

Pro Bono Month

AN OPPORTUNITY TO RECOGNIZE PRO BONO LAWYERS AND THEIR CLIENTS

For the third year, the State Bar of Michigan has designated October as Pro Bono Month, joining the American Bar Association and many other states in selecting October as a time to highlight the need for and importance of pro bono assistance by lawyers. This is a time when increased pro bono service is especially needed. More than three million Michigan residents qualify for free help from legal aid agencies because their annual income is below 200 percent of the federal poverty level. Foreclosure rates have increased more than 70 percent and Michigan's unemployment rate remains among the highest in the nation. Michigan's nonprofit legal aid programs lack the resources to serve all who need help; they must turn away nearly half of those requesting assistance. This can have dire consequences for the poor, whose legal problems often affect basic needs like family safety, housing, health, and economic security.

Lawyers who provide pro bono assistance make a difference to the clients they help and their communities. The following pro bono attorneys and clients are representative of the thousands who provide and receive pro bono civil legal services in Michigan.

Pro Bono Spotlight: The Attorneys' Perspective

Elizabeth "Joy" Fossel

By Joan Howard

While attending Thomas M. Cooley Law School, Elizabeth "Joy" Fossel clerked at the Varnum Law Firm in Grand Rapids and, after graduation, joined the firm as a litigator. During law school, Fossel had dreamed of a career in the prosecutor's office so she could give back to her community; after joining Varnum, she did not lose her desire to give back. In her 20 years with the firm, she has been actively engaged in pro bono work. Varnum encourages its attorneys to handle pro bono cases and has a pro bono coordinator who works with Legal Aid of Western Michigan. In the past two years alone, Fossel estimates the firm's attorneys have donated in excess of 1,400 pro bono hours.

In 2010, Legal Aid of Western Michigan awarded Fossel its Michael Barnes Award in recognition of her pro bono service. Fossel describes pro bono as "wonderful work" and considers pro bono cases the highlight of her career. It's Fossel's belief that

through pro bono service, she uses her legal training to make a difference in people's lives, which in turn makes the practice of law more meaningful for her.

So why does Fossel handle pro bono cases? Her words say it best:

It is an honor and a privilege to represent those who otherwise would face the court system alone. It is the best work a lawyer can do and one of the best ways one can honor our profession. I firmly believe that everyone should have access to justice, not just those who are able to pay for it. Defending yourself in court can be a very risky proposition and an intimidating one. If you're not an attorney, you can't know all the ins and outs of the system, let alone the ramifications of your actions or inactions. If you end up with a judgment against you, it can affect you for years in terms of payouts, damage to your credit rating, and even your job prospects. The chance to help those in need who are facing a court proceeding is not only a rewarding opportunity; it represents everything I went into the practice of law to do.





In fact, two of her most memorable clients have said that her representation saved their lives. In one such case, she represented a victim of domestic violence who had been sued in federal court by her ex-husband because she had obtained a personal protection order (PPO) against him. In his suit against her, he alleged abuse of process, malicious prosecution, invasion of privacy, and intentional infliction of emotional distress. He also sued her brother because he testified at the PPO hearing. It took two years and nearly 900 pro bono hours of Fossel's time, but in the end, she obtained a complete dismissal of all claims.

Fossel's pro bono work also includes complex matters that Legal Aid of Western Michigan does not handle. Because these cases were vital to Legal Aid's clients, she agreed to represent them. For example, she has represented a licensed practical nurse and a certified nursing assistant, both of whom were in danger of losing their professional licenses. Her success in these cases was critical to the well-being of her clients because loss of licensure would have threatened their ability to take care of their families.

Throughout her career, Fossel's desire to give back has positively impacted her community and changed many lives.

Kyle S. Krywko

By Joan Howard

Kyle S. Krywko is currently an attorney at Guardian Industries, but previously worked at Dickinson Wright. Krywko is zealously committed to pro bono service and recently used his legal training to right the wrongs against an elderly woman.

At Dickinson Wright, Krywko spent more than 50 hours representing an elderly homeowner who was a victim of a foreclosure-rescue scam. The woman had lived in her home for many years and despite living on Social Security retirement benefits, managed to accrue substantial equity in her home. She got behind in her payments when she began caring for her ill mother. She tried to save her home by filing a Chapter 13 bankruptcy, but was unable to keep up the payments. Her home went into foreclosure and was sold at a sheriff's sale.

Desperate to keep her home, the homeowner went to a number of mortgage companies to try to borrow money to reclaim her home. One of the mortgage companies steered her to a team of "foreclosure rescuers" who told her they would help her save her home. The rescuers paid \$40,000 to reclaim her home; however, before they would assist her, they demanded she deed her property to them. The rescuers explained that the transfer of the title to their name was a temporary measure necessary to secure repayment of the money they were loaning her. They also had her sign a \$53,000 promissory note, with the extra \$13,000 representing a fee for their services. Because of her age, limited education, and lack of sophistication in these matters, the homeowner did not understand she was transferring ownership of her property. Without the homeowner's knowledge, the rescuers secured a \$60,000 mortgage on the property and pocketed the cash instead of making payments on the mortgage. The home went into foreclosure a second time.

Instead of attempting to handle the second foreclosure herself, the homeowner sought the assistance of the Legal Aid and Defender Association, Inc. (LAD). LAD's staff assigned the case to Krywko, who filed suit against the rescuers. The mortgage company stopped the second foreclosure and restored the title to the homeowner. Krywko was also able to negotiate a new mortgage for the \$40,000 the client had previously owed, replacing the \$60,000 mortgage obtained by the unscrupulous rescuers.

The client's mother passed away during the litigation, so Krywko provided much-needed legal assistance during a very vulnerable period in the woman's life. Because of his tenacity, he was able to right the wrong his client had suffered at the hands of the mortgage rescue scammers and save the woman's home.

David Shaltz

By Heidi Naasko

David Shaltz concentrates his practice in guardianships, conservatorships, and Medicare and Medicaid planning. Shaltz has always been a big supporter of Elder Law of Michigan (ELM). His work has included volunteering as an on-call expert for challenging ELM cases. He also serves as a volunteer ELM board member.

In addition to his volunteer legal services, Shaltz helped ELM with its fundraising efforts by developing a fee-based training for elder law practitioners on topics not covered by other programs. Shaltz and other trainers volunteer their time and talent to conduct the training, and the tuition dollars go directly to ELM. Shaltz's fundraising efforts have been extremely successful; to date, ELM has received more than \$30,000 to invest in achieving its core mission.

While pro bono work is often conceptualized as providing legal services, lawyers can also meet their obligation by financially supporting legal services. The State Bar of Michigan and the Pro Bono Committee salute David Shaltz's unique fundraising concept, which has directly assisted ELM in reaching many low-income Michigan seniors.

Robert Treat

By Candace Crowley

Robert Treat works in a highly specialized niche—he is a qualified domestic relations order (QDRO) preparer. A graduate of the University of Toledo College of Law, Treat's undergraduate business studies, financial planning licenses, and work as a financial planner made him a perfect candidate for the position of president of QDRO Express, a non-law firm that provides litigation support to lawyers seeking to divide retirement plans in divorce matters.

As a member of the SBM Family Law Section and active in its listserv, Treat's QDRO expertise made him the go-to person for lawyers thirsty for competent advice in a complicated piece of divorce litigation. Joe Cunningham, an active Family Law Section listserv participant and past recipient of the State Bar of Michigan's John W. Cumiskey Pro Bono Award, recognized Treat's expertise and good nature and asked him to join the section's QDRO Pro Bono Committee. Doing so required Treat to take up to 12 pro bono QDROs yearly; fortunately, he agreed.

The QDRO committee accepts case referrals from legal aid organizations through pro bono staff at the State Bar. QDRO preparers like Treat never meet their clients in person. Still, Treat finds his pro bono work rewarding because he knows these clients are suffering and his services will help them put food on the table, pay rent, and take care of their children. Most of his clients are women, many of whom have been in abusive relationships.

In reflecting on his pro bono service, Treat emphasizes that lawyers have strong minds that eventually lead them to earn law licenses—two of the most valuable resources anyone could be fortunate enough to have. In his view, pro bono work is “for the good” and he believes that the more lawyers who do pro bono, the better off everyone will be. His pro bono service allows him to network and to meet and receive paying business clients as a result—not something every lawyer is able to do.

Treat recognizes that many others have helped him succeed in his pro bono efforts. Hantz Financial Group CEO John Hantz created opportunities for Treat to concentrate in QDRO work and eventually offer it as a pro bono service. Treat's staff and the other

pro bono QDRO preparers have played important roles in supporting his work and in eventually moving Treat into a QDRO committee leadership role. With his casework and administrative leadership, Treat easily contributes 50 hours yearly to official pro bono service. Like other lawyers, though, Treat has additional pro bono hours that aren't officially captured. He's moving the “better off” bar upward for all of us.

Shaun Willis

By Heidi Naasko

Shaun Willis is co-founder and partner at Willis Law, a busy firm that handles litigation, business representation, estate planning and administration, real estate, and construction matters. So how do Willis and the other attorneys at his firm find time to fit in pro bono work?

“You have to make the time,” he says.

Willis knew his firm could do more than simply volunteer at the bar association's “Ask a Lawyer” Program.

“While I felt good about volunteering for the bar association, I always felt like I could have done more,” he said. “I wanted to take their cases in house and finish the work that I started.”

Willis Law established a free legal clinic in 2004. The clinic was first run out of the local public library where librarian Martha Lohrstorfer was helping pro se litigants research their legal matters. When library funding ran out in 2009, the clinic was welcomed by the Kalamazoo Gospel Mission, where it currently operates monthly. Willis Law brings four lawyers and several staff members, legal forms, and legal pads.

“We essentially relocate our office for an afternoon,” Willis said. “We provide full billable-hour credit for our attorney volunteers so they are focused on the task at hand.”

The clinic's participants are low income, and most of the cases deal with family law, poverty law, small employment matters, criminal law, probate, and estate issues.

“Many of my clients call on my counselor function rather than my litigator function. They just need someone to help work through life struggles and the bureaucracy holding them back,” says Willis. If a case creates a business or ethical conflict, Willis refers it to one of his colleagues in the community.

The vast majority of cases don't require that much time to complete, but Willis says a few occasionally go to trial.

“One time, we had a pro bono case go to a jury over an insurance dispute,” Willis said. “The opposing counsel filed so many motions and stacks of discovery that our then-employee, Ryan Wurtzel, stepped up to the plate and devoted hours and hours of pro bono time to defend our client. Our client needed the \$15,000 in insurance benefits because she could not afford the repairs on her house without the money.”

The jury returned a verdict in his client's favor. And though Willis didn't earn a fee, he did get a return on his investment of time.

“She did bake us a cake. And that was thanks enough.”

Pro Bono Spotlight: The Clients' Perspective

Lois DeWolf

By Mark Fancher

Lois DeWolf asked for little. The Battle Creek woman in her nineties took great pleasure in simple things like riding city buses around town and spending the day people-watching at the mall.

That all came to an end when her poorly maintained home was condemned and Adult Protective Services (APS) appointed a temporary guardianship/conservatorship company. The company took control of DeWolf's finances, and she was placed into a nursing home.

DeWolf's nightmare really began in the nursing facility. According to friends, unfounded presumptions were made about her health, and for months she was denied visits from her friends, members of her church, and other well-wishers. Even though she did not have dementia, DeWolf was made to wear a "wander guard"—a leg bracelet designed to keep tabs on those who suffer from Alzheimer's disease. The once-independent, mobile senior was now confined and in misery.

Bradley Vauter, a concerned and compassionate member of the Legal Hotline for Michigan Seniors, alerted attorney Kelly Quardokus of DeWolf's plight. She agreed to represent DeWolf pro bono.

"Kelly was an answer to prayer," said Joan Klopfenstein, one of DeWolf's closest friends. "She stepped in and within one day the tether was off. Lois was allowed to have friends visit, the following Sunday she was allowed to go to church, and friends could take her shopping and out to eat."

Quardokus chalked her success up to experience and knowledge of how to work within the long-term care system to benefit elderly clients. "I was just so grateful to help her," Quardokus said. "She was so independent, and I felt that she should go on living that way."

Quardokus believed DeWolf would benefit from collaboration with other advocacy agencies. Before she approached APS and the nursing home about DeWolf, Quardokus enlisted the support of K. Jonker, the local ombudsman from the Michigan Office of Long-Term Care. With Jonker's help, Quardokus was able to persuade APS to drop the guardianship/conservatorship in exchange for a patient advocate and durable power of attorney, which gave DeWolf more choices and control of her life.

Quardokus said what appeared to be a difficult case was manageable because of her willingness to establish an alliance with the ombudsman and work with other agencies to get the best results for her client.

"You have to think holistically. Many lawyers find it scary to take pro bono cases because they think they are out there alone," she said. "But there are other resources and advocates out there, so don't be afraid to contact them. You aren't alone."

Now living semi-independently, a grateful DeWolf echoed her lawyer's sentiment. Her message to lawyers who are not provid-

ing pro bono services is: "Please help. You are really needed." Lawyers concerned about the lack of financial compensation for pro bono services should consider the observations of DeWolf's friend, Joan Klopfenstein: "Through her efforts, Kelly was able to restore Lois's dignity. Who can put a price tag on that?"

Karen Rogers

By Ashley Lowe

Karen Rogers* met her husband, John, in Texas in 2007. Throughout their marriage, John became increasingly violent. His belittling of Karen progressed to throwing things at her and hitting her. Karen never reported the abuse because John always apologized and promised to change. Also, since Karen and John had a young child, Karen thought it was in their daughter's best interest to work things out. Finally, in October 2009, John shot Karen in the foot with a pellet gun and then hit her on the head with the gun. John was convicted of domestic assault and served 100 days in jail. The Texas court granted personal protection orders to Karen and her daughter, but before John was released from jail, Karen moved to Michigan because she believed she would never be safe from violence in Texas.

When she arrived in Michigan, Karen moved in with her parents. Karen's mom helped her find legal assistance by searching the Internet. In June 2010, Karen came to the Family Law Assistance Project (FLAP) walk-in clinic. Although she had a protective order from Texas, Karen still needed to get a divorce and establish custody and parenting time for the long term.

FLAP referred Karen to attorney Matthew Michaels, who agreed to represent her pro bono. Michaels filed a complaint for divorce and served John in Texas, even though he evaded service for several months. While the divorce case was pending, the Texas protective order expired. Michaels helped Karen get a personal protection order from the Michigan court, so if John ever found her in Michigan, she would have the full protection of the law. In November 2010, the court entered a divorce judgment granting Karen sole legal and physical custody of her child. To further protect Karen and her child, the order declared that John would have no parenting time until he petitioned the court.

Michaels' pro bono representation made a huge difference in Karen's life. Until she had an attorney to represent her, Karen was afraid to file for divorce and was fearful that John would find her, harm her, and take her daughter. Now Karen has both a custody order and a personal protection order to prevent John from harming her and her child.

Karen says that when Michaels stepped in to represent her, he "took a big burden off" her chest. Karen has found a job, supports her daughter, and feels safe from violence. "It feels good to have my life back," she said.

*The parties' names have been changed for the client's protection.

Martha Schlesinger

By C. Michael Bryce

More people than ever before need pro bono representation. Those seeking assistance include not only traditional pro bono clients but also middle-class Americans who are in incredibly difficult financial straits related to health care issues.

One such person is Martha Schlesinger of Pleasant Ridge. In 2006, she began assisting her elderly mother, who returned to Michigan after suffering a heart attack. Her mother had health insurance designed to help with the costs of home health care. Martha arranged for this care by signing on behalf of her mother a patient services agreement with a Michigan health care provider.

Because of a clause in the health insurance policy, the insurance company missed payments during a period of 2008. Also during this time, Martha's mother's health began to fail; in April 2009, she passed away, leaving no estate. Martha's finances also deteriorated. A successful consultant, her business declined rapidly during the 2008 recession.

After Martha's mother passed away, the health care service provider sued her for payment of her mother's debt. She contacted a former college classmate—David Haron, of Frank, Haron, and Weiner—for advice. The first thing Mr. Haron did was provide a calming atmosphere for her to discuss her entire situation. He advised her that he believed she was being sued for a debt she didn't owe and because of her financial situation, his firm would take her case pro bono.

Michael Hamblin, a principal of the firm, took the case and filed a response to the complaint. The theory he brought to the action was simple: "A person is not liable for the debts of a relative who died." Later, Hamblin filed a motion for summary disposition. After a lengthy hearing, the court ruled that, based on the wording of the agreement, Martha had not signed as the patient nor had she signed as a principal of the agreement. She simply had signed as a representative of her mother and did not owe the debt.

Reflecting on the case, Martha recognizes that the best thing anyone can do in a similar situation is talk to an attorney. This could mean having a consultation, seeking representation, or seeking pro bono assistance if the circumstances warrant. As a layperson, she was confused by the legal process, but Hamblin communicated with her throughout and explained the case in simple language she could easily understand.

Hamblin's efforts helped Martha avoid a crushing debt, which she didn't owe. In today's economy, it is likely many others are suffering a similar fate. Fortunately for Martha, she received pro bono assistance from Hamblin and Haron in a manner that Haron describes as "giving back." Let's all give back to ensure that those in need have legal representation.

Crystal Van Brabant

By Mark Fancher

When Etta Zivian and her lawyer children first agreed to provide pro bono legal assistance to a domestic violence victim, they didn't anticipate they would become the catalyst for miracles. "Etta and her children were like guardian angels to me," said Crystal

Van Brabant, the Zivian family's client. "After 14 years of suffering alone and in silence, they were there to say, 'We are here to help you.'"

Crystal endured continuing physical and mental abuse at the hands of a man she married at a young age. After her oldest daughter became the target of the husband's abuse, Crystal sought help from the Family Law Assistance Project, which in turn referred the case to Zivian. Crystal filed a report with the police, and the abusive husband was arrested and prosecuted. At the trial, the testimonies of Crystal and her daughter led to a conviction and a lengthy prison term for the abusive spouse. At the same time, a divorce was successfully pursued. Unfortunately, the divorce was not the hoped-for happy ending.

Because they had witnessed so much abuse, Crystal's children suffered many problems. Child Protective Services became involved with the family and, ultimately, the agency asserted that Crystal was a neglectful parent because she had failed to leave her husband soon enough to protect the children. Crystal was placed on the central registry of abusive parents, a labeling that could have destroyed all prospects she had for creating a future for herself and her children. At the time, she was studying to become a nurse's aide, and remaining on the registry would have damaged her career aspirations.

Even though there was a widely held belief that it was futile to attempt to have someone removed from the central registry, Zivian began a diligent campaign to clear her client's name. Phone calls, letters, and carefully chosen references were all part of what eventually led to the agency's extraordinary decision to remove Crystal from the central registry. Zivian and her client consider it to be a miracle.

"This was the best gift ever," Crystal said. "I couldn't have asked for more."

But Crystal was to receive a great deal more, not only from her pro bono attorney but also from the Zivian children. Even though Crystal's ex-husband was locked away, she was still unable to rest easy. "Crystal feared his family even though he would be in prison for years," Zivian said.

Zivian's son, Robert, stepped in and successfully petitioned to terminate the father's parental rights when the Department of Human Services refused to do so.

Robert's sister, Sara Zivian Zwickl, prepared Crystal's will to provide guardians for her children and drafted powers of attorney to appoint decision makers in case Crystal became incapacitated. All of this gave the indigent, abused mother of four the peace of mind she needed to enroll in school and address her serious abuse-related health problems. "[Crystal] wants to better herself and be a role model for her children," Etta Zivian said.

Crystal Van Brabant is grateful for the pro bono assistance she received. "This may have been a small deed to the Zivians, but what they did completely changed my future," she said. "I can now raise my children safely without looking over my shoulder. Out of my nightmare, they appeared in my life. They are my heroes. They are a part of my family now, and I love them very much."

For other attorneys, Crystal has a special message: "Any attorney who has the opportunity to provide pro bono service should do it. They will receive a gift of knowing they can make a difference in a cruel world." ■

Pro Bono Month article authors:



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Candace Crowley is the director of external development at the State Bar of Michigan. Among other responsibilities, she is staff liaison to the Committee on Justice Initiatives and the Pro Bono Initiative. Before working at the State Bar, she was a legal aid lawyer, manager, and executive director.



Mark P. Fancher is the staff attorney for the Racial Justice Project of the ACLU of Michigan. He is a member of the State Bar of Michigan's Pro Bono Initiative.



Joan Howard is chief counsel in the Civil Law Group at the Legal Aid and Defender Association, Inc., which provides free civil legal services to low-income residents of Wayne, Oakland, and Macomb counties. Ms. Howard has been a legal services attorney for the past 30 years. She is a graduate of DePaul University College of Law and a member of the State Bar of Michigan Pro Bono Initiative.



Ashley Lowe is an associate professor at Thomas M. Cooley Law School. She is the director of the Family Law Assistance Project, where students, staff, and pro bono attorneys provide free family law services to low-income people in Oakland County. Lowe also is a member of the State Bar of Michigan Pro Bono Initiative and the State Planning Body.



Heidi Naasko is Dykema's national pro bono and diversity counsel. In addition to administering the program and mentoring lawyers in various areas of public interest law, she maintains a substantive poverty law practice. Her caseload includes representation of unaccompanied immigrant children who are victims of human trafficking and have been victims of crime in their country of origin or in the United States.