

# Is there a Pro Bono Gap in Virginia?

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How much pro bono legal work is being performed each year by Virginia lawyers? This is a timely and important question. At a time when Virginia's legal aid programs are reeling from the double whammy of severe federal funding cuts and collapsing revenues from Interest on Lawyer Trust Accounts, there is a pressing need for pro bono legal work on behalf of low-income Virginians. Over the last three years, Virginia's legal aid programs have lost more than one-fifth of their attorneys because of these funding losses, even while the state's poverty population has increased 32 percent over the last decade. The "Justice Gap" is yawning wider, leaving more and more low-income Virginians confronting a tilted playing field in our civil justice system. With lawyers effectively holding the keys to the courthouses, low-income Virginians who cannot afford an attorney are locked out of that system. Is it realistic to ask Virginia's lawyers to do more? Are Virginia lawyers doing all the pro bono work that can be expected of them? Or is there a "Pro Bono Gap" between the aspirational goals of Rule 6.1 of the Rules of Professional Conduct and the actual performance of Virginia's lawyers?

Last year, the Virginia State Bar's Access to Legal Services Committee set out to try to shed some light on these questions. As a starting point for our analysis, 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. According to VSB membership reports, there are 23,478 active Virginia lawyers practicing in the commonwealth. If each of them met the minimum aspirational goal established by Rule 6.1, Virginia lawyers would log a total of 939,120 hours of pro bono legal services annually.

## Pro Bono Work Through Legal Aid-Sponsored Pro Bono Programs

As an initial step to see how Virginia lawyers as a group were performing against this benchmark, we compiled and analyzed existing case data from Virginia's legal aid societies. Each of Virginia's legal aid programs operates pro bono programs involving the members of their local bar associations. They routinely report their case-closing statistics to the Legal Services Corporation of Virginia (LSCV) and the VSB, including

attorneys who have participated in pro bono activities through the local legal aid offices during the year, as well as the total number of pro bono hours donated by those volunteer attorneys. Aggregating these statistics, we learned that just over 1,000 attorneys (4.3 percent) of the 23,478 active Virginia lawyers participated in pro bono activities sponsored by the legal aid programs, donating more than 19,000 hours.

## Pro Bono Work Through Freestanding Pro Bono Programs

We recognized that the legal aid pro bono case statistics, while representing an important, foundational component of pro bono work in Virginia, did not portray the full picture of pro bono work in Virginia. We know that there are a number of independent freestanding organizations scattered around the state that operate their own pro bono programs. Unfortunately, these organiza-

tions do not report their case statistics to the VSB, as they are not licensed as legal aid societies under the VSB's legal aid society regulations. Accordingly, we undertook to survey them in an effort to gauge the amount of

pro bono work being performed under their auspices — perhaps the first ever statewide survey of non-legal aid pro bono programs.

We compiled a list of organizations through the state that might potentially be sponsoring pro bono activities for Virginia lawyers. We generated a list of thirty-two organizations that appeared to operate some form of pro bono program. These included some well-estab-

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statistics on pro bono work performed through their offices. For the 2011–2012 grant year, the legal aid offices across Virginia reported that they concluded, or closed, approximately 35,000 cases for low-income Virginians, while pro bono attorneys working on behalf of legal aid clients closed an additional 3,500 cases.

The legal aid programs also record and report the number of volunteer

lished pro bono organizations such as the Community Tax Law Project and the Northern Virginia Pro Bono Law Center, as well as law firm-sponsored programs, law school-sponsored programs, faith-based initiatives, and other specialty niche programs. In the spring of 2013, we contacted each of these organizations and provided them with a link to an online survey designed to solicit basic data on their pro bono programs: the number of pro bono cases concluded in the last year, by region, if available; the number of participating pro bono attorneys; and the number of hours of legal services donated by these attorneys in the cases they concluded. If the organizations did not have exact numbers, we asked that they provide us with their best estimates.

We received responses from twenty-four of the organizations. The eight organizations that did not respond to the survey appeared either to be defunct or not currently sponsoring a pro bono program. Some responding organizations indicated they did not actually have a pro bono program; others indicated that they collaborated with a legal aid program or another organization, meaning that their data would be redundant. When we weeded these out, we had fourteen organizations responding to our survey that operated their own pro bono program independently of a legal aid program. Two of these organizations indicated that they did not keep track of the data we requested: they did not know how many pro bono cases were concluded, how many attorneys assisted, or how many hours they donated. The remaining twelve organizations were able to provide at least some of the data we were seeking, although a majority of them indicated they were providing rough estimates, not actual counts.

Compiling this data, we found that there is a significant amount of pro bono work being undertaken through a number of these independent pro bono organizations. Just over 1,800 cases were reported to have been concluded over the previous year by pro bono attorneys

volunteering through the independent pro bono organizations (compared to the 3,561 cases handled by pro bono attorneys volunteering through legal aid-sponsored pro bono programs). The majority of these pro bono cases were in northern and central Virginia. The largest single category of legal work being undertaken by non-legal-aid-sponsored pro bono programs was immigration law. The independent pro bono programs reported that approximately 1,100 attorneys assisted over the last year, donating about 17,500 hours.

**A Pro Bono Gap?**

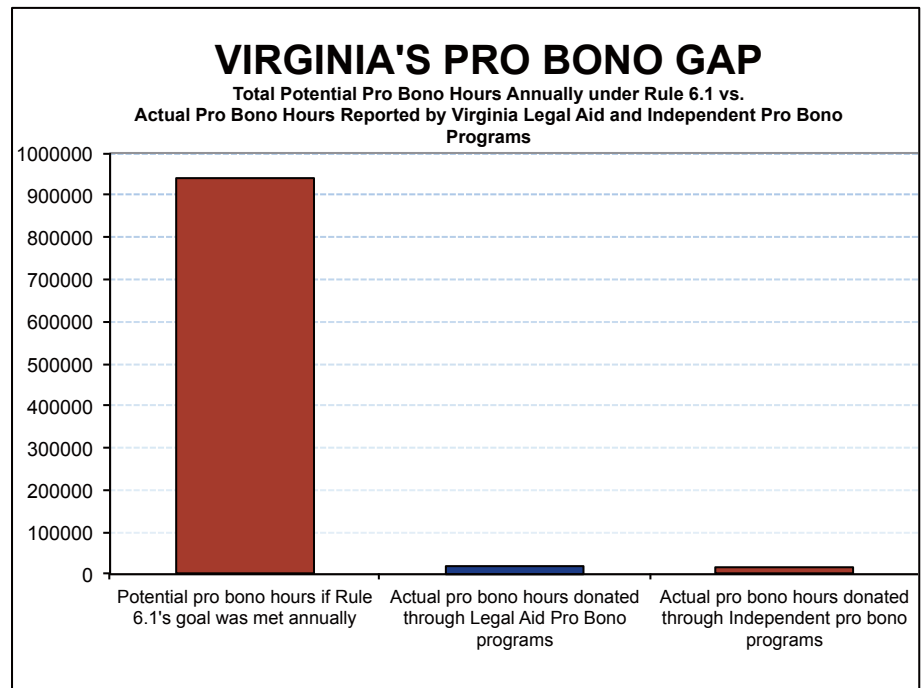
We then combined the data from the legal aid-sponsored pro bono programs and the independent pro bono programs. We found that 2,093 Virginia lawyers participating in organized pro bono programs concluded a total of 5,363 pro bono cases over the previous year, donating 36,698 hours of legal services. This suggests that less than 9 percent of Virginia’s active lawyers rendered any pro bono legal services through an organized pro bono program, whether sponsored by a legal aid society or by another organization. Remember, we had determined that Rule

6.1 established an aspirational benchmark of 939,120 hours of pro bono legal services performed annually by the 23,478 attorneys actively practicing within Virginia. Comparing the aspirational goal set by Rule 6.1 with the best data we were able to compile for pro bono work performed through organized pro bono programs, we found that, as a statewide community, we are performing less than one-twenty-fifth of the pro bono work that the rule expects of us — 3.9 percent, to be precise.

The graph below dramatically depicts the Pro Bono Gap that we found.

Having made this dramatic point, we acknowledge that there is undoubtedly a great deal of pro bono work being undertaken by Virginia’s lawyers on an ad hoc basis, rather than through any organized pro bono program. Lawyers certainly render pro bono legal services to needy folks referred to them through their churches, synagogues, and other faith groups, by friends and neighbors, from colleagues, or simply when a prospective client with a compelling story appears at their office lacking the ability to pay for their services.

Unfortunately, we have no mechanism in place for tracking the amount of



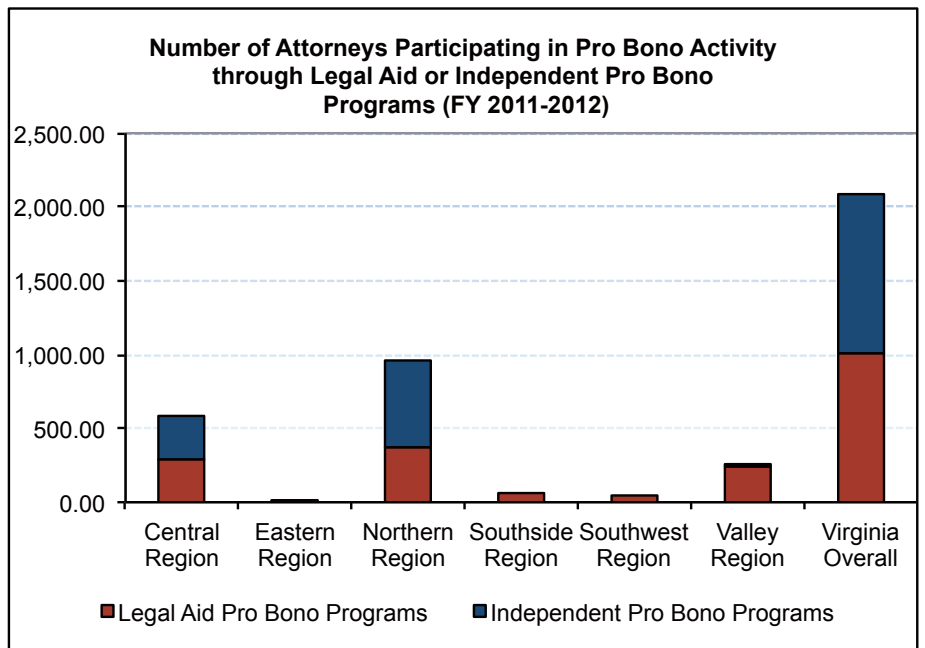
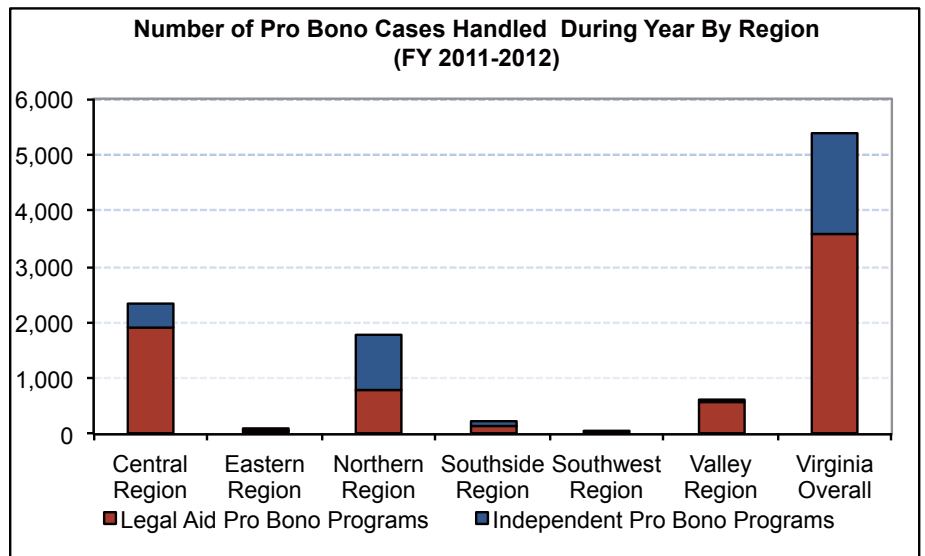
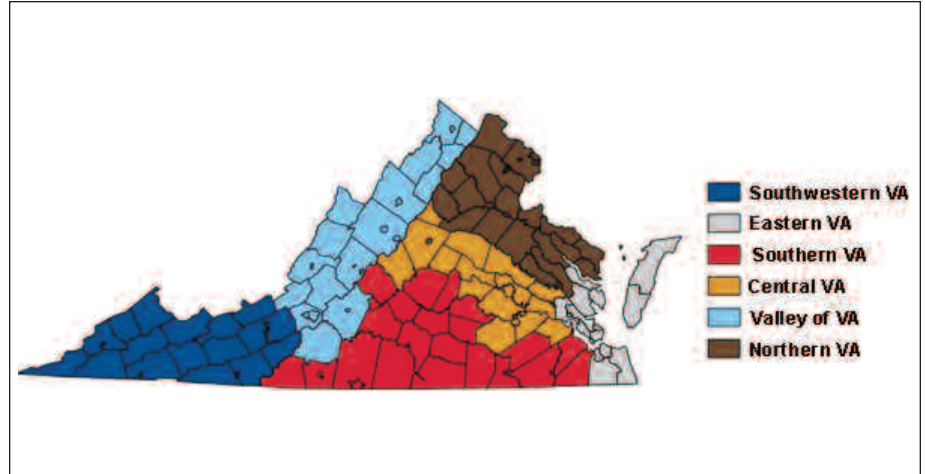
pro bono work being undertaken by Virginia’s lawyers outside of organized pro bono programs. However, a recent study by the American Bar Association may help us to extrapolate this in a very rough fashion. In March 2013, the ABA released a report titled “Supporting Justice III: A Report on the Pro Bono Work of America’s Lawyers.”<sup>11</sup> In this study, the ABA undertook a statistically sampled and weighted survey of nearly 3,000 lawyers across the United States, eliciting information about their performance of pro bono work. Among its findings, the study found that slightly more than a fourth (27 percent) of the pro bono work performed was through a legal aid program, while roughly another fifth (21 percent) was through a non-legal aid pro bono program. The balance (52 percent) of the pro bono work performed by American lawyers comprised ad hoc pro bono cases informally referred by other lawyers, family, friends, judges, religious organizations, and other sources.

Assuming the same breakdown applies in Virginia, we can extrapolate that roughly an equal amount of pro bono work is being undertaken outside of organized pro bono programs, thereby doubling the numbers our data initially suggested. If that assumption is true, then the amount of pro bono undertaken annually by Virginia lawyers would be more in the range of 76,000 hours. Even so, Virginia lawyers would be performing only about 8 percent of the pro bono legal work envisioned by Rule 6.1.

**Regional Variations**

We analyzed our pro bono data by region to see if there were any significant variations in pro bono participation across the state. The Legal Services Corporation, the conduit for federal funding for civil legal services, has divided Virginia into six regions; we used those geographical subdivisions for our analysis.

We found that the central Virginia region (Richmond, Petersburg,



Charlottesville, and surrounding counties) boasted the greatest number of pro bono cases handled through the legal aid-sponsored programs and the independent pro bono programs, followed by northern Virginia, and the Valley. In contrast, the eastern, southern, and southwestern regions had comparatively very few pro bono cases.

The northern region had the greatest number of attorneys participating in organized pro bono programs, and the greatest number of hours of donated legal services, followed by central Virginia. This is not surprising, since so many lawyers live and work in those areas.

We then compared the number of pro bono cases, attorney volunteers, and donated hours in each legal aid region to the number of attorneys overall in each region to gauge relative levels of participation. We found that the Valley region led the rest of the state in terms of the number of pro bono cases handled per lawyer, followed very closely by central Virginia. The other regions of the state trailed significantly.

The Valley region clearly dominated the other regions of the commonwealth in the percentage of attorneys participating in organized pro bono programs. More than 16 percent of Valley attorneys participated in organized pro bono programs in the previous year. Central Virginia followed (about 10 percent), with northern Virginia coming in next (a little over 8 percent).

Looking at the number of pro bono hours donated per capita, the Valley and central Virginia clearly led the state, each with about two hours of pro bono work donated per attorney per year. The northern region came in third, followed at a distance by southside, southwest, and eastern Virginia.

There are clearly significant variations in pro bono metrics among the various regions of Virginia, with some regions out-performing others. However,

a common theme across the entire state is the gap between the aspiration goal set by Rule 6.1 and the current level of pro bono in any region of the state.

### Conclusion

Because we do not have any systematic mechanism for Virginia lawyers to report the amount of pro bono legal services they have rendered annually outside of the legal aid-sponsored pro bono programs, the data we analyzed to reach our conclusions was incomplete. However, even if that data understates the true level of pro bono legal work in Virginia by half, the finding would be the same: While many Virginia attorneys are doing an admirable job in providing pro bono legal services as suggested by Rule 6.1, far too many Virginia attorneys are falling far short of the aspirational goals set by the rule. By closing this Pro Bono Gap—the difference between the aspirational goals of Rule 6.1 and the actual performance of the Virginia bar as a whole in undertaking pro bono work each year—we could make progress towards closing the Justice Gap while demonstrating our commitment to the Rule of Law and the principles of equality and justice under law.



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- 1 The report can be downloaded at: [http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf)

If you are not participating in a pro bono program and would like to volunteer, Karl Doss, the VSB director of Access to Legal Services, will assist you in locating pro bono opportunities. You can reach him at [doss@vsb.org](mailto:doss@vsb.org) or by calling (804) 775-0522.



**John E. Whitfield** has served as the executive director and general counsel of Blue Ridge Legal Services since 1989. He previously served as law clerk, staff attorney, and supervising attorney at the organization, which he joined in 1980. He is co-chair of the Virginia Access to Justice Commission. He was the 1998 recipient of the Virginia State Bar's Legal Aid Award and he was inducted as a fellow of the Virginia Law Foundation in 2009.