

**REPORT OF THE PRESIDENT'S COMMITTEE ON ACCESS TO JUSTICE  
CONCERNING PRO BONO  
AND ACTIONS OF THE NYSBA HOUSE OF DELEGATES ON APRIL 3, 2004**

**PREAMBLE**

The President's Committee on Access to Justice volunteered to assemble into a report comments received from various committees and sections of the NYSBA on the report issued by the New York State Unified Court System, *The Future of Pro Bono in New York*. The Pro Bono Coordinators Network Report was the most in-depth analysis received. We believe that it is a thoughtful review of the Office of Court Administration report, and we join in its analysis. We have also reviewed comments received from the Special Committee on Public Trust and Confidence in the Legal System and the Young Lawyers Section and have incorporated most of these in our introduction. All comments received have been included in an appendix made available to the Executive Committee and the House of Delegates. Because of tight deadlines, there may be comments received after the date of this Report. We will attempt to synthesize those in a supplement made available by April 2 and 3.

**INTRODUCTION**

In June, 1989, a Committee to Improve the Availability of Legal Services appointed by the Chief Judge of the State of New York issued a preliminary report calling for the imposition of mandatory pro bono service by attorneys. In response, the NYSBA appointed a Special Committee to Review the Proposed Plan for Mandatory Pro Bono Service, chaired by former Association President Justin L. Vigdor (the "Vigdor Committee").

The Vigdor Committee's October 1989 report was thereafter adopted by the House of Delegates, and it remains the most comprehensive and fundamental statement of the NYSBA on pro bono activity. In broad strokes, the NYSBA opposes mandatory pro bono, on the ground that adequate funding for access to justice is a societal burden that must be borne by government, while recognizing the significant role to be played by volunteer attorneys in making justice a reality. The Vigdor Report, which outlined the detailed State Bar Plan to increase voluntary pro bono activity, is at its core aspirational. Among other elements, the report set forth:

- An aspirational goal for every attorney to devote at least 20 hours per year to free legal services to the poor.
- For attorneys who could not meet that goal, encouragement that they recognize a moral obligation to make a financial contribution, commensurate with their resources, to an organization providing legal services to the poor.
- The need for a continuing effort to remove real and perceived barriers to pro bono activity.

These principles led to the creation at the NYSBA of the Department of Pro Bono Affairs and the President's Committee on Access to Justice and 15 years of concerted activity to increase access to justice in New York State by this organization and its members.

In our review of the recent OCA report, this Committee has identified certain principles that we recommend to the Executive Committee and the House of Delegates be part of the NYSBA position on pro bono service.

- People of limited means have significant unmet legal needs.
- Meeting these needs is a societal burden.
- We continue to encourage lawyers to help meet these needs.
- The level of pro bono service in New York State is exceptional and enviable.
- We encourage and celebrate the many essential contributions that this state's attorneys already make to their communities by providing free legal services and free counsel and working to improve the quality and accessibility of legal services and the administration of justice.
- Lost funding for staffed pro bono service programs has had a demonstrable impact on the levels of volunteerism.
- New York State recognized its obligation to provide civil legal services funding by developing the IOLA Fund as a way to provide such funding. The state, however, needs to recognize that historically unprecedented low interest rates have greatly reduced this funding stream. New broadly based funding mechanisms are required to meet the needs of the civil legal service system.
- The judiciary can play a vital leadership role in supporting pro bono activity. The Chair of the ABA Standing Committee on Pro Bono and Public Service recently published an article urging that, consistent with their ethical obligations, judges could encourage and facilitate pro bono in many ways, including by participating in training for pro bono attorneys, attending recognition events for volunteer lawyers, improving courtroom procedures and scheduling to benefit pro bono attorneys, and sponsoring help desks, pro se support centers and other pro bono-based initiatives in their courts. OCA's encouragement of judicial participation in these and other ways likely would help increase pro bono activity.
- Existing statewide and local networks that coordinate pro bono activity should be supported, rather than new structures created.
- Attempts to stimulate pro bono activity by lawyers in ways that might seem like policing are likely to be counterproductive.
- The Vigdor Report recognized the importance of accurate data regarding pro bono service and recommended a series of steps for gathering such information. If such efforts failed, other initiatives for pro bono data-gathering should be explored and implemented, the Report recommended. OCA has conducted several pro bono surveys; but some attorneys feel the results may not reflect the true level of pro bono activity.

## HOUSE OF DELEGATES ACTION

At its April 3, 2004 meeting, the House of Delegates considered the Report of the President's Committee on Access to Justice. The President's Committee Report was adopted, with the following amendments:

- 1.** The most significant way of providing legal services to the indigent is through a well-funded system of legal services providers and assigned counsel. The judiciary and the organized bar should advocate forcefully for sustained public monies to support such a system.
- 2.** The UCS should broaden the definition of "qualifying" pro bono to capture the essential services individual attorneys and bar associations regularly contribute to society for the public good. A suitable expanded definition will be prepared for consideration by the House and ultimate submission to OCA.
- 3.** Pro bono service should remain voluntary for attorneys, and any suggested number of hours should be purely aspirational.
- 4.** Reporting should be voluntary for attorneys and for sponsors of pro bono programs, such as bar associations.

The House endorsed the first point as to the primacy of funding for legal services and the need for judiciary and bar leadership. As to the judiciary's role in expanding access to justice, the House agreed that efforts by judges to facilitate lawyers who provide pro bono services should be encouraged, but specifically rejected giving the judiciary the primary leadership role in the quest to increase pro bono in New York, because of concerns that this might be perceived as coercive. These House positions seem consistent with the President's Committee Report, which stated that the judiciary can play a vital role in supporting pro bono, reaffirmed the need for greater funding and embraced a report by the Pro Bono Coordinators Network containing a list of suggestions for ways in which the judiciary can facilitate pro bono.

As to the second point, the House agreed that UCS should broaden the definition of "qualifying" to capture the essential services individual attorneys and bar associations regularly contribute to society for the public good, in addition to services which benefit persons of limited means, and further agreed that a suitable expanded definition would be prepared for House consideration and ultimate submission to OCA. This position was inconsistent with the President's Committee Report, which did not seek to expand the definition of pro bono adopted by the House in 1989, but instead reaffirmed a commitment to meeting the urgent legal needs of persons of limited needs.

The House approved the third and fourth points regarding the voluntary nature of pro bono service and reporting. As to pro bono service, statewide coordination of pro bono activities was found acceptable, but the House disapproved creation of another level of

government for this purpose. The House preferred to have these programs administered through the private Bar. As to pro bono reporting, the House explicitly rejected a mandatory program to be conducted through the biennial registration process or in any other manner.

This position is consistent with the President's Committee Report which also endorsed voluntary pro bono service and stated that a new statewide structure need not be created, recommending instead that the existing statewide network for coordinating pro bono should be supported. The Pro Bono Coordinators Network Report contains a discussion about how, in seeking to coordinate pro bono statewide, the expertise and resources of existing programs should be utilized, and the creation of unneeded bureaucracy should be avoided.

Dated: April 3, 2004