

MEETING THE LEGAL NEEDS OF INDIVIDUALS FACING SERIOUS ILLNESS THROUGH PRO BONO

Part 1 – Introduction and
Opportunities

Sponsors



Topics and Presenters

- Review of Ethical Considerations and Volunteer Opportunities via Legal Aid – Karl A. Doss, Director of Access to Legal Services, Virginia State Bar
- Pro Bono Opportunities with the Legal Information Network for Cancer (LINC) – Crista Whitman Gantz, Client Services Attorney, Legal Information Network for Cancer (LINC)
- Medical Legal Partnerships (MLP) – Allison Held, Medical Legal Partnership – Richmond (Massey Cancer Center at VCU)

“The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged.” ABA Model Code of Professional Responsibility, EC 2-25.

WHAT IS “PRO BONO”? – ETHICAL CONSIDERATIONS FOR VOLUNTEER LAWYERS

Overview

Virginia Rule of Professional Conduct 6.1 and ***ABA Model Rule 6.1*** generally establish the principle that ensuring “Access to Justice” (for those unable to pay) is a key responsibility of the organized bar.

Virginia Rules of Professional Conduct

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.

Not Mandatory but....

COMMENT

[1] **Every** lawyer, *regardless of professional prominence or professional work load*, has a personal responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.

Voluntary Pro Bono Publico Service

(a) Rule 6.1 (a) says “.... 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.”

“Poverty Law” Defined

Comment #2 defines “**poverty law**” as follows:

“*Pro bono* services in poverty law consist of free or nominal fee professional services for people who do not have the financial resources to compensate a lawyer. Private attorneys **participating in legal aid referral programs** are typical examples of “poverty law.”

Legal services for persons whose incomes exceed legal aid guidelines, but who nevertheless have insufficient resources to compensate counsel, would also qualify as “poverty law,” **provided the free or nominal fee nature of any such legal work is established in advance.**”

“Civil Rights Law” Defined

Comment #3 defines “**civil rights law**” as follows:

“Pro bono publico legal services in civil rights law consists of free or nominal fee professional services to assert or protect rights of individuals in which society has an interest. Professional services for victims of discrimination based on race, sex, age or handicap would be typical examples of “civil rights law,” provided the free or nominal fee nature of any such legal work is established in advance.”

“Public Interest Law” Defined

Comment #4 defines “**public interest law**” as follows:

“Free or nominal fee provision of legal services to religious, charitable or civic groups in efforts such as setting up a shelter for the homeless, operating a hotline for battered spouses or providing public service information would be examples of ‘public interest law.’”

KAD NOTE – The examples in the comment point to work with vulnerable populations, but the definition does not explicitly state this limitation.

“Voluntary Pro Bono Service”

Comment #5 defines ***volunteer activities designed to increase the availability of pro bono legal services*** as follows:

“Training and mentoring lawyers who have volunteered to take legal aid referrals or helping recruit lawyers for *pro bono* referral programs would be examples of ‘volunteer activities designed to increase the availability of *pro bono* legal services.’”

Contingent Fees?

Comment 6 states “Service in any of the categories described is not pro bono publico if provided on a **contingent fee basis**. Because service **must** be provided without fee or expectation of fee, the intent of the lawyer to render free or nominal fee legal services is essential. Accordingly, services for which fees go uncollected would not qualify.”

Pro Bono via Collective Works

Rule 6.1 (b) says: “A law firm or other group may satisfy their responsibility collectively under this Rule.”

- Comment #7 adds that “In fulfilling their obligation under this Rule, a group of two or more lawyers may pool their resources to ensure that individuals in need of such assistance, who would otherwise be unable to afford to compensate counsel, receive needed legal services. The designation of one or more lawyers to work on *pro bono publico* matters may be attributed to other lawyers within the firm or group who support the representation.”
- For example, the new associates at a larger firm may satisfy the firm’s *pro bono* obligation by doing their shares plus a senior partner’s share.

Pro Bono Via Direct Financial Support

Rule 6.1 (c) states: “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.”

- See Comment 9: “For example, some lawyers (*e.g.*, some government lawyers) are prohibited by the terms of their employment from engaging in any outside practice. Other lawyers lack the experience and access to resources necessary to provide competent legal assistance.”
- Comment 10 notes: “Lawyers who are unable to fulfill their pro bono publico obligation through direct, legal representation *should support programs that provide legal services for the purposes described in (a) through financial contributions in proportion to their professional income.*”

Rule 6.5 Limited Legal Services

- (a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
- 1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
 - 2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.
- (b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Other Ethical Considerations

- Rule 6.2: should not avoid accepting court-appointed representation “except for good cause”
- Rule 6.3: Serving as a director, officer or member of a legal services organization is encouraged (but check for conflicts)
- Rule 1.1: Competence – no need for special training but do “the necessary study”
- Rule 1.2: Scope of Representation – may limit the “objectives of representation” after consultation with and consent by client (but cannot be so limited in scope as to violate Rule 1.1)
- Rule 1.7: Concurrent Conflicts – do a conflicts check re. current clients
- Rule 1.8(e)(2): Conflicts re. Transactions with client – you can pay court costs/costs of litigation for indigent client
- Rule 1.9: Conflicts re. former clients: do conflicts check re whether same or substantially related matter in which the former clients interests are materially adverse interest to those of prospective client

ABA Model Rule 6.1

Every lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

- (1) persons of limited means or
- (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means

ABA Model Rule 6.1 (cont.)

In addition, a lawyer should voluntarily contribute **financial support** to organizations that provide legal services to persons of limited means.

Categories of Pro Bono

The ABA identifies two categories of pro bono services:

1. Category 1 pro bono is defined as direct legal representation provided to persons of limited means or organizations that supported the needs of persons of limited means for which no compensation was received or expected.
2. Category 2 pro bono encompasses activities performed for a reduced fee or unpaid activities for the benefit of an organization that supports legal services for the poor or for the general public.

In all cases, the services provided are law-related.

Source: ABA Standing Committee on Pro Bono and Public Service, Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers, March 2013

Examples of Category 1 Pro Bono

Free (without expectation of fee) legal services to persons of limited means or organizations that address the needs of persons of limited means.

- Full case representation
- Limited scope representation
- Legal advice
- Representation in mediation

Source: ABA Standing Committee on Pro Bono and Public Service, Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers, March 2013

Examples of Category 2 Pro Bono

Any other service provided for a reduced fee or no cost (without expectation of fee) to any type of client, not including activities performed to develop a paying client or anything that is part of paying job responsibilities.

- Legal services for a reduced fee
- Mediator
- Speaker on legal issues
- Trainer or teacher on legal issues
- Supervising an attorney (or law student) in providing pro bono representation
- Lobbying on behalf of a pro bono organization
- Policy advocacy
- Grassroots community advocacy
- Board member of legal services or pro bono organization
- Member of a bar committee related to pro bono or access to justice

Why Should You Do Pro Bono?

1. Pro bono benefits individuals and non-profit organizations that cannot afford to retain counsel
2. Providing free legal assistance to the poor and vulnerable members of society is beneficial to the community
3. Pro bono is the right thing to do. Practicing law is a privilege and responsibility
4. Pro bono is a good way to get training and experience working directly with clients and appearing in court – especially for a new or junior lawyer
5. Pro bono can make your career more fulfilling
6. Pro bono makes good business sense as paying clients value community service
7. Pro bono can be good for your health

Why Is Pro Bono Needed in Virginia?

1. There is a “justice gap” in Virginia – only 20% of the legal needs of the indigent are presently being served by legal services organizations.
2. Data also supports that represented litigants are two to three times more likely than unrepresented litigants to have a favorable outcome in cases frequently involving low-income individuals, i.e. eviction, consumer, unemployment, and child custody and support cases. Yet the poor usually lack access to counsel and often appear in court without representation.
3. LSC funding for legal aid has been significantly cut in recent years plus there has been a significant reduction in IOLTA funding. This has resulted in 20% reduction in number of legal aid attorneys and staff statewide – while poverty population in VA has increased by 32% since last census.

Bottom Line: **Legal Aid cannot meet increased need – Pro Bono can help fill the gap.**

VOLUNTEER OPPORTUNITIES AT LEGAL AID OFFICES

Blue Ridge Legal Services

- Main office in Harrisonburg, offices in Winchester, Lexington, and Roanoke (<http://www.brls.org/>).
- Provides routine assistance to low-income individuals dealing with legal issues arising from serious illness including health care and health insurance related problems, Medicaid, housing, consumer/finance issues, predatory lending, employment issues (FMLA), family law issues, advance directives, wills, and health care powers of attorney

Central Virginia Legal Aid Society

- Main office in Richmond, offices in Petersburg, and Charlottesville (<http://cvlas.org/>)
- CVLAS handles a variety of cases including bankruptcy, debtor rights, consumer/finance, employment, family law, health care and insurance, housing, public benefits, SSI, unemployment compensation
- CVLAS is part of Medical Legal Partnership with VCU at Massey Cancer Center with LAJC and LINC in which pro bono lawyers help clients/patients.

Legal Aid Justice Center

- Main office in Charlottesville, offices in Richmond, Petersburg, and Falls Church (<https://www.justice4all.org/>)
- Cases handled may vary by office but LAJC generally handles housing, consumer, employment, elder, public benefits
- LAJC is part of MLPs at University of Virginia Children's Hospital (with UVA Law School), VCU Massey Cancer Center (with CVLAS and LINC), and InovaCares Clinic for Children in Falls Church with LSNV

Legal Aid Society of Eastern Virginia

- Main office in Norfolk, offices in Hampton, Virginia Beach, Belle Haven, and Williamsburg(www.laseva.org)
- LASEVA handles many types of civil cases including family law, housing cases, SSI appeals, collections, public benefit denials , and powers of attorney/wills
- Legal Education and Advocacy Program(LEAP) is a MLP between General Academic Pediatrics at Children's Hospital of the King's Daughters and LASEVA and anticipates the possible future inclusion of medical students at EVMS, law students at W&M, nursing students at ODU, and social work students at NSU

Legal Aid Society of Roanoke Valley

- Office in Roanoke. Service area covers Roanoke Valley including Salem, Bedford, Alleghany, Bath, Lexington, Craig, Covington.
(http://lasrv.org/index.cfm?pagename=homepag_e)
- LASRV handles family law, consumer/finance, income maintenance, housing, employment, health and other civil cases.
- NOTE – BRLS handles pro bono recruiting for Roanoke Valley service area

Legal Services of Northern Virginia

- Main office in Falls Church, offices in Arlington, Alexandria, Fairfax, Leesburg, Manassas, and Fredericksburg (<http://www.lsnv.org/home.htm>)
- Pro Bono opportunities include bankruptcy, consumer protection, employment, family law, housing, public benefits, social security, wills, arbitration and mediation.
- LSNV is part of the Northern Virginia Medical-Legal Partnership program with InovaCares Clinic for Children and the Falls Church office of LAJC

Rappahannock Legal Services

- Main office in Fredericksburg, offices in Culpeper, and Tappahannock (<http://www.raplegal.com/>)
- RLS handles health law cases, social security, SSI benefits, unemployment claims, family law cases, housing/ landlord-tenant, consumer problems including bankruptcies, garnishments and debt collection

Southwest Virginia Legal Aid Society

- Main office in Marion, offices in Castlewood and Christiansburg (<http://www.svlas.org/>)
- SVLAS offers advice and referral on most civil issues and handles cases involving debtor relief (predatory lending to bankruptcy), government (public) benefits programs, health, housing, family law. Will expand representation priorities for someone dealing with serious illness.
- Wills and Powers of Attorney are not part of routine representation but assistance in these matters is available through pro bono clinics

Virginia Legal Aid Society

- Main office in Lynchburg, offices in Danville, Farmville, and Suffolk (<http://www.vlas.org/>)
- VLAS handles health care (Medicare, Medicaid, FAMIS, health insurance), public benefits, housing, family relations, advance directives and wills, consumer matters
- VLAS is part of an MLP known as Health Education Advocacy and Law (HEAL) with Lynchburg Family Medicine Residency, Sentara Obici Hospital, and Western Tidewater Free Clinic. These partnerships help educate health professionals and produce better health outcomes for low-income patients

Other Resources

- Probono.net/VA – contains resources for pro bono and legal services attorneys, law professionals and law students (<http://www.probono.net/va/>)
- JusticeServer (Central Virginia) – Case management and referral system for attorneys. Attorneys are able to create a confidential profile, view pro bono opportunities available in designated practice areas/jurisdictions, and find the resources to assist with handling the legal matter. (<http://www.justiceserver.org/>)



Pro Bono Opportunities with the Legal Information Network for Cancer

Cris Whitman Gantz
LINC Client Services Attorney



History

The Legal Information Network for Cancer was established in 1996 by two attorneys who were also cancer survivors: Phyllis Katz and Ann Hodges.





SERVICES AND RESOURCES

LINC connects cancer patients, survivors and their families with resources that help ease the day-to-day challenges of cancer.

Areas of assistance include:

- Estate Planning
- Employment Issues
- Private Insurance Denials
- Medicare/Medicaid Coverage and Denials
- Landlord-Tenant Issues
- Foreclosure Prevention
- Bankruptcy
- Debtor's Rights
- Financial Planning



MISSION AND VISION

Vision

No cancer patient goes without needed support services.

Mission

LINC eases the burden of cancer for patients and their families by providing assistance and referral to legal, financial and community resources.



WHO DOES LINC SERVE?

- Cancer patients, survivors and their families
 - Greater Richmond
 - Cities - Richmond, Petersburg, Hopewell, Colonial Heights
 - Counties - Amelia, Carolina, Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, King William, New Kent, Powhatan, Prince George, Sussex
 - Issues must be related to the cancer diagnosis and/or treatment in some way
 - Survivors must be within 5 years of a diagnosis or reoccurrence



WHO DOES LINC SERVE?

- 395 Clients (2013)
 - 95 MLP-R @ Massey
 - 300 Non-MLP

- 612 Issues (2013)
 - 429 Legal
 - 167 Financial Assistance/Other
 - 16 Financial Planning



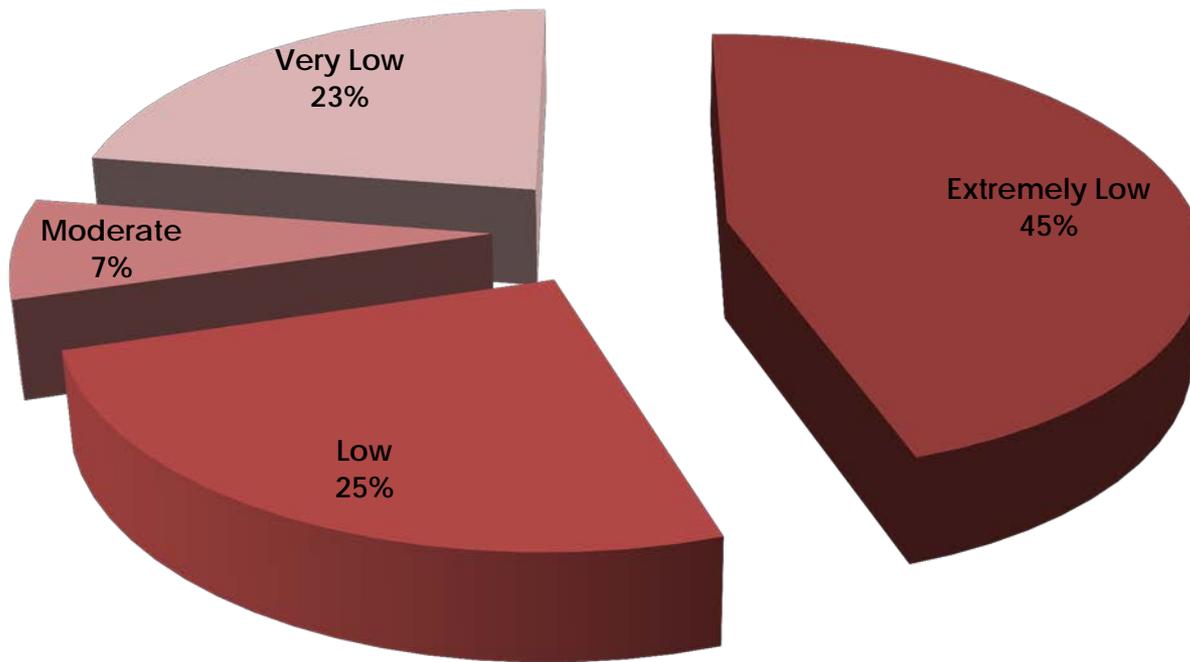
WHO DOES LINC SERVE?

- Hospitals/health care organizations served
 - Bon Secours
 - HCA
 - Hospice
 - VCUHS (MLP-Richmond @ Massey)



WHO DOES LINC SERVE?

LINC Client Income Levels 2013



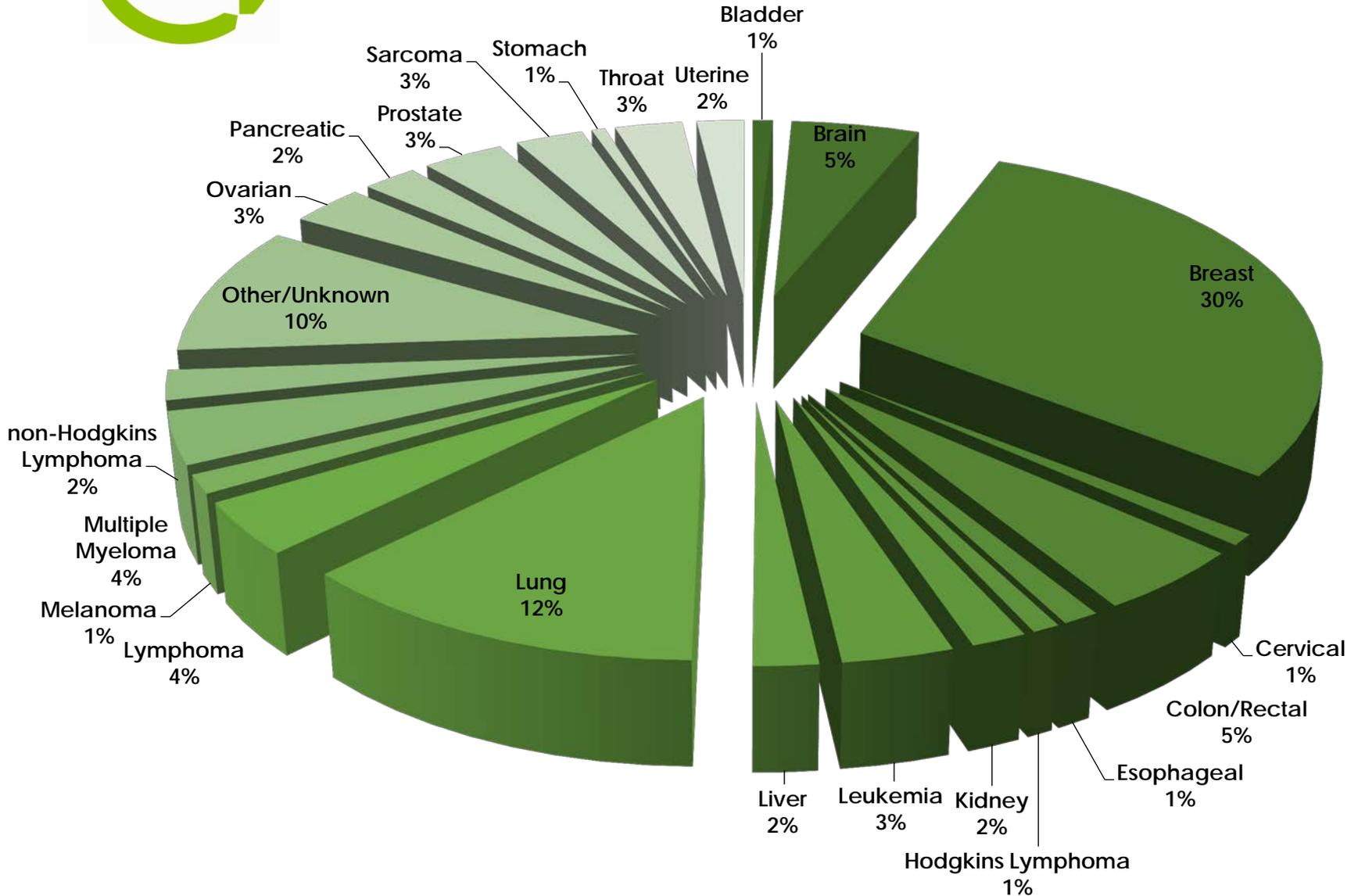


WHO DOES LINC SERVE?

- Access to legal services for cancer patients ineligible for assistance through Legal Aid organizations due to income
 - HUD Income Limits
 - Cancer is financially devastating even for those of more moderate income



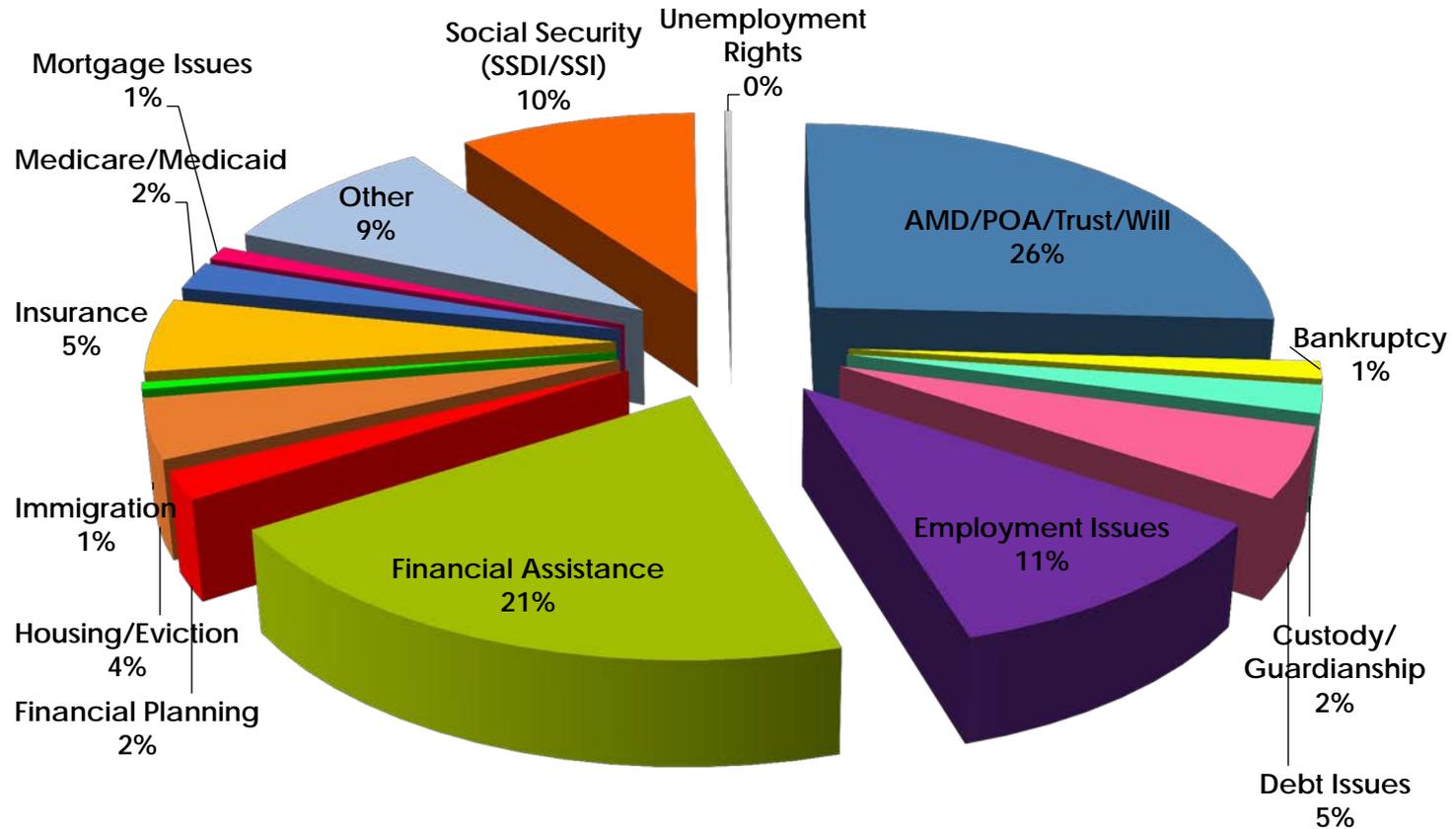
2013 LINC CLIENTS BY DIAGNOSIS



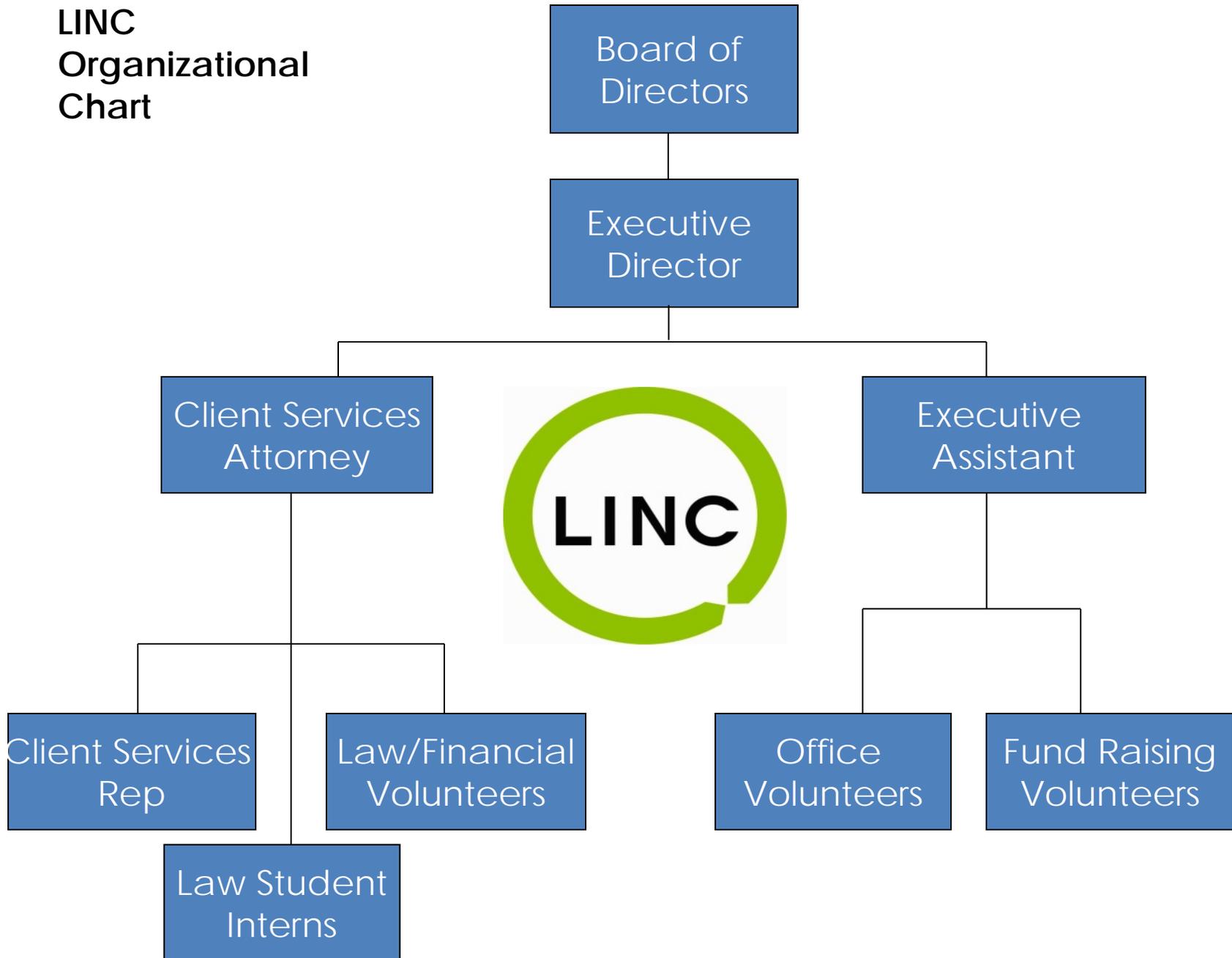


AREAS OF NEED

Issues LINC Helped Clients with in 2013



LINC
Organizational
Chart





RESOURCES TO ASSIST CLIENTS

- LINC Client Services Attorney
 - intake, general advice, emergency wills, POAs, AMDs
- LINC Client Services Representative
 - intake, follow up
- LINC Legal Interns
 - Intake, follow up
- LINC Volunteer Professionals
 - 184 Volunteer Attorneys
 - 10 Volunteer Financial Planners



PRO BONO OPPORTUNITIES

LINC is in need of volunteer attorneys to provide assistance in the following areas:

AREA OF NEED	TYPE OF ASSISTANCE NEEDED		
	Client Representation	Client Advice Only	General Advice to LINC Attorney
Social Security (SSI/SSDI) Eligibility Issues		X	X
Social Security (SSI/SSDI) Appeals	X	X	X
Estate Planning/Estate Administration	X	X	X
Wills/POA/AMD Drafting	X	X	X
Employment Issues (FMLA/ADA)	X	X	X
Employee Benefits		X	X
Private Insurance Coverage Issues and Appeals	X	X	X
Medicare/Medicaid Eligibility		X	X
Tax Issues	X	X	X
Medicare/Medicaid Coverage Issues and Appeals	X	X	X
Debtor/Creditor Issues	X	X	X
Bankruptcy	X	X	X
Foreclosure Prevention		X	X
Landlord/Tenant Issues	X	X	X
Uncontested Custody/Guardianship	X	X	X



WHY VOLUNTEER

- It's a great cause
- It's a great process
 - All LINC Pro Bono clients are pre-screened by the LINC intake department and the LINC Client Services Attorney
 - Direct referral according to your preferred process and communication method
 - Looking forward - Justice Server
- Free training
 - LINC Simple Wills/Life Planning Documents CLE
 - LINC & VA Bar Access to Legal Services substantive law CLE webinars



CLIENT STORIES

– Client 1:

- Surviving friend of cancer patient
- End of life wishes honored – cremation

– Client 2:

- Terminal cancer patient and family
- Eviction prevented

– Client 3:

- Work transfer resulted in farther commute; more stressful environment for breast cancer patient
- Volunteer attorney obtained a transfer to a small local facility as a reasonable accommodation



Medical-Legal Partnerships

Bringing the Law Office into the Healthcare Setting

Allison L. Held

Legal Advisor to the State Corporation Commission

Volunteer Attorney, MLP-Richmond

What is a Medical-Legal Partnership?



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**A professional partnership to
promote patient well being**

Doctors and Lawyers Working Together

- MLPs integrate legal assistance as a vital component of patient care
- MLPs are traditionally formed in hospital systems that serve a large indigent population



MLP Movement

- Now in:
 - 119 hospitals
 - 112 health centers
 - 30 Health Schools
 - 88 Legal Aid agencies
 - 66 Pro Bono Partners
 - 37 Law Schools (include MLP education)



Doctors and Lawyers Working Together

- MLPs address the social determinants of health



Doctors and Lawyers Working Together

- MLPs change clinical systems, reduce health disparities, and improve standard of care



MLP-Virginia

- **Charlottesville**
 - UVA Children’s Hospital, UVA Law School, Legal Aid Justice Center
- **Northern Virginia**
 - Inovacare’s Clinic for Children, Falls Church Legal Aid Justice Center, Legal Services of Northern Virginia
- **Lynchburg**
 - HEAL (Health Education Advocacy and Law), Lynchburg Family Medicine, Johnson’s Health Center, Virginia Legal Aid Society
- **Norfolk**
 - LEAP (Legal Education and Advocacy in Pediatrics), Children’s Hospital of the King’s Daughters, Legal Aid Society of Eastern Virginia

MLP-Richmond

- **3 MLP sites at VCU Medical Center**
 - Pediatrics
 - Massey Cancer Center
 - Hayes Willis Center of South Richmond
- **3 Legal Partners**
 - Legal Aid Justice Center
 - Central Virginia Legal Aid Society
 - LINC



 LEGAL AID
JUSTICE CENTER



VCU Medical Center



Bringing the law office into the clinical setting allows patients to receive advice and/or representation to:

- Secure government benefits
- Fix housing problems
- Resolve insurance disputes
- Solve family law issues
- Plan ahead (e.g., will, power of attorney, advance medical directive)
- Negotiate workplace accommodations
- Address credit or consumer issues
- Prevent disconnection of basic utilities

How is MLP different?

Legal Aid or Nonprofit

- Onus on individual to seek assistance
- Crisis-driven
- Often too late

Medical-Legal Partnership

- We go to patient-clients
- Early intervention
- Prevent crisis

Case Example: Child Custody

- Young mother dying of cancer
- Last wish is to confer custody of her minor daughter to her sister
- Contested custody battle with biological father
- After several legal hurdles, attorney was successful in obtaining custody for the patient's sister

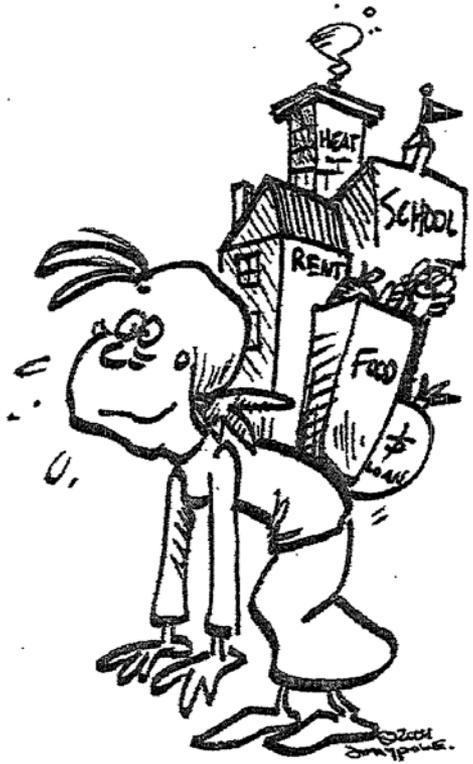
Case Example: Life Planning and Insurance

- The patient contacted MLP-R with several legal issues in preparation for surgery to remove cancer from his left leg.
- Returned for assistance with denial of insurance coverage for prosthetic leg
- Attorney and BOI assisted client with insurance appeal and client was successful

Scaling Up

- Exciting Partnership
 - 150,000 low-income patients seen annually at VCUHS, and we have reached only a small percentage
 - Strategic Plan to create a business plan for future growth and sustainability
-

HOORAY - THAT EAR IS BETTER...
ANYTHING ELSE...?



Thanks to Jack Maypole, MD, physician champion and cartoonist extraordinaire. Email him at jackmaypole@yahoo.com.

QUESTIONS?

For More Information

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Upcoming Webinars in This Series

- Part 2: Relief From Creditors, Wednesday, April 23, 2014 @ 2:00 pm
- Part 3: Medicare, Medicaid, and the ACA, Thursday, May 15, 2014 @ 2:00 pm
- Part 4: Social Security Benefits, Thursday, June 19, 2014 @ 2:00 pm
- Part 5: Housing Law, July 2014 (Date and Time TBD)

NOTE - while not part of this series, the VSB, VPLC, and Virginia Department of Aging and Rehabilitative Services are co-sponsoring a webinar Pro Bono and Elder Law: End of Life Planning, May 6, 2014 @ 2:00 pm