AN ASSESSMENT OF PRO BONO IN MICHIGAN

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For the State Bar of Michigan, Pro Bono Initiative

And the Michigan State Bar Foundation

MICHIGAN PRO BONO ASSESSMENT
FINAL REPORT
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INTRODUCTION

This assessment was undertaken to examine the systemic factors that support or deter the effective engagement of pro bono lawyers in Michigan in responding to the needs of clients of legal and other social service organizations. With this in mind, the primary emphasis of the assessment has been on how providers can improve their work with pro bono with a major focus on systems, coordination of resources, leadership and support, including institutional and structural support.

There have been a number of studies of pro bono in Michigan as well as those undertaken in other states over the years. This study differs from the others because of its deliberate focus on how the systems in programs and in the state affect the delivery of pro bono, with an eye toward recommendations regarding systemic changes to enhance its use. This focus is predicated on the observation that while significant, intentional and thoughtful efforts have been undertaken over the years to improve and support pro bono, more can always be done to take advantage of new ideas and strategies. This Report begins with a catalogue of many bright spots and laudatory efforts in the use of pro bono lawyers in Michigan. But, there are also gaps and not all the providers that could, bring the level of imagination and commitment to the effort that is possible and that would benefit the low-income communities they serve.

This was not a quality assessment of any legal aid provider's pro bono efforts, although information gathered points to some organizations that are excelling and others that are not. Similarly, the assessment is not an effort to identify and describe best practices with a goal of publicizing those practices so that others might replicate them. Nevertheless, the study did identify some exemplary efforts. Both these and areas where more could be done were looked to for insights regarding systemic factors that support the better efforts or, conversely, to which some of the failings could be attributed.

SUMMARY OF CONCLUSIONS

The history of support for and the development of pro bono in Michigan is a strong one. The State Bar of Michigan (SBM) and the Michigan State Bar Foundation (MSBF) are at the core of a decades long statewide, institutional commitment to the furtherance of pro bono that has had a lasting, long-term impact.[1] There is a strong culture of pro bono with a widespread acceptance of the value of pro bono, even among organizations that do not use it. Legal aid organizations funded by the MSBF or affiliated with the Access to Jus-

[1] These institutional efforts are fully discussed beginning at page 5.

tice Fund are expected to engage pro bono lawyers and their work. In addition, however, there are many unaffiliated organizations that use pro bono lawyers, or stand ready to engage them if the opportunity arises. Similarly, there is an acknowledgment on the part of private attorneys of the importance of their pro bono obligations and an openness to participation in pro bono when meaningful opportunities are offered.

There is a strong, statewide institutional system in place to support current pro bono efforts and to encourage new ones when they are appropriate. The non-affiliated social service organizations that are open to using pro bono lawyers, however, often do not know how to connect with available, interested lawyers and design programs to use them. Moreover, they are not familiar with the level of institutional support that is available should they seek to engage pro bono lawyers in supporting the mission of their organization.

The findings of this assessment point to the importance of leadership, relationships and trust to the quality and success of pro bono efforts. There is an understanding in the state of the importance of various program-level functions – such as, training, support or effective screening. What drives successful pro bono efforts, however, is not just the presence of these functions, but rather how leadership brings them together to operate as a system with a clear strategic focus that in turn generates a high level of trust and confidence between the legal aid organization and its pro bono lawyers. Where such leadership exists, the participating lawyers have confidence that the organization with which they work understands their needs and concerns in volunteering and is designed and operates in a way that responds to them, while serving important client needs. The organization, in turn, has confidence that the lawyers will bring competence and sensitivity to their work for the organization and its clients.

These insights underlie a set of potential strategies that are presented at the end of this Report. Those potential strategies are focused in three broad areas. The first set of potential strategies are focused on making the statewide support system available to non-affiliated organizations that may be ready to begin or expand the involvement of pro bono lawyers in serving their mission. The second relate to sustaining or improving the level of quality throughout the system. And the third are aimed at preserving the culture of openness to pro bono that exists in the state.

METHODOLOGY

The conduct of the assessment and its preliminary findings were subject throughout to oversight and review by the Pro Bono Assessment Advisory Committee.[2] The assessment was conducted in three distinct stages:

[2] Members of the Pro Bono Assessment Advisory Group were: **Candace Crowley**, State Bar of Michigan staff, **Bob Gillett**, Co-Chair, Pro Bono Initiative, State Bar of Michigan; **Joan Howard**, Chief Counsel Civil Law Group, Legal Aid and Defender Inc.; **Thomas Linn**, Partner, Miller Canfield; **Hon. Denise Page Hood**, U. S. District Court, Eastern District of Michigan; **Andrew Pride**, Office of General Counsel, Ford Motor Company: **Susan E. Reed**, Michigan Immigrant Rights Center; and **Linda Rexer**, Executive Director, Michigan State Bar Foundation.

- The first was to review the many materials that elucidate current and past pro bono efforts in Michigan. The materials reviewed are listed in the attached Appendix A.
- Second, a comprehensive survey was conducted of individuals from a broad spectrum of organizations that have been involved in or expressed an interest in pro bono over the years. These included organizations that receive funding from the Michigan State Bar Foundation (MSBF), ATJ Affiliates,[3] and other organizations. The responses to the survey are cited and analyzed throughout this report.
- Third, on-site and telephonic interviews were conducted of persons representing a cross-section of organizations including MSBF Grantees (4), law schools (2), self-help centers (1), mediation services (1), immigration assistance centers (2), law firm pro bono coordinators (2), corporate counsel (1), a women's resource center (1) and an organization dedicated to linking pro bono lawyers with nonprofit organizations (1).[4] Four of the organizations whose staff were interviewed are Access to Justice affiliates.

DEFINITIONS AND UNDERLYING CONCEPTS OF THE ASSESSMENT

Pro Bono. It is important at the outset of this report to be clear what is meant by pro bono. In past studies, analysis of some of the data obtained from surveys and interviews was hampered by the fact that participants apparently held different understandings of what qualifies as pro bono. The term, when used in this report, is consistent with the underlying concepts of the Voluntary Pro Bono Standard of the State Bar of Michigan. "Pro bono," therefore, refers to representation or professional services provided without charge or at a significantly reduced fee by a licensed attorney to low-income individuals or to an organization that serves such individuals.[5]

The Voluntary Pro Bono Standard also contemplates that private attorneys can fulfill their pro bono obligation by contributing a minimum of $300 per year ($500 per year for those lawyers whose income so allows) to "…not-for-profit programs organized for the purpose of delivering civil legal services to low-income individuals or organizations." This assessment does not address systemic factors that may foster or inhibit attorneys making the suggested contribution as their way of meeting the Standards.

Scope of pro bono. The scope of activities that constitute pro bono under this definition has expanded significantly over the years. Past studies have measured pro bono participation in terms of numbers of individual cases that are referred to volunteer private attorneys and are accepted for representation along with the numbers of hours spent on those cases. In fact, however, there are many other ways in which pro bono lawyers are called upon by legal aid providers to assist their organizations and the low-income persons they

[3] ATJ Affiliates are organizations that are eligible to receive funds from the Access to Justice Fund campaign and to which qualifying donations can be made under the Voluntary Pro Bono Standard.

[4] A list of the persons interviewed is attached at Appendix ###.

[5] The Voluntary Pro Bono Standard is set forth at page 6.

serve. This shift has occurred in response to the understanding developed over the years that one of the *systemic* factors that encourages pro bono use is having a variety of options available for potential volunteer attorneys, particularly activities that have a predictable, short duration and require only a "limited" professional commitment.[6]

In recognition of this shift, the assessment sought information regarding pro bono participation in the following range of activities:

- Direct, full representation of clients;
- Provision of legal advice on a one-time basis in a clinic or on a hot-line;
- Provision of legal information in a pro se or self-help clinic;
- Provision of limited representation in a "case processing" clinic, where assistance beyond legal advice may be offered, but in which the pro bono lawyer's professional commitment is limited to the services offered in the clinic or in immediate follow-up;
- Provision of legal information in a community education presentation to low-income persons;
- Provision of limited or full transactional representation directly to an organization that provide services to low income persons or communities; and
- Provision of training to other pro bono attorneys or to staff of a legal aid or social service organization.[7]

INITIAL OBSERVATIONS REGARDING SYSTEMS TO SUPPORT PRO BONO IN MICHIGAN AT A STATEWIDE LEVEL

Michigan enjoys a notably strong system of intentional and conscious support for pro bono at the state level, at the core of which are the State Bar of Michigan and the Michigan State Bar Foundation. The strength of the system derives not only from the seriousness of purpose which each organization brings to its institutional responsibilities that directly and indirectly affect the development and operation of pro bono. The system's strength also derives from a culture of collaboration and coordination that infuses the relationship of these two central institutions, as well as their relationship with the leadership of the legal aid community. Major initiatives and new policy directions are not undertaken without consultation among the key stakeholders affected so that decisions are grounded in a long-term strategic focus for the overall legal services delivery system.

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[6] The term "limited" refers to limited representation as contemplated in Rule 1.2 (b) of the Michigan Rules of Professional Conduct).

[7] The Voluntary Pro Bono Standard also contemplates activities beyond direct representation in individual cases. A footnote to the Standard states: "In recognition of the fact that some individuals may not be able to provide direct client representation, the time obligation may be fulfilled by active involvement in activities such as serving on a local Pro Bono committee or the board of directors of a legal aid or legal services program, training other lawyers through a structured program, engaging in community legal education programs or advising nonprofit, low income, or public interest organizations or groups."

This study did not examine the systemic factors that affect participation on a bar pro bono committee or legal aid organization's Board of Directors.

The formal role of the State Bar is key. The **State Bar of Michigan** has had what was described as a "long and strong" and "unwavering" commitment to access to justice issues of which its pro bono commitment is a part. In 1996, it created a high-profile Access to Justice Task Force and dedicated 6 staff positions to access to justice issues. The task force structure and staffing configurations have changed over time, but its commitment, sensitivity to and knowledge about legal aid service delivery influences many aspects of SBM's operation and its leadership and support for pro bono services continues. The SBM has one full-time staff member whose sole area of focus is pro bono. Its government relations, bar liaison, communications, and professional responsibility staff are involved in access to justice and pro bono issues.

The State Bar has several formal responsibilities related to pro bono. As part of its general responsibilities related to oversight of the Michigan Model Rules of Professional Conduct, the State Bar is responsible for its members' compliance with Rule 6.1 of the Michigan Rules of Professional Conduct regarding Pro Bono Publico service.[8] In 1990, the State Bar adopted the Voluntary Standard for Pro Bono Participation which provides guidance for Michigan lawyers meeting their responsibilities under Rule 6.1. The Voluntary Standard now provides that:

> *"All active members of the State Bar of Michigan should participate in the direct delivery of Pro Bono legal services to the poor by annually:*
>
> 1. *Providing representation without charge to a minimum of three low income individuals; or*
> 2. *Providing a minimum of thirty hours of representation or services, without charge, to low income individuals or organizations; or*
> 3. *Providing a minimum of thirty hours of professional services at no fee or at a reduced fee to persons of limited means or to public service or charitable groups or organizations; or*
> 4. *Contributing a minimum of $300 to not-for-profit programs organized for the purpose of delivering civil legal services to low income individuals or organizations. The minimum recommended contribution level is $500 per year for those lawyers whose income allows a higher contribution."*

Over the years, the State Bar of Michigan has undertaken a number of initiatives to support pro bono and increase the visibility of opportunities for private attorneys seeking to fulfill their pro bono obligations. The Bar created the Committee on Justice Initiatives which in turn sponsors a Pro Bono Initiative both of which have worked to increase pro bono opportunities throughout the state. The goal for the Pro Bono Initiative set forth on

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[8] Rule: 6.1 of the Michigan Rules of Professional Conduct regarding Pro Bono Publico Service reads: "*A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations.*

"A lawyer may also discharge this responsibility by service in activities for improving the law, the legal system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

SBM's website is ambitious: "…*that every attorney and firm in the state has one or more opportunities available to them to fulfill their pro bono obligation*."

The Pro Bono Initiative created the *Circle of Excellence*, which is administered by the Bar, and provides public recognition of firms, corporations or other legal organizations that have brought every attorney affiliated with them into compliance with the Voluntary Pro Bono Standard. In 2012, 23 large firms, 19 small firms and one corporate department were certified into the *Circle of Excellence*.

The **Michigan State Bar Foundation** also has formal responsibilities that directly impact how pro bono has evolved and operates in the state. Each of MSBF's grantees is required to provide pro bono opportunities for attorneys in its service area and provides detailed reports to the Foundation regarding its pro bono activities. The pro bono activities of MSBF's grantees are also subject to review as part of the peer reviews conducted periodically by the Foundation. Over the years, therefore, the MSBF has kept tabs on the variety of pro bono techniques utilized by its grantees and, where necessary, has worked with its grantees to improve their efforts.

The Foundation also administers the Access to Justice Fund, which it operates in partnership with the Bar Association and the legal aid providers to support the delivery of legal services to low income persons in the state. The ATJ Fund was set up to receive funds donated by private attorneys to meet the Voluntary Pro Bono Standard. Donations to the Fund are distributed to organizations that provide civil legal assistance to low-income individuals or organizations under the Standard. To qualify as an ATJ Fund recipient, the legal aid organization must sign an Assurance of Compliance that states that, among other things, the organization "*…should include a pro bono program that facilitates participating attorney's compliance with the State Bar of Michigan's Voluntary Pro Bono Standard.*"

As important as these assigned responsibilities are, there is another more subtle aspect of the operation of the State Bar and the Foundation, in concert with the leadership of the legal aid providers, that is critical to the success of pro bono in Michigan. The SBM's engagement in its ongoing responsibilities coupled with its role as liaison to local and specialty bar associations across the state keeps it informed of resources, interests and activities that may relate to potential pro bono initiatives. The Bar's access to justice culture in leadership and staff influences its government relations, professional responsibility, bar liaison and communications work. The MSBF, in turn, is aware of the activities of its grantees and the ATJ Affiliates, the resources available to them and their potential strengths and weaknesses. The providers are engaged with low income individuals and communities they serve and are, therefore, aware of ongoing as well as newly emerging needs of those individuals and communities.

Because of the solid relationships and a high level of communication among these three partners, a strong, though informal capacity to monitor and respond to new needs and opportunities has evolved. Together they serve as an informal clearinghouse of information and ideas regarding pro bono possibilities and opportunities in the state and helps connect needs, people and resources to facilitate ideas becoming realities.

The high level of commitment that has been brought to support for pro bono by these institutional partners is demonstrated by the broad range of systems and activities created over the years. The website of the State Bar of Michigan prominently features a "Menu of Pro Bono Opportunities" that lists nine pages of available pro bono programs and projects with a brief description and contact information.[9] Where in most states a declaration of "Pro Bono Month" is often largely symbolic, in Michigan the efforts of the MSBF and the PBI in partnership with the state's legal aid organizations result in a month that is marked by almost daily opportunities, including trainings, clinics, community legal education efforts and other public events.[10]

Among the initiatives is the Michigan Litigation Assistance Partnership Program (MI-LAPP) that was created to link large law firms and corporate law departments with legal aid organizations to assist in handling complex cases, to provide representation that would be prohibited by the funding sources and to assist with transactional representation. Similarly, in 2006, MI-LAPP undertook responsibility for a QDRO Referral Program in which private attorneys with knowledge in the field assist in the drafting Qualified Domestic Relations Orders, which are highly technical orders relating to the distribution of retirement benefits in a divorce.

For the past five years, the Pro Bono Initiative has sponsored a Pro Bono Workshop, which started as a support effort for Pro Bono Coordinators of legal aid programs, but has expanded into a daylong workshop that serves a wider audience, including directors of nonprofit organizations, law firm pro bono managers, pro bono coordinators and other staff.

The State Bar also experimented with "Pro Bono Fairs" held in conjunction with Pro Bono Month and designed to give legal aid organizations and interested private attorneys an opportunity to meet and communicate about available pro bono opportunities. The Fairs generated well-presented booklets with a detailed list and description of regional and statewide pro bono opportunities.

The joint efforts have also led to the production of a number of publications designed to support pro bono efforts in the state and in some cases offer guidance regarding pro bono delivery. Publications of note include:

- **And Justice for All—A Report on Pro Bono in Michigan** (2009)
- **Pro Bono Reference Manual** (Fourth Edition, February 2008) [Prior editions in 2003, 1999 and 1995]
- **Pro Bono Toolkit for Michigan Judges 2010**
- **Committee on Justice Initiatives Annual Report** 2012
- **Documenting the Justice Gap in Michigan** Updated Spring 2012
- **Immigrant Service Provider Reference Manual updated, 2012**

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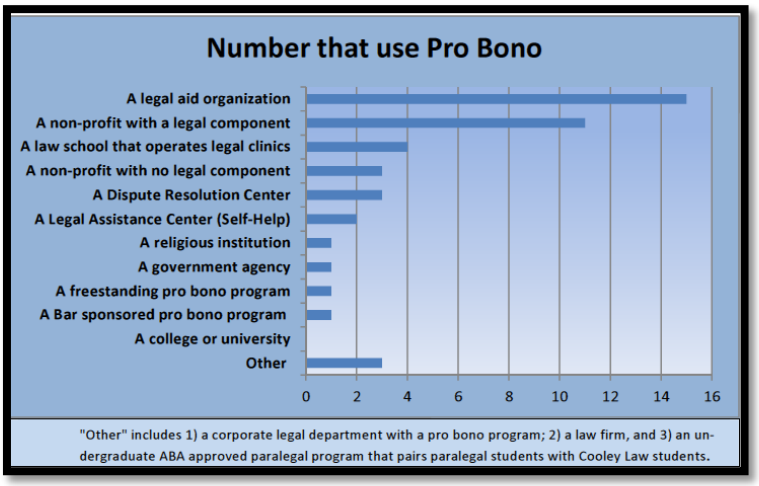
[9] http://www.michbar.org/mastersection/pdfs/ProBonoMenuMMLS_cWeb2.pdf

[10] For 2012 for instance, 33 separate events were listed. See http://www.michbar.org/probono

This assessment did not evaluate the component of the Voluntary Pro Bono Standard that involves an annual contribution of $300 to an organization which provides free legal services to low-income persons. It is clear, however, that the active engagement of the Michigan State Bar Foundation and the State Bar of Michigan in identifying and publicizing eligible organizations and their integration into the annual Access to Justice Campaign is key to maximizing such contributions. Moreover, the Circle of Excellence campaign and its ongoing recognition efforts encourage and publicize compliance with the Voluntary Standard; this high-level institutional commitment to support both the service and donations aspects of pro bono has significantly enhanced the expansion of the ATJ Campaign and the volume of pro bono related financial donations over the years.

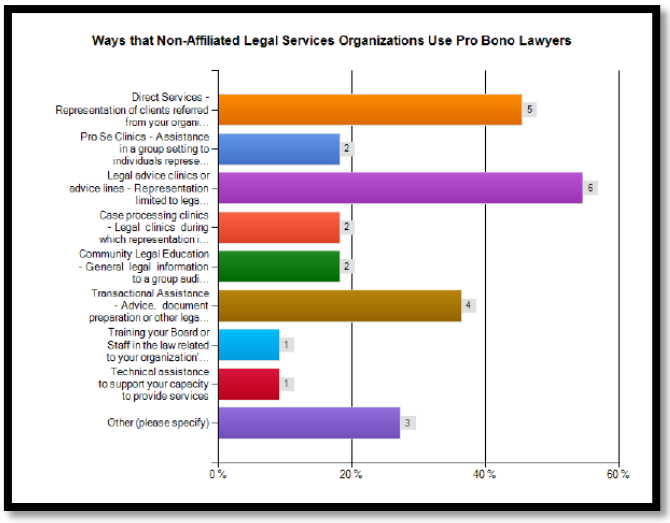
BROAD USE OF PRO BONO AND OPENNESS TO NEW INITIATIVES

This assessment found one significant, and perhaps unexpected, strength of the state wide system of pro bono that can no doubt, in significant part, be attributed to the high level of institutional support for pro bono from the State Bar and the Michigan State Bar Foundation. There is a widespread use of pro bono by a variety of organizations in the state, including not only the MSBF grantees and the partners in the Access to Justice Campaign, but also various organizations that are not formally part of the access to justice system.



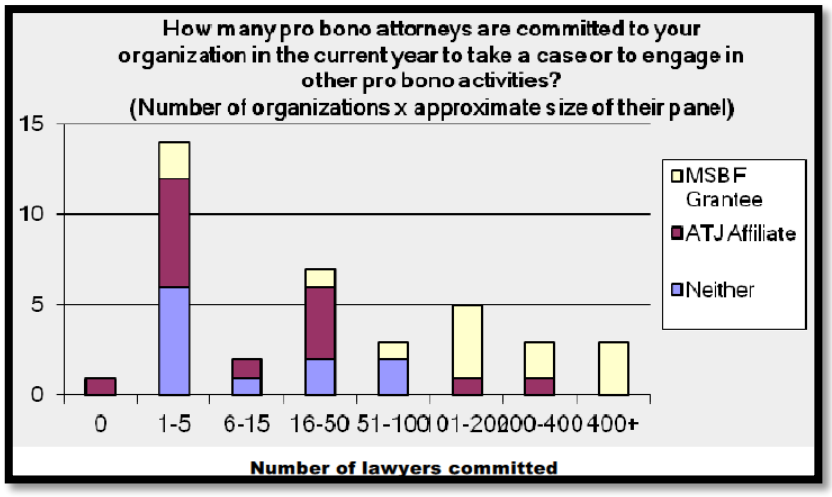
Pro Bono use by non-affiliated organizations.

Half of the fifty-eight organizations that responded to the online survey conducted as part of this assessment were not directly affiliated with the access to justice system. Fourteen of those non-affiliated organizations reported that they use pro bono lawyers to respond to the legal needs of low-income persons whom they serve. The data from the on-line survey also show (see chart at right) that these 14 non-affiliated organizations employed pro bono attorneys in a broad variety of ways with most



participating in advice clinics or providing direct representation.

The data from the online survey also show, however, that the size of the panels of the non-affiliated organizations and the level of participation of their pro bono lawyers varies significantly and in some it is quite low. Several non-affiliated programs have large panels of lawyers that are used in creative ways that are central to the success of the organizations' mission. Four non-affiliated organizations have between 16 and 100 lawyers on the panel. On the other end of the scale, however, are non-affiliated programs that have very small panels of between one and five attorneys and appear to make only limited use of the attorneys they do have available.



It is significant that some of the individuals interviewed in the course of this assessment, whose organizations do not currently use pro bono lawyers or underutilize those that they do have, were able easily to identify viable, potential pro bono projects involving significant issues for the communities they serve. What stood in the way of those organizations establishing effective programs were the difficulties they encountered in establishing trusting relationships with the lawyers on which they would rely, sometimes because they did not have a connection with the bar or because they did not have a large enough staff to reach out to make the necessary connections.

Responses to the survey confirmed the problem:

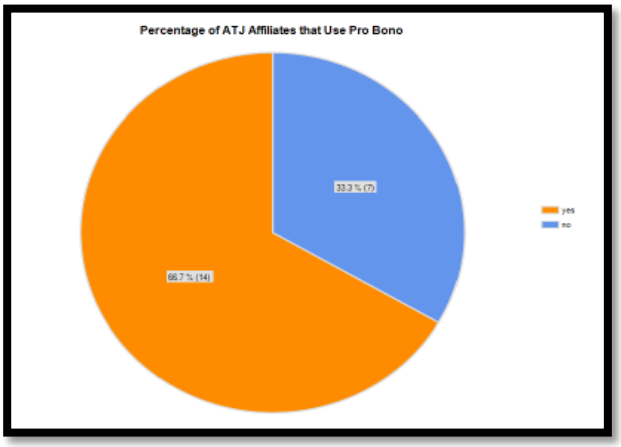
- One respondent described itself as not "*mov[ing] in the same circles*" as most private lawyers.
- "*It has been difficult to build relationships with private legal service providers as we are not attorneys*."
- *"We have tried to start a pro bono program but we run into barriers around recruitment as we are not a dedicated legal services agency and often lack connections with legal service providers looking to engage in pro bono work."*
- *"…it has been difficult to build relationships with private legal service providers as we are not attorneys. We come from the non-profit arena and we employ one full time attorney to assist with domestic violence victims' family law, housing, immigration and public benefits needs. We have not had the staff resources needed to build additional relationships with private attorneys but we are exploring other options."*

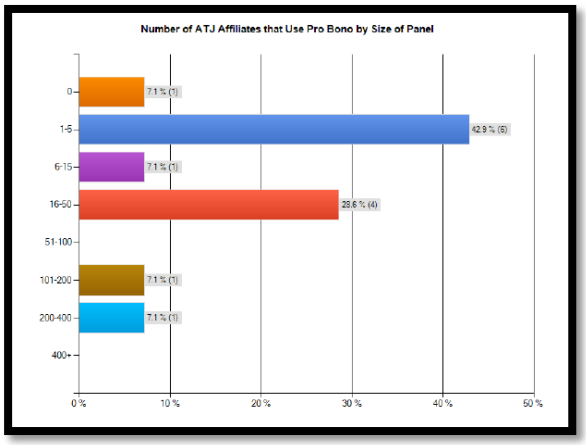
- "*The barrier to having a system is time. For years I attempted to create a panel of attorneys who I would have "on call". But that took too much time to maintain. I now rely on partnering agencies to split the time it takes to recruit the pro bono attorneys for clinics and I try to maintain good working relationships with any attorneys I might meet in case a pro bono opportunity presents itself."*

This finding is significant and underlines the strategy suggested at page 17 of this Report that the informal capacity of the state level institutions to serve as a clearinghouse and connector for new pro bono initiatives be expanded to respond to the needs identified by non-affiliated organizations that are ripe for pro bono engagement.

Use of pro bono by ATJ Affiliates.

Another surprising finding from the online survey is that one-third of ATJ Affiliated Programs indicated that they do not use pro bono lawyers, notwithstanding that they are expected to do so to qualify as an ATJ Affiliate.[11] Moreover, the actual level of participation in pro bono activities that are offered by some ATJ Affiliates appears to be very low. As the chart below shows, seven of the ATJ Affiliates that indicated that they do use pro bono lawyers, in practice only have between zero and five participating attorneys available to them. This is in contrast to another ATJ Affiliate that has 157 attorneys available (it reported having used up to 450 in past years) and another that has in excess of 200.





The apparent low level of participation in pro bono are among some ATJ Affiliates is subject of a proposed strategy found at page 19.

The importance of organizational mission. A factor that affects whether non-affiliated and some ATJ Affiliated organizations engage pro bono lawyers is their dedication to a mission and service delivery method that they do not see as being conducive to the involvement of volunteer private attorneys. Some self-help centers and mediation programs, for instance, do not consider assistance from private attorneys to be pro bono, since no attorney-client relationship is formed with the people assisted. Individuals helped at a court sponsored self-help center only receive legal information and the center

[11] See page 6.

may actually provide such information to both parties. Similarly, county mediation programs do not provide representation since the role of the mediator is by definition a neutral one.[12]

In some cases, the distinction is semantic in that the self-help or mediation program in fact uses volunteer lawyers, but because of the lawyers' actual role, do not consider their participation to be "pro bono." One respondent to the survey, for instance, stated: "*I am actually not sure if our programs are actually 'pro bono.' Our volunteer mediators do not provide pro bono legal services, and half our volunteer mediators are not attorneys."*

In other cases, because actual representation is not provided, the programs do not even seek the pro bono assistance that might be offered by lawyers interested in fulfilling their responsibilities under the Voluntary Pro Bono Standard. This is significant because, as discussed above, successful pro bono programs often include in their menu of options assistance with pro se clinics and community legal education, where no attorney-client relationship is formed.[13] Indeed, having such an option is sometimes a key to success, since having a commitment of short and predictable duration is important for some attorneys to participate in pro bono.[14]

The degree to which law schools called upon pro bono lawyers is also significantly affected by how they see their mission.[15] One law school that reported only limited use of private lawyers in its clinics commented: "*We can only take a very limited number of pro bono attorneys to work with us because we spend most of our time training law students, which is very supervision-intensive, and because students getting to do the interesting work is important to us. We can't supervise a lot of pro bono attorneys. They must fit our mission.*" Another observed: "*We rarely use pro bono private attorneys, but in some cases we need special support, and solicit help. We also get program assistance in the form of volunteer moot court judges, etc.*"

This is in sharp contrast, however, to one law school that operates a project that utilizes several hundred lawyers (458 in 2010 and 254 in 2011) who receive disciplined training

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[12] Several mediation programs noted the challenge of engaging private attorneys because of the difficulty some have in separating from their accustomed adversarial role. One comment to the survey noted: *"Some volunteer mediators who are attorneys find it difficult to be as neutral as necessary for the mediation process to be true and effective, and sometimes egos get in the way of effective mediation and effective training."* Another said: "*The greatest challenge is to train attorneys to be facilitative, rather than directive."*

[13] See the discussion of the scope of pro bono above at page 4.

[14] Only a small percentage of the county-based mediation programs and self-help centers responded to the survey. Of the seven dispute resolution centers that did respond, however, three said they use pro bono lawyers and four said they did not. Although most mediation centers do not use volunteer lawyers to any significant degree, one has a group of 20 volunteer attorneys that it uses regularly.

A total of four self-help centers responded of which two use pro bono lawyers and two do not.

[15] In response to the survey, four law schools indicated that they use pro bono and one said it did not. All are ATJ Affiliates.

and have access to robust online manuals that provide guidance for them to assist veterans in pro se clinics. The same law school has another clinic that has 20 lawyers who provide direct representation, offer community legal education and staff pro se clinics in immigration law.

Engagement of MSBF grantees in pro bono. Under current policies in Michigan, MSBF grantees are expected to include pro bono as part of their program's activities. As observed at the outset of this report, this assessment did not involve an evaluation of the effectiveness of any specific legal services or social services organization that uses pro bono lawyers to support its work. It appears, however, from the survey results and from statistics submitted to the Michigan State Bar Foundation that there is a wide range in the number of pro bono lawyers used by MSBF grantees and the types of pro bono opportunities they offer.

Numbers and statistics are almost never, standing alone, reliable indicators of the quality or effectiveness of an organization, nor its compliance with a grant or contractual obligation. However, the review of the data obtained in this assessment and through the on-site interviews suggests that some organizations do not have the integrated systems discussed in the next section and whose leadership, therefore, may need to focus on their development. This challenge is addressed in a proposed strategy set forth at page 19.

ANALYSIS OF SYSTEMS THAT SHOULD BE IN PLACE IN LEGAL SERVICES PROVIDERS FOR EFFECTIVE PRO BONO ENGAGEMENT

The importance of leadership and trusting relationships

What underlie all of the successful pro bono efforts encountered in this assessment are the existence of strong relationships based on mutual trust between the legal aid organization and the pro bono lawyers. One comment to the survey put it this way: "*The systems are important, but high quality, responsive support and strong interpersonal relationships are most important."* Another said: "*We rely almost exclusively on good working relationships with the attorneys in our area."* And still another observed: "*Many attorneys on our pro bono panel donate their services because we have an excellent working relationship with them and they know they can count on us to support them in whatever they need to represent the client effectively*."

The importance of institutional trust was strongly affirmed in the survey in which "*Commitment to our organization and desire to support it*" was ranked by virtually all types of organizations as the first or second most important motivational factor that encourages participation by pro bono lawyers.

Ranking in order of importance by type of service provider

(Rankings are coded by color)

Motivational factors that encourage participation	Legal Services Programs	Soc. Svs. w/ legal component	Soc. Svs. NO legal component	ADR	Law school clinics	Others
• Commitment to our organization and a desire to support it	1	1	2	1	1	2
• Commitment to their professional responsibility and desire to provide meaningful service	2	2	4	2	2	1
• The case has interesting and challenging issues	3	6	5	5	5	8
• The time commitment is of limited and predictable duration	4	3	1	3	3	4
• The issue is of demonstrable importance to the client	5	4	3	4	4	3
• The opportunity to comply with the Voluntary Pro Bono Standard	6	5	7	7	7	6
• Recognition by their peers for their efforts	7	7	6	6	6	7
• The case might generate publicity for the lawyer or the lawyer's firm	8	9	9	9	8	9
• The case is routine	9	8	8	8	9	5

The trust did not need to be personal, although the initial development of a pro bono initiative often began with a strong, trusting personal relationship between a bar and program leader. The development of trust, however, does depend on effective leadership within the organization that understands the importance of how the various functions of pro bono fit together in an integrated system that serves the needs of the volunteer attorneys and response to the strategic needs of the program.

The key role of an organization's leadership in developing and implementing effective strategies for using pro bono lawyers was cited in several responses to the online survey. The Director of one of MSBF's Grantees put it this way: *"It is easy for pro bono to become the 'one more thing I don't have time to do:' it is easy for a manager to decide that pro bono is not worth the extra time and effort. It is important that program leadership and funders push pro bono — and that means both making sure that local office managers care about it and pay attention to it and making sure that the pro bono systems actually deliver meaningful and efficient service to clients."*

The Director of a much smaller non-affiliated program expressed the same sentiment: *'Within our organization, it's the most knowledgeable and/or leadership folks that participate during the creation process. They need to have some authority to make decisions, etc. They also need to know how systems work and why they are important - big picture people.*"

With effective program leadership, the trust that is developed over time becomes institutional; that is, that the pro bono attorney is confident that the legal aid organization understands and will respond to the lawyer's concerns in taking on work and conversely, the legal aid organization is confident that the private attorney will follow through with competent and sensitive work.

Functions that support the development of trust. The survey conducted as part of this assessment as well as the survey conducted as part of the 2007 study both demonstrated that most lawyers engage in pro bono are highly motivated to do so by the desire to meet their ethical obligations. They, therefore, typically harbor several concerns which ultimately underlie the development of their trust in the legal services organization:

1) knowing that they have the professional competence or will be offered support to provide the needed services competently,
2) knowing the time and resources they are being asked commit, and
3) knowing that the work is meaningful and will make a difference to the individual or organization assisted.

Supporting professional competence. Establishing and maintaining institutional trust is not accomplished without effort. It begins with the leadership of the organization recognizing the value of the pro bono resource to the organization and the individuals and communities it serves. The legal aid organization's leadership needs to be attentive to assuring the professional competence of the work being done. While this is obviously important for the client, it is also equally important for the attorneys who volunteer. Lawyers are appropriately very conscious of their ethical obligation to provide competent

service and will not continue to assist in effort for which they do not feel they have adequate preparation or support. Sometimes, assuring the appropriate level of confidence requires the legal aid organization to provide training and to have solid systems for ongoing support and mentoring, often supported by effective use of technology. At other times, however, the legal aid organization may assure an appropriate level of proficiency by recruiting attorneys who will bring the necessary competence to their volunteer work. For the overall pro bono system to work effectively, the right strategy needs to be in place based on the issues involved and the lawyers being targeted to volunteer.

There are a number of systems that have been consistently identified as being essential to supporting professional competence. Those systems include: 1) the availability of expert backup and support, 2) access to sample forms and pleadings, and 3) the availability of training. These are typically identified along with other important functions, such as effective screening of clients, having a diverse set of options for participation, effective recruitment and volunteer recognition. The survey and interviews conducted as part of this assessment confirmed the general importance of these factors to effective pro bono.[16]

The assessment also showed, however, that the importance of each specific factor varies significantly based on the type of issue being addressed and the population being served, as well as the professional circumstance of the pro bono lawyer. In some cases, for instance, a potential pro bono attorney has no concern about receiving support and back-up or training or about the screening of clients or issues. In other circumstances, on the other hand, one or more of these may be essential for a lawyer to volunteer time for a legal aid organization. The results of the survey conducted during this assessment reflect how the importance of

Systemic factors that encourage participation in Pro Bono	Ranking by order of importance (Rankings are coded by color)					
	Legal Services Programs	Soc. Svs. w/ legal component	Soc. Svs. NO legal component	ADR	Law schools	Others
• The availability of expert backup and support	1	1	7	2	4	2
• The availability of funds to cover costs	2	7	2	9	8	7
• Potential pro bono clients are consistently pre-screened	3	3	1	7	1	1
• Access to sample forms and pleadings	4	2	5	10	2	5
• The attorney's firm credits the time to the attorney's billable hours	5	5	8	8	10	6
• The availability of training	6	6	11	1	3	4
• The availability of malpractice coverage	7	10	4	11	7	8
• The availability of a wide range of pro bono opportunities	8	8	9	4	9	9
• The opportunity to co-counsel	9	11	10	3	5	11
• The activity does not involve creation of an attorney-client relationship	10	4	3	5	6	3
• Pro bono cases are given favorable placement by judges	11	9	6	6	11	10

[16] The same issues were identified – with different emphasis and ratings as to their importance – in the survey conducted as part of the assessment of pro bono in 2007. Each of these factors is also addressed in the ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means (Adopted 1996) as well as Standard 2.7 of the ABA Standards for the Provision of Civil Legal Aid (Adopted 2006).

each of these systems is relative. As the chart above shows, for instance, the importance of many systemic functions varies significantly among different types of providers.

Comments to the survey elucidate why the importance of systemic factors such as training or support varies with circumstances. Some programs engage volunteer lawyers, precisely because their help is needed in areas important to the population the organization serves, but regarding which the organization has no expertise. For such programs, it is essential that they recruit lawyers who come with the requisite expertise and knowledge. Thus, one respondent to the survey attributed program success *to not* having to provide training. "[We] *get skilled and experienced attorneys who do not need extensive training. Pro bono should not be primarily a means for pro bono attorneys to gain an education."*

In contrast, however, another program noted the central importance of training and support for its project: *"The system most important to my program involves the training seminar, manual and materials … that I developed for our Pro Se Clinics*." Such projects are typically designed to make very specific training available to private attorneys in order to respond to a need for there is a high volume of unmet need. Projects that work with populations such as veterans or immigrants, for instance, may involve relatively discrete, recurrent legal problems for which targeted training is the linchpin for the success of the program.

The differing levels of importance attributed to specific systems that support the professional competence of pro bono lawyers points to the importance of engaged, thoughtful leadership and management in designing and implementing those support systems. What matters to the lawyers who volunteer is having confidence that the legal services organization will provide them with training and support appropriate to the issue they are addressing or the population they are serving. Program leadership's understanding of that is what contributes to the development and maintenance of trust that is essential to the pro bono efforts' success.

Controlling the lawyers' commitment of time and resources. It is also a responsibility of the legal aid organization's leadership to assure that the systems that are designed for engagement of pro bono attorneys are mindful of the volunteer attorneys' need to limit the time and resources dedicated to the activity. Some lawyers and firms are willing to take on major litigation, knowing it is a large and to some degree open-ended commitment of resources. Most, however, feel a need for assurance at the front end of how much a commitment is necessary and expected – and for a small firm or sole practitioner to know that the commitment is limited.

Sensitivity to pro bono attorneys' concern that their commitment of time and resources be predictable and manageable has led to the development of a variety of new delivery mechanisms over the years. It is a mark of effective leadership in legal aid organizations with significant resources that they offer a range of pro bono opportunities to attorneys with whom they work. Legal advice, case processing and pro se clinics, for instance, offer volunteer attorneys an opportunity to participate in assisting clients in a setting that is designed to be a limited duration and professional commitment.

Not every legal aid provider needs to have a broad array of ways to engage in pro bono lawyers. Some may be dedicated to a particular type of work, issue or population that lends itself to one or two approaches. What is important, however, is that the leadership of the organization understands the reasonable limitations, if any, on the participating lawyers' commitment and designs systems that accommodate that need.

Offering meaningful work. Pro bono lawyers are appropriately protective of their time and if they cannot perceive the benefit of their work for the persons served, they will cease to be interested. The program's leadership, as well as other managers and staff, also need to perceive the importance of the work that is done, so that they will be committed to carrying out their responsibilities effectively to support it. The successful pro bono efforts identified in the course of this assessment all were built around important, meaningful issues and an effective strategy for communicating to volunteer attorneys what the issue is and why their work is a significant component of responding.

Technology. Another systemic factor that was identified during the assessment as being critical to the success of pro bono was technology. Two types of technology were identified: 1) case management systems and 2) on-line support. With regard to case management systems, one MSBF Grantee put it this way: "*The case management and scanning systems allow us to process cases more efficiently. We sometimes even place emergency cases because we can email cases and the documents to pro bono attorneys. Our case management system also allows us to see cases for clients that have just been interviewed in real time, look at their scanned documents and quickly determine if this is a case we can place."*

Technology that supports online support was identified as a major factor in the operation and success of two projects. One MSBF grantee highlighted its "*…internal pro bono wiki that serves as a quick reference for attorneys to get information on areas of law that they may not be familiar with."* The other provided a lengthy description of the central role of technology in a project that utilizes a large number of volunteers: "*The system most important to my program involves the training seminar, manual and materials … that I developed for our Pro Se Clinics. [It] …is a user friendly system that includes Common Issue Guides and Common Forms in addition to numerous templates and a detailed manual in an easily searchable electronic format. The intake application is designed to elicit a specific response from the client leading to the proper identification of the issue and prompting the attorney to pull the correct information from the Common Issue Guide. The attorney knows exactly what advice to provide based on the information contained in the guide. The Common Issue Guide allows the attorney to refresh his/her memory on the topic (which was covered in the training seminar) and is designed to be given to the client as part of the consultation so that the client walks away with relevant information and ultimately an easily understandable plan of action."*

POSSIBLE STRATEGIES TO EXPAND PRO BONO IN MICHIGAN AND IMPROVE THE QUALITY OF PRO BONO EFFORTS

As noted at the outset of this Report, the efforts of the State Bar of Michigan and Michigan State Bar Foundation have fostered the development of strong statewide and program-level systems that support a high level of trust and confidence among most legal aid organizations and volunteer attorneys that in turn support successful pro bono initiatives.[17] There are two areas identified in this Report where more could be done, however: 1) to support the creation of new institutional relationships where there may be fresh opportunities for pro bono lawyers to engage in meaningful work and 2) to improve the quality of programs that may lack the level of trust and confidence necessary for a high degree of success.

Strategies to support the creation of new institutional relationships and pro bono initiatives

There are two areas where strategies to open up new opportunities for pro bono lawyers may be appropriate.

- The first is to reach out to the non-affiliated legal and social service organizations that serve populations with areas of need where volunteer lawyers could assist, but where the organization lacks connections with the bar to undertake such an initiative or is not familiar with what would be necessary to make it successful.[18] As a service to such organizations and to expand opportunities for its members, the State Bar of Michigan could expand its "clearinghouse and connecting function" discussed earlier in this report[19] to help such organizations establish needed connections and design the initiative to respond.

  To accomplish this "bridge" effort would involve publicizing the concept both to its membership and to social service organizations across the state. Outreach to the organizations could be made broadly, or to targeted segments of the social service system, such as domestic violence centers or veteran serving organizations. The services offered would be 1) to assist the organization in defining the issue to be addressed and the scope of service to respond; 2) to identify the support mechanisms necessary, including training and backup as well as potential sources for such support, 3) to identify potential volunteer attorneys, 4) to help make appropriate institutional introductions and connections (such as, with the leadership of the local bar or the management of a local law firm that may be asked to adopt the project and take responsibility for its design and operation), and 5) to assist with other planning and troubleshooting as necessary to effectuate a project.

[17] See the discussion beginning at page 4.

[18] See the discussion beginning at page 10.

[19] See the discussion beginning at page 6.

There are many organizations that might be approached through this effort, but they are often small local programs with limited organizational capacity. To assure that the Bar's efforts in this area are within the Bar's capacity, therefore, the Bar's initial activities should be cautious and targeted. Wherever possible, the organizations should be invited to utilize existing Bar structures—such as the annual pro bono workshop – or to link with partners in the legal aid delivery system. A successful model used in the past for such efforts was the Michigan Immigrant Rights Center that used its substantive legal strengths to engage immigration programs around the state and engage pro bono lawyers to respond to the legal needs of clients in those programs.

- A second area that could be explored is outreach to self-help centers and mediation programs – each of which have its own network and state association – regarding their possible inclusion of volunteer lawyers in providing their services that are directed to low-income clients. There are examples in both networks of successful pro bono efforts, but the norm is not to use volunteer attorneys. An initiative in this area would involve closer review of programs that do use pro bono attorneys to assess their model and what might be replicated by others in the same network. The State Bar would also need to reach out to the leadership of the network to enlist their engagement, if desired, in an effort to make the pro bono resources available to its members. To undertake this, would require additional resources that are not currently available in the system, so the goal of any such effort should be to engage the resources and leadership of the network of each type of organization in a pro bono initiative. It would be important that it be done in a way that does not increase demands on the already stretched resources of the SBM, MSBF or legal aid providers.

Strategies to improve current pro bono efforts among MSBF Grantees and ATJ Affiliates

As noted above, not every legal aid organization in Michigan that should be excelling in its use of pro bono lawyers appears to be doing so. The strategies suggested are based on an assumption that for those organizations that are not operating at the level that should be expected, either the pro bono effort is of low priority to the program's leadership or that leadership may be unaware of the degree to which their program is lagging behind what is possible. Furthermore, what may be lacking are not necessarily the systems to support pro bono, but rather, as discussed above,[20] trust and confidence on the part of private attorneys in the responsiveness of those systems to their needs. Program leadership may also harbor doubts about the potential of volunteer attorneys to provide the services necessary to the program's clients and so they may not be reaching out as appropriate.

There are a variety of ways through which the Michigan State Bar Foundation, as the funder, could address possible inadequacies on the part of its grantees or affiliates to meet their pro bono obligations. The MSBF has been active in the past in peer evaluations and

[20] See the discussion beginning on page 12.

other initiatives that have included assessments of the pro bono efforts among its grantees. Such evaluations are expensive, however, and sometimes not successful in improving areas of concern, since the results are generally presented as recommendations and are not always followed in letter or spirit.

The following recommendations are based on an analysis that there may be a greater likelihood of success in improving quality in programs that are lagging, if the assessment is owned by the local program and is informed by independent comments from local bar leaders. To make that happen, the MSBF would design and oversee two program self-assessments, one to be conducted by each of its grantees and the other by each ATJ affiliate. In addition, the MSBF could also sponsor focus groups of local bar leaders to talk about the relationship between local bars and local pro bono programs and to solicit advice from these groups about how to improve pro bono.

Grantees' self-assessment. The self-assessment of the grantees would be conducted by each MSBF grantee consistent with the design developed by the Foundation. The goal of this assessment would be to have each program look critically at its own pro bono systems and report on: 1) their success in referring priority cases; 2) the capacity (if any) of the local bar to do more; 3) the extent to which their intake system promptly and effectively identifies and refers appropriate pro bono cases; 4) the quality of the program's pro bono support systems; 5) the level of satisfaction of pro bono attorneys with the system; 6) the involvement of local bar associations in the program's pro bono systems. The design might include approaches such as an online survey of local bar members and be linked to focus groups of local bar leaders from the providers' service area, which are discussed below.

ATJ Affiliates' self-assessment. The self-assessment of the ATJ Affiliates would also be undertaken consistent with a design developed by the MSBF which would review and comment on each self-assessment report. The process would solicit a detailed description of the efforts undertaken to engage pro bono lawyers, the numbers of lawyers so engaged and the amount of work provided. Organizations that do not have a meaningful amount of pro bono engagement would be asked to present ways in which they could utilize pro bono lawyers, consistent with their obligations as an ATJ Affiliate, and how they might overcome the barriers they have stood in the way of their involvement with pro bono.

Local Bar Leadership focus groups. To help inform the self-assessments described above, the MSBF could support the convening of focus groups of local bar leaders to discuss pro bono in their area, their relationship with local programs and how pro bono might be improved. The focus groups would explore whether there is a trusting relationship with the local legal aid program, based on there being: 1) an opportunity for engagement in work that is important to low-income individuals or communities; 2) effective mechanisms to ensure that attorneys feel they have an appropriate level of competence; and 3) a variety of opportunities for participation that give the attorneys clear expectations regarding their commitment of time and resources.[21] The focus groups

[21] The importance of these three factors to the establishment of trust is discussed above at page 13.

would inform the MSBF's review of the self-assessments discussed above and at the same time give it an understanding of the range of practices and relationships in the state. The focus groups would also serve to identify the strengths and weaknesses of the system and facilitate better connections between willing pro bono lawyers and programs that can use them effectively.

Strategies to further enhance the pro bono culture in Michigan

Michigan has excelled in creating a culture that has fostered the success of current pro bono efforts and the development of new initiatives as needs arise. That culture is the product of disciplined hard work over several decades in the state.[22] In spite of its success, however, attention should be paid to how this supportive culture can be maintained and expanded in the future. One aspect of that effort involves addressing the next generation of lawyers who will be leaders in the bar and will set the tone for pro bono and be the next wave of lawyers who volunteer. A second aspect is to reach out to currently available resources that may not be utilized to the degree possible. A third aspect relates to improving the capacity of technology to support pro bono efforts in the state.

Reaching out to the next generation of lawyers.

Law students. There is a growing interest nationally, and in Michigan, in requiring law students to engage in pro bono work. The underlying rationale for such efforts is the exposure of the students to their pro bono obligations and to the challenges facing low income and other disadvantaged persons with an eye to increasing the future lawyers' openness to providing service to such individuals in the future. A concern raised regarding such initiatives is that they require significant amount of administration, supervision, training and oversight by legal aid and similar organizations, which may not have resources available to carry out those functions. On the other hand, law schools recognize that these costs are an obligation in the provision of a legal education, and law school initiatives are generating significant resources for the client community and for use by legal aid and social service organizations to assist low-income persons and communities.

The Pro Bono Initiative of the State Bar of Michigan should track developments in this area and encourage law schools to continue developing programs that provide quality experiences to their students and increase access to justice for the poor. The University of Michigan Law School, Thomas M. Cooley Law School and Wayne State University College of Law have all instituted voluntary pro bono pledges asking their students to commit to performing 50 hours of pro bono service while enrolled at the law school. The Michigan State University College of Law has a student run pro bono project. The University of Detroit Mercy School of Law has a strong clinical program that uses students and pro bono lawyers to provide legal services to the community.

New lawyers. In addition, there are a number of initiatives supporting the pro bono efforts of recent law graduates. These include law school-based fellowship programs that

[22] See the discussion beginning at page 4.

place recent law graduates at legal aid programs and bar association-based programs and provide mentorship and support as they provide pro bono services. These initiatives should be supported by the Bar with the understanding that for such initiatives to be successful, the legal aid programs need significant additional resources to develop and sustain them in order to increase their capacity to serve indigent clients.

*Reaching out to other available resources***.** Several ideas were also suggested during the assessment for tapping into pro bono resources that are currently available, but may not be utilized to the degree possible.

Senior attorneys. One idea that emerged is to target the recruitment of senior lawyers, including particularly retired legal aid lawyers, to be available on a pro bono basis to legal aid and social service organizations. Such an initiative could be as simple as publicizing the possibilities and keeping a directory of individuals who express an interest and making it available to existing pro bono efforts for their follow-up. These efforts should be coordinated with the State Bar's Master Lawyers Section.

*Large firms and corporate counsel***.** Pro bono in Michigan has enjoyed significant support from several large firms and corporate law departments and the system's leadership has valuable connections to draw on in both worlds. In other states, a strategy has evolved of having large law firms or corporations "adopt" an issue and take full responsibility, usually with the support of a legal aid provider, for developing and implementing a project to respond. In other states, there is also significantly more co-counseling by legal aid providers and large firms on major litigation or other advocacy than appears to be the case in Michigan. There is an ongoing discussion in Michigan of the development of the pro bono counsel role in the large law firms and the most effective way to engage this group in discussions of planning and delivery. The State Bar, perhaps with the participation of members of the Pro Bono Assessment Advisory Group, should convene a discussion with the pro bono managers of large firms to discuss these possibilities.

*Technology***.** This assessment did not focus on the technology used in both legal aid and social service organizations or in law firms that volunteer their services. It did, however, affirm the importance of technology that can support pro bono efforts in the state. Both the Legal Services Corporation and the National Legal and Defender Association have undertaken national initiatives to examine the need for pro bono support, including technology. The results of those efforts will be monitored since leaders from the state are involved in both. There are several aspects of technology support that should be addressed. The first is the development of standards regarding the technology that should be in place to support pro bono. The second is monitoring available software that can be used by organizations relying on pro bono support, particularly those with large panels and complicated systems. The third, which has been successfully tried in the state before, is to develop strategies to assist smaller organizations by making useful software available to them.

Because it is possible that a national pro bono technology model will emerge from the LSC-ABA processes (including the pending revision of the ABA's Pro Bono Program

Standards), this assessment recommends that Michigan not move forward to develop its own state technology model at this time. In addition, Michigan has a Legal Services Computer Committee (LSCC) that should be involved from the outset in any discussions regarding technology systems for pro bono as it has a responsibility to help coordinate the architecture and design of technology among programs.[23]

IMPLEMENTATION

The Pro Bono Assessment Advisory Group has reviewed this report and the possible strategies and believes that both have merit. The Assessment has identified important strengths of the pro bono system in Michigan, not all of which have been fully catalogued and formally acknowledged in the past. It has also suggested strategies designed to benefit the system and increase the extent and quality of pro bono efforts in the state. As with any suggestion for change, there are challenging resource questions in determining which of the possible strategies should be implemented, who should be assigned responsibility and, most importantly, from where the resources would come to carry them out.

The Advisory Group recommends that an implementation plan be developed to identify the strategies that should be put into action, together with a timeline for each as well as an outline of the resources, action steps and leaders necessary to accomplish the strategy. Members of the Advisory Group have agreed to serve on this Implementation Committee and others may be invited to participate as well. A Subcommittee of the Implementation Committee will estimate the costs and potential benefits of each strategy to assist the Committee in identifying priorities and other factors affecting success. The Implementation Committee will also invite broad feedback on the report from individual programs, bar associations, private lawyers and law firms, as well as other interested groups and individuals.

The Implementation Committee will consider the input noted above and draft an Implementation Plan suggesting timelines, accountabilities, resources and tools to support the recommended strategies. This plan may set forth actions at the program, local, regional and state levels. It will be presented to the State Bar of Michigan through its Pro Bono Initiative (PBI) and to the Michigan State Bar Foundation for review and further action. These entities will also work to disseminate the report and publicize its findings and recommendations in the state.

[23] The LSCC played a pivotal role in the recent process that provided an effective pro bono tracking system (Pika) to many small providers in the state.