

## Pro Bono by In-House Counsel Should Be Easier

Congratulations to Richmond attorney John M. Oakey Jr. for providing eleven years of full-time pro bono legal services. Mr. Oakey was recognized at a summit held by Virginia Supreme Court Chief Justice Leroy Rountree Hassell Sr., who called for attorneys across the state to perform more pro bono work.

A laudable goal — but we need more than just good intentions to increase the number of attorneys providing quality legal advice to those in need. We need ethical reform.

When Verizon set up its pro bono program last year, the biggest challenge was dealing with the patchwork of state ethics rules that govern pro bono practice by in-house counsel. With offices in twenty-one U.S. jurisdictions, and because the company has relocated offices many times, a large number of these attorneys are not licensed in the jurisdiction where their office is located.

In Virginia almost two-thirds of our attorneys work under an in-house license because they're not licensed in the commonwealth. Some jurisdictions — Virginia falls into this group — require in-house attorneys to work only with certain approved organizations and under the supervision of a member of the state bar association, even if they are licensed in Virginia.

Over the years, I've heard many of my colleagues say that one of the things that they miss most about practicing at a law firm is the pro bono work, so I'm heartened by the fact that nearly half of Verizon attorneys in Virginia have volunteered to provide free legal services to victims of domestic violence, a fallen veteran's family, and a start-up school, among other clients.

Given the hurdles that an in-house attorney must overcome to volunteer services at a time of great need in our

society, one has to wonder how many more attorneys in the state might volunteer if it was easier.

Jennifer L. McClellan  
Assistant General Counsel Mid-Atlantic South, Verizon Communications

*Editor's Note: The justices of the Supreme Court of Virginia on May 20, 2010, invited the Virginia State Bar to work with the Virginia Bar Association to submit a rule for the Court's consideration that would address the provision of pro bono services by Virginia corporate counsel.*

## Judge Gregory's Award Well-Deserved, but Appointment Wasn't Unique

A friend who knows how much I admire Judge Gregory sent me an image of your recent report (*Virginia Lawyer*, April 2010, [http://www.vsb.org/docs/valawyer magazine/vl0410\\_noteworthy.pdf](http://www.vsb.org/docs/valawyer magazine/vl0410_noteworthy.pdf)) on the prestigious award to Judge Roger L. Gregory by the University of Richmond School of Law. He is a remarkable individual. He has always been the ultimate gentleman and demonstrated incisive legal acumen. The award was well-deserved and your reporting allowed it to reach someone in the hinterland like me, a quasi-retired African American lawyer in Los Angeles. Thank you.

I did want to point out a potential inaccuracy in the article's closing line. At least one other federal judge was nominated by presidents of different parties. He was, like Judge Gregory, both a graduate of the University of Michigan Law School and an African American. Cecil Poole was nominated twice by Democrat Lyndon Johnson (confirmation blocked), then in 1976 by Republican Gerald Ford (confirmed to the U.S. District Court for the Northern District

of California), and finally in 1979 by Democrat Jimmy Carter (confirmed to the Ninth Circuit U.S. Court of Appeals). I knew him well, because he was a very close friend of my father, William Hastie.

Again thank you for reporting this event.

William H. Hastie  
Los Angeles, California

## Oakey's Journey Led to Writer's Own

I wanted to offer a couple of observations to complement those in John M. Oakey Jr.'s fine article, "Pro Bono Journey" (*Virginia Lawyer*, April 2010, [http://www.vsb.org/docs/valawyer magazine/vl0410\\_journey.pdf](http://www.vsb.org/docs/valawyer magazine/vl0410_journey.pdf)).

First, it was nice to know that someone I have known for over twenty years remains productive practicing law on behalf of clients for whom representation is so meaningful. That is consistent with the encouragement I received from John and others to offer pro bono services when I was an associate at the firm now known as McGuireWoods.

Second, I hope that even the most junior of lawyers recognize the benefits of pro bono work. The effort is not only rewarding in the Hallmark moment sense. To the inexperienced lawyer, especially in a bigger civil practice, it may offer faster and more intense experiences at developing client relationships, thinking about relevant factual as well as legal issues, and negotiating or litigating disputes to resolution.

To use just one personal example, I recall vividly that my first evidentiary hearing came in a pro bono child-custody dispute. The case involved what I will politely call difficult facts, an interesting client, and a last-minute evidentiary issue prompted by client melo-

drama with authorities. The court ruled in my client's favor. The judge then noted that I was serving pro bono, commended me for the services, and told me she'd look forward to seeing me again. That case let me hone skills relevant to my private practice and motivated me to continue doing pro bono work.

I congratulate John on his own pro bono journey, thank him for helping encourage my own, and emphasize that pro bono service can help not only one's conscience or the community, but one's own full-time practice as well.

Paul G. Gill  
Assistant Federal Public Defender  
Richmond

## Gutterman Rebuts Brazell Indigency Status

Contrary to Clarence M. Dunnville Jr.'s assertion ("Letters," *Virginia Lawyer*, April 2010), *Brazell* was not indigent when the Fairfax Circuit Court terminated her parental rights.

*Brazell* stated under oath throughout the [termination] hearing that she was earning monies that would plainly show, had a calculation been done at that time, that she did not qualify for court-appointed counsel, and further, that when [her prior court-appointed counsel] withdrew as her counsel, she was put on notice that she needed to have counsel at the time of the trial, and the case would not be continued for her failure to do so.

[I]'t's plain that her responses to the interrogatories are consistent with her testimony given at trial that she was, in fact, employed and, in fact, earned monies that would disqualify her for the appointment of counsel.

*Brazell v. Fairfax County Dep't of Soc. Servs.*, 2008 Va. App. Lexis 388.

At the remand hearing, *Brazell's* counsel conceded this point without qualification. *Brazell's* counsel likewise admitted that *Brazell* was earning "over the guideline" amount at the time of the remand hearing, rendering her ineligible for appointment of counsel for appeal. In an abundance of caution, however, the circuit court appointed counsel for *Brazell* for purposes of this appeal.

*Brazell* may be an example of the problems the working poor who do not meet the definition of indigence and cannot afford counsel have in navigating our overwhelming and complex legal system. But contrary to Mr. Dunnville's assertions, *Brazell* is not an example of the "huge impact" of the inability of indigent persons to have legal counsel in civil proceedings. From the Court of Appeals' opinion, *Brazell* was not indigent as of trial. Had she been indigent, she would have been entitled to court-appointed counsel per Virginia Code § 16.1-266(D)(2).

Kim V.H. Gutterman  
Rockingham County Assistant County Attorney  
Harrisonburg

Mr. Dunnville's response:

*I appreciate the opportunity to once again respond to Assistant County Attorney Gutterman's continuing assertion that Ms. Brazell was not indigent. I can only repeat my statement in the April 2010 Virginia Lawyer that Ms. Brazell was found indigent by legal services, and the trial court recognized that determination at the August 16, 2007, remand hearing required by the Court of Appeals. The trial court in fact appointed counsel, but unfortunately*

## Letters

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*too late for Ms. Brazell. To hopefully end this matter, I am sending Ms. Gutterman a copy of the relevant portions of the transcripts of the August 10 and August 16, 2007, hearings so that she can see for herself that this is true.*

*At the August 16 remand hearing it was stipulated that she had a monthly income of \$1,585. The guidelines were \$1,426. Her counsel agreed that she earned \$1,585 per month. However, it was asserted that she had a small child at home, paid rent, and was entitled to deductions which would bring her well within the guidelines for indigency. The Department of Social Services agreed that she was entitled to some deductions and had a child, but would not agree on all of the deductions which it was asserted that she was entitled to. The court did not take any evidence as to whether Ms. Brazell was entitled to the claimed deductions, and this was never resolved by the trial judge. The court never determined whether she was indigent on the record.*

Clarence M. Dunnville Jr.