

# President's Message

by Michael W. Robinson



## The Most Meaningful Service We Provide

THIS EDITION OF *Virginia Lawyer* spotlights our commitment to pro bono work and to improving access to justice in the commonwealth. While the national election year has elevated discussion about the nation's income gap, the justice gap significantly exacerbates the difficulties faced by those living near, at, or below the federal poverty level, but has received far less attention.

The Virginia State Bar and voluntary bars throughout the commonwealth continually focus on programs to help lead the effort to narrow the gap. The Virginia Access to Justice Commission — created by the Supreme Court of Virginia in 2013 — is studying, promoting, and emphasizing coordinated programs to help address the access to justice gap. The important work of this commission can be reviewed at <http://www.courts.state.va.us/programs/vajc/home.html>. The Supreme Court's biennial pro bono summit continues to bring added focus and emphasis to the deep-rooted needs of the underserved population. New technology and web-based programs are coming on-line to assist the efforts and allow greater coordination and pro bono management. For example, the VSB has recently launched a website devoted to allowing low-income Virginians to have questions answered by lawyers; the program allows lawyers to pitch in without having to take on a representation. The program can be reviewed, and lawyers can volunteer to assist at <https://virginia.freelegalanswers.org/>.

Virginia lawyers can be rightfully proud of their efforts to provide pro bono, and increase access to justice for the less fortunate, and the lost and unchosen among us. But the need is so great that we cannot pretend we are — as a profession — doing enough. So as we spotlight programs and ongoing efforts, it is important to focus again on our individual and collective obligations as lawyers.

Simply put, our privilege to practice law carries with it the responsibility to ensure legal services are available to those who, because of financial circumstances, cannot otherwise afford representation. This principle upholds the highest ideals of our profession, and is likewise firmly enshrined in our Rules of Professional Conduct. Rule 6.1 sets forth an aspirational goal for Virginia lawyers to devote 2 percent of their professional time to pro bono publico service. That equals just 40-50 hours per year. The goal is aspirational — a distinction that goes hand-in-hand with the voluntary nature of pro bono work, and recognizes that we are perhaps at our best when undertaking voluntary efforts.

So what does the rule contemplate we do with that 40-50 hours? What constitutes pro bono publico services under Rule 6.1? The rule identifies four broad areas: (1) poverty law, (2) civil rights law, (3) public interest law, and (4) efforts designed to increase the availability of pro bono legal services.

The phrase "poverty law" is intentionally and inherently broad; it captures those services provided for

free or for nominal fees to economically disadvantaged persons. The work is not limited to those whose income falls below a particular metric, such as the federal poverty guidelines. Nor is it limited to work referred by or coordinated with established legal service programs. It includes all work for those who have insufficient resources to hire counsel, as long as the pro bono or nominal fees are established in advance. Similarly, "civil rights law" is broadly intended to encourage legal services "to assert or protect rights of individuals in which society has an interest." These two categories address providing legal services directly to clients on specific matters.

In contrast, the latter two categories address broader efforts. The term "public interest law" encourages the provision of legal services to groups who themselves are undertaking efforts for civic improvement. Providing legal advice to groups that provide eleemosynary services — not strictly legal services — constitutes pro bono publico services. Finally, Rule 6.1 recognizes the value of training and assisting other lawyers, and working on systemic programs to increase the availability of pro bono legal services. Thus, lawyers can also meet their aspiration goals by, for example, conducting a CLE for legal aid and pro bono lawyers, serving on the board of a legal aid organization, recruiting lawyers to engage in pro bono service projects, and advocating for increasing resources for legal aid.

In all of our careers, there will be times when practice, family, and other commitments may limit our ability to take on significant pro bono matters. Rule 6.1 recognizes the need for, and value of, providing financial assistance to pro bono and legal services programs in lieu of, or in addition to, direct pro bono work. With budgets being consistently squeezed — legal service groups have lost approximately 20 percent of their funding in the last two-years — we should not overlook our ability to voluntarily help overcome the financial restrictions faced by programs upholding the profession's commitment.

With such a broad recognition of pro bono publico services, a commitment of 40-50 hours seems imminently achievable. Yet we instinctively know we don't always measure up to our aspiration. One self-imposed barrier to providing pro bono work is the concern that an individual's practice area or particularized skill does not translate to meeting pro bono needs. There is a fear of stepping outside our comfort zone. I would argue that pro bono is the perfect opportunity to do so, and that the concern is unnecessary; our skills as lawyers allow us to quickly transfer our abilities to broader areas to serve the needs of the underserved. And as with so many things in life, stepping outside our comfort zone offers opportunities for new experiences and personal and professional growth.

Pro bono work allows us to use our special skills as lawyers to improve and change people's lives in ways small and large. From personal experience, and from many discussions with lawyers around the commonwealth, I can join the chorus that also says it is often the most meaningful — and personally satisfying — service we provide.

## Ten Facts about Virginia's Justice Gap

1. More than 80 percent of the civil legal needs of the poor in Virginia and nationwide go unmet.
2. Individuals who are represented by counsel are twice as likely to have a favorable outcome compared to those who are unrepresented.
3. There are presently more than one million people in Virginia who are living in poverty. In other words, one in eight Virginians is eligible for free legal services from Virginia's legal aid programs.
4. 48 percent of low- and moderate-income households in Virginia experience a legal problem each year (approximately 400,000 legal problems annually).
5. Because of funding cuts and decrease in IOLTA revenue, Virginia's legal aid programs have lost 20 percent of their funding, resulting in a loss of 20 percent of total legal aid attorney and support staff statewide (sixty-one positions total, including thirty-four attorneys). That leaves just 130 legal aid lawyers to cover the land area of Virginia or 42,775 square miles. At the same time Virginia's poverty population has increased by over 30 percent.
6. There is one legal aid lawyer per 7,237 poor people in Virginia. Compare this to the ratio of one lawyer per 349 Virginians.
7. Nationwide, 50 percent of the potential clients who request legal assistance from legal aid are turned away because of a lack of resources. People seeking assistance with family law cases were turned away 80 percent of the time.
8. Rule 6.1 of the Virginia Rules of Professional Conduct every lawyer, regardless of professional prominence, should devote 2 percent of his or her professional time to pro bono legal services activity (or approximately forty hours per year).
9. If Virginia lawyers were in compliance with this aspirational goal, we should be providing more than 900,000 hours of pro bono.
10. According to the best available data, Virginia lawyers are providing just 80,000 hours of pro bono.

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Sources:

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| 2 | Russell Engler, "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed," <i>Fordham Urban Law Journal</i> , Volume 37, Issue 1, 2009. pp. 51- 66. | 5 | id  |   |   |
| 3 | Legal Services Corporation of Virginia, Report to the Commonwealth and the General Assembly, FY 014-15, p. 8  | 6 | VSB Membership Report, August 3, 2015 (number of active Virginia lawyers); LSC Grant Application, May 2014(number of legal aid lawyers); US Census website (Virginia population and poverty population) | Whitfield, "Is There a Justice Gap in Virginia?" <i>Virginia Lawyer</i> , February 2014 |   |
|   |   | 7 | Legal Services Corporation, FY 2016 Budget Request; Alan W. Houseman, <i>The Future of Civil Legal Aid in the United States</i> , Center for Law and Social Policy (CLASP), November 2005               | 10  | Legal Services Corporation of Virginia, Report to the Commonwealth and the General Assembly, FY 014-15; 2013 VSB Access to Legal Services Statewide Survey of Independent Pro Bono Programs; and an extrapolation of ad hoc pro bono hours from ABA Supporting Justice III report, March 2013 |
|   |   | 8 | Rule 6.1, Virginia Rules of Professional Conduct  |   |   |
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