

Dialogue

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1999: A Glass Half Full for Military Taxpayers

by LCDR Steve Haycock

This article examines some of the events of occurring in 1999 that could impact the tax liability of servicemembers. Many changes in tax law or policy have widespread impact, and receive substantial publicity. Legal assistance providers, however, must also go "beyond the headlines" and become familiar with the relatively obscure changes that may be of critical importance to those in uniform.

For the average taxpayer, the big news in 1999 was what didn't happen: Congress and the President did not agree on significant tax legislation. Specifically, the much-discussed H.R. 2488, a \$792 billion tax bill that would have done everything from lowering income tax rates to abolishing the estate tax, fell victim to a Presidential veto. As of the end of 1999, it appears that the politicians will agree on legislation to extend expiring tax provisions. While paling in comparison to the importance of HR-2488, the "extenders" legislation will at least ensure that approximately one million Americans avoid Alternative Minimum Tax liability. If not for this legislation, many middle-class taxpayers would not be able to make use of personal nonrefundable credits such as the Child Tax Credit, the Lifetime Learning Credit, the Hope Scholarship Credit, and the Child and Dependent Care Credit.

For many military taxpayers, the year's biggest tax disappointment is also related to the demise of H.R. 2488. Section 121 of the Internal Revenue Code currently requires that most taxpayers own and use a residence for a period of two years out of the five years preceding its sale in order to qualify for the \$250,000 (\$500,000, for married taxpayers filing jointly) capital gains exclusion. Many servicemembers do not qualify, because they have chosen (or been forced by a depressed housing market) to rent out a former residence for a lengthy period. H.R. 2488 would have solved the

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DIALOGUE

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Robert N. Weiner
Chair, ABA Standing Committee on
Pro Bono and Public Service

John E. Busch
Chair, ABA Standing Committee on
Lawyer Referral and Information Service

Doreen D. Dodson
Chair, ABA Standing Committee on
Legal Aid and Indigent Defendants

David C. Hague
Chair, ABA Standing Committee on
Legal Assistance for Military Personnel

Herbert S. Garten
Chair, ABA Commission on IOLTA

Terry Brooks
Director, ABA Division for Legal Services

Will Hornsby
Staff Counsel
ABA Division for Legal Services

Gail Thompson
Division Designer/Webmaster
ABA Division for Legal Services

Comments, suggestions, proposed articles
and address changes should be directed to:

Will Hornsby
ABA Division for Legal Services
541 N. Fairbanks Ct.
Chicago, IL 60611
312/988-5761
fax: 312/988-5483
whornsby@staff.abanet.org

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Taxpayers

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problem by excluding from the five-year period time spent in "qualified" duty in the uniformed services. Now, with no legislative solution on the horizon, servicemembers must either move back into a former residence long enough to qualify for "2 of 5," pay tax on whatever capital gains they realize from the sale, or hold onto rental property in the hope that military-specific legislation will eventually pass.

The IRS delivered bad news of its own to some servicemembers in the form of a ruling from the Service's International Branch that members of U.S. forces assigned to NATO remain employees of the United States, and do not qualify for the foreign earned income exclusion. The Tax Court had ruled in 1995, in *Adair v. Commissioner*, that a U.S. civilian employee transferred to NATO became an employee of an international organization, and, therefore, that his salary was exempt from U.S. income tax under 26 U.S.C. § 911. Some servicemembers, apparently relying on the opinion of low-level IRS employees that *Adair* applied to military personnel as well, chose not to report military pay on their returns in 1998. These individuals are now obligated to pay tax on any pay excluded in reliance on *Adair*. While there is no word yet on interest, it appears that the IRS will waive payment of penalties for servicemembers who can prove they acted in good faith in excluding their pay from gross income.

Not to be outdone, the Court of Appeals for the Fourth Circuit dealt a blow to combat zone benefits in *Waterman v. Commissioner of Internal Revenue* (1999 WL

357185 (4th Cir.)). Waterman was a Navy Petty Officer who received a \$45,000 separation bonus while stationed within a combat zone. He excluded the money from his gross income, arguing that Treasury Regulation 1.112-1(b)(4) permits the exclusion of compensation "provided that the member's entitlement to the compensation fully accrued in a month during which the member served in a combat zone." The regulation goes on to state that an entitlement accrues "upon completion of all actions required of the member to receive the compensation." Because Waterman completed all actions necessary to receive the pay while in the combat zone, he argued that his separation pay was not subject to taxation.

The Fourth Circuit disagreed. Focusing on the language of 26 U.S.C. § 112 rather than on the regulation, the court held that Waterman's separation pay was not "compensation received for active service . . . in a combat zone," but was instead compensation for Waterman's promise to leave active service. The need for a close connection to "active service" also allowed the court to distinguish (although not convincingly) Waterman's separation pay from a reenlistment bonus—compensation explicitly held to be tax-free by Treasury Regulation 1.112-1 if received in a combat zone.

However, the news wasn't all bad for military taxpayers in 1999. Combat zone benefits became available to more servicemembers as a result of operations in and around Kosovo. Those qualifying for the benefits fall into two categories: (1) members serving in the combat zone, and (2) members serving outside the combat zone but who receive

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From the Chair...



by David C. Hague
Chair of the ABA Standing
Committee on Legal Assistance
for Military Personnel

In the last Report From The Chair I saluted the heroes of military legal practice, the folks actually delivering legal assistance—judge advocates and civilian attorneys working with them, paralegals, legalmen, and legal clerks. Special note was also taken of the senior leadership in the legal field that promotes dynamic, adequately staffed and funded legal assistance/preventive law programs. In this report I want, among other things, to salute our legal assistance instructors and 1999 LAMP Legal Assistance Award recipients.

Judge advocates begin to understand and appreciate legal assistance during their basic course. During those critical weeks of instruction attitudes about legal assistance and preventive law are developed. Unlike in the past when the basic courses were almost exclusively focused on courts-martial, all of our schools now have balanced curricula that reflect current military legal practice. Smart, talented instructors are teaching the exciting blend of lawyering and leadership making up legal assistance and preventive law. With so many judge advocates proceeding straight from the basic

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Secretary of Defense
Honors ABA

On November 12, 1999, President William G. Paul and the Board of Governors of the American Bar Association gathered at a Dining Out hosted by The Marine Corps Recruit Depot in San Diego. Major General Henry P. Osman presented President Paul with a letter from Secretary of Defense William Cohen thanking the American Bar Association for its significant contributions to the military justice system and the legal needs of military personnel. The text of the letter read:

Dear President Paul:

I am delighted that you, the Board of Governors of the American Bar Association, and your guests are gathered at a Dining Out, a traditional military setting of celebration and camaraderie. This is a fitting occasion for me, on behalf of the Armed Forces, to thank the American Bar Association publicly for its rich contributions to the morale, quality of life, and readiness of our men and women in uniform.

In the early days of World War II, the American Bar Association was at the forefront of efforts to provide civil legal services to military personnel deploying overseas. The American Bar Association Committee on War Work and the Judge Advocates General of the Army and Navy formalized a plan to make counsel available to advise military members on personal legal matters. Today, from those beginnings, vigorous legal assistance and preventive law programs exist in all of the Services. Your Standing Committee on Legal Assistance for Military Personnel can be especially proud of their accomplishments in this vital aspect of our national defense.

The American Bar Association has been an important voice urging improvements to the military justice system since World War I. Following World War II, the ABA was an active partner with us in securing the enactment of the Uniform Code of Military Justice in 1950. Furthermore, through the Standing Committee on Armed Forces Law and the Military Law Committee of the General Practice Section, the ABA continues to be an effective advocate on behalf of military personnel and their families.

Your continued support and friendship are important to our Armed Forces. In the spirit of the evening, I therefore propose a toast to the American Bar Association, to our continued cooperative efforts, and to the ideal of a free and just society to which we are all committed.

Sincerely, Bill Cohen

President Paul was also given a present from Judge Advocates of the military services. Brigadier General John DeBarr gave President Paul, a retired Marine Corps Colonel, a pictorial history of the Marine Corps, and made the following remarks:

"In appreciation to you, Mr. President, and the American Bar Association, I present this gift to you. It is a pictorial history of the Marine Corps and is a gift from the Judge Advocates of the military services. May I add, Mr. President, that you are held in great esteem and we thank you for the contribution you have made to the legal profession. You have treated us, Mr. President, to a

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From the Chair...

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course to legal assistance billets, the importance of the instructors who teach and motivate them cannot be overstated. Kudos and thanks to you all. Your success can be measured in part by the accomplishments of your students, only a few of whom can be recognized by the LAMP Committee.

The 1999 LAMP Legal Assistance Awards were presented in most cases at the recipients' commands, but Navy Lieutenant Keith received his award at the Navy JAG Conference and the Task Force Eagle Legal Assistance Office in Bosnia received its award via a VTC hookup from the Pentagon. In the order presented, and with congratulations again to each of you, the recipients for this year are:

- Naval Legal Service Office, Northwest, Naval Base, Seattle, WA
- Task Force Eagle Legal Assistance Office, OSJA, Tuzia, Bosnia-Herzegovina
- Jim Brennan, OSJA, Fort Eustis, VA
- Legal Assistance Section, Client Services Division, OSJA, Fort Sam Houston, TX

- Lieutenant Brandon S. Keith, JAGC, USNR, Naval Legal Service Office, Southeast Detachment, Mayport, FL
- Captain Theresa Bruno, USAF, Peterson AFB, CO

The LAMP Committee met and presented a day-long CLE at Fort Hood, Texas, in November, and at Camp Pendleton, California, in January. The next two scheduled LAMP meetings and CLEs are at the Air Force JAG School on April 27-28 and Naval Station Bremerton in Everett, WA on July 27-28. Thanks to Colonel Rick Rosen, III Corps SJA, and his staff for marvelous support and hospitality at Fort Hood.

While LAMP Committee gatherings are always enjoyable and, being among America's finest, recharges everyone's batteries, serious business also takes place. Two important recommendations, discussed elsewhere in this issue, were discussed at our Fort Hood meeting and forwarded to the ABA House of Delegates for action at its Midyear Meeting in February 2000. ABA adoption of those recommendations concerning tax relief for military homeowners and statutory recognition of a military will are important impetus to legislative action. Sponsoring

such recommendations is one way the Committee actively helps the Armed Forces. Work also continues on a purple legal assistance website supported by the services but managed by the LAMP Committee. The website, with its ability to provide links to and information on commercial companies that can benefit legal assistance attorneys and their clients, will add a new dimension of support for the legal assistance mission.

I have just described a small, albeit important, part of our workload. We have other projects underway and are looking for further means to support and foster legal assistance. We also want to include more of you, the legal assistance providers, in our events and undertakings. You are invited and encouraged to attend and participate in our meetings and CLEs. We may soon be able to include you in the Committee as associate members, who can be involved with us year round. You can assist now however. Let us know how we can be of more direct help to you. Give us your thoughts and ideas. The best way to communicate with the Committee is by e-mail to ABA Headquarters in Chicago: Chair, LAMP Committee, c/o sswetin@staff.abanet.org. Let us hear from you.

Upcoming LAMP CLE Events

April 27, 2000

Air Force JAG School, Maxwell AFB; Contact: Major Bill Carranza 334/953-2802

July 27, 2000

Naval Station Bremerton, Everett, WA; Contact: Captain Bruce MacDonald 360/476-2156 X234

Please note that all LAMP CLEs are approved for credit in most MCLE states. For further information contact Colleen Glascott at 312/988-5760 or glascotc@staff.abanet.org.

Taxpayers

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imminent danger pay and serve in direct support of combat zone operations. In either case, the servicemember's military pay (up to \$4,653 per month) is not subject to Federal income tax (and, in most cases, to state income tax). In addition, the law extends tax-related deadlines (for example, filing and paying taxes, contributing to an IRA, filing a claim for refund, etc.) for those entitled to combat zone benefits. Deadlines are extended for the period the servicemember is in the qualifying area, 180 days after he/she exits the area, plus whatever time remained to take the action in question at the time the servicemember entered the area. IRS Publication 3, "Armed Forces' Tax Guide" (which may be downloaded from www.irs.gov), contains a detailed explanation of these concepts and several examples of their effect.

While on the subject of the combat zone, note that the tax-free

income soldiers and sailors receive does not qualify as "earned income" according to the IRS, and cannot be used to fund an IRA. In other words, an individual in the combat zone for the entire year, with no other earned income, could not contribute to an IRA, per Internal Revenue Notice 99-30. Note, however, that if the servicemember's spouse has sufficient earned income, he or she may be able to contribute to an IRA on the servicemember's behalf.

While the rules relating to Traditional IRAs are sometimes confusing, those relating to Roth IRA conversions have apparently proved to be mystifying. The IRS recently announced that taxpayers who converted traditional IRAs into Roth IRAs in 1998 have until the end of 1999 to recharacterize them as Traditional—provided they have filed, or will file, a timely 1998 return. The announcement was prompted by the determination that taxpayers have experienced "particular difficulty" in properly applying the Roth rules. The extension will be of interest primarily to those who were not eligible to convert Traditional IRAs into Roths (because, for example, their modified adjusted gross income was over \$100,000 in 1998), but who did not realize that they were ineligible until they completed their 1998 returns.

The Earned Income Credit became a source of controversy late this year as the government attempted to maintain a balanced budget. Many junior servicemembers benefit from the EIC, which they receive in a lump sum after filing their return. There was talk among Republican legislators of instead paying out the credit over a period of months, thereby allowing the government the use of the money over a longer

period. The Republicans backed away from the proposal, in part because presidential candidate George W. Bush criticized the plan. However, the idea survives, and could be resurrected in 2000.

Finally, 1999 saw what could be characterized as a "change in heart" at the IRS. In proposed and temporary rules on offers in compromise, the Service for the first time authorized compromise in tax controversies when the taxpayer faces severe or unusual economic hardship. Upon application by the taxpayer, the IRS will first determine whether he or she is eligible for a traditional offer in compromise, allowed on the basis of doubt as to liability or doubt as to collectibility of the tax. If the taxpayer is not eligible under the traditional categories, the IRS will consider the taxpayer's offer under new economic hardship provisions. Examples of "qualified hardship" include inability to earn a living due to long-term illness or inability to meet basic living expenses if assets were liquidated to pay the taxes due.

Experts disagree over whether this change in policy will amount to much. If nothing else, however, it could indicate that the IRS is serious about changing its image, and that the future could bring more pleasant surprises.

The views, analyses, interpretations and opinions expressed in this article are those of the author and should not be deemed the views, opinions or policies of the American Bar Association or the ABA Standing Committee on Legal Assistance to Military Personnel.

LCDR Steve Haycock is the Deputy Division Director for Legal Assistance and the head of Field Support Tax Branch for the United States Navy.

Sec. of Defense

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very special evening, one that will be long remembered."

The ABA Standing Committee on Legal Assistance for Military Personnel thanks The Judge Advocates General and the legal assistance attorneys from the Army, Air Force, Marines, Navy and Coast Guard for the privilege of working closely with you these past 60 years. The Committee is proud and honored to support military legal assistance and help improve the legal services provided to military members and their families.

LAMP Committee Makes Policy Recommendations to the ABA House of Delegates

by *Sheree Swetin*

The Standing Committee on Legal Assistance to Military Personnel has submitted two Reports with Recommendations to the ABA House of Delegates for their consideration at the February Midyear Meeting in Dallas.

The first report urges Congress to provide protection to military homeowners from capital gains penalties that result from the military member's absence due to official active duty. Recent revisions to the Internal Revenue Code (IRC) have resulted in the inequitable treatment of military service members and their families by imposing, under certain circumstances, capital gains penalties on the sale of their principal residence. Under the revised Code, service members who do not use their principal residence for at least two of five years preceding the sale of the residence must pay a pro rata share of capital gains tax on the proceeds of the sale, even if their absence was due to extended duty away from home. Previous amendments to the IRC recognized this inequity with regard to rollover time periods, and offered an extension to service members on extended duty assignments or who were required to live in Government housing while stationed in the United States. This remedy was not included in the Taxpayer Relief Act of 1997, despite a 1998 Sense of Congress recommending specific relief.

If approved, this policy would permit the ABA to encourage

Congress to include language in the next tax bill that will protect military homeowners from capital gains penalties on the sale of their principal residence if these penalties result from the military service member's absence due to official active duty. This language would suspend, for time spent away from home for official active duty, the five-year period during which the ownership and use requirements of IRC section 121 must be met.

The second Report urges Congress to amend Chapter 53 of Title 10, USC, to add a section requiring states and territories.

LAMP is asking the ABA to support the addition of Section 1044d to Chapter 53 of Title 10, USC. This section would require a military will to be recognized if the will contains a self-proving clause and is executed by a person eligible for legal assistance. The section furthermore exempts the will from any requirements of form, formality or recording under the laws of a jurisdiction.

Given the nature of military legal assistance practice, it is not always possible to adopt the current procedural requirements for probate when preparing a client's will—especially when the client is about to depart because of a military operation. The proposed Section 1044d would require states to recognize wills prepared for eligible clients, and admit them for probate without regard to state procedural formalities.

This legislation neither abolishes nor modifies existing state

laws on testamentary succession. It merely provides an additional uniform method for persons eligible for legal assistance to establish their testamentary intent, assuring them that noncompliance with state formalities alone will not impede the achievement of that intent. Absent convincing evidence to the contrary, the will would be presumed valid and admissible to probate in state court without requiring any appearance or deposition of execution witnesses. This proposal would significantly reduce the likelihood that family members would experience difficulties in probating a service member's will. The amendment does not create a Federal military will nor affect the applicability of state substantive law.

The proposed Section 1044d is very similar to Section 1044c, which requires states to recognize advance medical directives prepared for persons eligible for legal assistance under section 1044. The American Bar Association adopted policy in support of Section 1044c in 1994, and this section was subsequently added to the U.S. Code.

The LAMP Committee has sent copies of these Resolutions to all interested ABA Sections and Committees, and is soliciting their support. Please contact us with your comments and questions at sswetin@staff.abanet.org

Sheree Swetin is staff director for the Standing Committee on Legal Assistance for Military Personnel, in the ABA Division for Legal Services.

DL Tips and Tricks

Editors Note: With this issue of *Dialogue*, we are introducing a new column by CAPT Kevin Flood to assist legal assistance attorneys with the Drafting Libraries (DL) Wills program. Please feel free to send in your own tips, or questions. We will feature them in upcoming issues.

I have had the good fortune to use the Drafting Libraries Wills program since 1985 (when it was known as Drafting Legalease). It is a great program, but it is just that, a software program. It will not think for you, and its instruction screens may be wrong.

Let's discuss drafting a will with a specific cash bequest. You complete the question screens and then you come to one that says:

NOTE: A cash bequest to an individual will "lapse" if the beneficiary does not survive the testator, i.e., the bequest will pass

to the residuary estate. If the testator does not want the bequest to lapse, or if a successor is to be named, edit the OUTPUT FILE.

Sounds good, may even make sense. The only problem is that it is an incorrect statement of the law in most states. The majority of states have in their probate codes an antilapse statute. This usually states that if any distribution (not just cash) is made to someone within a certain degree of kinship to the testator, and the gift does not direct where it goes should the beneficiary predecease, the gift will not lapse, but will pass to the beneficiary's issue.

For example, in New York, the antilapse statute allows children of the sister, brother or issue of the testator to take if their respective parent dies before the testator. This doesn't apply in the case of

a conditional bequest (i.e. to Hal if he survives me). This was in a question on the last New York bar exam, at <http://www.nylj.com/links/298barqa5.html>. The antilapse protection is even broader under the Uniform Probate Code. The Florida version goes so far as to protect the issue of any beneficiary descended from a testator's *grandparent*. F.S. 732.603.

Therefore do not take it for granted that the gift will pass to the residue. Always draft a conditional gift, and better yet, an alternate beneficiary. If you do want it to pass into the residuary estate, then state that if the beneficiary fails to survive, the gift shall lapse and become part of the residue.

Next issue: How to set place-markers and avoid paragraph renumbering.

LAMP Committee - A Proud Record of Service to the Armed Forces

In fulfillment of its charter to support the Armed Forces and foster legal assistance and preventive law programs for its members and their families, the ABA Standing Committee on Legal Assistance to Military Personnel (LAMP) has, inter alia:

- Championed federal legislation in support of legal assistance, including enactment of 10 USC 1044, the first statutory recognition of military legal assistance and a military advance medical directive effective in all states and territories.
- Urged DoD and DOT to require service-members who purchase SGLI to designate beneficiaries by name, rather than "by law."
- Urged DoD to provide judge advocates recalled to active duty with the same professional liability protection as doctors received under the SSCRA.
- Urged suspension of 1972 DepSecDef memo intended to reallocate responsibility for delivery of legal services within the Military Departments of DoD.
- Support since 1971 legislation creating a statutory, instead of the current voluntary, authorization for legal assistance.
- Supported legal assistance for Reservists and their families prior to mobilization.
- Presented 93 LAMP Legal Assistance Awards to individuals and offices since 1980.
- Initiated LAMP Outstanding Student Award in 1998—15 presented to date.
- Provided ABA-approved CLE aboard military installations four times a year for more than two decades.
- Provided a forum for more than three decades in which all of the services have worked together with the ABA for the betterment of legal assistance.
- Worked closely with The Judge Advocates General and the Chiefs of Legal Assistance to foster a supportive environment for legal assistance and the preservation of limited resources.

Not bad for the last millennium—on to the next!



Perspective:
**Prepaid Legal Service Plans:
 Alive, Well and Growing**

by Cubbedge Snow, Jr.
Chair, ABA Standing Committee on Group and Prepaid Legal Services

What do *Lawyers Weekly USA*, *HR Magazine* and *The Washington Post* have in common? They all featured extensive articles on prepaid legal services. Why did these diverse publications devote major story space to something that has been around for almost 30 years? It's because group and prepaid legal service plans have been proving their value in making affordable legal services available to the average family. These plans have been quietly spreading over the years to the point where tens of millions of Americans have access to legal plan benefits.

According to the National Resource Center for Consumers of Legal Services, legal services plan coverage grew by an estimated 7.1% in 1997, with approximately 105 million Americans now eligible to receive assistance through some kind of group or prepaid legal plan. While total legal plan coverage now exceeds 100 million, including primary participants, eligible spouses and dependents, the census reports estimates prepaid legal plan coverage at 17.6 million. 1997 saw increases in both individual enrollment plans (+18.5%) and payroll deduction plans (+8.3).

Such varied institutions as the AARP, the AFL-CIO, General Motors, AT&T and MetLife are just a fraction of the consumer groups, labor unions, employers and insurance companies that either maintain a legal service

plan or are interested in doing so. Major group legal plan administrators report that American Express, Dayton Hudson, Ford, Chrysler, Lucent Technologies, Nabisco, PepsiCo, Pitney Bowes, Ryder, Shell and many other major employers offer group legal benefits coverage to their employees.

Legal services plans come in all shapes and sizes. In the simplest form of plan, an individual member of the group is referred to a lawyer or law firm who by previous arrangement provides free or low-cost legal consultations and provides additional services according to a plan fee schedule or at some fee discount. There is no prepayment for services and the program is open to anyone who is a member of the group.

The truly prepaid legal service plan is usually a little more complex. In the simplest "access" plan, the basic services covered by the prepaid fee generally include legal advice and consultation by telephone, brief office consultations, the preparation or review of a simple legal document, such as a will, and short letters written or phone calls made by a lawyer to an adverse party. Additional services available at discounted fees.

The more comprehensive prepaid legal service plans are designed to cover 80-90% of the average person's legal service needs in a given year. Once the fee has been paid, benefits are available at no additional charge,

except for deductibles and co-payments that may apply to certain kinds of services. A comprehensive plan may provide access services, i.e., legal advice and information by phone, and coverage for a wide variety of legal work.

Legal service plans generally use a system that organizes lawyers into a contract service provider panel from which those eligible for legal benefits receive covered services. This panel may consist of one lawyer or a group of lawyers who agree to the terms and conditions under which the plan is operated. In some plans, legal advice by telephone is provided by one law firm or a small group of law firms in each state that are retained specifically for this service. Plan members are referred to local firms for additional legal representation as needed. Other plans contract with lawyers in areas where they have members to handle all covered services, including telephone legal advice.

Legal service plans usually have criteria that participating lawyers must meet, including levels of experience. Professional liability insurance, convenient office hours and an adequate phone system are among the most common requirements. A few plans need specialists in certain areas of the law, but most concentrate on recruiting experienced general practitioners in the geographic

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From the Chair...



by Herbert S. Garten
Chair of the ABA
Commission on IOLTA

The ABA Commission on IOLTA met in Portland, Maine on October 30-31, 1999. As has become the Commission's custom, representatives from the local IOLTA program joined us for a portion of the meeting. Kevin Cuddy, Peggy McGehee, Eric Samp, and Carol Warren, trustees of the Maine Bar Foundation were in attendance, as was the executive director of the program, Calien Lewis. From what we learned in the meeting, the Maine IOLTA program should be commended. In an opt-out state, the program enjoys an over 90 percent attorney participation rate. Negotiations with banks have been as successful as in any state, and the program funds many exciting projects such as the Frank M. Coffin Fellows Project. In turn, our colleagues from Maine learned about the Commission and the services that it provides. Once again, all in attendance felt that the meeting was a success. The Commission will continue to invite representatives from the local IOLTA programs to our meetings.

On November 12, 1999, the Commission and the National Association of IOLTA Programs (NAIP) co-sponsored a workshop at the National Legal Aid and

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IOLTA Steps Up Collaborative Efforts

by Lucy Metting

The National Association of IOLTA Programs (NAIP) has initiated a plan to deepen relationships between IOLTA (Interest on Lawyers Trust Accounts) programs and other funders, with the help of a planning grant from the Open Society Institute. Although the source of funds for IOLTA is different from those in a family or community foundation, the charitable nature of IOLTA, the grant making activity and shared values with other foundations make the case for better communication. NAIP leadership is recognizing the potential for collaborative funding partnerships and common direct action to improve the lives of low-income people.

In addition to grant making, IOLTA programs, especially those that are administered by bar foundations, share an interest with other foundations in traditional fund raising. They are making connections for information, skill development and mutual, on-going training.

This effort parallels one of the emerging trends in the delivery of legal services, the move toward a holistic model that bridges legal services with human services and provides legal assistance in non-traditional settings such as senior centers, hospital emergency rooms or protective shelters. It also mirrors the national resource development efforts of the Project for Equal Justice, the Management Information Exchange and the ABA's Project to Expand Resources for Legal Services. These groups share the reality of the decline in federal funds for legal services and are mobilizing to expand awareness and develop new resources.

"This project is an effort to look beyond the legal sphere to the greater community to develop awareness, support and new partnerships," said Lorna Blake, president of NAIP and executive director of the New York IOLA Fund. "The boundaries are shifting, and I believe it is time for IOLTA to play a more active role in joining forces with others with shared interests. Many of us have had some involvement with other funders, but until now there has not been an emphasis in the IOLTA community as a whole on building these relationships."

A survey released in August indicates that IOLTA programs think of themselves for the most part as members of the philanthropic community. However, many IOLTA programs operate in a separate, bar-focused sphere and do not think the philanthropic community recognizes the good work that is being done through IOLTA. According to Blake, "There is a 'disconnect' between the self-perception and their perceived recognition by others." The survey further indicates that approximately half of IOLTA programs are not actively involved members of the broader foundation community. According to the survey:

- 87% of responding IOLTA programs consider themselves to be part of the philanthropic community;
- 50% are not sure, or don't think that they are recognized as such by others;

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Collaborative

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- 40% belong to organizations of grant-makers;
- 16% are members of their regional association of grant-makers.

In addition, just 30% of IOLTA programs responding subscribe to the *Chronicle of Philanthropy*, even though it's a low cost publication helping readers stay on top of developments in the field.

The results indicate that IOLTA programs need to identify barriers to communicating with other funders, and begin to more actively reach out to them, beginning with those who provide support to IOLTA grantees. There is movement in this direction. Survey results showed that:

- 58% of IOLTA programs have participated in educating other foundations about legal services;
- 52% have written letters of support on behalf of their grantees to other funders;
- 33% have had a partnership with other funders;
- 28% are working on joint projects with other funders.

Some IOLTA programs are enlisting trustees to forge relationships with other funders and to take a more active role in engaging with the philanthropic community generally.

In addition to the survey, NAIP, in conjunction with the ABA Commission on IOLTA, has initiated an educational effort to inform IOLTA programs of the benefits of collaborating with others in the philanthropic community. A session at the Summer 1999 IOLTA Workshops in Atlanta last August on Collaborative Funding Efforts featured

a variety of perspectives. Phyllis Holmen, executive director of Georgia Legal Services, has successfully raised funds for programming from a wide range of sources. A \$750,000 Woodruff Foundation technology grant with support from the Georgia Bar Foundation's IOLTA program and other funders has enabled the program to link service sites by computer. This has made a

"... it is time for IOLTA to play a more active role ..."

significant improvement in the program's capacity to help people, particularly in rural Georgia. Robert Clyde, executive director of the Ohio Legal Assistance Foundation, which administers IOLTA funds in the state, was invited to meet with a leader of the Gund Foundation. Through that contact, he began to build relationships with a network of community foundations in Ohio for the benefit of legal services programs. Atlanta Women's Foundation director Stephanie Davis, who has a background in legal services and recognizes the potential for collaboration, challenged IOLTA to begin conversations with other funders, and to realize common interests.

According to Blake, "IOLTA can play any number of roles. It can provide letters of support to other funders on behalf of grantees; make presentations to local and regional meetings of grant makers; and convene and participate in forums of funders, such as one held in New York on parent involvement in child welfare reform." Blake continues, "We

have to speak in the language that all can understand with a client- and community-based approach to common problems and concerns."

NAIP has begun the process of building relationships with other networks of grant makers. In the fall of 1998, Blake and Jane Curran, executive director of the Florida Bar Foundation, spoke at a meeting of program officers for community foundations. They presented a model program, Cincinnati Works, that recognizes that when clients are not retaining jobs there is often a legal problem combined with other issues. It is an example of a multi-disciplinary approach to an issue that is relevant to those in community foundations addressing issues of poverty and working toward social change.

There will be continuing efforts to establish relationships between the IOLTA community and other funders on the state and national levels. NAIP, in collaboration with the Project for Equal Justice, has proposed a panel for the upcoming Women's Funding Network conference in Los Angeles.

"I believe that these small steps will lead to a more cohesive approach," said Blake. "Clients have multiple needs, and there is good reason for funders to work with us. Lawyers specializing in poverty law are essential players in meeting our shared goals. Moral persuasion is often not enough, and legal remedies strengthen the effectiveness of programs funded by other foundations. Together, we can identify issues and solve problems with the ultimate goal of alleviating human suffering."

Ms. Metting is a consultant to the National Association of IOLTA Programs.

Grantee Spotlight . . . Miracle Riders

by Carol DeVelice

In today's world we seem to be faced with more and more confused young people; those who are undisciplined, who seem aimless, and who, because of these problems, turn to gangs, drugs, and to crime. They identify with the element that seems to give them the direction they are so desperately seeking. Many of these youngsters come from homes that are dysfunctional, many with only one caregiver, and that caregiver often not a parent, but a grandparent, aunt, uncle, or other family member.



These are the *children-at-risk*; those who are ill equipped to deal with organized society. The task facing our society is to find a way to empower these young people to understand their own self-worth and to show them that there is a

way to work within the confines of the law that is both productive and rewarding. We must give these children-at-risk a better alternative to gangs; a group to identify with that will offer them disci-

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From the Chair...

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Defender Association (NLADA) Annual Conference. The workshop title was "Partners for Comprehensive Delivery: Building Stronger Client Delivery Systems through Program Assessment." We were fortunate to have a expert panel made up of Jonathan Asher, Executive Director, Colorado Legal Services; Lorna Blake, President of NAIP; Judge Lora Livingston, Member of the ABA Commission on IOLTA; and Ken Smith, Director, IOLTA Information Systems. The workshop was well attended, and the panel stimulated a lot of discussion. The Commission and NAIP plan to co-sponsor workshops at future NLADA meetings and at

the 2000 Equal Justice Conference in Houston, on April 6 – 8.

The Joint Commission/NAIP Meetings and Training Committee has been hard at work planning an outstanding array of sessions for the Winter 2000 IOLTA Workshops. Topics including IOLTA program leadership, banking, joint fundraising, technology and making funding decisions will be addressed during the two days of workshops. A joint dinner with the National Conference of Bar Foundations is also planned. I look forward to seeing many of the IOLTA directors and board chairs in Dallas, in February.

On a personal note, I want to take this opportunity to publicly thank Ken Elkins, former Assistant Counsel to the Commission and Director of Publications of the Division for Legal Services, for his

exceptional service over the past six years. Ken left the American Bar Association in December to pursue Rabbinic studies in New York. As Assistant Counsel, he was instrumental in reorganizing the IOLTA Clearinghouse and in developing the *IOLTA Handbook*. He aided in developing the comprehensive survey of IOLTA programs and resulting IOLTA database, which is now updated annually. Ken also provided excellent staffing to the Joint Commission on IOLTA/NAIP Committees on Communication and Technical Assistance. His thoughtful counsel will be missed by the Commission and the entire IOLTA community. I know I speak for all who worked with Ken in thanking him for his outstanding contributions and in wishing him well in his new pursuits.

Claims Against Texas Supreme Court Justices Dismissed in IOLTA Litigation

On January 4, 2000, United States District Court Judge James R. Nowlin granted a motion for judgment on the pleadings filed by defendants Justices of the Supreme Court of Texas in the remanded case of *Washington Legal Foundation, et al. v Texas Equal Access to Justice Foundation, et al.* In his ten-page opinion, Judge Nowlin held that the Justices of the Supreme Court of Texas are entitled to complete immunity. As a result, the Court dismissed all claims against them.

This ruling did not address the underlying issues in the case, which are whether the Texas IOLTA program violates the Fifth Amendment of the United States Constitution by taking client property without just compensation or violates the First Amendment by forcing plaintiffs to finance speech that they find objectionable. Those claims remain alive against the other defendants, the Texas Equal Access to Justice Foundation and its chairperson. During a bench trial of the case in September 1999, Judge Nowlin indicated that he planned to rule on those claims by January 1, 2000. As of press time, however, a ruling has not been issued.

Miracle Riders

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pline while building their self-confidence and their self-esteem.

There are numerous programs offered throughout the country dealing with this growing problem. The Miracle Riders of West Alabama, Inc. is one such program. It is a therapeutic and educational equestrian charitable organization located at Hope Farm in Tuscaloosa, Alabama. In 1998, the Alabama Law Foundation provided IOLTA funds to start a program working with children and adolescents ages ten through seventeen, who were referred by the intake officers at Juvenile Court through Indian Rivers Mental Health Center's Children in Need of Supervision program. The outcome of this endeavor proved so successful that the grant was renewed in 1999.

Participants are drawn from the West Alabama area. Many come from low-income families. They are referred to the Juvenile

Court system and then to Indian Rivers for many reasons. The typical problems of these children include defiance of authority, poor school performance, chronic violation of home rules, minor legal infractions, bullying, fighting, and runaway behavior. According to the coordinator for CHINS (Children in Need of Supervision), "A major difficulty we have in working with these children is accessing activities which enhance self-esteem and provide sufficient guidance." The Miracle Riders program is helping provide a solution to this difficulty.

The program empowers and motivates its participants. It brings about an increase in self-control, improvements in self-esteem and confidence, and cooperation with others. The children, in becoming responsible for their own horses, develop a relationship of trust with horses, and with their volunteers and instructors. For many, this is the

first trusting relationship ever experienced. They are learning that by giving to the horses, through grooming, feeding, riding, and general care, the horses are prospering, and are giving back to the children. These young people are now the "caregivers" to the horses, and by being so, are increasing their awareness of their own self-worth. They are learning that through the discipline of horses, and of a regimented barn system, they can succeed in something they never dreamed possible. Further, they are building relationships based on shared experiences with the others in their program and learning to work together as a team.

The Miracle Riders program consists of six-week sessions, where groups work one day a week together. Each participant is paired with a volunteer and/or instructor, and with their own horse. They learn the routines of grooming, tacking up (saddling and bridling), orderly use of tools, and the orderly preparation and care of the horse, as well as other stable work. The ultimate reward at the end of the six weeks is a riding lesson. Whenever possible, the children return for second and even third sessions, progressing in all their skills, and acting as mentors to the first-time participants. The work is all overseen by certified riding instructors. The knowledge gained is in stable management and, ultimately, in riding. The final goal, that of strengthening the individual, is difficult to measure.

There is controversy over why such a program is able to produce the positive results it does. It has been said that horses are the great levelers. When dealing with a horse, all people are equal. Many

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Miracle Riders

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of the children and adolescents who come to Hope Farm have never been exposed to large animals. Horses weigh between nine hundred and eleven hundred pounds. They are imposing to a youngster who has never dealt with an animal of that size. By virtue of their size alone, horses command respect. The children come into the barn with fear. Through their positive experiences with the volunteers, instructors, and especially the horses, they are able to overcome this fear. This triumph over fear helps promote a feeling of worthiness in the individual. The program, while providing recreational value to the participants, is run with the discipline necessary to make the barn a safe environment. This discipline, which is tempered with laughter, caring and camaraderie, is much needed by the children.

Many factors go into making this segment of the Miracle Riders productive, and to making this program one that is worth the support of so many donors. Each participant is screened, so that he or she can be effectively matched with a volunteer and with a horse that will be of the most benefit. The horses that form the foundation of the Miracle Riders are all chosen with great care. They are kind, patient, tolerant creatures who like people and are able to overlook the inconsistencies of inexperienced hands. The instructors are all certified, either by the British Horse Society, or by the American Riding Instructors Certification Program. This insures the highest level of safety in the barn as well as in the riding arena. Rules are laid down during the first session, so that there are no

surprises and can be no questions as to what conduct is expected. The participants are all asked to work, and are all equally lavished with praise for jobs well done. A mediocre job, such as an incorrectly bandaged leg, must be redone satisfactorily. This fosters in the children a striving for excellence. Their desire to please is one of the many rewards for those who work so diligently with them.

As with any program of this type, outcome needs to be evaluated to ascertain whether the program is of sufficient success to merit its continuation. In this case, the Indian Rivers Mental Health Center conducted two tests. The tests are from the BETA System: Behavioral Evaluation, Treatment, and Analysis, a scientifically-based, organized, and systematic method of obtaining and using environmental-behavioral data about individuals for the purposes of prognosis, treatment, and evaluation.

The Juvenile EDS is a 16-point checklist of environmental input to the individual in terms of his deprivation or support in such areas as school, organizations, and interpersonal relationships. The MBR is the counterpart of the EDS. It is the response or reaction side of the equation dealing with responses to school attendance, interaction with peers and teachers, non-academic school activities, fighting, abusiveness, family, alcohol and drug abuse, and other response problems. A lowered score reflects a positive result.

Prior to participating in the Miracle Riders program, the applicants took the two tests. These tests were then repeated with the participants after completion of the sessions, and with those who were accepted but did not participate. The results indicate

that the group that completed the program dropped an incredible 4 plus points on both tests, while the group that was accepted but did not participate, experienced a rise in their scores of .75. The participants are building positive social skills, are interacting in a positive manner with their peers, and are building self-esteem and self-confidence. This overall improvement is reflected in every area of their lives, as the test scores indicate.

It is easy to talk of test results, to list positive scores that reflect the success of a given program. Equally important is the smile of a child who rarely smiles, the caring touch of a young man who has been dubbed a sociopath, feeling nothing and caring for no one. True achievement can also be found in the grin of triumph when an overweight teenager who has tried to commit suicide on multiple occasions mounts her horse independently for the first time, and then returns to the Miracle Riders at Hope Farm to mentor other troubled youngsters. The proof of success is also found in the laughter of three boys who were listed as being unable to function with their peers, anti-social, and uncooperative, sharing a shovel as they formed a team to clean their horses' stalls. If such an endeavor can positively affect the lives of even one of these children, then all the time, the effort, and the money spent will be well worth the outcome. These children are our future. It is our responsibility to see that they are given a chance to prove themselves in a positive manner, and to believe in themselves and their contribution to society.

Ms. DeVelice is Executive Director, The Miracle Riders of West Alabama, Inc.

Ken Elkins Leaves ABA Post

After six years as Director of Publications for the ABA Division for Legal Services and Assistant Staff Counsel for the Standing Committee on IOLTA, Ken Elkins has left the ABA to return to his native New York.

Those who work with IOLTA around the country know Ken as a key staff member who provided substantive and administrative support for the Commission's workshops, researched and critiqued IOLTA litigation issues and provided insightful analysis in all aspects of the Commission's work.

Ken was a stealth force in the production of *Dialogue*, working diligently, yet in his signature low-key manner, with a core group of committee members from LRIS, LAMP and Pro Bono,

in addition to IOLTA. He made sure that the magazine included worthy content of wide interest to those who are dedicated to improving the delivery of legal services. Ken set and met the deadlines so that the most current topics could be widely distributed at the Annual and Midyear Meetings and the National Equal Justice Conference.

In recent years, Ken's religion became an increasingly prominent aspect of his life. He decided to pursue religious studies on a more formal and extensive basis and has moved to New York to do so. His colleagues in the Division for Legal Services and the many committee members he has worked with join to wish him well.

Websites You Should Know

Here are some web sites that those involved in the delivery of legal services may find helpful. Add them to your on-line list of favorite sites.

<http://www.abanet.org/redbook>: The directory of ABA leaders and committee participants includes names, addresses, phone, fax and email for convenient reference.

<http://www.abanet.org/legalservices>: The home page of the ABA Division for Legal Services provides access to back issues of *Dialogue* and links to the entities within the Division, including Pro Bono, SCLAID, LRIS, LAMP, IOLTA and Delivery.

<http://www.abanet.org/legalservices/Access.html>: The site to download leading research on legal needs published by the ABA Division for Legal Services over the past decade, including the frequently quoted Comprehensive Legal Needs Study.

<http://www.equaljustice.org/index.html>: The Equal Justice Network is the web site of the Project for the Future of Equal Justice and includes information on innovative services, resource development, state planning partnerships and technology.

IOLTA News

A. Scott Coburn Named Executive Director of Kentucky Bar Foundation and IOLTA Program

A. Scott Coburn replaced Libby Turley as the Executive Director of the Kentucky Bar Foundation and the Kentucky IOLTA Fund. Before joining the Foundation, he served as Minister of Involvement for Russell Christian Church in Russell, Kentucky. In that capacity, Coburn coordinated need outreach, adult education and ministry involvement. From 1990-1995 he was engaged in the private practice of law in Ashland, Kentucky. He also served as a Law Clerk to U.S. District Judge Joseph M. Hood.

Coburn is a 1988 graduate of the University of Kentucky College of Law and received his business administration degree, with emphasis in marketing, from Morehead State University in 1985.

Oral Argument Scheduled by Ninth Circuit Court of Appeals

Oral arguments in the case of *Washington Legal Foundation v Legal Foundation of Washington* have been scheduled before the Ninth Circuit Court of Appeals for February 9, 2000 in Seattle. This case is on appeal from a lower court decision rendered in January 1998 that found in favor of the defendant, the entity that administers IOLTA revenues in Washington State. Plaintiffs challenged on First and Fifth

Amendment grounds the constitutionality of the application of IOLTA to limited practice officers—individuals licensed by the Washington Supreme Court to practice law for the limited purpose of real estate closings.

The case has been fully briefed since October 1998. The American Bar Association, the National Association of IOLTA Programs, the Washington State Bar Association and IOLTA programs operating in the Ninth Circuit filed amicus curie briefs in support of the IOLTA program. David Burman and Nick Gellert of Perkins Coie, who successfully represented the IOLTA program in the United States District Court, are continuing their pro bono representation of the program before the Ninth Circuit.

From the Chair . . .



by John Busch
Chair of the ABA Standing
Committee on Lawyer Referral
and Information Service

No one, not even the near-computer illiterate, can deny that shopping trends are headed toward the Internet, as evidenced by the recent holiday season. As Internet shopping becomes commonplace, it does not take a profound thinker to realize that shopping for all forms of services, including lawyer referral, will focus on the Internet.

Before you read further, take a look at some of the new web sites, such as <http://www.legal-bid.com> and <http://www.uslaw.com>

Legal-Bid.com speaks about its services as "a revolutionary alternative to the traditional manner of locating and maintaining counsel". In response to my inquiry regarding legal services in the estate planning field, I received a welcome letter, with the suggestion that I check back often with "Legal-Bid in order to monitor your bid requests". Other than limited personal information (marital status, estate tax concerns), my inquiry is hardly definitive about the time and complexity of the service that may be necessary. Likewise, I have no assurance or representation regarding the quality or experience of any lawyer who

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Automated Call Distribution— Enhancing Customer Service

by Duane Stanely and Janet B. Diaz

Editor's note: Several lawyer referral programs across the country have implemented Automated Call Distribution (ACD) systems. The Fall 1999 issue of Dialogue included a description of the King County Bar and the Massachusetts Bar Association LRSs' ACDs. The following are examples from the Hennepin County Bar Association LRS and the Houston Lawyer Referral Service, Inc.

Hennepin County Bar Association (Minneapolis, Minnesota)

Our April move to new facilities brought with it the associated headaches as well as the blessings of upgrading technologies, including a new voice messaging system. The system integrates our Tel-Law system with our lawyer referral lines, so listeners can easily transfer to the LRIS after listening to any recorded message. The system also has a reporting capability that lets us know how many times each separate Tel-Law message has been accessed. We also added a new AVT system that has the additional advantage of a fax-back system. Callers can punch in the appropriate numbers to reach a library of documents, and the system will call back to their fax machines to provide the requested documents. We are in the processes of developing this library, experimenting with text copies of our Tel-Law messages and hoping to add a wide variety of forms such as applications for LRIS, Fee Arbitration filing forms, and nomination forms for all awards.

We had already taken a firm position that, as a membership association, we want members to reach a live person rather than a push-button menu when they call the bar association, as opposed to the LRIS. We had calculated that nearly half of the calls handled by the receptionist were from people who know exactly to whom they wanted to speak. The receptionist was spending an enormous, and unnecessary, portion of each day simply transferring calls to office extensions. Incorporating direct dial numbers allows those who are familiar with the association to reach staff directly and, at the same time, takes a significant load off of the receptionist. Now those who do call the main number can receive more personal attention in a less hectic atmosphere.

You may ask, "What about the automated attendant?" While we wanted our members to be able to reach a live receptionist, we prefer that callers to the LRIS receive some information to contemplate before they reach the live staff. Callers to our main LRIS numbers are the only ones fed directly to the automated attendant. They are welcomed and are provided three choices. Callers unfamiliar with LRIS are invited to listen to a recording describing what the service can and cannot do. Second, callers can choose to leave a message in the LRIS mailbox, and our staff will return the call as quickly as possible. The third choice is the infamous "wait for the next available operator." Those who make

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From the Chair...

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may respond to my inquiry. It does not appear that the service qualifies their panel members, but appears to be an easy-to-use service, providing on-line help, and appears to be the lay person as a "Lawyer Referral Service".

USLaw.com offers "free e-mail alerts" and offers titles that provide information to be downloaded regarding legal and business topics. I downloaded information concerning small business liability for workplace harassment (as may result from my paralegal trying to teach me to effectively use the Internet) and received several pages of generic information that appears well done. I do not know if a lawyer prepared it, and obviously legal opinions expressed may or may not be applicable to my jurisdiction. USLaw.com has "attempted to verify" that their lawyers have graduated from an ABA approved law school, are members in good standing, have at least three years of experience and have never been sanctioned by the state bar association. A lawyer is selected by entering his zip code and practice area. In order to see which lawyers may be represented in our geographical area, I entered the practice

area of insurance and zip codes of several major West Virginia cities. No lawyers appeared in response to this inquiry.

The service is certainly user friendly (and includes access to free horoscopes via e-mail). As with Legal-Bid.com, obviously significant planning and effort is going into creating these sites. The assurances by USLaw regarding the qualification of their panel attorneys is hardly ironclad and the shopping public will likely not differentiate between public service lawyer referral programs and for-profit Internet sites like these. Internet use is increasing exponentially. These sites are examples of a myriad of those now available to the consumer of legal services. A majority of the potential clients for your LRIS are people with jobs, who can pay legal fees, and have or will soon have on-line Internet access. With no reflection at all on the quality of the two sites described, they are real competition for all lawyer referral programs. Other Internet-based commercial sites are up and running, creating significant competition for public service lawyer referral.

The CEO of USLaw.com has been quoted as saying "We think there is a huge unmet need in the consumer space", and makes further reference to America's

status as "a litigation obsessed nation". USLaw.com is quoted as saying they "target consumers and small-business owners who are seeking guidance on their legal problems" by providing "legal information" rather than "legal advice". Is that a distinction without a difference? Certainly, to the lay public, the difference is very subtle. Subtle may also be the difference between public service lawyer referral entities and commercial ventures. This makes it even more critical for public service agencies to have experienced panels, make certain providers have malpractice coverage, and communicate that to the consumer. Certainly the ABA logo for qualified services speaks volumes. Many bar associations offer e-mail referrals, taking several hours to respond to a referral request on-line. We question whether this level of service is adequate and competitive, given the consumer's ability to contact a commercial service for an immediate referral.

For the millennium, we must compete effectively in all areas where consumers seek legal services. There can be no doubt the Internet will be an extremely viable source of legal referrals. The train is on the track. We hope your LRIS will secure a front-row seat.

Automated Call

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no choice flow directly to this point after the recording has told them about our service.

Our phones are programmed to indicate to all of the LRIS stations whether anyone is in the hold sequence by lighting a

particular button on the desk set. This allows us to monitor staffing needs and trim the wait time to a minimum. The programmed phones also allow each LRIS counselor to log in or out identifying to the automated attendant whether that station is available to accept calls.

We had a choice of three

distribution patterns in programming the phones:

- 1) a defined sequence to the stations, sending each new call to the station with the highest priority;
- 2) a random assignment to the available stations; or
- 3) distribution to the station

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Automated Call

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that has been inactive the longest. We selected the third option.

After considerable evaluation of alternatives, we also paid \$3,000 for a second announcement, which allows choices to be offered again after the caller is on hold for a certain period of time. This message breaks into the hold sequence after a predetermined number of minutes and apologies to the caller for the length of time that the caller has been on hold. The caller is again informed of the ability to press the suitable button in order to leave a message for our counselors who will return the call at the earliest opportunity. The caller is also given the option to remain on hold with the promise that we will be back to them very soon.

The "on hold" messages were designed primarily for the LRIS audience—that is, the general public, since they are more likely to wait for service than callers who reach the receptionist directly. Messages describe our Tel-Law system, speakers' bureau, fee arbitration program and other public services of the association. The limitations of the system mean that everyone on hold, including those who have called the Volunteer Lawyers Network, hear the same recording. The messages need to be written accordingly, taking into consideration the variety of callers.

We are very pleased with our system, having gained considerable efficiencies from the technological additions without losing the sense of personal service and user friendliness that we want to provide. If you have any questions about our system, feel free

to call or e-mail Duane Stanely, at 612/752-6611, duane@hcba.org

Houston Lawyer Referral Service

"Thank you for calling the referral service. How can we help you?". "No, I'm sorry but we don't provide pro bono services." While local referral services want to help direct individuals to a variety of legal and social services, LRS administrators can't help but wonder if there isn't a better way. Targeting resources to an automated call processing phone system could be the answer.

Automated call processing incorporates features such as Automated Attendant (AA) and Automated Call Distribution (ACD). These system features offer callers direct access to recorded information on local legal services, selective access to live staff assistance, recorded information about the benefits of your LRS for callers on hold, and multiple line capabilities with minimal hold time.

By using an AA, your referral service can benefit by having more incoming telephone lines than staff members. As an example, the Houston Lawyer Referral Service (HLRS) has fourteen incoming telephone lines and three staff members designated to answer the phones. When an individual calls the HLRS, the AA automatically answers the line after one ring. The AA provides a brief introduction about the HLRS and gives the caller the option to either listen to pre-recorded social service information or to hold for the next available staff member.

Many LRS offices are experiencing an increase in the number of calls for information about local social services. In an effort to

decrease staff time devoted to answering these types of questions, your office can utilize voice mail technology to provide callers access to information they need on programs such as small claims court, free legal representation, and dispute resolution. Over the two-year period that HLRS has used this technology, records show that approximately 25,000 callers accessed the option for recorded information instead of the option to speak to a staff representative. The HLRS voice mail feature is similar to the "Tel-Law" program offered by some LRS's with the exception that the information is geared toward general information instead of legal advice.

When a caller chooses to speak with an HLRS staff member, the ACD feature places the call on hold and then directs it to the next available employee. ACD can be programmed to distribute hunt group calls in an effort to equalize call time or call count among available staff members. Another advantage of ACD includes multilingual and/or special program distribution. Multilingual call distribution routes callers to a staff member who speaks their language. If the LRS has a low-income panel or mediation panel that is administered by specific personnel, the ACD will attempt to connect the caller to the designated staff member. If the employee is on another call, the ACD will hold the call until that staff member becomes available. If the staff member is not available, the ACD can send the caller to voice mail. Proper call routing provides for less frustrated callers and staff.

Use the time that your callers are on hold to market your

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Automated Call

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program. Tell them why the LRS is better than looking through the Yellow Pages for an attorney. The HLRS uses a separate Message-on-Hold device that allows the callers on hold to hear these messages:

1. A member of our staff will be on the line momentarily to discuss your problem. Though we're not attorneys and can't give legal advice, our staff will request a brief explanation of your situation and may then refer you to an appropriate attorney, or to an agency designed to assist with your need. All attorneys on our service are in private practice and charge normal fees, however, attorneys offer the first 30 minute in-office consultation for only \$20.
2. Flipping through the Yellow Pages, or a referral from a friend, isn't the right way to find an attorney. The HLRS has over 425 qualified attorneys who can properly handle your legal matter. Our standards require for an attorney to complete an extensive membership application, maintain

professional liability insurance, and be in good standing with the State Bar of Texas. Additionally, attorneys wishing to receive referrals for more complex legal matters must complete an experienced panel application, proving experience in that area of the law. You need the Right Lawyer to answer your legal questions.

What a great way to convey your professional message to a captive audience!

Once your office has made a referral, don't lose the client. Take advantage of a phone system that offers direct transfer to the attorney's office. Upon making a referral and while your staff member is still on line with the client, the call can be forwarded straight to the attorney's office. This direct transfer keeps the client motivated to pursue their matter with the attorney you referred and alleviates any confusion for the attorney about how the client was directed to their office. Most new phone systems provide automatic call transfer, however keep in mind that it may not be necessary for you to upgrade your existing equipment for this feature. Most

local phone companies offer Call Transfer Disconnect as an option.

Thanks to automated call processing, many referral services have seen an increase in the total number of calls as well as a decrease in the hold time that individuals must endure. If you decide to take the plunge and research new phone systems, remember to conduct a busy-line study before and after the installation of the new phone system. This study will record the number of callers unsuccessfully attempting to reach your LRS. Hopefully your statistics will lead to a reduction in the number of unsuccessful calls.

Hearing ringing phones in your sleep? Worried about how many callers aren't reaching your office? Let an automated phone system help relieve at least one of your stress points. You'll find a full-circle benefit to you, your staff, your callers and your attorney members.

Duane Stanely is Executive Director of the LRIS of the Hennepin County Bar Association.

Janet B. Diaz is Executive Director of the Houston Lawyer Referral Service, Inc.

Prepaid

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areas where they have members.

Although costs vary by type of coverage, enrollment model and other factors, legal services can be offered to employees at a cost of between \$12 and \$25 per month. Most people joining plans these days are enrolled on a voluntary basis. Under a voluntary enrollment model, members seek services at a rate that is two to

four times higher than in a true group situation in the first few years. This is because people who voluntarily choose to join a prepaid legal service plan either have immediate need for legal services or contemplate such a need in the near future. In other true group programs, benefit utilization is generally lower on average because some members will have immediate need to claim benefits while others may not ever need to use a lawyer's services.

The growing number of groups and individuals attracted to legal service plans attests to the increased importance that the public is placing on access to legal help. With bankruptcies running at an all time high, increased concern about protecting rights in health care arrangements and an aging population concerned about retirement and estate planning, consulting a lawyer about common problems is becoming less of a novelty and more of a necessity.

Ask Dr. Ethics

Dear Dr. Ethics:

I attended the percentage fee funding session at the annual workshop, and frankly, I was inspired! We can actually perform a public service and make money too, at least if we can believe the speakers at that session.... But I'm still worried. A few years ago when we were showing a profit, the bar took our surplus and spent it on a bar association bash complete with a live band. And at the annual LRIS workshop, a friend of mine from another state told me what happened to her. She has percentage fees, but rarely if ever sees the profits. Last year, her bar spent the money on a retreat for the board of directors at a ski resort!

If this is what I've got to look forward to, I say to heck with it! Can the bar really take our money and blow it on wine, food, and a good ski weekend? If we go to percentage fees, I don't want the members of the bar board getting \$ signs in their own eyes.

Show Me the Money

Dear \$\$\$:

To be sure, this is not our usual ethics question. We're talking here about the ethics of the bar association, not the ethical dilemmas that LRIS programs and their lawyers face on the front lines. But yes, this is an ethical issue that can be very important to the welfare not only of your LRIS, but of the people you serve.

In the opinion of Dr. Ethics, it is inappropriate for a bar association to take the money and use it for any purpose other than the LRIS

or pro bono programs, or necessary operating expenses. There is an old IRS opinion issued in California that exempts percentage fee income from unrelated business income tax on the grounds that it is used ONLY for public service activities, so use of these revenues for activities such as rent, parties, etc. could put the bar at risk for unrelated business income—no parties, ski weekends, or bar bands (no matter how good the guitar player is.) And on this one, I've got some significant support from the ABA—the standards passed by the House of Delegates several years ago.

By now, pretty much everyone in the lawyer referral community has seen the ABA standards—model rules of court and legislation for the operation of a lawyer referral service are designed to set the benchmark for how LRIS programs should perform. Most lawyer referral folks know the standards. Lawyer referral programs must meet the standards approved by the ABA House of Delegates to be entitled to use the ABA logo and slogan that says "Meets ABA Standards."

Rule IX of these standards puts it plainly: "Qualified referral services may charge percentage fees, but the income from any such percentage fee shall be used only to pay the reasonable operating expenses of the service and to fund public service activities of the service or its sponsoring organization, including the delivery of pro bono legal services." (Emphasis added.) The legislation, in section 5(i), has similar language.

Here's what that clear language means to me:

(1) The money can go to fund LRIS-related programs.

(2) The money can go for any kind of pro bono program.

(3) Public service activities of the bar may be supported. If the bar has a district attorney candidates' night, a minority law students' scholarship fund, or Law Day activities in the high schools, LRIS money could be used to fund these—although Dr. Ethics feels that the further we get away from pro bono, the more questionable the public service aspect of the activity becomes.

(4) Reasonable operating expenses of your sponsoring association can also be paid from lawyer referral income. It seems to Dr. E. that this includes paying money toward the sponsor's necessary salaries, rent, and the like within reason. But it does not give the sponsoring organization license to fund all its expenses off the back of a profitable LRIS without using a significant portion of the money for the benefit of the clients of the LRIS and the poor.

(5) Ski weekends, parties with good (or, for that matter, bad) rock bands, softball tournaments, black-tie dinners, and barbecues are not (repeat NOT) allowed under this definition. If this is where the money is going, it not only doesn't meet the ABA requirements, it can cost the LRIS its ABA logo, and may expose the bar to unrelated business income tax.

Two observations:

First, what constitutes "public

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Dr. Ethics

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service activities” has not yet been tested in any court, or directly by the ABA’s LRIS committee. Neither has the term “reasonable operating expenses.” Again, speaking for myself, my sense is that while there will be a certain amount of flexibility allowed, the ABA LRIS Committee may well pull the plug on its approval of services for those bars using the funds in a way that is “public service” only if you stand on your head and squint hard into the Sun.

The intent of the standards is obvious: Do good for your community with the money you make, or you won’t be meeting our standards. I’m confident that the ABA LRIS Committee will live up to this intent. The question is whether your bar will do the same.

Second, what’s at stake? Well, from the start there’s the ability to use that “Meets ABA Standards” logo—something which could seriously hurt a service if permission is taken away. But also, these standards didn’t get written in a vacuum. We knew the importance of public service before we created them. That importance hasn’t changed a bit in the years since.

There’s a reason for having these rules. Expect the ABA LRIS Committee to apply them as necessary.

Ultimately, it may be up to you to let your bar know the score. Since neither the term “reasonable operating expenses” nor the term “public service activities” have been tested, you, like other LRIS directors across

the country, will have to negotiate with your board to determine where to draw the line. During this negotiation, you might remind the board, gently, that any single individual panel attorney could challenge the expenditure of money in a way that violates the ABA rules. What a mess that would cause! You can even provide a copy of this column to read, free of any percentage fee or other service charge!

Here’s another percentage fee question.

Hey, Doctor E!

We’ve been charging percentage fees for five years. Recently I’ve started hearing that one group of attorneys is raising its contingency rates by five percent for lawyer referral cases, to make up for part of the percentage fee the service charges the lawyers. It doesn’t feel right to me—after all, aren’t we here to help our clients, not make it more expensive?

Burnin’ by the Bay

Dear BBB:

Not only are you right on in describing the purpose of lawyer referral, but the ABA Standards, as well as state ethics opinions, prohibit this practice! Take a look at Rule V: “The combined fees and expenses charged a prospective client by a qualified service and a lawyer to whom the client is referred shall not exceed the total charges which the client would have incurred had no referral service been involved.” Pretty clear, huh?

The California standard on which this rule is based is even broader: The service and the

lawyer are not allowed either to increase the cost of legal services or decrease the quantity or quality of services which [the client] would otherwise receive if the LRIS hadn’t been involved. (Calif. Rule 17.1(b)) Other states have ethics opinions that permit percentage fee funding ONLY if it does not increase the fees to the client.

So if those surcharging lawyers give you trouble once you show them this language, boot ‘em off your panel, assuming, of course, that your contract with your panel members requires that they follow this rule. If not, your contract or rules should be amended to clearly prohibit a panel member from adding on fees to cover the percentage they remit to the LRIS, particularly if you’re at a LRIS that otherwise meets the ABA standards.

Dr. Ethics is otherwise known as Richard Zitrin, who teaches legal ethics at the University of San Francisco and University of California’s Hastings College of Law. While a member of the ABA Standing Committee on Lawyer Referral and Information Service, he was one of the principal drafters of the Model Rules and Legislation for the Operations of a Lawyer Referral Service. He has been a PAR consultant since 1989. He is the co-author of two books on lawyers and ethics, including *The Moral Compass of the American Lawyer: Truth, Justice, Power, & Greed*, published in May 1999.

The views, analysis, interpretations and opinions expressed in this article are those of the author and should not be deemed the views, opinions or policy of the American Bar Association or the ABA Standing Committee on Lawyer Referral and Information Service.

1999 National Workshop a Major Success

by Jim McLindon

Sometimes people wonder why we spend time and money to go to things like the Annual LRIS Workshop. Had you walked into the opening reception in Alexandria, Virginia, the answer would have been obvious in a moment. This is one of those places where, if someone doesn't know your name, at least they know what it's like at your service back home.

This Workshop was one of the best attended, with representatives from most of the Lawyer Referral offices from around the country. As always, the Workshop provided a seedbed for innovation in the Lawyer Referral field, a place where the newbies listen to the veterans—and vice versa.

Keynote Speaker

The opening speaker was Major General William Suter, the Clerk of the United States Supreme Court. Besides being the Clerk, he is the de facto Goodwill Ambassador for the Court. When delegations come from around the world to examine our judiciary, he is one of the people who explains how it all works.

In his remarks, Mr. Suter spoke highly of the quality of lawyering before the Court, although he noted that even the most skilled litigants can be stumped occasionally. Fortunately, the justices sometimes help out. For example, Justice Kennedy sometimes poses a tough question to counsel, which counsel fields as best as he or she can. Unsatisfied, Justice Scalia jumps in, suggesting that counsel "could have answered the question this way . . ." to which counsel responds, "That would also be a good answer." (This is triangula-

tion, Supreme Court style).

Mr. Suter attempted to disabuse the audience of the notion that we could predict the voting of the justices, reminding us that 40% of the cases are unanimous opinions. The guiding principle that he advised us to follow was that, "a squad of facts can defeat an army of legal theory."

Marketing

Lisa Coe, of Vista Communications, presented three marketing sessions during the workshop: Marketing your LRIS, Marketing on a Shoestring, and Marketing with Precision. She noted that the most recent ABA survey clearly demonstrated that marketing makes a difference; indeed, there appears to be a linear relationship between increased marketing and increased success of an LRIS program. As for techniques, the survey revealed that 90 percent of responding referral services indicated that they advertise in the Yellow Pages. Obviously, such advertising remains the bedrock of LRIS marketing. As for inexpensive and innovative marketing techniques, Ms. Coe suggested that services first analyze community demographics and tailor strategies to the market. Next, partner with others, such as other bar associations, college interns, or a starving new advertising firm.

As for specific techniques, the ABA has several publications that provide camera-ready art and sample press releases. Another inexpensive idea for attracting attention to your LRIS is to issue press releases at well-timed moments of opportunity. For

example, January and February is a time when people do new year planning for the future. It is therefore a natural time to promote your service's trusts and estates panel. In March and April, attention turns, unfortunately, to paying taxes, and so the time is ripe to market your tax panel. Opportunities continue throughout the year, e.g., May—Law day issues; June—weddings; July—freedom issues; August—back-to-school issues; September—labor and business issues; October–December—fraud, and debt issues.

PSA's are another technique, although one increasingly hard to utilize. To persuade radio stations to accept your PSA (free Public Service Announcement), emphasize the quality of your panels and the informational services that you provide, for example, your referrals to other community agencies. Scripts for PSA's are available from the ABA.

Ms. Coe mentioned numerous other inexpensive promotional ideas, including a speakers bureau providing panel attorneys for local groups; lunch 'n learn programs providing local employers with panel attorneys to discuss typical legal issues (e.g., wills and real estate purchases) with their employees; "Ask a Lawyer" columns in your local papers that include the LRIS phone number; community fair participation; sports team sponsorship; movie theater advertising slides; and Internet websites. Participants at the Workshop provided other suggestions: mailing Rolodex cards to bar members, accountants and

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Workshop

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real estate agents and establishing a relationship with an Employees Assistance Network.

Finally, Ms. Coe emphasized that any good LRIS marketing requires the Service to do the following three things:

- 1) set reasonable goals which require you to do homework to understand your marketing environment;
- 2) start small, sustain your marketing efforts, and then build on them; and
- 3) define your message—keep it simple, consistent, repetitive (e.g., the ABA LRIS slogan, “the right call for the right lawyer”)

The Internet

The Internet provided quite a buzz at the Workshop. A number of services are already receiving inquiries and making referrals on the Net. Indeed, many services operate in a quasi-chat mode. That is, an inquiry is received, additional information is requested, and then usually a referral can be made. Remember that boxes for the prospective client to fill out are only as good as the person designing the boxes. The consensus at this point seemed to be that open-ended questions to the client about his or her problem is the most useful approach.

Jim Savage, Director of Strategy and Business Development, SBC/Ameritech, and Adam Slote, President of iLawyer.com, an on-line network of lawyer referral services, led a discussion about marketing and delivering services on the Net. They generated a number of ideas about how to make your site easier to find

**Save the Date
for the 2000
LRIS Workshop
in New Orleans -
October 18-21.**

via the various search engines; emphasized how important it is to make your site attractive and easy to use; and stressed the need to reinforce your web presence through your other advertising.

Also on the subject of the Internet, attendees were reminded of a number of services provided by the ABA. First, all LRIS's are listed on the ABA web page; a hyperlink instantly connects visitors from the ABA web page to any service which has a web page. The ABA also maintains a listserv where directors can post program questions and receive on-line advice from colleagues. In short, Workshop participants were advised that they can expect that the Internet will become as central to LRIS as the phone and the phone book.

LRIS After Hours

There was also discussion about the desirability of operating LRIS's outside of normal business hours. For example, the Houston Lawyer Referral Service has recruited attorneys to wear a beeper and thus provide after-hours coverage. They primarily receive criminal defense inquiries. To attract attorneys to staff the program, attorneys who agree to be on call do not have to remit percentage fees for the cases they accept at night.

Unbundling Legal Services

Neil Ruther of the Legal Advice Line spoke on the unbundling of legal services. He estimates there are 80 million Americans who think they can not afford a lawyer

for their legal problems. High prices charged by lawyers are therefore encouraging people to do things for themselves.

The Legal Advice Line has tackled this problem in Pennsylvania and Maryland. Their challenge is to make the services that people need available at prices they can afford. To do so, you need lawyers who can assist clients in handling a wide variety of problems themselves.

How do you train a lawyer to perform this role effectively and efficiently? The Legal Advice Line's answer is to provide them with a legal information database and document management system. The lawyers are trained to make a calculated decision about when clients can safely represent themselves. The factors in that decision include: What is at stake? How complex is the matter? What is the client's ability to represent him or herself?

The Legal Advice Line provides a telephone consultation for \$30.00. They sell the appropriate forms to callers who want to purchase them. However, Legal Advice Line lawyers are prohibited from accepting cases. If a client needs representation, they can be transferred to the local Lawyer Referral Service. In 30% of the cases, the Legal Advice Line lawyer recommends hiring a lawyer.

The service is rendered with a 100% money back guarantee. An average call lasts 17 minutes.

These few highlights just begin to scratch the surface of this year's program. Plan to join us next October in New Orleans. Watch *Dialogue* for details.

Jim McLindon is a freelance writer and former member of the ABA LRIS Committee.

From the Chair...



by Robert N. Weiner
Chair of the ABA Standing
Committee on Pro Bono
and Public Service

Thousands of lawyers across America each year put aside their time sheets and billing slips and engage in pro bono work to help meet the civil legal needs of the poor in their communities. I have never met a lawyer who does pro bono for the glory or the recognition. Rather, my experience is that lawyers are motivated by the opportunity to make a difference and the satisfaction that comes from helping someone in need. Nonetheless, providing recognition for the outstanding pro bono work of America's lawyers is an important way to thank the profession generally for the commitment to the goal of justice for all, and to acknowledge truly heroic efforts of those who reflect the best of the profession.

Established in 1984, the Pro Bono Publico Awards Program of the Standing Committee on Pro Bono and Public Service recognizes extraordinary contributions from those who provide pro bono legal services to the poor. The Committee presents up to five awards annually. Nominees may be those who are individual lawyers who do not obtain their income delivering legal services to the poor, law firms, corporate

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Pro Bono, Innovations and New Partnerships: The 2000 Equal Justice Conference

by Steven Scudder

It's appropriate that Texas, a state that prides itself on everything being BIG, will be the host for the largest gathering ever of civil legal services advocates and supporters. Scheduled for April 6-8, 2000, the ABA/NLADA Equal Justice Conference will be held at the Hyatt Regency in Houston. The first Equal Justice Conference, a collaborative effort of the ABA's Standing Committee on Pro Bono and Public Service and the National Legal Aid and Defender Association, was attended by over 800 individuals, representing a broad cross-section of the legal profession. The sponsors are anticipating even more attendees for the 2000 conference.

The conference is designed to provide an opportunity for examination of client-based delivery innovations and to strengthen the working relationships among the key players in the civil justice system. Representatives from staff legal services and pro bono programs, court administrators, legal services funders, law school deans and staff will attend. Special efforts are being made to increase the attendance of private lawyers, legal services and pro bono program board members, judges, corporate counsel, government attorneys, and bar association leaders.

Special pre-conference affinity group sessions will be held for pro bono program managers, legal services program staff, court administrators, social workers, and pro se/hotline staff. These sessions offer significant opportunities to focus on specific issues of importance to those holding similar positions. The basic conference programming will provide the opportunity for these groups, and others, to integrate their ideas, consider new partnerships and explore new delivery strategies.

Attendees will be treated to inspirational and informative keynote addresses from Mayor Dennis Archer of Detroit, Michigan, and Robert Grey, Chair of the ABA House of Delegates. Invitations have been extended to other outstanding speakers to join us for this important event.

Those who have attended past ABA Pro Bono Conferences (a predecessor to the Equal Justice Conference) or last year's conference know that at the heart of the event are the workshop programs covering substantive, administrative and innovative delivery issues. Over 80 programs have been developed for this year's conference. An additional workshop time slot has been added. Workshop developers have put together programs featuring the most cutting edge issues and innovations, presented by those with the greatest knowledge and expertise.

The Equal Justice Conference conference-within-a-conference program—the Pro Bono Partnership Forum—will be held again this year. The Partnership Forum is an invitation only event designed for leaders of bar associations, law firms, law schools, corporate law departments, the judiciary and the boards of pro bono legal services programs. The

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From the Chair...

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law departments, government attorney offices and other legal institutions whose members have collectively made an outstanding contribution.

We, as lawyers, have the power to change people's lives for the better. Acknowledging those who do so for those least able to protect themselves is simply the right thing to do. We hope that these awards will encourage more lawyers, in all aspects of the profession, to

follow the examples our winners have set, and to realize that good works—valuable in and of themselves—do not go unnoticed.

We will present the awards at the Pro Bono Awards Assembly Luncheon on July 10, 2000, at the ABA Annual Meeting in New York City. This is a featured event of the ABA Annual Meeting each year. Elaine Jones, President and Director/Counsel of the NAACP Legal Defense Fund will be the keynote speaker. We expect over 400 people at the Awards luncheon. In attendance will be the ABA leadership and members,

nominators, family and guests of the recipients, former pro bono award recipients, media representatives, international guests of the ABA President, and others.

The Pro Bono Committee needs your help. The nomination deadline for the 2000 Pro Bono Publico Awards Program is March 6. Please send us the names of people who deserve this recognition. To obtain a copy of the nomination brochure, contact Dorothy Jackson at 312-988-5756, or go to the Committee's web site at <http://www.abanet.org/legalservices/probono.html>

Equal Justice

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Forum will provide these key stakeholders in the legal services delivery system an opportunity to focus on how pro bono efforts can be increased through the participation and partnership of all components of the legal community. The program will feature significant opportunities for attendees to interact with each other, sharing information, experiences and ideas.

The goal of the Partnership Forum is to motivate leaders to return to their communities and activate pro bono partnership initiatives. This will be accomplished through a panel presentation highlighting the key elements of planning a partnership initiative and providing the discussion group setting the opportunity to get counsel and advice from colleagues.

Two highlights from the 1999 conference will be repeated this year: the Technology Showcase and the Consultants Corner. In

the Technology Showcase, various individuals and programs will demonstrate some of the best and most successful technological innovations from around the country. This year's Showcase will feature projects using remote videoconferencing, Internet "push" technology, web site collaborations, linkage of advocates and many others.

As programs continue to respond to changes in funding, the scope of services they provide, and the law affecting their clients, they are exploring new strategies for meeting client needs. These programs know that they can not do this work alone and are looking for the technical expertise, guidance and resources necessary to make the decisions that will best help them improve and expand their work. The Consultants Corner is designed to provide conference attendees with access to individuals and organizations with which they might consult in the future.

No conference of this scope could be successful without local support. The Houston Host

Committee has provided exceptional leadership for the Equal Justice Conference Planning Committee—helping in many ways to contribute to what is shaping up to be an exciting, educational, and fun conference experience. You don't want to miss the Texas Barbecue at the Houston Museum of Health and Medical Science sponsored by the Host Committee! The Texas Bar Foundation, the State Bar of Texas and the Gulf Coast Legal Foundation have also provided important support for this event—through both financial support and involvement in program planning.

Please join the Pro Bono Committee and NLADA in Houston in April for Equal Justice Conference 2000. Conference registration materials can be obtained by calling Bridget Howard at 312-988-5789 or on the Pro Bono Committee's website: www.abanet.org/legalservices/probono.html

Steven Scudder is Counsel to the ABA Standing Committee on Pro Bono and Public Services in the Division for Legal Services.

The Center for Pro Bono Creates New Project: The Rural Pro Bono Delivery Initiative

by Greg McConnell

With funding from the Open Society Institute, the ABA Center for Pro Bono has established the Rural Pro Bono Delivery Initiative, a new nationwide pro bono support project designed to improve access to pro bono legal services for rural citizens. The Initiative has been designed to operate for two years, beginning in early 2000. The Initiative will focus on serving the legal needs of particular segments of the poor population living in rural areas; and on developing, improving and advocating for delivery strategies that serve the entire rural poor community. The Initiative will have a special focus on the redistribution of human and financial resources from urban areas to rural areas. The Initiative will develop strategies for serving this constituency by training and recruiting advocates, and undertaking administrative advocacy. It will also focus on technology.

This is the second recent nationwide project developed by the Center. The first such project, the Children's SSI Project, demonstrated the capacity of the Center to create and administer a national support project, and the capacity of the ABA to bring to bear substantial resources in the effort to expand pro bono participation and mold national policy issues. (See *Dialogue* Fall 1999 issue for a summary of that project.) An integral part of the Children's SSI Project's success was the Center's effective collaboration with other legal service providers involved in addressing

the legal needs of children with disabilities. The Initiative will replicate that model by working with groups that have labored long and hard to improve access to pro bono civil legal services for rural citizens, including organizations such as the Rural Consortium of the National Association of Pro Bono Coordinators (NAPBCO), the Legal Services Corporation Rural Legal Assistance Programs, and the Farmers Legal Action Group (FLAG).

The Center is currently in the process of selecting a director for the new Initiative. Once that person has been hired, the Center will distribute more substantive information about the Initiative's proposed activities and projected achievements. In the meantime, a brief overview of the Initiative's operations and goals follows.

The Need for the Initiative is Urgent and Dramatic

While the urban poor have many, well chronicled needs, they often overshadow the desperate conditions of the substantial number of poor persons living in rural areas. A recent study of rural America shows that of the nation's 3,000 counties, over 75% are designated "rural," meaning no cities of more than 100,000 are located within their boundaries. Rural counties exist in all fifty states, span approximately 82% of the nation's total landmass, and encompass 22% of the total U.S. population.¹

Another study shows that, compared to the U.S. urban population, rural citizens suffer a greater

likelihood of poverty (15.9% poverty rate versus 12.6%).² At the same time, the rural poor work more and are less reliant on government benefits. Nearly 60 percent of rural families living in poverty work at least part of the year, and are less likely to participate in government assistance programs. Moreover, despite relatively higher rates of employment, the rural poor tend to be entrenched in poverty. Over 500 counties are classified as "persistently poor" with a poverty rate exceeding 20% for more than 30 years.

In many respects, the legal needs of the rural poor may not be that much different than those faced by their urban counterparts. They need assistance with consumer concerns; affordable, safe and sanitary shelter; and public benefit claims. They need to be free from violence, have access to health care and obtain direction for transition from welfare to work. A major challenge of providing pro bono legal services to meet the legal needs of the rural poor stems in large part from the critical shortage of lawyers in these areas. A highly disproportionate share of the nation's attorneys resides and works in metro areas. A recent survey of 100,000 ABA attorney members shows that only 20% of members live in towns or cities with populations of less than 50,000.³

Moreover, those attorneys in private practice in rural areas have unique limitations on their ability to provide pro bono service.

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Rural Pro Bono

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They often encounter conflicts that prevent representation, require multi-district registrations, have less access to support staff, or face greater travel demands for meeting with clients and court appearances. Staff-based legal aid programs that serve these communities face similar difficulties. Programs serving rural areas generally cover a wider geographic area than programs serving urban areas, and with less staff and fewer resources. This limits intake opportunities and increases costs due to travel.

Although the pro bono community and the private bar have made valiant efforts to meet the great need by increasing recruitment and training pro bono attorneys, these activities are principally located in urban areas, where the vast majority of attorneys live and practice. Resources in rural programs have been stretched thin by factors affecting rural communities generally: extreme geographic isolation, lack of transportation and limited communication networks. The low number of available attorneys imposes severe limits on the effectiveness of rural pro bono programs and significantly impedes efforts that seek to reduce poverty in rural communities.

How the Initiative Will Address These Issues

The Initiative's goal is to expand the availability of pro bono legal services and information to poor rural clients. The Initiative will promote a restructuring of rural pro bono delivery systems by developing models that capitalize on innovative technology and

improve collaboration with urban pro bono programs. To accomplish this, the Initiative will:

1. Identify, promote and assist in the development of model pro bono programs that utilize innovative approaches to provide legal representation for the rural poor;
2. Promote, develop and encourage the use of technology to address geographic barriers to pro bono legal services, and improve access of the rural poor to attorneys, pro bono programs and judicial and administrative forums. Potential developments include:
 - Innovative use of communication technology, including web sites and e-mail for referrals and assignment of attorneys; video conferencing for intake and advice between rural clients and attorneys;
 - Use of video conferencing equipment to allow an attorney (or client) to participate in judicial and administrative hearings;
 - Linking urban pro bono attorneys and rural clients to provide instructions with pro se materials via telephone and fax; and
 - Use of telephone hotlines staffed by urban pro bono attorneys to provide counsel and advice, brief service and referrals to rural clients;
3. Promote model programs that foster linkage between rural programs and bar supported pro bono programs, which are typically based in urban areas. Potential activities include:
 - Development of community education materials, especially in support of pro se and brief advice activities;
 - Use of urban attorneys with transactional expertise to support rural micro-enterprise activities; and
 - Representation in hearings where the rural client must travel

- to a venue that is located in an urban area (e.g. bankruptcy, Social Security and SSI hearings, drivers license matters);
- 4. Promote models that serve underrepresented constituencies in rural areas, such as farmers, community organizations supporting rural microenterprise initiatives, the elderly, and victims of natural disasters; and
- 5. Provide technical assistance, training and other support to programs.

What the Center Intends to Accomplish through the Initiative

During the first year, the Initiative will devote most of its efforts to: (1) identify and examine successful models for duplication; (2) raise awareness among the public and profession of the issues that underlie the creation of the Initiative; (3) create the necessary collaboration network needed to identify and, ultimately, promote these models; and (4) assist in the development of new projects. The second year of the Initiative will build on and continue this effort, and also set in place a more permanent system to facilitate delivery of pro bono legal services in rural areas after the Initiative has concluded its work. This may result through development of permanent collaborative relationships or creation of institutional commitments to the cause of pro bono rural delivery.

Over a two-year period, it is expected that the Initiative will achieve:

- A demonstrable increase in planning to address rural pro bono delivery issues; the implementation of novel pro bono delivery strategies to serve rural clients;

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Rural Pro Bono

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- The increased implementation of innovative pro bono delivery models by programs; and
- A demonstrable increase in the numbers of pro bono opportunities, increased numbers of pro bono attorneys, and greater representation of poor rural clients.

Conclusion

The ABA and the Center for Pro Bono are committed to improving the lives of the rural poor and providing them access to the legal

system through pro bono legal assistance. This segment of the poor population is in great need of assistance and is often overlooked by the community of providers in favor of other deserving needs. While the barriers to delivery are substantial, the ABA intends to marshal its substantial resources through this Rural Pro Bono Delivery Initiative and offer this population assistance that is not currently provided at an adequate level.

Greg McConnell is Director of the Center for Pro Bono in the Division for Legal Services.

Look for the 1999/2000 Directory of Pro Bono Programs on our website <http://www.abanet.org/legalservices/probono> March 1, 2000.

- ¹ "Welfare Reform in Rural Areas," Rural Policy Research Institute (Oct. 29, 1998).
- ² "Rural America and Welfare Reform: An Overview Assessment," Rural Policy Research Institute (February 10, 1999).
- ³ 1998 Survey of ABA members.

Positions Available

Rural Pro Bono Delivery Initiative Director Chicago, IL

The Center for Pro Bono is seeking capable applicants for the position of Project director to administer its newly created Rural Pro Bono Delivery Initiative. The purpose of the Initiative is to respond to a growing number of persons living in rural areas who are unable to access legal assistance principally because of the low number of attorneys practicing in these areas and the large number of hurdles facing those attorneys that do.

The Director will quickly identify and evaluate existing delivery models for effectiveness. This will be accomplished through an existing network of advocates and programs serving rural communities, as well as proactive outreach to state and local bar associations, law firms, law schools, and other interested persons. In coordinating this Initiative, the Director will develop and provide

information, support and technical assistance regarding rural pro bono delivery to pro bono programs, legal services programs, the judiciary, bar associations, corporate counsel, law schools, and other significant components of the legal profession. The Director will develop long range strategies for creating and duplicating effective pro bono delivery models in rural areas.

The position requires a law degree from an ABA-accredited law school and admission to the bar in at least one jurisdiction. Also required is a minimum of two years experience in the practice of law, legal aid or public defender work, work in coordinating volunteer activities, or service with a bar association or similar organization. An applicant should have at least a fundamental understanding of the legal services staffed and pro bono delivery

If you are interested or know of someone that may be interested in being a consultant at the 2000 EJC in Houston, April 6-8, 2000, please contact Bridget Howard at 312/988-5789, or email her at howardb@staff.abanet.org

systems. Substantive knowledge of legal issues facing rural citizens is preferred. Strong communication skills (oral and written) are required. In addition, he or she should possess project development skills related to coordinating a national project designed to establish new projects throughout the country. These skills include recruiting, training, marketing, information-gathering, networking, public speaking and writing.

Greg McConnell
Staff Counsel
ABA Center for Pro Bono
541 N. Fairbanks Court
Chicago, IL 60611
312.988.5775
312.988.5483 fax
mconneg@staff.abanet.org

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Positions

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ABA Commission on IOLTA Assistant Counsel and ABA Division for Legal Services Periodicals Director

The American Bar Association is seeking an individual who is committed to the delivery of legal services to the poor with excellent research, writing and editing skills to serve as Assistant Counsel to its Commission on IOLTA and Director of Periodicals for the Division for Legal Services. The staff person will have two primary areas of responsibility:

- Provide substantive support for the projects and activities of the Commission on Interest on Lawyers' Trust Accounts (IOLTA), including: providing technical assistance to IOLTA program directors, bar leaders, supreme courts, legislators and others; operating the ABA IOLTA Clearinghouse, which is a repository of information regarding the history, operations and administration of IOLTA programs; and overseeing and updating annually the IOLTA computer data base, which contains information on IOLTA

program income, grants and banking practices

- Produce the quarterly magazine, *Dialogue*, the publication of the ABA Division for Legal Services addressing various topics relating to the delivery of legal services to poor or moderate income clients. Specific tasks include: writing and editing for the publication; conducting research to discover story ideas and prepare articles; providing support and guidance to volunteer editors; and supervising design, layout and production tasks

Candidates for this position should have a background in the delivery of legal services to the poor or the administration of justice and the production of publications. A law degree or graduate study in the administration of justice is required. Experience with a legal services program, public interest law organization, bar association, legal journal or other publication is desirable. Demonstrated excellent research, writing and editing skills are required.

Candidates should contact Andrea Ceo, ABA Human Resources Department, 750 N. Lake Shore Drive, Chicago, IL 60611; Fax 312/988-5177; E-mail: abajobs@abanet.org
Salary Range: \$43,000 - \$57,000

Attorney II (Private Attorney Involvement Administrator Attorney)

The AARP Foundation is seeking an Administrator Attorney to work on public interest litigation. Specific duties include designing and administering processes for finding public interest impact cases; developing, screening, and placing cases with private attorneys and law firms; monitoring cases to ensure timely and competent resolution; and developing ways to favorably impact lives of older people through judicial intervention.

Qualifications include a minimum of five years of experience in complex litigation; member in good standing of the DC Bar (or eligible to waive in); good organizational and administrative skills; ability to relate well to partners of law firms and diverse clients; and proven innovation skills.

Please send resume and cover letter along with writing sample to: AARP, Attn: HRD-EW3704YM, 601 E Street, NW, Washington, DC 20049; Fax: (202) 434-2809; E-mail (ASCII): resumes@aarp.org
Visit AARP online @ www.aarp.org/jobs

Delivery Committee Involved in Tech Project

The ABA Standing Committee on the Delivery of Legal Services is providing direction and assistance in an ABA presidential initiative to increase technology in the practice of law and delivery of legal services. Last year, when William Paul was structuring his priorities for his presidential term, he asked the Delivery Committee to join with the Law Practice Management Section

to develop a project to harness the Internet to improve efficiencies in the delivery of legal services.

Through participation in a task force known as Technology 2000, the chair and staff of the Committee have participated in the planning and development of a web site dedicated to those who provide personal legal services and designed to illustrate ways in which lawyers can use the power of technology to enhance the scope

and efficiency of their services.

The task force is also planning an invitation-only conference of individuals who have been deeply involved in the use of technology to improve the delivery of legal services. The conference will take place on March 28-29, and generate papers designed to advance this effort. The material will then be available to practitioners through the Internet site.

From the Chair...



by Doreen Dodson
Chair of the ABA Standing
Committee on Legal Aid
and Indigent Defendants

I am happy to report on a number of positive developments regarding delivery of civil legal services to the poor.

Legal Services Corporation Funding Increase

On November 29, 1999, President Clinton signed the Commerce, Justice, State appropriations bill for FY2000, which included \$305 million for the Legal Services Corporation (LSC)—a \$5 million increase over the FY99 appropriation. However, LSC will actually receive \$303.9 million due to a .38 percent across-the-board cut in domestic discretionary spending imposed in separate legislation. ABA and state and local bar association leaders were instrumental in advocating for continued funding for the LSC. Thank you to all who participated!

The process for seeking FY 2001 funding for LSC will begin soon in Congress. We hope all *Dialogue* readers will continue to work for LSC funding—writing letters and setting up meetings with your members of Congress while they are home in their districts this winter. For updates on developments, please visit the ABA web site at www.abanet.org/legadv/

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Project for the Future of Equal Justice Develops National Public Awareness Campaign

The Project for the Future of Equal Justice is developing a national public awareness campaign to increase support for civil legal assistance to the poor. The Project is a joint initiative of the National Legal Aid and Defender Association and the Center for Law and Social Policy. Funded by the Open Society Institute and the Ford Foundation, the Project's mission is to expand and strengthen the national infrastructure that supports the development in every state of a comprehensive, integrated system to provide low-income people with the information, assistance and advocacy they need to resolve their legal problems. The public awareness campaign is intended to create an environment that cultivates the public support and funding necessary to develop and sustain these systems in the states.

Facing growing demands for civil legal assistance to the poor and diminished and restricted funding from the Legal Services Corporation, provider organizations at the national, state and local levels are seeking new and expanded financial support from a variety of sources. These sources include national, regional and community foundations, individual donors, law firms, corporations, state legislatures, United Way organizations, and county and city agencies. In addition, those working within and on behalf of the civil legal assistance community seek broader public support at the national, state and local levels. Increased public support is essential to ensure that policymakers prioritize civil legal assistance for the poor as a cornerstone of the American justice system.

In an effort to increase financial and public support, organizations that provide civil legal assistance to the poor, and supporters advocating on their behalf, need to develop an image that portrays their work in a compelling way. To that end, the public awareness campaign is designed to achieve three objectives:

- To educate the public and target audiences about the public benefit and importance of civil legal assistance to the poor.
- To inform the public and target audiences about the amount of unmet need for civil legal assistance to the poor.
- To address negative stereotypes about organizations that provide civil legal assistance to the poor and about the clients that they serve.

The Campaign Process

The campaign is a multi-staged process that combines research and implementation. The communications research firm of Belden, Russonello and Stewart has been retained to conduct Phases I and II. **Phase I**, which has been completed, included a review of existing public opinion data about Americans' attitudes toward legal assistance to the poor. The consultants reviewed prior opinion research conducted by the ABA, the Legal Services Corporation, the American Civil Liberties

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Project for Future

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Union and others. The consultants also interviewed twenty professionals working within the legal assistance community to assess the community's self-image, as well as perceptions of the obstacles to improving the image.

Existing Public Opinion Data

- The consultants first reviewed Americans' attitudes toward low-income persons in general, and the public perception of why certain people are poor. The review of existing public opinion data revealed a fundamental tension between two values: **fairness** and **individual responsibility**. The data showed that the degree of Americans' commitment to each of these values has fluctuated since 1965. At the inception of the Clinton Administration in 1992, 52% of the poll and survey respondents indicated that they believed people were poor most often because of circumstances beyond their control. With the onset of the welfare reform debate in 1995 and the Republican Congress' Contract with America, 62% of the respondents indicated that they believed people most often were poor because of their lack of effort. As of 1998, the two values were relatively evenly matched.
- The consultants also reviewed Americans' attitudes toward the justice system and the legal profession. The data revealed that a strong majority of Americans has confidence in the justice system, but that

there is much less confidence in lawyers and the legal profession. The data also showed that a strong majority of the public perceives that courts do not treat the poor and minorities fairly, and that there is little confidence that poor people have access to good lawyers who can assure them a fair trial.

- Finally, the consultants reviewed Americans' attitudes toward civil legal aid for the poor. The data revealed that Americans are broadly supportive of public resources for civil legal services, and that nearly two-thirds oppose the reduction of federal funding for the Legal Services Corporation. The data also indicated that 70% of survey respondents opposed the restriction of legal representation of poor people in cases involving abortion rights, immigration rights or challenges to welfare laws.
- Existing public opinion data suggests several problems and possible openings for a communications campaign on civil legal assistance for the poor. The **hurdles** include:
 - The belief that certain people are poor because of their own lack of hard work and effort, combined with the belief that currently everyone has an equal opportunity to succeed in this country;
 - Little knowledge and concern about the lack of access to the justice system for many people in the United States.
 Some **openings** on which communications initiatives can build include:
 - Americans' strong support for unrestricted civil legal assistance; and

- A general belief that the poor and minorities are not treated fairly by the justice system.

Next Steps

The Project began **Phase II** in November, 1999. This phase involves extensive research and message development to explore the hurdles and openings indicated in Phase I. The research includes focus groups, a national poll, individual interviews with key audiences and additional focus groups with target audiences to test draft messages. Potential targeted audiences include the business community, national and regional foundations and the private bar.

Based on the research and message testing, the consultant will develop a message strategy for improving the public image of civil legal assistance to the poor. This strategy will form the foundation for a communications plan to implement the message to funding communities and other target audiences.

In **Phase III**, the Project will finalize the design of the communications plan to implement the message strategy. This phase also will include campaign rollout through the national and regional media, advertising or other means, and developing products for educating and influencing target audiences at the national, state and local levels, including brochures, videos, talking points and press kits. In addition, this phase will include communications training sessions for constituents regarding how to utilize the campaign materials to increase funding and public support for civil legal assistance to the poor. Finally, this phase may

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include working with several pilot states to develop communications strategies to enhance the image of civil legal assistance organizations before key audiences in those states, including state legislators and the private bar.

Advisory Committees

A Working Group will guide Phases II and III. This group

includes representatives of the American Bar Association, the National Legal Aid and Defender Association, the Center for Law and Social Policy, the Legal Services Corporation, the Management Information Exchange, the National Association of IOLTA Providers, and local and state-wide organizations that provide civil legal assistance to the poor. The Project also will seek the input of a larger group of advisors that includes private attorneys, corporate counsel, foundation

representatives and leaders of other non-profit organizations. For more information about the campaign, please contact the campaign coordinator:

Bonnie Allen
Project for the
Future of Equal Justice
NLADA
1625 K Street NW, Suite 800
Washington, D.C. 20006
202/452-0620 x 221
FAX 202/872-1031
e-mail: b.allen@nlada.org

The Standing Committee on Legal Aid and Indigent Defendants solicits nominations for the 2000 Harrison Tweed Award. The award recognizes the extraordinary achievements of state and local bar associations that develop or significantly expand projects or programs to increase access to civil legal services to poor persons or criminal defense services to indigents. Any local or state bar association that has developed or significantly expanded a project or program for providing access to legal services for the poor may apply or be nominated. Nominations are due by March 31, 2000. Details and nomination materials may be obtained from the Committee's web site at www.abanet.org/legalservices/HTAWD.html, or by calling 312-988-5757.

From the Chair...

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The increased funding received by the LSC this year is to be devoted to a special program to enhance the technology available to grantees. Most local grantees will see a slight reduction in basic LSC funding awards, but will have the opportunity to seek additional funding for technology improvements. The LSC will be issuing a request for proposals soon; it expects to fund at least one major "model technology program," and to make a number of awards to grantees to improve technology systems or to launch discrete technology-based initiatives.

Other Funding Advances

A number of states experienced great success during 1999 in finding new sources of funding, or expanding available funds, to support the delivery of civil legal services to the poor. Three states—

California, Colorado and West Virginia—obtained new state appropriations for legal services for the poor. Increases in state funding were approved in Georgia, Iowa, Missouri, Tennessee and Virginia. Details on funding mechanisms and achievements in all states are available from the Committee's web site: www.abanet.org/legalservices/sclaid.html. Congratulations to the many bar and legal services leaders who have worked so hard to expand and diversify the funding base for legal services programs!

State Planning Assistance Enhanced

The Committee offers assistance to all those who are working to improve state systems for providing legal services to the poor through our State Planning Assistance Network. This project gathers information about delivery system developments in each state, and offers advice and

assistance to those engaged in planning efforts. We have now posted information on efforts underway in each state on the Committee's web site at www.abanet.org/legalservices/span.html

Legal Needs Research Materials on the Web

We often receive inquiries about the ABA Comprehensive Legal Needs Study. This 1994 study produced two publications: *Legal Needs and Civil Justice: A Survey of Americans* and *Agenda for Access: The American People and Civil Justice*. These are now available for downloading on the Standing Committee on Legal Aid and Indigent Defendants' web site at: www.abanet.org/legalservices/Access.html

Calendar

Pro Bono

April 6 - 8: ABA/NLADA Equal Justice Conference in Houston. For details and registration information, contact Bridget Howard, at 312/988-5789, howardb@staff.abanet.org, or see <http://www.abanet.org/legalservices>

LAMP

April 27: CLE at Maxwell AFB. Contact Colleen Gloscott, at 312/988-5763, glascotc@staff.abanet.org

ABA

July 6-12: Annual Meeting in New York City

July 15-20: London 2000
For details, see <http://www.abanet.org>

LRIS

October 18-21: National Lawyer Referral Workshop in New Orleans. For information, contact Lourdes Rodriguez at 312/988-5786, or rodrigul@staff.abanet.org

Become an ABA Associate

You don't have to be a lawyer to enjoy the benefits of affiliation with the American Bar Association or to give a meaningful voice to your support of the ABA's efforts on behalf of legal services.

A recent change in the ABA's membership structure makes it possible for professionals involved in supporting the delivery of legal services to become ABA Associates.

Learn about what becoming an ABA Associate means to you. You can enroll by visiting the ABA's website at <http://www.abanet.org/members/info/associates.html>

American Bar Association
Division for Legal Services
541 North Fairbanks Court
Chicago, IL 60611-3314

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