

# Pro Bono Journey

by John M. Oakey Jr.

When I retired from my law firm ten years ago, I wanted to continue practicing and also do something to help others. Fortunately, over the years I have been able to develop a practice in the pro bono area which not only helps my clients, but also means even more to me. As I like to tell people, most attorneys do not realize how much fun it is to practice law without keeping time, fighting to get clients, or worrying about collecting fees. I hope that this article will give others some encouragement to develop a very rewarding practice in this area.

When I started practicing law in 1964, there were no legal aid organizations as they exist today. Yet many young lawyers did work for people who could not afford to pay fees. Some of the work was in criminal defense and some of it was civil law. Unfortunately, a large percentage of the disadvantaged population never had a lawyer to represent them merely because they had no way to find an attorney. Only if somebody you were related to or knew well worked for an attorney or an attorney's clients would you have the opportunity to even be mentioned to an attorney. Even in those days, younger lawyers did most of the work, due to the fact that it was their supervisors who were assigning the cases.

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I was with a law firm in Richmond, but because I was the low man on the totem pole, I did much of my work in outlying counties and got to know a lot of small-town and country lawyers. In our discussions, it became obvious to me that those attorneys did every type of work that came to their office and represented just about every person who asked for their help. Many times they knew that the person

they were helping could not afford to pay them a realistic fee. But because they were the only attorney in town or the only one that this person knew to go to for help, they did the work. In their minds, representing these people without any pay was just part of being a lawyer. I have been thinking recently that, in a perfect world, this is probably the way all of us would view pro bono service.

In cities and metropolitan areas, many lawyers do community service or church work

and view these activities as the way they use their profession to help others. Community service is absolutely necessary to our society. But representing the poor is a type of community service that only lawyers can do, and if the lawyers fail to do it, it will not get done. This is a message that we should always remember. I feel that every lawyer has a responsibility to do some pro bono legal work for the poor. Making a financial contribution to legal aid is a step in the right direction, but the legal aid organizations cannot do it all. Currently, almost 80 percent of the people who need legal assistance receive no help. The only way we will close this gap is when more lawyers do pro bono work.

But back to my journey: In the 1970s, legal aid societies started building bar and community partnerships. From the first, they developed volunteer programs for lawyers in housing, hotline calls to give legal advice, family law matters, commercial law, and other types of cases. Even though protection against domestic violence has become a large focus of volunteers today, I do not remember any of those cases in the old days. I was one of many lawyers who received the letters asking for volunteers; I placed them on the corner of my desk with the intent to become involved, but unfortunately I got busy and never got around to volunteering for these programs.

As time went on, I became involved in bar activities and, later, in teaching seminars on litigation, and with other commitments such as a family and church activities I did very little pro bono work. It has been my experience that, in most cases, the more experienced an attorney becomes, the less pro bono work he or she does. I realize now that what I did was wrong. I had always considered myself a very professional attorney and

had even taught courses on professionalism and ethics. The professionalism creed of the Virginia Bar Association and Virginia Rules of Professional Conduct 6.1, which governs voluntary pro bono publico service, suggest that attorneys should contribute time and resources to charitable activities and pro bono work. Unfortunately, at that time I was in among those experienced attorneys who considered that bar activities and other community service was as important as pro bono work. It bothers me when I think of all the people who suffered from no representation because of this mind-set.

Thirteen years ago I decided to turn over a new leaf and make a complete change as to my pro bono responsibilities. I would become involved in as many pro bono programs as I could and use these activities to finally perform my responsibilities. Also, I would use this as my way of retiring from my law firm but not from the practice of law, which I still dearly love. The best part of my plan was that I would be able to help others at the same time I was making my retirement a lot more enjoyable.

The first volunteer program in which I became actively involved was a housing project then sponsored by the Central Virginia Legal Aid Society. Through the project, a client who meets the legal aid income guidelines and who has a problem with a landlord—eviction, failure to fix a leaky roof, and all matters in between—can possibly receive a free lawyer to assist them. Many of these cases involve going into general district court. Based on my experiences talking with low-income clients since then, it is amazing to me the number of qualified tenants who do not realize that this program exists. Unfortunately, probably hundreds of people are living in very unsatisfactory facilities because they do not have this information. If all these people sought help, we would have to expand this volunteer program greatly.

Most of the clients I have represented have been in subsidized housing. This means a large percentage of their rent is paid by the federal government. The amount the clients pay is based on their income. If they are evicted, it takes them years to get back on the list.

One of the cases that I remember the most involved a woman of about 30 who had two young children. She very much wanted to do something for her children, and the only way she could survive was because of the rent subsidy. She found herself in this position because her husband had deserted her, moved somewhere out in the country, and never paid child support. I was

requested to represent her because she had received an eviction notice. The landlady apparently did not like her and wanted to get rid of her.

The eviction notice was based on the allegation that my client's 8-year-old child had been on an outing with a church group and when the bus came back and was on the premises of the housing development, candy was given to all of the children who had participated. The allegation was that the child, without permission, took a half a bag of candy that was on the floor. A criminal act by a family member was a violation of the mother's lease. The incident probably did occur, and she was sure she would be evicted until I told her that we should fight it in court. I felt reasonably confident that the church people would not be willing to testify to this in court. At the trial, which was my first court appearance in the case, the attorney for the landlady seemed surprised that anyone had appeared. When the case was called, he told the judge he was taking a nonsuit (he didn't have the courtesy to mention this before). He had no witnesses. It was pretty obvious what would have happened had I not been there.

This is just one example what can be done to help a client in a housing case. So many of these cases illustrate how poor people can lose a lot without proper representation. They also pay a lot of extra fees. As one legal aid lawyer told me, "It's expensive to be poor."

One of the most valuable sources of pro bono services in the central Virginia area is the Pro Bono Clearinghouse. This is an organization that was envisioned and organized by Richmond lawyer Brian R. Marron. It is the premier project of the Greater Richmond Bar Foundation. Currently, more than 150 attorneys have volunteered to help. The organization provides free legal assistance to charitable corporations. These charities save funds that they need for their missions, and they also get high-quality legal services. The clearinghouse provides pro bono opportunities not related to litigation. Most of the work that I have done for this organization has been as a board member and president, but I also have worked with lawyers in my former firm and even handled several matters myself when there was a litigation component. I might add that the clearinghouse is continually looking for volunteers so if any nonlitigators would like to become involved, you should give them a call.

Here's an example of how the Pro Bono Clearinghouse helped a local adult day-care center that was audited by Medicaid. The federal

government sent a notice stating that the center owed \$220,000—an amount that would have put it in severe financial straits. A local attorney who had experience in this area spent about ten hours to prepare the reply of the charity. He was able to convince the federal government that the center owed only a couple thousand dollars. Without this free, high-quality service, the day-care center might have had to curtail their services.

In the last ten years, the clearinghouse has matched more than five hundred charities with an appropriate attorney. The charities likely have been saved millions of dollars.

I quickly realized that the greatest need for legal help from clients who cannot afford to pay is in family law. It's also the one area in which I've had more calls from people who explained to me that they've already been to court and the matter has been decided against them. In many cases, if they had they been represented by an attorney, the decision would have been different. Most attorneys don't realize how difficult it is for the average person to go to court, testify to the necessary facts, and cover all of the information that it is relevant. In addition, pro se litigants never seem to get the witnesses they need. Even when they do have witnesses, they don't know how to ask the proper questions. Many legal aid societies can handle only a small fraction of family law cases in which extended representation is needed. Some, due to scarce resources and other constraints, do not handle any.

It became obvious to me several years ago that these cases, which frequently involve the custody of a child, mean more to the clients than large sums of money meant to the clients I used to represent in tort cases. Custody of a child can mean even more than keeping a house or apartment.

As I was writing this article, I received a telephone call from a social worker asking if I would consider representing one of her clients in a custody matter. There were three children, ages 4 to 8, two of whom had disabilities. The father and mother each had a job, and a church leased them a house at a reduced rent because of the children's problems. The reduced rental rate was conditioned on the family remaining intact. The father was never close to the children. He had never been to the children's school, had very little contact with them, and had never even talked to the children's pediatrician. He had several affairs and eventually left the wife and refused to pay toward care of the children, who remained with her. He had only seen the children a few times since leav-

ing. Two months after leaving, he filed for divorce and requested custody of all three children plus child and spousal support. The mother had lost her job because she had to take care of the kids, move from the house, and basically do everything for the family.

The custody matter comes up in most of these cases because of the child support issue. The social worker had worked with both parents, but gave a very strong recommendation for the mother over the husband. I get several of these calls a month. I give telephone advice in most cases, but this one bothered me so much that I agreed to take it. A lawyer, apparently paid by the father's mother and stepfather, filed the papers for the father. Even though the papers said the father wanted the children, it was obvious from the wife's information that he not only had never taken care of them, but he could not do so in the future. Since the case was filed in circuit court, it would have been virtually impossible for the mother to fully represent herself, and I am sure that the father counted on that. Fortunately, I think he made a mistake.

I do not recommend that the legal aid system represent all parents who come to them for help in custody cases. In the early 1990s, when legal aid had more funding and more in-house lawyers, most programs represented parents in a custody case when the other side was represented by an attorney or there was domestic violence involved. Currently, because of funding constraints, some programs have eliminated the first category.

There is something very wrong about a legal system in which a person who cannot afford a lawyer will receive significantly less justice than the person would have received with representation. I hope I have been able to help a few people in that situation, and I plan to continue to do so as long as I can. But we need a lot more attorneys who are willing to help in difficult cases.

A number of years ago, I became involved in the Central Virginia Legal Aid Hotline program. I still do it. Volunteer attorneys go to the Legal Aid Offices once a month and, for approximately two hours, make telephone calls to people who have called in with legal problems for which no attorney is available. Volunteers attend a very good training program and are provided with a booklet for reference while making the telephone calls. Many of the questions can be answered by common sense, but many do require some legal advice. In the unusual case when you don't know exactly what to tell the person you are assisting, you can always check

with the legal aid supervisor and call back. Several retired attorneys work in this program. For anyone who has not done any prior legal aid work and wants to become involved, I highly recommend starting with the hotline.

Two other very valuable programs in which I have participated need volunteers.

G. Andrew Nea Jr. has organized Wills for Seniors, which provides wills, powers of attorney, and advanced medical directives to seniors who cannot afford to pay an attorney. The program has existed in Central Virginia for several years and has helped a lot of people. A power of attorney can be extremely important to many seniors, and most do not even realize they need it.

Another project, the Drive to Work program, was founded and is run almost entirely by O. Randolph “Randy” Rollins. This program is designed to help people who have lost their operator’s permits to obtain at least a restricted license so they can drive, primarily to work. Many people who would have been unable to obtain substantial employment have been helped by this program. I have helped Randy on occasion, and he tells me that he still needs volunteers, particularly in areas outside of Richmond.

A recent initiative by the Virginia Bar Association could make a big difference in the number of lawyers and firms providing pro bono services. Chief Justice Leroy R. Hassell Sr. has called for a Pro Bono Summit on April 27, 2010, in Richmond. The purpose is to set up in all areas of the state committees that will meet periodically to form pro bono programs and recruit volunteers. The committees will report once a year on their progress. These committees would be called Firms in Service, and their emphasis would be on providing volunteers to organizations that do pro bono work. Despite the name, all attorneys, including solo practitioners, could be included. The meetings are designed to insure that this organization achieves its purpose and will continue for many years, hopefully until it’s replaced by something better. The state chairs are Scott C. Oostdyk, Harry M. “Pete” Johnson III, and Jennifer L. McClellan.

I have been to one meeting, billed as a pre-summit meeting, presided over by VBA President John D. Epps and Virginia Justice Donald L. Lemons and attended by an enthusiastic audience of legal aid providers. The most telling comments came from some of the organizations that deal with the financially disadvantaged community. Their reports highlighted that currently probably many thousands of people in the Richmond area

## Retiring? Consider Your Own Pro Bono Journey

The following resources address the history of pro bono service in Virginia, its current status, and resources for those who wish to volunteer:

- “Reflections on the History of Legal Aid in Virginia,” *Virginia Lawyer*, December 2006. [http://www.vsb.org/docs/valawyerjournal/vl1206\\_history-legal-aid.pdf](http://www.vsb.org/docs/valawyerjournal/vl1206_history-legal-aid.pdf)
- “A New Role for Law Schools and the Bar,” by Clarence M. Dunnville Jr., *Virginia Lawyer*, December 2009. [http://www.vsb.org/docs/valawyerjournal/vl1209\\_access.pdf](http://www.vsb.org/docs/valawyerjournal/vl1209_access.pdf)
- Pro Bono Institute’s Second Acts program. <http://www.probonoinst.org/secondacts.php>

need legal help but cannot obtain it. I believe this initiative will make a big difference in the number of low-income Virginians who will be helped with their legal problems.

One concern that has bothered me for the past ten years is why lawyers who are winding down their practices or who have actually retired don’t become more involved in community service — especially pro bono representation. I have read many articles in which service in retirement was suggested, but to this day I know only a few lawyers who have followed this path. I have received a couple of pro bono awards, and each time many of the friends I have at the bar who are of this age thank me for doing the work and tell me how wonderful it is. But what I would really like to hear someone say is, “I think it’s a great idea, and I’m going to start doing some pro bono or community service work myself, starting now.”

My main purpose in agreeing to write this article was because I am hoping it will convince at least a few people to become involved. The work is interesting and can be enjoyable to anyone who really enjoys being a lawyer. It’s not always the easiest thing to do, but if you have any problems or need advice, I am more than willing to spend whatever time is necessary to give you the benefit of my experience. I might add that this work has meant more to me than anything I’ve done in my professional life.