

80 Pa. B.A. Q. 47

Pennsylvania Bar Association Quarterly

April, 2009

Judge **AnneLazarus**^{al}

Philadelphia **Court** of Common Pleas

Copyright © 2009 by **Pennsylvania** Bar Association Quarterly; Judge **AnneLazarus**

PRO BONO: A CASE FOR JUDICIAL INTERVENTION, OR HOW THE JUDICIARY CAN HELP BRIDGE THE JUSTICE GAP IN AMERICA

TABLE OF CONTENTS

INTRODUCTION	47
THE JUSTICE GAP	48
INCREASING ATTORNEY <i>PRO BONO</i> PARTICIPATION	50
<i>Pro Bono</i> Recruiting	50
Providing Incentives for <i>Pro Bono</i> Attorneys	51
Reducing the Costs of <i>Pro Bono</i>	52
IMPROVING COURT SUPPORT FOR <i>PRO SE</i> LITIGANTS	53
Increasing Resources and Their Availability to <i>Pro Se</i> Litigants	53
Loosening Restrictions	54
Educating Court Staff	55
CONCLUSION	57
APPENDIX	58

“Judges have a special opportunity, and obligation, to use their positions to provide access to our justice system. As leaders in the community and the bar, [judges] can lead the way to enhance access.”--

The Honorable Judith M. Billings, former chair of the ABA Standing Committee on *Pro Bono* and Public Service.¹

INTRODUCTION

In the United States, our justice system is founded upon lofty principles such as “equal justice under law.” In fact, that phrase has adorned the main entrance of the highest and most prestigious **court** in the land, the United States Supreme **Court**, since its current building opened in 1935.² However, the reality within our justice system today is that this lofty principle is nothing more than an unrealized ideal.³ The ever-increasing cost of legal services in our country has resulted

in effectively pricing the poor out of the system.⁴ The result is a tremendous disparity between the need for civil legal services among low- and middle-income individuals, and the *48 amount of assistance available to them.⁵ This disparity has been dubbed by some as “the justice gap.”⁶ While non-profit civil legal aid providers, such as Legal Services Corporation (“LSC”), do everything within their power to combat this reality, they simply do not have the resources necessary to meet the need for their services.⁷ This problem was highlighted by a 2005 LSC report which documented that approximately fifty percent of the eligible low-income individuals who sought legal assistance from LSC-funded programs were turned away due to the unavailability of sufficient resources.⁸ This unmet civil legal need encompasses matters of critical human importance, such as child support and custody, health care, disability benefits, domestic violence, and virtually every other quality of life issue imaginable.⁹ This article discusses the issues surrounding the problem, focusing on steps that the judiciary can take to foster a culture of *pro bono* within the justice system, and to increase **court** support for *pro se* litigants, thereby helping to bridge the justice gap.

THE JUSTICE GAP

Roughly one million eligible low-income individuals who seek civil legal assistance from LSC-funded programs are rejected each year due to the unavailability of sufficient resources.¹⁰ This number likely reflects only a fraction of the true level of unmet need for legal services among the poor because many low-income individuals are not aware of the availability of legal assistance to them.¹¹ Furthermore, this number does not include those individuals to whom some limited level of assistance was provided, but not the level of assistance that was ultimately needed.¹² In fact, it is estimated that only twenty percent or less of all legal problems experienced by the poor are addressed with the assistance of an attorney, whether through legal aid or private counsel.¹³ The problem of unmet legal need is not isolated to the poor, but affects the middle-class as well. According to estimates, somewhere between forty and sixty percent of the legal needs of middle-income individuals remain unmet.¹⁴ This unmet need for legal assistance results in many individuals representing themselves *pro se*-- something few are equipped to perform adequately-- or otherwise forfeiting rights and benefits to which they may be legally entitled.¹⁵

*49 Not surprisingly, considering the complexity of our legal system, research shows that litigants representing themselves *pro se* are at a significant disadvantage compared to litigants represented by counsel.¹⁶ A 2006 report released by the American Bar Association's Task Force on Access to Civil Justice recognized that “[w]ith rare exceptions, non-lawyers lack the knowledge, specialized expertise and skills to [represent themselves] and are destined to have limited success no matter how valid their position may be, especially if opposed by a lawyer.”¹⁷ In fact, “[a] party who is unrepresented but faces a lawyer on the other side ... [has his or her] chances of prevailing drop by approximately half.”¹⁸ Ultimately, “[t]he presence of lawyers in a civil case makes a substantial

difference to the outcome of the proceedings, which is why those who can afford lawyers hire them.”¹⁹

One area where there is a particularly pressing need for increased legal assistance is in the field of family law.²⁰ For example, a 2006 task force appointed by the Commission of Justice Initiatives in **Pennsylvania** estimated that approximately eighty-five to ninety percent of litigants in the Family **Court** division of the **Court** of Common Pleas of Philadelphia County were self-represented.²¹ The **Pennsylvania** Family **Court** division handles important matters such as divorce, spousal support, child custody, child support, and child abuse and neglect.²² Having such a high percentage of family **court** litigants representing themselves *pro se* is not a problem limited to Philadelphia County, or even to **Pennsylvania**. Estimates similarly suggest that up to eighty percent of family **court** litigants in California represent themselves *pro se*.²³ Other states have reported similar family **court** numbers as well.²⁴

***50** That so many Americans are at risk of being stripped of valuable rights and benefits simply because they are financially unable to retain counsel is in direct conflict with our idyllic notion of “equal justice under law.” Although guaranteed representation for all civil litigants in our country is currently an unrealistic goal, there are steps that can be taken to reduce the level of unmet legal need.²⁵ Two significant steps toward this end can be achieved by increasing the amount of *pro bono* service performed by our attorneys, and by improving **court** support for *pro se* litigants. The judiciary stands in a prime position to lead the way towards the accomplishment of both of these goals.²⁶

INCREASING ATTORNEY *PRO BONO* PARTICIPATION

Lawyers have a professional responsibility to perform *pro bono* service, defined as “being or involving uncompensated legal services performed especially] for the public good.”²⁷ The belief that the legal profession has a responsibility to provide free legal services to individuals who cannot afford them dates back to at least the early nineteenth century.²⁸ Today, this belief is articulated in Rule 6.1 of the ABA Model Code of Professional Responsibility, which states that “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay.”²⁹ Rule 6.1 further states that lawyers “should aspire to render at least (50) hours of *pro bono publico* legal services per year.”³⁰ However, because compliance with Rule 6.1 is aspirational, as opposed to mandatory, most lawyers are simply not fulfilling their responsibility under this Rule.³¹ In fact, research suggests that attorneys perform, on average, less than one half hour of *pro bono* service per week.³² Clearly, measures must be taken to improve these numbers. By actively recruiting attorney *pro bono* participation, providing incentives for *pro bono* attorneys, and reducing the costs incurred by attorneys who do participate in *pro bono* services, the judiciary can help to facilitate and increase attorney *pro bono* participation.

Pro Bono Recruiting

Judge-led recruiting efforts can go a long way towards increasing attorney *pro bono* participation, as attorneys are often more willing to volunteer to provide *pro bono* service if they know that judges are involved with the organization.³³ One way ***51** in which judges can perform effective *pro bono* recruiting is by sending letters on behalf of *pro bono* organizations to lawyers and law firms, encouraging them to increase their participation in *pro bono* service.³⁴ In addition to sending recruiting letters, judges can utilize public speaking opportunities to educate their audiences about the need for increased *pro bono* participation, and to encourage attorneys to fulfill their professional responsibility to provide *pro bono* service.³⁵ For instance, judges can take advantage of swearing-in ceremonies, law school graduations, and bar association meetings or conferences to emphasize to their audiences the importance of attorneys providing *pro bono* service.³⁶

While recruiting, judges should stress that attorney participation in *pro bono* service benefits everyone involved in the justice system. Litigants benefit by obtaining counsel and valuable representation to help them navigate their way through our complex legal system, where they otherwise would be left to their own devices.³⁷ Judges, and **court** staffs collectively, benefit by spending less time dealing with unprepared and inexperienced *pro se* litigants.³⁸ This results in freeing up scarce judicial resources, and allows judges more time to handle their remaining caseload, thereby helping to reduce judicial backlog.³⁹ Finally, attorneys can benefit considerably by providing *pro bono* service via the numerous incentives discussed below.

Providing Incentives for *Pro Bono* Attorneys

Although some might think that fulfilling one's professional responsibility while helping those in need would be enough incentive for attorneys to volunteer to provide *pro bono* service, the current statistics regarding *pro bono* participation beg otherwise.⁴⁰ However, various professional incentives exist that can provide motivation for attorneys to participate in *pro bono* service. For example, through *pro bono* service, attorneys can receive valuable training at reduced or no cost, and gain experience in areas of law that they might not otherwise be exposed to.⁴¹ This can ***52** be an especially attractive incentive for new attorneys, and can provide opportunities to network with judges and other lawyers within their geographic area.⁴² In addition, seven states have adopted rules that permit attorneys to earn credits towards mandatory CLE requirements by performing *pro bono* service.⁴³ Furthermore, **courts** can provide incentive by waiving or reducing annual admission fees for attorneys who volunteer for *pro bono* service.⁴⁴ Some within the legal profession have even advocated providing a tax credit to lawyers who participate in *pro bono* work.⁴⁵ By promoting awareness of the various incentives available within their area, and working

to implement these and other incentives where they are not yet in place, judges can help increase attorney *pro bono* participation.

In addition to the professional incentives discussed above, public recognition of attorneys for their participation in *pro bono* service can also be an attractive incentive.⁴⁶ Judges can provide attorneys with public recognition by participating in awards ceremonies or dinners that honor attorneys for their *pro bono* contributions.⁴⁷ Judges can give keynote speeches at these events, sign and hand out certificates of appreciation, or hand out plaques recognizing recipients' accomplishments in providing *pro bono* service.⁴⁸ More simply, judges can send letters to attorneys personally thanking them for their participation in *pro bono* service.⁴⁹ These tangible forms of recognition typically generate a sense of pride and accomplishment in attorneys, and can be displayed on their office walls for all to see.⁵⁰ Despite any protests to the contrary, volunteers generally appreciate expressions of thanks from the judiciary, and few lawyers who receive certificates or plaques hide them away.⁵¹

Reducing the Costs of *Pro Bono*

Attorneys who handle cases on a *pro bono* basis often end up incurring considerable financial costs through their participation.⁵² By eliminating or reducing as many of these costs as possible, **courts** can facilitate increased attorney participation in *pro bono*. One way in which **courts** can reduce costs typically incurred by attorneys providing *pro bono* representation is to waive filing fees for *pro bono* clients.⁵³ In many jurisdictions, **courts** can easily accomplish this by automatically entering an order of *in forma pauperis* for indigent litigants, thus saving the *pro bono* attorney the ***53** time and money of having to draft an *in forma pauperis* petition.⁵⁴ In addition, standard form interrogatories can be drafted for certain types of matters that judges can then issue *sua sponte* as part of the initial screening process.⁵⁵ This can assist the judge in reaching an initial determination of whether a case has merit, and if so, the judge can then refer the case to an appropriate *pro bono* program.⁵⁶ This helps judges avoid referring frivolous claims to *pro bono* organizations, thereby helping the *pro bono* organization reduce its caseload so that they are better able to serve clients with more meritorious claims.⁵⁷

Judges can also accommodate *pro bono* counsel by providing them with scheduling preferences.⁵⁸ By hearing *pro bono* cases first on the daily calendar, granting docket times close to times where *pro bono* attorneys are already appearing on other matters, or allowing *pro bono* counsel to attend standard hearings via conference call, whenever possible, judges can significantly reduce costs often incurred by *pro bono* attorneys.⁵⁹ Although providing *pro bono* attorneys with scheduling preferences could potentially create the appearance of impropriety or favoritism towards certain litigants or attorneys, most jurisdictions permit this as long as fairness and impartiality are strictly maintained.⁶⁰

Several other ways exist for judges to reduce the costs frequently incurred by attorneys through *pro bono* service. Judges can help alleviate the burdensome cost of depositions, often the single greatest expense incurred by attorneys through *pro bono* service, by encouraging *pro bono* participation by **court** reporters in cases where the client is represented by an attorney on a *pro bono* basis.⁶¹ Judges can create and maintain a panel of *pro bono* **court** reporters, and encourage **court** reporters who serve their **court** in paid cases to enroll as panel members.⁶² Similarly, judges can create and maintain a panel of *pro bono* expert witnesses, and encourage experts who frequently appear in their **court** as paid experts to enroll as panel members.⁶³ Finally, judges can encourage their **court** to create a fund to help reimburse attorneys for the costs they incur through their *pro bono* participation.⁶⁴ For example, many federal district **courts** use *pro hac vice* or attorney admission fees to help pay expenses of *pro bono* counsel.⁶⁵ Some jurisdictions also place a surcharge on **court** document filing fees, or use IOLTA funds to help fund legal services.⁶⁶ Judges can *54 work to implement similar programs in jurisdictions where they are not already in place.

By actively recruiting attorneys to participate in *pro bono*, providing incentives for attorneys to participate in *pro bono*, and helping to reduce the costs incurred by attorneys for their *pro bono* service, the judiciary can increase attorney *pro bono* participation. However, increasing attorney *pro bono* participation alone is unlikely to eliminate the tremendous amount of unmet legal need in our country.⁶⁷ By improving **court** support for *pro se* litigants, the judiciary can take another significant step towards solving this problem, and thus towards bridging the Justice Gap.

IMPROVING **COURT** SUPPORT FOR *PRO SE* LITIGANTS

As discussed above, *pro se* litigants are at a significant disadvantage compared to litigants who are represented by counsel.⁶⁸ While guaranteed civil representation for all litigants in this country is not a realistic goal at this time, improving **court** support for self-represented litigants can help to diminish this disadvantage.⁶⁹ Increasing the resources available to *pro se* litigants, loosening restrictions on lawyers and the unlicensed practice of law, and educating **court** staff on how to handle *pro se* litigants can each help make significant progress towards improving **court** support for *pro se* litigants and ensuring equal access to justice. As with the steps necessary to increase attorney *pro bono* participation discussed above, judges stand in a prime position to help accomplish these actions, and thus improve **court** support for *pro se* litigants.

Increasing Resources and their Availability to *Pro Se* Litigants

One way to substantially improve **court** support for *pro se* litigants is to increase the resources that are available to them. The provision of state or **court** run comprehensive legal self-help websites, accessible to the public over the internet, can significantly improve the resources available to *pro*

se litigants.⁷⁰ In addition to being relatively low-cost to maintain, such websites “have proven themselves to be highly effective means of providing the information component of access to justice.”⁷¹ In fact, a recent California study found that nearly half of self-represented litigants, the majority of which can be considered economically disadvantaged, can obtain access to the internet, and prefer to do so as a means of obtaining information about filing a case and preparing **court** documents.⁷² Legal self-help websites should offer an overview of the **court** system, access to plain language standardized forms and instructions, and information on where to get additional legal assistance.⁷³ Furthermore, these websites should permit *pro se* litigants to electronically file their pleadings, motions, and other **court** forms over the internet. Electronic filing *55 both reduces the costs and increases the speed of filing **court** documents.⁷⁴ In addition to the aforementioned advantages, electronic filing can provide litigants with simplified access to **court** files from any location with an internet connection.⁷⁵ Once these websites are implemented, states can ensure that *pro se* litigants have access to the important legal information they contain by providing public law libraries where self-represented litigants can access these websites on the internet.⁷⁶ In the absence of availability of public law libraries with internet access, computers and kiosks located in courthouses can also widen the availability of such access.⁷⁷

Loosening Restrictions

Another way in which **court** support for *pro se* litigants can be improved is by loosening restrictions on lawyers and the unlicensed practice of law.⁷⁸ In recent years, some jurisdictions have loosened the restrictions on lawyers to allow the “unbundling” of legal services.⁷⁹ Unbundling is the concept of permitting attorneys to provide limited scope representation to a client.⁸⁰ Unbundling permits litigants who cannot afford full representation by counsel to hire an attorney to handle one or more discrete, often more complicated, aspects of their case, while handling the remaining aspects of their case *pro se*.⁸¹ With unbundling, many of the advantages that having counsel represent a litigant provides to the system as a whole are still accomplished, albeit on a more limited basis.⁸² Although having full representation by counsel may be preferable to limited scope representation, it is important to remember that providing some assistance to *pro se* litigants is preferable to providing none.

Judges can promote limited scope representation by supporting the general concept of unbundling.⁸³ This can be accomplished simply by judges making positive comments about limited scope representation.⁸⁴ Judges should let attorneys know that they think it is beneficial to have lawyers involved in what would otherwise be self-represented cases, and that they appreciate receiving forms and **court** documents which they can understand.⁸⁵ Furthermore, by discussing the topic during *56 their public speaking opportunities, judges can further educate and increase awareness about unbundling.⁸⁶ Judges can also modify their courtroom conduct to

facilitate unbundling.⁸⁷ Perhaps most importantly, this includes permitting counsel to withdraw from representation of a client after the attorney has performed the agreed to limited scope representation.⁸⁸ If judges fail to honor limited scope representation agreements, this is likely to result in attorneys feeling like they are being punished for their good intentions, thus they will be unlikely to provide limited scope representation in the future.⁸⁹

In addition to promoting unbundling, judges can establish partnerships with state and local bar organizations, as well as legal service providers, to explore the role of non-attorneys in expanding the types of assistance available to self-represented litigants.⁹⁰ In this vein, the bar in some jurisdictions has relaxed restrictions against the unlicensed practice of law by adopting emeritus attorney *pro bono* rules which allow retired judges, attorneys, and other qualified yet non-practicing lawyers to undertake the *pro bono* representation of clients.⁹¹ Emeritus attorney *pro bono* rules vary from state to state, but typically seek to encourage volunteer emeritus attorney *pro bono* participation, while establishing guidelines to protect both the public and legal profession by requiring that the volunteer activity be performed under the auspices of a recognized legal services or other non-profit organization, the volunteer be a member of a bar in good standing, and the volunteer work be supervised by a lawyer licensed within that jurisdiction.⁹² Effective ways to facilitate emeritus attorney *pro bono* participation include having the local bar waive annual fees for volunteers, having **courts** waive admission fees for volunteers, and by nonprofit legal aid organizations providing volunteers with necessary malpractice insurance.⁹³ By working to establish partnerships with local bar organizations and legal service providers, judges can encourage the adoption of these and other practices to increase participation in emeritus attorney *pro bono* service.

Educating **Court Staff**

Finally, **court** support for *pro se* litigants can be improved by educating judges and **court** staff on how to properly deal with self-represented litigants and their cases. To accomplish this, judges should develop guidelines for **court** staff regarding training *57 and handling of *pro se* litigants.⁹⁴ In addition, judges must also educate themselves regarding the potential ethical and procedural dilemmas that may arise in cases with *pro se* litigants.⁹⁵ Perhaps most notably in cases involving self-represented litigants, judges have competing interests between ensuring justice for the *pro se* litigants, and remaining neutral and impartial to preserve the **court's** integrity.⁹⁶ This dilemma is magnified in cases where one party is represented by counsel and the other party is not.⁹⁷ The issue ultimately boils down to, “[h]ow much assistance [to *pro se* litigants] is too much?”⁹⁸ In other words, “[w]hen does reasonable [judicial] assistance to ensure fairness become an improper ‘appearance’ of impartiality?”⁹⁹ Much debate and uncertainty surrounds this issue at the present time, but by familiarizing themselves with the arguments on both sides, judges may put themselves in a better position to understand and properly handle cases involving *pro se* litigants.

CONCLUSION

Thomas Aquinas, the noted philosopher and jurisprudential influence, believed that all laws, if they were just, had at their basis the common principle of serving the good of society as a whole.¹⁰⁰ Before being admitted to the bench or bar respectively, every attorney or member of the judiciary is required to swear an oath vowing to support the United States' Constitution, and the laws of his or her respective jurisdiction.¹⁰¹ Performing *pro bono* service, defined as “being or involving uncompensated legal services performed especially for the public good,” is an obligation implicit within that oath.¹⁰² Although Rule 6.1, regarding an attorney's duty to provide *pro bono* service, is aspirational and not mandatory, “it is precisely because our duties go beyond what the law demands that ours remains a noble profession.”¹⁰³ As noted by Deborah L. Rhode, one of the nation's leading scholars in the areas of legal ethics and public policy, “the judiciary has both the opportunity and the obligation to narrow the gap between equal protection principles and practices.”¹⁰⁴ The *58 bottom line is, members of the judiciary stand in a position of leadership within our justice system. As such, it is incumbent upon the judiciary to continually strive to improve access to justice for the underprivileged members of our society. By focusing on the problem, and directing all available resources toward solving it, the judiciary is capable of narrowing the Justice Gap, thereby taking great strides towards achieving the promise of “equal justice under law.” Attached to this article is a “Judicial Self Test.” Members of the judiciary are encouraged to review the test and to see if there is not at least one if not several suggestions that can be implemented into your judiciary's practice to encourage greater *pro bono* participation. *Pro bono* service requires that judges lead by example. Together, with lawyers, we can bridge the gap.

*59 APPENDIX

First Judicial District

Ten Ways to Encourage *Pro Bono* in Your Courtroom

The following questions are designed to encourage you to think about how you can support the efforts of those private attorneys who are rendering volunteer legal service to the poor in our courtrooms. Each of the methods has been approved as an activity in support of the administration of justice and therefore consistent with the Judicial Code of Conduct.

This is a “self-test”. There is no scoring but as you take it, please think about the opportunities that you have to inspire the private bar's *pro bono* efforts. Try one, some or all of them out this fall. If you think of other ways for doing so, please send them to me and we will share them.

The **Court's** *Pro Bono* Committee will also be surveying all Judges later this fall about areas of unmet legal need that they perceive in their courtrooms, continuing our effort to try to link actual needs with willing attorneys and law students.

Thank you for your help with these important efforts.

Chair, *Pro Bono* Committee

First Judicial District

Do you:

- 1) Maintain a list of attorneys (panel) for *pro bono* appointment, or utilize an established *pro bono* program (like Philadelphia VIP)? Do you have a list of the *pro bono* coordinators at the major firms or would you like one?
- 2) Make announcements in your courtroom about the importance of *pro bono* service, ask if there are any counsel representing clients *pro bono* that day to register with your clerk, and/or ask for volunteers to sign up?
- 3) Give priority/early listings to *pro bono* counsel when calling or scheduling cases, to reduce the amount of lost time?
- 4) Give *pro bono* counsel handling or supervising *pro bono* cases the chance to schedule their matters in “groups” to reduce the number of **court** appearances?
- 5) Acknowledge/thank *pro bono* attorneys after a hearing (to encourage other attorneys in the courtroom to participate) or after the matter is concluded (e.g., by letter)?
- 6) Write letters to senior/managing partners in the law firms of those attorneys who have completed a matter, complimenting the attorney, acknowledging the firm, and thanking it for its commitment to equal justice?
- 7) Nominate *pro bono* attorneys for awards, either from the First Judicial District or from the Philadelphia, **Pennsylvania**, or other Bar Associations?
- *60 8) Participate in training *pro bono* attorneys about procedures in your division?
- 9) Encourage your law clerks to take *pro bono* cases?
- 10) Serve on the Board of Directors of a *pro bono* or public interest legal organization (but recusing yourself from participating in fundraising activities)?

Footnotes

- a1 Judge, Philadelphia **Court** of Common Pleas Orphans **Court** Division. The author wishes to thank Steven P. Stoer, a third year law student at Villanova University School of Law, for his assistance in preparation of this article.
- 1 Robert E. McBeth, *Judicial Activism*, 40 *Judges J.* 12 (2001).
- 2 See, e.g., Alan W. Houseman, *The Future of Civil Legal Aid: A National Perspective*, 10 *D.C. L. Rev.* 35, FN 1 (2007).
- 3 See Debra L. Rhode, *Access to Justice*, 3 (2004).
- 4 See *Id.* at 13; See also Jason M. Theimann, *The Past, the Present, and the Future of Pro Bono: Pro Bono as a Tax Incentive for Lawyers, Not a Tax on the Practice of Law*, 26 *Hamline J. Pub. L. & Pol'y* 331, 334 (2004-2005) (noting that the gap between the legal needs of the poor and the legal resources necessary to meet those needs has increased over time).
- 5 Rhode, *supra* note 3, at 3 (noting that approximately four-fifths of the civil legal needs of low income individuals, and approximately two- to three-fifths of the civil legal needs of middle-income individuals remains unmet).
- 6 Legal Services Corporation, *Documenting the Justice Gap in America* (June 2007), at 1, available at <http://www.lsc.gov/justicegap.pdf> [hereinafter *Justice Gap*].
- 7 *Id.* at Preface.
- 8 *Id.* at Preface, 4, 8.
- 9 *Id.* at 1.
- 10 *Id.* at 5.
- 11 *Id.* at 6; See also Rhode, *supra* note 3, at 106.
- 12 *Justice Gap*, *supra* note 5, at 6.
- 13 *Id.* at 13-14; See also Rhode, *supra* note 3, at 3; Helynn Stephens, *Price of Pro Bono Representations: Examining Lawyers' Duties and Responsibilities*, 71 *Def. Counsel J.* 71 (2004).

- 14 See Rhode, *supra* note 3, at 3.
- 15 See Ronald M. George, *Pro Bono Work is Lawyers' Duty*, California Bar Journal (Oct. 2001), available at <http://www.calbar.ca.gov/calbar/2cbj/01oct/page9-1.htm>; See also The Honorable Beverly W. Snukals and Glen H. Sturtevant, Jr., *Pro Se Litigation: Best Practices from a Judge's Perspective*, 42 U. Rich. L. Rev. 93, 95-96 (2007-2008) (noting that even “[i]f the *pro se* litigant is knowledgeable enough to proceed with his case to trial, laying a proper foundation for admission of evidence and navigating the hearsay exceptions are sure to make the already difficult job of self-representation nearly impossible”); ABA Resolution 112A (adopted August 7-8 2006), at 9, available at <http://www.abanet.org/leadership/2006/annual/dailyjournal/hundredtwelvea.doc> (noting that “large numbers of *pro se* litigants lose their families, their housing, their livelihood, and like fundamental interests, losses many of them would not have sustained if represented by counsel.”).
- 16 See Gary Blasi, *How Much Access? How Much Justice?*, 73 Fordham L. Rev. 865, 869 (2004-2005) (noting that a random sample of over 150 eviction case files with habitability claims in Los Angeles, California showed that zero *pro se* tenants had prevailed at trial); See also Deborah L. Rhode, *Access to Justice*, 69 Fordham L. Rev. 1785, 1793 FN 44 (2000-2001).
- 17 Debra Gardner, *Justice Delayed is, Once Again, Justice Denied: The Overdue Right to Counsel in Civil Cases*, 37 U. Balt. L. Rev. 59, 70 (2007-2008).
- 18 *Id.* at 71-72.
- 19 *Id.* at 70. Also see Deborah J. Cantrell, *Justice for the Interests of the Poor: The Problem of Navigating the System Without Counsel*, 70 Fordham L. Rev. 1573, 1582 (2001-2002) (noting that poor people are more likely to represent themselves than non-poor).
- 20 See, e.g., Commission on Justice Initiatives in **Pennsylvania**: Report and Recommendation of the Task Force on Self-represented Litigation (December 22, 2006), at 1.
- 21 *Id.*
- 22 *Id.*
- 23 See *Twenty Things Judicial Officers Can Do to Encourage Attorneys to Provide Limited Scope Representation*, reprinted from *The Bench*, news journal of the California Judges Association (Summer 2003), available at <http://www.calbar.ca.gov/calbar/pdfs/accessjustice/20-Things-Judicial-Officer.pdf> (noting that up to eighty percent of litigants in California family law **courts** represent themselves); See also George, *supra* note 15 (column excerpted from remarks made by the California Chief Justice noting that in the area of family law the vast majority of cases have no lawyer involvement at all).

- 24 See Madelynn Herman, *Self-Representation: Pro Se Statistics Memorandum* (September 25, 2006), available at <http://www.ncsconline.org/wc/publications/memos/prosestatmemo.htm#statecourt> (noting, *inter alia*, that: (1) in one family **court** in the 9th Judicial Circuit **Court** of Florida, at least one party was a *pro se* litigant in seventy-three percent of cases in 2001; and (2) a 1998 Report of the Boston Bar Association Task Force on Unrepresented Litigants found that, in over seventy-five percent of the family **courts** studied by the task force, at least one party was unrepresented by counsel).
- 25 See generally Rhode, *supra* note 16, at 1816.
- 26 See, e.g., Rhode, *supra* at 1808 (“[T]he judiciary has both the opportunity and the obligation to narrow the gap between equal protection principles and practices.”).
- 27 *Black's Law Dictionary*, Eighth Edition (2004).
- 28 Theimann, *supra* note 4, at 335; See also Deborah Rhode, *Pro Bono in Principle and Practice*, 53 *J. Legal Educ.* 413, 424 (2003) (suggesting that the duty can be traced back to medieval ecclesiastical **courts**, and to a 1495 English civil law statute).
- 29 *ABA Model Rule 6.1*.
- 30 *Id.*
- 31 See Cantrell, *supra* note 19, at 1577 (noting that half of the country's lawyer perform no *pro bono* work, and that those who do perform *pro bono*, on average, perform less than half an hour a week); See also Rhode, *supra* note 16, at 1808 (noting that most lawyers fail to meet aspirational standards, and that *pro bono* participation by the legal profession “remains at shameful levels”); Talcott J. Franklin, *Helping Lawyers Help Others: Creating a Pro Bono Program Designed to Attract and Retain a Large Volunteer Pool*, 27 *J. Legal Prof.* 23, FN 1 (noting that only 15% of licensed attorneys nationwide participate in formal *pro bono* programs).
- 32 Cantrell, *supra* note 19, at 1577.
- 33 See McBeth, *supra* note 1, at 13; See also Lauren Hallinan, *What Judges Can Do to Increase Equal Access to the Courts*, 40 *Judges J.* 6, 9 (2001) (noting that judicial involvement in *pro bono* recruiting can attract and encourage involvement by law firm leaders and senior partners, and citing one such example involving the Arizona Chief Justice); Carl “Tobey” Oxholm, *A Rule to Show Cause on the Courts: How the Judiciary Can Help Pro Bono--Part II*, *Dialogue* (Spring 1999), at 5, available at <http://www.abanet.org/legalservices/dialogue/downloads/dialsp99.pdf> (noting that when attorney are aware that members of the judiciary will be present at *pro bono* program meetings, attorney attendance is significantly higher).

- 34 Hallinan, *supra* note 33, at 9 (author further notes that, because successful recruitment of law firm participation in *pro bono* requires a commitment from law firm leadership, *pro bono* recruitment letters are most effective if they appeal directly to a firm's policymakers).
- 35 *Id.*
- 36 *Id.*
- 37 See McBeth, *supra* note 1, at 13.
- 38 See Gardner, *supra* note 17, at 72 (“Representation can also ease the burden on the courts ... parties with lawyers are much more likely to achieve settlement than those without”); See also Snukals, *supra* note 15, at 96 (noting that where litigants are self-represented, “court staff ... experience an increased workload as a result of the time they spend assisting *pro se* litigants who have little or no understanding of the judicial system”); *Commission on Justice Initiatives in Pennsylvania*, *supra* note 20, at 7 (noting that the availability of the internet has led to many *pro se* litigants utilizing forms from other states and jurisdictions, and how this often leads to judges spending unnecessary time determining whether the forms meet Pennsylvania requirements).
- 39 See McBeth, *supra* note 1, at 13 (discussing how *pro bono* attorneys help their clients organize and present their cases, thereby reducing the time courts would otherwise spend handling the matter if the clients were *pro se* litigants).
- 40 See Cantrell, *supra* note 19, at 1577 (noting that half of the country's lawyers perform no *pro bono* work, and that those who do perform *pro bono*, on average, perform less than half an hour a week).
- 41 See Oxholm, *supra* note 33, at 4 (noting that training can be provided to *pro bono* attorneys at reduced cost or free, and that attorneys handling *pro bono* cases learn far more through performing *pro bono*, usually in a practice area unfamiliar to them, than in a mandatory CLE credit hour).
- 42 Deborah L. Rhode, *Cultures of Commitment: Pro Bono For Lawyers and Law Students*, 67 *Fordham L. Rev.* 2415, 2420 (1998-1999).
- 43 *Continuing Legal Education (CLE)/Pro Bono State Rules*, available at <http://www.abanet.org/legalservices/probono/clerules.html> (the seven states that currently allow attorneys to be awarded CLE credits for *pro bono* service are Arizona, Colorado, Delaware, New York, Minnesota, Tennessee, Vermont, Washington, and Wyoming).
- 44 Oxholm, *supra* note 33, at 4.
- 45 See generally Theimann, *supra* note 4.

- 46 See Hallinan, *supra* note 33, at 9; Oxholm, *supra* note 33, at 4-5.
- 47 Hallinan, *supra* note 33, at 9.
- 48 *Id.* (however, note that judges may not participate directly in such events if they are fundraisers for an organization).
- 49 See Oxholm, *supra* note 33, at 4.
- 50 *Id.*
- 51 *Id.*
- 52 See Carl “Tobey” Oxholm, *A Rule to Show Cause on the Courts: How the Judiciary Can Help Pro Bono--Part I*, Dialogue (Winter 1999), at 13, available at <http://www.abanet.org/legalservices/dialogue/downloads/dialwi99.pdf>.
- 53 *Id.* at 13-14.
- 54 *Id.*
- 55 *Id.* at 14 (noting that a critical factor in the success of a *pro bono* program is the quality of its screening; volunteers take cases because they want to help clients, but they do not want to waste their time on a case with no merit).
- 56 *Id.*
- 57 *Id.* (noting that the if a volunteer *pro bono* attorney is given a no-merit case, it is very likely that he or she will never again volunteer for *pro bono* service, and also will share his or her bad experience with others).
- 58 The Honorable Judith Billings and Jenny M. McMahon, *Expanding Pro Bono: The Judiciary's Power to Open Doors*, Dialogue (Spring 1998), at 4, available at http://www.abanet.org/legalservices/probono/expanding_pro_bono.pdf; See also McBeth, *supra* note 1, at 12; Hallinan, *supra* note 33, at 6; Franklin, *supra*, note 31, at 30; Oxholm, *supra* note 52, at 15.
- 59 Hallinan, *supra* note 33, at 9.
- 60 See *Id.*; McBeth, *supra* note 1, at 13.
- 61 Oxholm, *supra* note 52, at 14-15.
- 62 *Id.* at 15.

- 63 *Id.*
- 64 *Id.* at 16.
- 65 *Id.*
- 66 See Sarah M. Singleton, *A State Bar Leader's Perspective*, *Management Information Exchange*, Volume XXII No. 1, at 13 (Spring 2008). For further information regarding IOLTA, see Cantrell, *supra* note 19, at 1576 FN 19.
- 67 Cantrell, *supra* note 19, at 1578; See also Hallinan, *supra* note 33, at 10.
- 68 See footnotes 16-19 and accompanying text, *supra*.
- 69 The terms “*pro se* litigants” and “self-represented litigants” are used interchangeably within this article.
- 70 See Snukals, *supra* note 15, at 102.
- 71 *Commission on Justice Initiatives in Pennsylvania*, *supra* note 20, at 5.
- 72 *Id.*
- 73 See Snukals, *supra* note 15, at 102.
- 74 Hallinan, *supra* note 33, at 11.
- 75 *Id.*
- 76 *Commission on Justice Initiatives in Pennsylvania*, *supra* note 20, at 13 (many public county law libraries in **Pennsylvania** already provide access to such websites, as well as to case reporters and online legal research databases, such as Westlaw or Lexis).
- 77 Hallinan, *supra* note 33, at 10.
- 78 See Snukals, *supra* note 15, at 103.
- 79 See generally, Forrest S. Mosten, *Unbundling Legal Services: Servicing Clients within Their Ability to Pay*, 40 *Judges J.* 15, 16 (2001) (describing the concept of unbundling, and noting that unbundling is not just a theory but is currently in practice in many areas today).
- 80 *Id.*; note that the terms “unbundling” and “limited scope representation” are used interchangeably within this article.
- 81 Snukals, *supra* note 15, at 100-01 (listing specific aspects of a case that an attorney might perform while representing a client on a limited basis, including, but not limited to, the

provision of legal advice, conducting legal research, fact gathering, conducting discovery, engaging in negotiations, drafting pleadings, motions, and various other **court** documents, and providing limited representation for **court** proceedings).

82 See footnotes 37-39 and accompanying text, *supra*.

83 *Twenty Things Judicial Officers Can Do to Encourage Attorneys to Provide Limited Scope Representation*, *supra* note 23.

84 *Id.*

85 *Id.*

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.*

90 See *Conference of Chief Justices Resolution 23* (adopted January, 2001), available at <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol23Leadership.html>.

91 Holly Robinson, *State Bar Emeritus Rules Encourage Pro Bono*, available at <http://www.abanet.org/legalservices/probono/emergitus.html> (to date, six states have adopted some type of emeritus attorney *pro bono* rules, including Alaska, Arizona, California, Colorado, Delaware, and Florida, as well as the District of Columbia).

92 *Id.*

93 See *Senior Lawyers: Solutions to Perceived Barriers to Senior Lawyer Pro Bono Projects*, available at http://www.abanet.org/legalservices/probono/senior_lawyers.html (noting that Emeritus rules in some jurisdictions permit retired or inactive lawyers to obtain a limited license to perform *pro bono* work without paying licensing fees; furthermore, many *pro bono* programs carry malpractice insurance for their volunteers); See also Margaret Graham Tebo, *Retired, Then Re-energized*, 93 A.B.A. J. 52 (2007) (noting that in August 2006, the ABA House of Delegates passed a resolution calling for states to modify their ethical rules and methods for calculating bar dues to facilitate retired attorneys in providing *pro bono* services through recognized legal aid and non-profit organizations).

94 Hallinan, *supra* note 33, at 10.

95 *Commission on Justice Initiatives in Pennsylvania*, *supra* note 20, at 14-15; See generally Cynthia Gray, *Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants*, available at <http://www.ajs.org/prose/pdfs/Pro%20se%C20litigants%20final.pdf>

(providing an in depth discussion of the ethical issues that can arise for judges dealing with self-represented litigants).

96 See Snukals, *supra* note 15, at 98.

97 See *Commission on Justice Initiatives in Pennsylvania*, *supra* note 20, at 14.


98 Jona Goldschmidt, *Judicial Ethics and Assistance to Self-Represented Litigants*, 28 Just. Sys. J. 324, 326 (2007).

99 *Id.*

100 Thomas Aquinas, *Summa Theologica*, at Q. XCV., A. 2.

101 See generally, Oaths of Justices and Judges (Federal), Title 28, Part I, Chapter 21 §453, available at http://www.law.cornell.edu/uscode/html/uscode28/usc_sec_28_00000453----000-.html (stating that “[e]ach justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: “I, XXX XXX, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as XXX under the Constitution and laws of the United States. So help me God”).

102 See Rhode, *supra* note 28, at 424 (noting that “[s]ome nineteenth-and twentieth-century American courts asserted that compulsory unpaid representation of indigents is a well-known tradition, and that anyone who applies for bar admission has therefore consented to provide such representation”).

103  *Mallard v. United States District Court*, 490 U.S. 296, 311 (1989) (Justice Kennedy's concurring opinion).

104 Rhode, *supra* note 16 (Deborah L. Rhode is currently a professor of law and faculty member at Stanford School of Law; for more information regarding her background and qualifications, please see her biography, available at <http://www.law.stanford.edu/directory/profile/51/>).

80 PABAQ 47