

# Equal Justice Under Law: The Most Inspiring Ideal of Our Society

by Lonnie Nunley

Justice is a cornerstone of our democracy, our country and the commonwealth. No state can lay a firmer claim to embedding justice in our societal DNA than Virginia. Virginia lawyers have been and remain at the forefront of efforts to preserve and expand justice for all.

Access to justice, however, is not a given. For many Virginians, access to justice depends on the willingness of lawyers to assist people with legal problems who cannot afford the services of a private lawyer. The primary purpose of the Virginia State Bar's Special Committee on Access to Legal Services is to help create and foster connections between lawyers who want to provide pro bono legal services, and the Virginians who are in need of those services.

As Virginia lawyers, we are all governed by the Virginia Rules of Professional Conduct. Rule 6.1 states that: "A lawyer should render at least 2 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."

There are approximately 32,000 active-status Virginia lawyers. Assuming those lawyers work on average 1,500 hours per year, Rule 6.1 should be generating approximately 1,000,000 hours of pro bono time. Is it? We can't be sure, because we have no way of measuring the amount of pro bono work performed by Virginia lawyers. And without knowing the amount of pro bono work that is being provided, it is impossible for our committee to know whether we are effectively serving our purpose of creating pro bono opportunities for Virginia lawyers and matching willing lawyers to those opportunities.

This inability to measure Virginia lawyers' contributions to the goal of greater access to justice is not a new problem. As a committee, we've been aware of this information gap for many years. Although efforts have been made to collect pro bono data state-wide on a voluntary, ad-hoc basis from organizations that offer pro bono services, the reporting was not comprehensive. Moreover, the data failed to account for the tremendous amount of pro bono services that lawyers provide directly to needy Virginians, outside the context of volunteering through legal aid or a similar organization.

We were delighted to learn that the Access to Justice Commission, which was formed by the Supreme Court of Virginia in 2013 to "promote equal access to justice in Virginia, with particular emphasis on the civil legal needs of Virginia residents," is proposing that Virginia adopt a pro bono reporting system, through the Virginia State Bar, that will gather more accurate data on the amount of pro bono being provided. The proposed reporting language is as follows:

**Pro Bono Publico Legal Service Reporting Requirement:** In order to make available information about lawyers' pro bono publico legal service, each active member of the Virginia State Bar shall provide the following annual certification:

1. **Pro Bono Hours.** I have personally provided approximately \_\_\_\_ hours of pro bono publico legal services during the previous 12 months beginning July 1 of the preceding year and ending June 30 of the current year.

2. **Financial Contribution.** I have personally contributed \$\_\_\_\_\_ to support programs that provide the

direct delivery of legal services to meet the needs described in Rule 6.1 (a) of the Virginia Rules of Professional Conduct, as an alternative method for fulfilling my responsibility to render pro bono legal services.

3. **Exempt Persons.** I am exempt from the provision of pro bono legal services because (i) I am currently serving as a member of the judiciary; or (ii) I am a government lawyer prohibited by statute, rule, regulation or agency policy from providing legal service outside of my employment; or (iii) I maintain retired, disabled or associate status with the Virginia State Bar. \_\_\_\_ (Check here.)

This proposal does not change Rule 6.1's aspirational goal that Virginia lawyers devote 2 percent of their professional time to pro bono. Nor does this proposal make pro bono mandatory. If a lawyer chooses not to provide pro bono services, she or he can report zero hours. There is no consequence for reporting zero hours. The proposal also asks the lawyer to indicate whether she or he has made a financial contribution to support programs that provide legal services to needy Virginians. Again, there is no obligation to make such a donation, and if none is made, the lawyer meets the reporting requirement by indicating zero dollars.

We believe the results of this reporting will be a great benefit to the commonwealth, its citizens, and its lawyers. We know that there is a tremendous amount of pro bono legal services being provided by Virginia lawyers, and we know that many Virginia lawyers also support access to justice through financial contributions. With better information, we can respond more persuasively to people who feel that Virginia lawyers

are not doing their fair share to improve access to justice. More comprehensive information will allow us to partner more effectively with organizations working to increase access to justice. Additionally, the information developed by the reporting will allow us to be more effective and persuasive when we communicate to Virginia lawyers regarding the need for pro bono, and the commitment of their fellow lawyers to increasing access to justice.

We recognize that the proposed reporting requirements may add some administrative burden, although we hope slight, to lawyers' already full plates. The draft reporting language specifies that the hours reported are approximate, which we think will help lawyers feel comfortable in reporting their pro bono to the best of their ability. Some lawyers may record hours in their practice closely; for those lawyers meeting the reporting requirements should be easy. For others who do not normally record hours, reporting an approximate number of hours will suffice. For example: "I handled three no-fault divorces last year; each took about ten hours, so I'll report

thirty hours." We are currently operating in a "no information zone" in regards to Virginia lawyers' commitment to pro bono, so this reporting proposal, even if it is based in part on lawyers' good faith approximations, will be a huge step towards more comprehensive information. And as to the financial reporting, we think most lawyers track those donations already for tax purposes, so there should be little incremental record keeping burden.

A notable Virginia lawyer, Justice Lewis Powell, said: "Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. It is fundamental that justice should be the same, in substance and availability, without regard to economic status." As Virginia lawyers, we help ensure, through our labor and financial support of pro bono publico legal services, that equal justice is not merely a caption on a building. We carry forward a proud tradition of transforming the "most inspiring ideal of our society" into a day-to-day reality

for needy Virginians. We hope you will join us in supporting the pro bono reporting proposal.<sup>1</sup>

Endnote:

- 1 The Special Committee on Access to Legal Services endorses the Access Commission's proposed change to include pro bono reporting. Members of the Access Committee are Tara Casey, Susan Stanford-Stoney, Marie Appleby, Polly Chong, Jennifer Dean, Alexandra Fannon, Razan Favez, Paul Garrett, Rachel Jones, Valerie L'Herrou, Adrienne Sakyi, James Speer, Crystal Twitty, Hon. Yvette Ayala and Mark Braley.



**Lonnie (Chip) Nunley** clerked for Judge Glen Williams in the Western District of Virginia after graduating from law school and then joined Hunton and Williams in Richmond in 1985. Nunley's practice is focused on litigation and regulatory matters. He is chair of the Virginia State Bar's Special Committee on Access to Justice.

## We Are Looking for A Few Good Lawyers...

## Who Have A Few Minutes to Do Good.

**Virginia.freelegalanswers.org** — the ABA-sponsored national program that brings legal answers to the questions of people who cannot afford an attorney, starting in Virginia in August.

**We need you!**

If you are interested in participating in this innovative pro bono opportunity, please contact Karl Doss at [doss@vsb.org](mailto:doss@vsb.org) or (804) 775-0522 or complete the Attorney Interest Form found at [www.vsb.org/docs/volunteer-form-pb.pdf](http://www.vsb.org/docs/volunteer-form-pb.pdf).

## Save the Date

Wednesday, October 26, 2016

## 2016 VSB Pro Bono Conference and Celebration

the Embassy Suites by Hilton Hampton Hotel Convention Center & Spa



### Free Continuing Legal Education Sessions (3.5 hours MCLE credits pending)\*

- **Representing Domestic Violence Survivors: Protective Orders and Pro Bono**
- **Handling Uncontested Divorces: Nuts and Bolts for Pro Bono Lawyers**
- **Introduction and Demo: [Virginia.freelegalanswers.org](http://Virginia.freelegalanswers.org)**

(\*Note – The Pro Bono Conference will be held in conjunction with Day 1 of the Virginia Legal Aid Conference. Attendees of the Legal Aid Conference are welcome to attend sessions of the Pro Bono Conference at no additional cost)

- **Joint Legal Aid Conference/Pro Bono Conference Reception (Free)**
- **Lewis F. Powell Jr. Pro Bono Award Dinner and Ceremony** (\$20.00 fee) with Keynote Speech by Jeffery Robinson, Deputy Legal Director and Director of the Center for Justice, American Civil Liberties Union.

See agenda and group rate information for lodging at [http://www.vsb.org/site/pro\\_bono/PB-celebration](http://www.vsb.org/site/pro_bono/PB-celebration).  
Please contact Karl A. Doss at (804) 775-0522 or [doss@vsb.org](mailto:doss@vsb.org) for more information.

## Nominate Your **Good** Friend

We are looking for a few **Good** lawyers to profile for the October pro bono issue of *Virginia Lawyer*.

If you know a lawyer who manages a law career yet still finds time to do *law for the good*, send an e-mail to [hickey@vsb.org](mailto:hickey@vsb.org)