

PRO BONO (PRO SE) SURVEY

Dear Friends,

January 14, 2011

INTRODUCTION

This is a survey primarily for attorneys and clerks in Hickman, Perry and Lewis Counties. I do not need your name, but I do need as full a response to the questions as possible, and then some. I apologize for the length but it will be helpful. The other thing is **I need them back by 12 p.m. on January 19, 2011.** I will tabulate the results and present them at a *Pro Bono* Conference in Nashville on January 21st. There are multiple aspects of *Pro Bono* Services being reviewed, but the focus of the committee I am on is dealing with the challenging aspects of providing *Pro Bono* Services in Rural Areas and how to get more participation.

Attorney's *Pro Bono* Obligations

In 2008 Tennessee's Supreme Court declared "Access to Justice" a critical need in Tennessee as there are only 81 Legal Aid attorneys statewide to meet the needs of over 1 million low income people. One qualifies for legal aid if your income is under 125% of poverty guidelines. For a family of four this is an income of \$25,000 a year which appears to mean a salary of \$12 an hour. A lot of our rural citizens obviously qualify.

Put another way, a family of four would have to spend their entire weekly income on an attorney's charges for 1-3 hours of legal work. This gap appears only to be widening in these difficult financial times.

In the spring of 2009 a ten member Access to Justice Commission was created by the Supreme Court which is headed by Margaret Behm. The commission's report led to a "Justice for All" campaign, changes and adoption of new Supreme Court Rules on *Pro Bono* Services, the pending conference on *Pro Bono* set for next week, etc. This dovetails with the TBA's 2008 4ALL campaign. I have attached Rule 6.1 of the appendix to Rule 8 of the Supreme Court Rules. It defines *Pro Bono* services as an upfront donation of legal services to a low income person, or to a non-profit organization primarily offering low income services. The Supreme Court wants but does not require each attorney to provide 50 hours of *pro bono* work per year (the ABA has recommended this standard since 1993), as well as a \$50 a month donation to organizations such as Legal Aid or the TN Justice Center, etc.

An attorney volunteer can now more easily provide "unbundled" services and not just "full representation" services, meaning an attorney can provide *pro bono* services by handling part of the client's legal needs—

letter writing, advice, Answer to Complaint, etc. without being ethically and legally on the hook for a “full representation”.¹

I suspect your practice is much like mine and Dana’s where free and reduced services and services to community organizations is such an integral part of our practice that we do not separate out or keep track of our *pro bono* services. The Supreme Court and TBA recognize this, but want us to do a better job of documenting our hours spent on true *pro bono* services.

I have gone back and read every Tennessee Volunteer Newsletter since its inception which documents the *pro bono* efforts across the state of Bar Associations, Legal Aid Offices, and the efforts of individual attorneys. It is clear Tennessee is leading the way nationally on the fight for Access to Justice!

PRO SE

Part of the *Pro Bono* movement is the *Pro Se* movement. The Supreme Court also has a *Pro Se* Commission that has and is developing *pro se* forms that will be/are available through the AOC website. Also, there is a push to have General Sessions Courts adopt local rules concerning *pro se*

¹ For more on a historical breakdown of the Pro Bono Rules I refer you to Terry Woods 2003 article in Tennessee Volunteer on “The Essence of Lawyering”. I think her article is interesting even if I do not always agree with her analysis.

litigants, adopting procedures, forms and proof requirements to facilitate principles of basic fairness in *pro se* cases.

OUR BAR

Our Bar has consistently risen to the occasion. I believe our response to the *Pro Bono* challenge of the Supreme Court, to our ethical rules, and to our commitment to our rural communities and fellow citizens will be equally strong. Nonetheless there are issues to be worked through and approaches to be decided on that will require our collaborative analysis and decision making. (I have additional information concerning how our Juvenile Court representation should be analyzed which I will share with you later.)

PROBLEMS WITH PROVIDING PRO BONO LEGAL SERVICES IN RURAL AREAS

(There is a definitional problem of just what is meant by Rural. The Census defines rural as non-urban which is defined by the number of residents per square mile. However, even heavily urban counties like Davidson County have rural areas in them. Suffice it to say, our 3 counties meet every definition of rural and poor (although our home ownership is actually higher than the average for the state.)

Some of the below challenges to bringing *Pro Bono* Services to rural areas are identified in a 61-page 2003 ABA study on “Rural Pro Bono Delivery”. Rural areas have/present:

1. Few attorneys
2. Transportation problems
3. Higher level of conflict of interests
4. Higher % of poor
5. Lower % of illiteracy
6. Lack of accessibility to technology (cell phone, high speed internet)
7. Higher % of working poor—the elderly and young
8. Legal Aid while serving the counties do not have a permanent presence there and are overstretched
9. Gap between needs of poor and expertise of local attorneys (ex. bankruptcy, etc.)
10. Rural attorneys already overstretched by free and reduced services to clients and their juvenile court work
11. Rural attorneys already financially very stretched
12. That the cultural and individual independence and self reliance of rural residents while commendable and healthy can result in rural residents not knowing, appreciating or protecting their legal rights

13. Lack of adequate communication systems (newspapers published once a week, etc.)

Please add your own.

14. _____

15. _____

16. _____

I have not included several other problems facing rural delivery of pro bono services on the above list. I need you to fill in with your own selections and comments.

1. What county(ies) do you practice in?

2. How many years have you practiced?

3. In what areas of the law do you primarily practice?

4. a) Were you aware that Supreme Court Rule strongly encourages 50 hours of *Pro Bono Service* a year? ___ yes ___ no

b) Do you believe this is ___ too many, ___ too few or ___ a reasonable number of hours?

Please explain _____

c) What number do you believe is a reasonable number to fulfill your responsibility as an attorney if you disagree with 50?

d) Do you believe you presently provide, even if not well documented, 50 hours of *Pro Bono Service* a year? ___ yes ___ no

Please explain

5. Were you aware that *Pro Bono* services do not include:

a) Client Debt forgiveness ___ yes ___ no

b) Non-profit representation (if the non-profit does not provide services primarily to low income citizens) ___ yes ___ no

6. Were you aware *Pro Bono Services* may include:

a) "unbundled" services – advice only, a letter, limited pleadings, etc. ___ yes ___ no

b) Appointed cases even if you are compensated if you only took the cases out of a sense of duty ___ yes ___ no

c) You can get CLE credits for your *Pro Bono Service*

___ yes ___ no

7. Were you aware the Preamble to Supreme Court Rule 8 states, “A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance; the lawyer should therefore devote professional time and civic influence in their behalf. A lawyer should also aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest”? yes no

PRO SE

8. a) Were you aware in our Judicial Circuit there are Pro Se Irreconcilable Divorce packets at the Clerk and Master’s offices that are distributed to interested citizens? yes no

b) The courts in the 21st Judicial District have found it helpful to furnish its own forms as opposed to citizens using often inappropriate or inadequate forms found elsewhere. Do you agree with the Court providing the public these forms?

yes no

Please explain _____

c) Would your opinion be affected by what the parties’ financial situation was? yes no

Please explain _____

9. Are there other areas of uncontested Chancery Court practice that you believe would be appropriate to facilitate pro se litigants with standardized forms? ___ yes ___ no Please explain

10.If you answered yes to question 9, please provide example(s) of the kind of form(s) you had in mind. (adoption, small estate, etc.)

CLERKS

11.Can you tell me what forms are generally presently available in General Sessions and Juvenile Courts in your county for *Pro Se* litigants? Please list:

12.Do you believe these forms are adequate (do not need revising)?
___ yes ___ no

13. Are there other forms that you believe would be helpful for the General Sessions and Juvenile Courts to adopt the use of for *pro se* litigants? yes no

Please explain:

14. Do you feel support for increased *pro bono* and *pro se* services is financially unfair to you (do you feel financially threatened?)

yes no Please explain:

15. Do you agree it is your ethical duty to provide free or reduced cost legal services to indigent clients? yes no Please explain:

16. Based on your practice and being a resident of a rural community, identify the areas of the law in which do you believe rural residents could most benefit from having free or reduced legal help? Please explain in detail.

17.a) Are you already providing *pro bono* services to low income citizens and organizations providing low income services?

yes no

b) Please explain what those services are.

c) Would your present record keeping concerning those services allow you to provide basic information about the type of case and number of hours donated?

yes no

18.a) Would you be willing to provide more *pro bono* and help on *pro se* services if you knew the person was truly low income (met Legal Aid financial standards for eligibility) yes no

b) Would you prefer/insist that those *pro bono* and *pro se* services only be provided by you at a reduced fee rather than on a no fee basis? yes no Please explain

c) Would you be willing to provide a combination of no fee and reduced fee Full Service and/or Bundled Services? ___ yes ___ no

Please explain _____

d) Would you be willing to keep accurate records of your *pro bono* services? ___ yes ___ no

19) Would you prefer a *pro bono* system where you

a) randomly accept pro bono cases off the street

b) are referred pro bono cases by Legal Aid or from some other source

c) through a local Bar created and agreed-on program, where there is screening for income eligibility, and where most, but preferably all, local attorneys (and others who would volunteer) agree on one or more programs or services that are shared and provided by all of the attorneys as a sponsored Bar project. (This may well include individual Full and Unbundled representation of individuals)

d) Other _____

Please pick your first preference of the four:

___ 19a, ___ 19b, ___ 19c, ___ 19d

20) Currently there are many, many different *Pro Bono* Programs and services found in different TN counties sponsored by Bar associations, Legal Aid offices, non-profits and attorney groups to bring legal services to low income citizens some of which work out of community organizations, some the court office and some out of lawyers' offices. (In Memphis there is also a program CLC (Community Legal Center) for citizens not eligible for Legal Aid—those earning between 125-175% of poverty guidelines.) Some of these programs provide:

- A. Clinics for consultation only
- B. Direct free full representation
- C. Direct free unbundled representation—letters, advice, etc.
- D. Direct reduced cost representation
- E. Community education to low income citizens
- F. Community education to low income service providers
- G. Phone/email/Skype consultations
- H. Services provided by large firms in large cities through Skype, etc., through libraries and other community organizations—bankruptcy, etc. to rural low income residents
- I. Saturday, Tuesday, once a month, etc. clinics
- J. Clinics to help *pro se* parties fill out forms

- K. Use of retired lawyers and law students
- L. Partnering with Social Service providers
- M. Specialized advice clinics (or community education) on family law, juvenile law, domestic violence, divorce and post-divorce issues, elderly law, consumer debt, landlord-tenant, bankruptcy, contract dispute, orders of protection, living wills and estates, personal property issues, emancipations, adoptions, grandparents rights, conservatorships, mental health issues, special education issues, insurance issues, unemployment and disability issues, etc.

Would you be willing to periodically provide *Pro Bono* time to consult (or provide minimum services) with low income individuals about any of the above legal areas? ___ yes ___ no Please explain and identify the areas listed above you believe would be most helpful to residents in your county.

21. Are there any other areas not identified in 20-M above about which you believe there is a particular need in your county to provide *pro bono/pro se* services? ___ yes ___ no Please identify

Thank you for your time in filling this form out. Please either print off and fax back to (931) 729-3532 or email your response to avanderhorst@dye-vanderhorst.com.

Sincerely,

Allston Vander Horst,
President, Hickman Co. Bar Assoc.

AVH:sap