatory pro bono service.

After clearing these hurdles, Virginia will be in a position to roll out the pro bono reporting requirement. The most efficient way to do a roll out would be through the Virginia

State Bar website. The Virginia State Bar is mandatory for all Virginia attorneys and all attorneys are required to pay dues each year to the bar. An attorney can pay his or her dues through an online portal or by mailing in a form with payment. This dues statement can include a prominent description of the new requirement, explanation of the penalty for non-compliance, and space to report the pro bono hours donated and any financial contributions made. The online form should not allow you to submit your dues statement until you enter your information in the correct space.

In addition to an explanation of the new rule on the dues statement, there should be a definition of what constitutes pro bono work. The current definition under the Virginia State Bar Professional Guidelines Rule 6.1 lists what pro bono public service includes: "Pro bono public services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services."[75]This should be included with the dues statement to remind attorneys what work constitutes pro bono participation.

In terms of non-compliance, Virginia should adopt a strict penalty like Maryland. If attorneys do not return a report of their pro bono contribution, they will be treated as though they did not pay dues and be removed from the Virginia State Bar. It will be the attorney's responsibility to initiate the recertification process, and a similar system to Maryland's can be organized. By following this methodological roll out, meeting opposition with an openness to negotiate and learning from the mistakes of other states, Virginia can adopt a reporting requirement that will benefit legal service organizations, attorneys and the indigent citizens of the state.

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[75] VA. STATE BAR PROF'L GUIDELINES R. 6.1, *available at* http://www.vsb.org/pro-guidelines/index.php/rules/public-service/rule6-1/.

VII. Conclusion

In conclusion, Virginia should adopt a pro bono reporting requirement. Studies show that there is a growing justice gap and that pro bono participation and financial contributions to legal aid can help close this gap. When looking at states that have pro bono reporting there seems to be a correlation between the implementation of the requirement and a rise in pro bono hours and financial contributions to legal aid. Even if this rise is not a result of the reporting requirement, the data collected from these reports is beneficial to measuring the success of the delivery of legal aid and in designing programs to increase pro bono participation and financial contributions. Financial contributions are imperative to the success of legal aid organizations, and the reporting requirement can help raise those contributions.

Attorneys have a professional responsibility to serve the community and those in need of representation that cannot afford it. A reporting requirement would help inform attorneys about pro bono opportunities, offer a little positive peer pressure, and remind each attorney of this requirement.

Appendix A

Florida Pro Bono Hours Donated and Dollars Contributed to Legal Aid[76]

Hours of pro bono legal assistance donated to the poor and dollars contributed to legal aid organizations

Date	Pro Bono Hours Donated	Dollars contributed to legal aid
July 1, 1993- June 30, 1994	806,874	$1,518,781
July 1, 1994- June 30, 1995	561,351	$876,837
July 1, 1995- June 30, 1996	709,070	$1,169,718
July 1, 1996- June 30, 1997	842,305	$1,427,263
July 1, 1997- June 30, 1998	989,333	$1,861,627
July 1, 1998- June 30, 1999	1,068,666	$1,688,708
July 1, 1999- June 30, 2000	1,146,501	$1,642,033
July 1, 2000- June 30, 2001	1,206,357	$2,314,181
July 1, 2001- June 30, 2002	1,247,546	$2,459,660
July 1, 2002- June 30, 2003	1,298,202	$3,746,150
July 1, 2003- June 30, 2004	1,457,644	$3,790,700
July 1, 2004-June 30, 2005	1,322,138	$3,408,484
July 1, 2005-June 30, 2006	1,450,505	$3,924,792
July 1, 2006- June 30, 2007	1,398,467	$4,446,486
July 1, 2007- June 30, 2008	1,489,099	$5,288,466
July 1, 2008- June 30, 2009	1,545,157	$4,443,830
July 1, 2009- June 30, 2010	1,614,676	$4,637,265
July 1, 2010- June 30, 2011	1,622,449	$4,812,275
July 1, 2011- June 30, 2012	1,675,498	$4,885,236
July 1, 2012- June 30, 2013	1,701,503	$4,852,888

[76] *Pro Bono Publico*, THE FLORIDA BAR, https://www.floridabar.org/DIVCOM/PI/BIPS2001.nsf/1119bd38ae090a748525676f0053b606/a8e811c59073e9f68525669e004d21f6?OpenDocument#Thepercent20Standingpercent20Committeepercent20onpercent20Properce nt20Bon (2014).

Appendix B

Illinois Pro Bono Hours Donated and Dollars Contributed to Legal Aid[77]

Hours of pro bono legal assistance donated to the poor and dollars contributed to legal aid organizations

Date	Pro Bono Hours Donated	Dollars contributed to legal aid
2008	2,192,345	$14,779,088
2009	2,197,041	$14,901,582
2010	2,328,770	$15,266,660
2011	2,255,024	$15,419,130
2012	2,142,527	$15,919,963

[77] ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, ANNUAL REPORT OF 2012 at 7-8 (2012), *available at* www.iardc.org/annualreport2012.pdf.

Appendix C

Illinois Report on Pro Bono Hours 2008-2012[78]

Categorized by type of pro bono provided

	2008	2009	2010	2011	2012
Type of *Pro Bono Service*	**Service Hours**	**Service Hours**	**Service Hours**	**Service Hours**	**Service Hours**
Legal services to persons of limited means	1,102,907	1,113,778	1,238,967	1,207,199	1,130,480
Legal services to enumerated organizations designed to address needs of persons of limited means	301,680	375,260	365,371	365,197	355,062
Legal services to enumerated organizations in furtherance of their purposes	714,308	660,022	673,051	634,164	605,505
Training intended to benefit legal service organizations or lawyers providing *pro bono* services	73,450	47,981	51,381	48,646	54,480
Total:	2,192,345	2,197,041	2,328,770	2,255,024	2,142,527

[78] *Id.*

Appendix D

Maryland Pro Bono Hours Donated and Dollars Contributed to Legal Aid[79]

Hours of pro bono legal assistance donated to the poor and dollars contributed to legal aid organizations

Date	Pro Bono Hours Donated	Dollars contributed to legal aid
2002	995,615	$2,208,001.00
2003	1,031,216	$3,812,263.00
2004	1,071,968	$2,821,759.00
2005	1,098,609	$2,759,360.00
2006	1,097,662	$3,220,691.00
2007	1,069,666	$2,957,450.00
2008	1,109,686	$2,872,919.00
2009	1,139,866	$3,244,816.00
2010	1,181,028	$3,661,518.73
2011	1,163,859	$4,060,551.14
2012	1,162,232	$4,174,712.34
Increase over time	16.74%	89.07%

[79] MD. ACCESS TO JUSTICE COMM'N. & COURT OF APPEALS STANDING COMM. ON PRO BONO SERV., LONGITUDINAL ANALYSIS OF PRO BONO REPORTING: 2002-2012 3 (2014), *available at* http://www.courts.state.md.us/mdatjc/pdfs/longitudinalanalysisprobonopracticerepor2014accessible.pdf.

Appendix E

Pro Bono Reporting State by State

States with Required Pro Bono Reporting								
State	Reporting order/rule	Date Requirement Adopted	Type of Bar	% of Attorneys Doing Pro Bono	Average Hours of Pro Bono Per Attorney*	Total # of Pro Bono Hours Provided	Comments	Contact
Florida	Required reporting on dues statement. Failure to report is a disciplinary offense. (Florida Rules of Professional Conduct Rule 4-6.1)	1993, upheld 1997	Unified	**2009:**51% **2010:**52% **2011:**51% **2012:**51% **2013:**51%	**2009:**22 **2010:**22 **2011:**23 **2012:**22 **2013:**22	**2009:**1,545,157 **2010:**1,614,676 **2011:**1,681,775 **2012:**1,695,466 **2013:**1,740,019	Pro bono can consist of legal work OR financial donation to legal aid. Donations: 1995-1996: $1,238,263; 2011-2012: ($4,885,236)	Contact: Kent Spuhler, 850-385-7900 kent@floridalegal.org
Hawaii	Required reporting. (Order Amending Rule Supreme Court Rule 17(d))	2007	Unified	**2009:**50% **2010:**47% **2011:**43% **2012:**41%	**2009:**32 **2010:**68 **2011:**62 **2012:**69	**2009:**231,189 **2010:**232,325 **2011:**196,351 **2012:**181,490	Hawaii RPC 6.1. Pro bono can consist of legal work OR financial donation to legal aid.	Contact: Dew Kaneshiro 808-528-7051 dew@vlsh.org
Illinois	Required reporting on annual registration fee statement. (Illinois Supreme Court Rule 756(f))	2007	Voluntary	**2009:**32% **2010:**30% **2011:**34% **2012:**34% **2013:**34%	**2009:**26 **2010:**27 **2011:**— **2012:**24 **2013:**23	**2009:**2,197,041 **2010:**2,328,770 **2011:**2,255,024 **2012:**2,142,527 **2013:**2,098,472	Pro bono definition not in IL RPC. Pro bono defined inSupreme Court Rule 756(f). Service to "working poor" counts.	Contact: Kelly Tautges 312-554-8356 ktautges@chicagobar.org
Indiana	Reporting required w/ attorney annual registration.Supreme Court Order creating IN Rule for Professional Conduct 6.7.	Sept. 2014	Voluntary	**N/A**	**N/A**	**N/A**	Rule effective 1/1/15.	Contact: Marilyn Smith Indiana Bar Foundation 317-269-2415 msmith@inbf.org
Maryland	Reporting required "as a condition of practice." (See	2002	Voluntary	**2009:**54%	**2009:**33	**2009:**1,139,866	*Percentage attorneys doing pro bono is full-	Contact: Sharon Goldsmith 410-837-9379

	FAQ 10's reference to Rule of Procedure 16-903.) Required form: "Lawyer Pro Bono Service Report"			**2010:**59 % **2011:**58 % **2012:**57 %	**2010:** 34 **2011:** 32 **2012:** 31	**2010:**1,181,028 **2011:**1,163,859 **2012:**1,162,232	time practicing lawyers, not all licensed who reported.	sgoldsmith@probonomd.org
Mississippi	Annual reporting requirement. (Mississippi Rules of Professional Conduct 6.1(e) & 6.1(f))	2007	Unified	**2009:**53 % **2010-11:** 44% **2011-12:** ------ **2012-13:** ------	**2009:** 24 **2010-11:** 14 **2011-12:** 15 **2012-13:** 15	**2009:**183,016 **2010-11:**122,430 **2011-12:**134,409 **2012-13:**120,469	Pro bono can consist of legal work OR financial donation to legal aid.	Contact: Davetta Lee 601-948-4471 dlee@msbar.org
Nevada	Annual reporting requirement. (Nevada Rule of Professional Conduct 6.1(b)) Required form: "Annual Pro Bono Reporting Form." Failure to report = possible $100 fine.	2007	Unified	**2009:**43 % **2010:**31 % **2011:** ------ **2012:**34 % **2013:**33 %	**2009:** 44 **2010:** 48 **2011:** ------ **2012:** 50 **2013:** 47	**2009:**115,443 **2010:**140,601 **2011:** ------ **2012:**139,647 **2013:**122,648	Pro Bono Definition Used: 6.1(a)(1)-(2) (Tiers 1 & 2)	Contact: Angela Washington 702-382-2200 angelaw@nvbar.org
New Mexico	Annual reporting requirement, called "Certification." Certification form submitted along with State Bar member fees statement. (Rule Governing the New Mexico Bar 24-108(C))	2008	Unified	**2009:**67 % **2010:**65 % **2011:** ------ **2012:** ------ **2013:**57 %	**2009:** 31.5 **2010:** 31.2 **2011:** ------ **2012:** ------ **2013:** 27.3	**2009:**275,733 **2010:**271,261 **2011:** ------ **2012:** ------ **2013:**249,888	"Pro Bono" can consist of legal assistance and/or financial contribution to civil legal aid.	Contact: Paul Haidle 505-797-6077 phaidle@nmbar.org

** Average is the total # of pro bono hours divided by the total number of inactive and active attorneys in the state.*

States with Voluntary Pro Bono Reporting						
State	Reporting Status	Date of Adoption	Type of Bar	Number Reporting	Comments	Contact
Arizona	Voluntary Reporting on dues statement	1994	Unified		Response rates: 31% in '95; 35% in '96.	Contact: Betty Flores

						602-252-4804 x215 Betty.Flores@staff.azbar.org
Connecticut	Voluntary Reporting	January 2012	Unified	**2012:**19,300 attys **2013:**17,350 attys **2014:**18,089 attys	After the 2011 Pro Bono Summit, CT adopted a voluntary reporting practice as part of the annual electronic attorney registration.	Contact: Krista Hess 860-263-2734 Krista.Hess@jud.ct.gov
Georgia	Voluntary Reporting on dues statement and on webpage	6/1/2000	Unified		Response rate: 8% in '98 via CLE Form; Rule 6.1 adopted 6/00; reporting policy adopted after promotion by two members of S.Ct.	Contact: Michael Monahan 404-527-8762 mike@gabar.org
Kentucky	Voluntary Reporting on dues statement	6/14/2005	Unified		Rule 6.1.Response rates: 12% in '96; 15% in '98; 16% in '07.	Contact: Jackie Duncan 859-255-9913 x18 jduncan@ajfky.org
Louisiana	Voluntary Reporting full page form enclosed with dues statement	6/1/1998	Unified		Response rates 8-9% in '98 and 15% in '01; 11% in '02; 11% in '03; 11% in '04; 11% in '05; 10% in '06.	Contact: Monte Mollere 504-619-0146 mmollere@lsba.org
Michigan	Voluntary Reporting Underconsideration		Unified		Working Group WG of Planning Cmte. PC of Access to JWorking Group WG of Planning Cmte. PC of Access to Justice Task Force AJTF recommended later consideration of required if voluntary "does not sufficiently increase attorney participation."	Contact: Robert Mathis 517-346-6412 rmathis@mail.michbar.org
Montana	Voluntary Reporting	6/22/2005	Unified		60% in '10	Contact: Patricia Fein 406-794-7824 pfein@mt.gov
Ohio	Voluntary Reporting	9/20/07	Voluntary	X	Supreme Court commentary Response Rates: 12% in '08	Contact: E. Jane Taylor Ohio Legal Assistance Foundation 614-715-8568 jtaylor@olaf.org
Oregon	Voluntary Reporting Reporting Form		Unified			Contact: Cathy Petrecca 503-431-6355 cpetrecca@osbar.org
Tennessee	Voluntary Reporting on TBA dues statement since 2006	6/27/2005	Voluntary	X on TBA dues statement	Compliance rates: 4% in '05; 6% in '06; 20% in '07 increase due to more prominent placement on dues statement.	Contact: Sarah Hayman 615-277-3233 shayman@tnbar.org
Texas	Voluntary Reporting in 2005, began doing an annual telephone survey of 500 randomly selected attorneys about their pro	6/14/2005	Unified		Resolution.Response rates:94/95 - 39.5%; 95/96 - 40.1%; 96/97 - 34.7%; 97/98 - 21.3%; 98/99 - 17.3%; 99/00 -	Contact: Trish McAllister 512-427-1855 trish.mcallister@texasbar.com

	bono work instead of voluntary reporting - more statistically reliable				21.1%; 2000 - 38.7%; 2001 - 37.9%. Format changes '97-'99 reduced prominence of legal services to poor category.	
Virginia	Voluntary Reporting		The Virginia State Bar is required and unified, while the Virginia Bar Association VBA is voluntary.		Resolution to Enhance Pro Bono Publico passed by Bar Council several years ago that encouraged attorneys to report voluntarily.	Contact: Maureen Petrini 804-775-0522 petrini@vsb.org
Washington	Voluntary Reporting a separate form included with the annual licensing packet	9/1/2003	Unified		Compliance rates: 13% in '03; 13% in '04; 13% in '05; 15% in '06.	Contact: Allison Durazzi 206-733-5942 allisond@wsba.org

States with No Pro Bono Reporting

State	Reporting Status	Type of Bar	Number Reporting	Comments	Contact
Alabama	No Reporting	Unified	X		Contact: Linda Lund 334-269-1515 x2246 linda.lund@alabar.org
Alaska	No Reporting	Unified	X		Contact: Krista Scully 907-272-7469 sculiyk@alaskabar.org
Arkansas	No Reporting	Voluntary	X	Committee recommended new required reporting 6.1 rule - not adopted yet by Supreme Court.	Contact: Amy Johnson 501-376-3423 x112 adjohnson@arkansasjustice.org
California	No Reporting	Unified	X		Contact: Sharon Ngim 415-538-2267 sharon.ngim@calbar.ca.gov
Colorado	No Reporting Required Reporting rejected	Voluntary	X	Rejected S.Ct. rejected in 5/99	Contact: Kathleen Schoen 303-824-5310 kschoen@cobar.org
DC	No Reporting	Unified	X		Contact: Monika Kalra Varma

					202-737-4700 x3201 MKVarma@dcbar.org
Delaware	No Reporting		X		Contact: Susan Simmons 302-658-5279 x101 ssimmons@dsba.org
Idaho	No Reporting	Unified	X		Contact: Anna Almercio 208-334-4510 x1870 aalmerico@isb.idaho.gov
Iowa	No Reporting	Voluntary	X		Contact: Brett Toresdahl 515-244-8617 isbavlp@dwx.com
Kansas	No Reporting	Voluntary	X		Contact: Anne Woods 785-861-8838 awoods@ksbar.org
Maine	No Reporting	Voluntary	X		Contact: Juliet Holmes Smith 207-774-5518 jholmes-smith@vlp.org
Massachusetts	No Reporting Required Reporting rejected	Voluntary	X	Cmte. of Supreme Judicial Court SJC recommended required in preliminary report 4/98 but eliminated from final report 11/98 due to controversy.	Contact: Sheila Hubbard 617-423-0648 shubbard@vlpnet.org
Minnesota	No Reporting	Voluntary	X	In 7/99, MSBA approved recommendation to petition S.Ct. for "required reporting" to be included with annual attorney registration statement. Petition to S.Ct. filed 10/99, hearing 12/99, denied 4/00: "Would not significantly advance or assist in the obligation of lawyers to provide pb. svcs."	Contact: Steve Marchese 612-278-6308 smarchese@mnbar.org
Missouri	No Reporting	Unified		Rule 6.1. Average 10% response rate.	Contact: Robert Stoeckl 573-638-2225 rstoeckl@mobar.org
Nebraska	No Reporting	Unified	X		Contact: Jean McNeil 800-927-0117 jmcneil@nebar.com
New Hampshire	No Reporting	Unified			Contact: Virginia Martin 603-224-6942 vmartin@nhbar.org
New Jersey	No Reporting	Voluntary		Statewide required pro bono - attorneys can be assigned one pro bono case per year unless exempt b/c provided 25 hours of pro bono services to an approved provider.	Contact: Sharon Balsamo 732-937-7505 x7544 sbalsamo@njsba.com
North Carolina	No Reporting	See Comments	X	The North Carolina Bar Association is a voluntary bar association. The North Carolina State Bar is the mandatory, regulatory agency in North Carolina.	Contact: Michelle Cofield 919-657-1565 mcofield@ncbar.org
North Dakota	No Reporting	Unified	X		Contact: Carrie Molander 701-255-1404

					carrie@sband.org
Oklahoma	No Reporting	Unified	X		Contact: Karen "Sunny" Langdon 918-295-9422 karen.langdon@laok.org
Pennsylvania	No Reporting	Voluntary	X	http://www.pabar.org/pdf/StateBarArticleProBonoService.pdf. Also,http://www.pabar.org/public/probono/countyprobono.asp for a county-by-county report of pro bono activities	Contact: David Trevaskis 800-932-0311 david.trevaskis@pabar.org
Rhode Island	No Reporting	Unified	X		Contact: Susan Fontaine 401-421-7722 sfontaine@ribar.com
South Carolina	No Reporting	Unified	X		Contact: Jill Rothstein 803-799-6653 jill.rothstein@scbar.org
South Dakota	No Reporting	Unified	X		Contact: Cheryl Hanna 605-222-5159 access.to.justice@sdbar.net
Utah	No Reporting	Unified		Rule 6.1.S.Ct. rejected Bar Commission's required proposal.	Contact: Michelle Harvey 801-297-7027 Michelle.Harvey@utahbar.org
Vermont	No Reporting	Voluntary		S.Ct. Cmte. examining pro bono issues, including reporting.	Contact: Angele Court 802-863-7153 acourt@lawlinevt.org
West Virginia	No Reporting	Voluntary	X		Contact: Catherine Eckley 866-401-6439 ceckley@lawv.net
Wisconsin	No Reporting	Unified	X	In 2006, Supreme Court's Ethics 2000 Commission proposed required reporting. The State Bar opposed the changes, urging the Court to adopt ABA Model Rule 6.1 instead, which the court did - effective 7/1/07.	Contact: Jeff Brown 608-250-6177 jbrown@wisbar.org
Wyoming	No Reporting	Unified	X		Contact: Nancy Shore 307-632-9061 nshore@wyomingbar.org

80

[80] *See* AMERICAN BAR ASSOCIATION, http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html (last updated Decemeber 23, 2014).