

# Where Has the Pro Bono Passport Taken Us in 10 Years?

By Hon. Victoria A. Roberts

In 1997, I wrote an article for the *Michigan Bar Journal* entitled “The Pro Bono Passport” concerning a statewide survey about where pro bono can take lawyers, clients, and the justice system. At that time, I was president of the State Bar of Michigan, which gave me the chance to see many lawyers engaging in many good works, including pro bono activities. But it was not until I read the 1997 report regarding lawyers’ perceptions about and participation in pro bono that I saw where a pro bono passport takes us. I learned that the journey enhances lawyers’ lives as much as it helps clients’ lives and that Michigan lawyers provide significant pro bono legal services and financial donations so low-income persons with legal problems can be helped.

A decade later, the State Bar conducted another survey about pro bono activities and perceptions. This study sought to answer questions about the current state of pro bono and whether any key findings have changed since the 1997 report. Those questions included:

- Has pro bono service increased or decreased?
- Do most lawyers believe in and support pro bono?

An elderly indigent veteran suffered from colon cancer and applied for government help. After he was incorrectly sent both VA and Social Security benefits, the VA sought repayment. A pro bono lawyer helped him get a waiver of the debt because he had high medical bills and because recapturing those funds would not leave enough for him to live on. The lawyer also helped the man arrange a manageable payment plan for the medical expenses. Now this veteran is able to survive and to obtain the medical care he needs.

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- Do lawyers understand what pro bono is and is not?
- What are the main reasons lawyers do or do not perform pro bono service?
- What are the main reasons lawyers do or do not make financial donations?
- What types of cases are handled and what types of services are provided?
- Do lawyers use organized pro bono programs to perform pro bono service?

The questions involve financial donations because pro bono in Michigan includes both legal services and financial contributions. Lawyers can meet their annual pro bono obligations through handling three cases or providing 30 hours of free legal help for low-income persons or donating a minimum of \$300 to a nonprofit legal aid program.<sup>1</sup>

The results of the survey, which asked lawyers to report on their pro bono activities in 2007, were published earlier this year.<sup>2</sup> It found that, in many ways, the pro

bono landscape stayed very much the same from 1997 to 2007. Both the 1997 and the current reports show that Michigan lawyers provide a significant amount of pro bono legal services and financial donations to assist civil legal aid for the poor. The current report shows that 66 percent of all lawyers reported doing some pro bono work in 2007, 30 percent of all lawyers reported making donations to legal aid programs for the poor in 2007, and some lawyers reported doing both.

The percentage of attorneys providing pro bono legal services and the average donations per lawyer were nearly the same in 2007 as they were in the 1997 report. In both reports, the average donation is just over \$100 per lawyer—about one-third of the \$300 annual minimum donation recommended in the State Bar’s Voluntary Pro Bono Standard. Many lawyers donate money instead of service, but a number of attorneys who provide pro bono service also make donations. The more detailed survey information will be helpful to those seeking financial donations, such as the Access to Justice (ATJ) Fund;<sup>3</sup> examples include the fact that older lawyers are more likely to make financial contributions and that some law firm pro bono policies encourage both service and donations.

In the 1997 report, the average number of pro bono hours reported was 36; the hours reported declined by about 6 hours to an average of 30 hours reported in 2007.<sup>4</sup> Interestingly, there was a significant increase

### Reasons Attorneys Perform Pro Bono Service



in pro bono services in one area: service for organizations or committees that provide direct services to indigent individuals. The number of cases or matters in this category increased by 30 percent between 1997 and 2007, and the number of hours expended increased by about 20 percent during this time period. This growth in "corporate and transactional pro bono" almost certainly reflects the efforts of some larger firms to become more active in the pro bono area, including efforts by those firms to engage their corporate and transactional lawyers in pro bono work.

The survey confirms that most lawyers continue to believe in and support pro bono, expressing the same three top reasons for doing pro bono in 2007 as in the 1997 report: (1) a sense of personal satisfaction; (2) the importance of supporting legal aid, the bar, or a cause; and (3) the belief that pro bono is part of a lawyer's professional responsibility. The top reasons lawyers make pro bono financial contributions are also the same as in 1997: (1) lawyers should prioritize charitable giving to assure access to justice, (2) lawyers feel an ethical obligation to do pro bono work and to donate under the State Bar's pro bono standard, and (3) lawyers feel a connection to a local legal aid program and wish to support that program.

Among reasons for not doing pro bono, more attorneys in 2007 (41 percent) said that lack of time was a factor compared to 1997

(32 percent); one-third in 2007 (33 percent) said they cannot afford to do pro bono compared to 17 percent in 1997. More than one-third in 2007 (34 percent) said their offices limit pro bono compared to 5 percent in 1997. The current report indicates that large law firms are more likely than small firms to have formal policies encouraging pro bono. It also notes that small firms provide more flexibility to individual lawyers regarding whether to offer pro bono services and what kinds of services to provide.

The current report indicates that a lawyer's practice setting influences how much pro bono that lawyer is likely to do. Private practice lawyers are considerably more likely to provide pro bono services than corporate or government lawyers. Attorneys in academia, legal services, non-law practices, and especially those in the judiciary were much less likely than others to report having provided pro bono services in 2007. The survey also indicates that law firm policies and culture have a significant impact in encouraging pro bono service and donations.

One of the important findings of the current report is that lawyers do not have a uniform definition of pro bono. Some lawyers' definitions of pro bono are not consistent with the definition under the State Bar's Voluntary Pro Bono Standard. The Bar's standard focuses on legal assistance to low-income persons; some lawyers consider pro bono work to include work for friends or others who are not low-income or clients who were expected to pay but did not.<sup>5</sup>

A surprise result from the 1997 survey that appears again in the current report concerns pro bono case sources. Only 41 percent of lawyers report that they received pro bono case referrals through established pro bono programs (e.g., a legal aid program, a local bar program, or the firm's pro bono program). More than three-fourths of lawyers received and accepted cases from informal sources (friends, churches, other). This means that much pro bono work is informal and spontaneous, which may not fit with the definition of pro bono under the State Bar's standard. Structured programs need our help and can support pro bono services and coordinate them with other community services.

The State Bar Representative Assembly adopted the Voluntary Pro Bono Standard to assist lawyers in focusing volunteer efforts on legal assistance, something lawyers are uniquely suited to do. While both lawyers and others provide valuable community service, only lawyers can provide legal assistance to low-income persons who cannot afford to hire counsel. The State Bar values all community service that many lawyers perform; in fact, the State Bar established the "A Lawyer Helps"<sup>6</sup> program in 2009 to highlight all lawyer community service activities. The "A Lawyer Helps" website notes that pro bono work and pro bono donations are lawyers' public service

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A low-income grandmother died before she was able to pay taxes on her longtime home where her low-income daughter and grandchild also lived. The daughter and grandchild were in danger of becoming homeless after the house was sold for back taxes. A pro bono lawyer provided many volunteer hours going to court and securing title in the daughter's name so she could obtain financing, allowing her to pay the property taxes and remain in the family home with her child.

priority and provides lawyers with tools to continue these efforts, but the site also separately recognizes other community service provided by attorneys.

Though down from 54 percent in 1997 to 45 percent in 2007, family law was the area with the most pro bono legal services in both 2007 and 1997. The next highest case service areas were housing, consumer, and probate matters.

Although many aspects of pro bono services and attitudes remained the same from 1997 to 2007, there have been a few notable changes in the pro bono landscape over the past 10 years. These include the growth of the ATJ Fund, which has raised nearly \$10 million since its inception in 1997 and now is an established campaign, raising about \$800,000 a year for legal aid programs; the much more active engagement of many larger multi-city law firms in pro bono; and the development of the "pro bono menu" through which a variety of pro bono opportunities are listed in one place with the goal that every lawyer, regardless of geographic region or practice setting, can find an appropriate way to provide pro bono service.<sup>7</sup>

Respondents report that several things would encourage them to provide increased pro bono service, including:

- The opportunity to do discrete legal tasks without taking a case
- A wider range of pro bono opportunities to choose from
- Availability of mentors and co-counsel to assist in pro bono service
- Free or discounted training as a reward for performing pro bono service
- Request from a judge to take on a pro bono case
- Funds to cover out-of-pocket costs

In response to the current report, both legal services programs and the State Bar undertook initiatives to respond to these findings.

Legal Services Association of Michigan (LSAM)<sup>8</sup> is now working with its members (legal aid programs) to:

- Increase free and discounted training for attorneys who do pro bono work
- Develop and better publicize discrete legal tasks for pro bono attorneys to undertake<sup>9</sup>
- Develop new options and expand choices for pro bono service within member organizations
- Improve the screening of and support for pro bono cases
- Participate in the ATJ Fund centralized fundraising campaign

Consistent with its role to foster a culture of pro bono in all practice areas and in all regions of the state,<sup>10</sup> the State Bar of Michigan is working with legal aid programs, lawyers, and others to support expanded pro bono. It will:

- Educate its members about their obligation to provide pro bono service and donations consistent with the Voluntary Pro Bono Standard
- Assist with the promotion of free and discounted trainings and materials
- Provide information to all lawyers to explain how they can fulfill pro bono obligations, e.g., contact information for pro bono coordinators for legal aid programs

and a menu of pro bono opportunities for potential volunteers

- Partner with legal aid programs and the Michigan State Bar Foundation to raise funds through the ATJ Fund to support civil legal aid for the poor
- Recognize law firms that meet the standard through the Circle of Excellence and provide additional recognition and tools to help lawyers meet the standard through the "A Lawyer Helps" website

Overall, the survey suggests that lawyers continue to support the concept of pro bono and that a significant number of lawyers provide pro bono services and donate to legal aid programs. The opinions expressed in the survey—especially about the motivation of lawyers to provide pro bono services and make financial donations, and what barriers prevent lawyers from providing pro bono services—present useful information to help the Bar and legal aid programs improve pro bono opportunities.

This is very consistent with my own experience as a private lawyer and now federal judge. As a practicing trial lawyer, my own pro bono work was primarily with the Fair Housing Center of Metropolitan Detroit. That work permitted me to assist the talented and committed staff of a local Fair Housing Center on behalf of deserving clients on issues that I cared passionately about. So the survey and its outcomes strike a chord with me. As State Bar president, I devoted one of my President's Page columns to a discussion of the survey and its results.<sup>11</sup>

Now as a federal judge, I see pro bono through different eyes. I am a member of the Eastern District Pro Bono Committee, chaired by Hon. Denise Page Hood. In that role, I have participated in pro bono recruitment and training. More importantly, I have had the opportunity to observe pro bono lawyers handling cases in my court—and my appreciation and respect for these

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lawyers and the services that they provide to their clients and to the court system has grown dramatically.

I also became a trustee of the Michigan State Bar Foundation, which provides funding to nonprofit legal aid grantees that have pro bono programs in which private lawyers annually give more than 30,000 hours of free volunteer legal service for low-income persons. Despite this pro bono assistance, these agencies must turn away three of seven persons who seek their help because of inadequate resources to assist them.<sup>12</sup>

The path to which my own pro bono passport has taken me underscores the findings of the survey and confirms my own belief in the importance of the legal profession's prioritizing pro bono service and donations. This is clearly an opportunity, but also, in today's difficult economy, a challenge.

Although lawyers' support for pro bono has remained consistent, the need for legal services for the poor has grown dramatically. This need outstripped available resources in 1997—and the justice gap is even greater today. Because of the recession, more than one-third of the state's population qualifies for free help from legal aid because they live below 200 percent of the federal poverty limit (about \$29,000 annually for a family of two), but legal aid programs are not able to help everyone who needs assistance. Even more pro bono hours and dollars are needed from Michigan lawyers. Please use your own pro bono passport and take the journey with the many generous lawyers who provide volunteer legal service and donations to help assure access to justice for all. ■



*In 1998, Victoria Roberts was commissioned by President Clinton to serve as a United States district judge for the Eastern District of Michigan. She was the 62nd president of the State Bar of Michigan and has received its two highest awards: the Roberts P. Hudson and the Champion of Justice awards. Judge Roberts also teaches "Federal Sentencing: Its Evolution and Dynamics" at the University of Michigan Law School.*

## FOOTNOTES

1. State Bar of Michigan, Justice Initiatives, *Voluntary Pro Bono Standards* <<http://www.michbar.org/programs/atj/voluntarystds.cfm>>. All websites cited in this article were accessed May 16, 2010.
2. State Bar of Michigan, "... And Justice for All": *A Report on Pro Bono in Michigan: 2007* (2009), available at <<http://www.michbar.org/programs/atj/pdfs/justiceforall.pdf>>.
3. State Bar of Michigan, Justice Initiatives, *Access to Justice Campaign* <<http://www.atjfund.org>>. The ATJ Campaign is a partnership of the State Bar of Michigan, Michigan State Bar Foundation, and Michigan's legal aid programs to increase resources for civil legal aid to the poor.
4. The decline in pro bono hours reported in Michigan is consistent with findings from surveys undertaken in other states. See, e.g., MacQueen, *Pro Bono Goes Stagnant—Report sets goal to revitalize the profession's provision of free services to the poor* (2009), available at <<http://www.floridabar.org/DIVCOM/JN/jnews01.nsf/8c9f13012b96736985256aa900624829/dc64c1e177b1e80d85257524006acaa0?OpenDocument>>.
5. One possible reason for the lack of consistency in the definition of pro bono is that the current pro bono rule (MRPC 6.1) lacks detail about what is (and isn't) pro bono. The detailed definition of pro bono service and donations is in the State Bar's Voluntary Pro Bono Standard, but because that detail is not part of the rule, many lawyers may not know about it. Recently, the State Bar Representative Assembly unanimously recommended that the Michigan Supreme Court adopt a new version of MRPC 6.1 that incorporates the detail currently in the pro bono standard.
6. State Bar of Michigan, *A Lawyer Helps* <<http://www.alawyerhelps.org>>.
7. For a fuller discussion of developments in the world of pro bono, see Gillett, *The Bar and Pro Bono: Structure and Spontaneity*, 85 Mich B J 33 (May 2006).
8. LSAM is the organization that coordinates services among and acts as a spokesperson for all the legal aid and legal services programs in Michigan.
9. As examples, many legal aid programs offer pro bono clinic settings in which lawyers can talk to clients and provide general advice without filing a case or appearing in court; other programs provide structured, non-litigation pro bono opportunities, such as preparing simple wills for low-income seniors.
10. The Bar's pro bono efforts are coordinated by the Pro Bono Initiative, a 15-person volunteer committee. See State Bar of Michigan, Justice Initiatives, *Pro Bono Initiative* <<http://www.michbar.org/programs/atj/home.cfm>>.
11. Roberts, *The Pro Bono Passport*, 76 Mich B J 778 (August 1997).
12. State Bar of Michigan in Collaboration with Michigan's Legal Services Corporation Funded Providers, *Documenting the Justice Gap in Michigan* (2006), available at <<http://www.michbar.org/programs/atj/pdfs/JusticeGap.pdf>>.