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**MEMORANDUM**

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**TO:** JOE SULLIVAN  
**FROM:** KATHERINE HAYES  
**SUBJECT:** USING THE JUDICIARY'S LEADERSHIP ROLE TO ENCOURAGE PRO BONO  
**DATE:** 8/1/2005

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I. INTRODUCTION

It has been stated that “public service is the very essence of the work of a judge.”<sup>1</sup> Within the legal profession, judges hold a uniquely prestigious leadership role, and it is because of this privileged position that judges can and must play an important part in promoting and encouraging pro bono services. As Debbie Segal, Chair of the Standing Committee on Pro Bono and Public Service of the ABA, stated, “judges have dedicated themselves to improving the administration of justice, [and] they are in a special position to influence pro bono and public service work. They have both the honor and the obligation to look towards increasing access to justice in our society.”<sup>2</sup> Judges have the ability to set the tone, standards, and expectations of the legal profession with respect to pro bono service.

Yet despite the fundamental importance of public service to the judiciary, judges face many ethics rules that limit their ability to actively participate in various forms of pro bono work. On the most basic level, judges cannot participate in any activities that would compromise their objectivity or coerce lawyers with

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<sup>1</sup> Amendments to the Code of Judicial Conduct and Rules Regulating the Florida Bar RE: Pro Bono Activities by Judges and Judicial Staff Attorneys, 840 So. 2d 1023 (2003), *available at* <http://www.law.fsu.edu/library/flsupct/SC02-1001%20-%20SC02-1250.html> [hereinafter Report of Task Force] .

<sup>2</sup> Debbie Segal, Chair, Standing Committee on Pro Bono and Public Service, American Bar Association, *From the Chair . . .*, 8 DIALOGUE 1 (Winter 2004), *available at* [http://www.abanet.org/legalservices/dialogue/04winter/dial\\_04winterprobono.html](http://www.abanet.org/legalservices/dialogue/04winter/dial_04winterprobono.html).

whom they deal.<sup>3</sup> Most states' Rules of Judicial Conduct include provisions that prevent judges from becoming involved in activities that could influence matters that may come before them, thereby preserving their impartiality.<sup>4</sup> Therefore, judges must be careful about associating themselves with particular pro bono organizations and participating in fundraising or soliciting donations. Concerns about ethical restrictions have led many judges to avoid or severely limit their involvement in pro bono and public services. As Florida's judicial Task Force, established by the Supreme Court of Florida in 2000, concluded "there is substantial uncertainty about the type and extent of pro bono service that is ethically permissible for judges."<sup>5</sup>

However, the view that judges are prohibitively limited in their ability to get involved in pro bono activities is giving way to a new attitude—namely that judges have a duty to take the lead in actively encouraging, facilitating, organizing, and monitoring pro bono participation.<sup>6</sup> In fact, in October of 2003 the Nevada Supreme Court amended the state's Code of Judicial Conduct, "to eliminate language that discouraged members of the judiciary from assisting" in pro bono recruiting and "affirmed that the provision of pro bono legal services furthers the administration of justice by improving access to the courts."<sup>7</sup> The Supreme Court of Florida also proposed a revision to the Florida Code of Judicial Conduct to specifically state that "judges and members of the Florida Bar employed by the judiciary are encouraged to perform pro bono service and activities which relate to improving access to the justice system for the poor."<sup>8</sup> Additionally one Florida judge proposed the development of educational materials for judges to help guide them through

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<sup>3</sup> *Id.*

<sup>4</sup> Report of Task Force, *supra* note 1 at 3. *See also* F.L. CONST. art V, § 13, *cited in* Report of Task Force, *supra* note 1 at 3 (noting that Florida judges are explicitly forbidden by the state constitution from practicing law).

<sup>5</sup> Report of Task Force, *supra* note 1 at 9.

<sup>6</sup> Ohio Legal Assistance Foundation, *Pro Bono Resources: Role of Judges*, available at <http://www.olaf.org/probonoresources/roleofjudges.shtml> ("Some mistakenly believe that judges are prohibited from supporting pro bono, while just the opposite is true. Judges share a duty to ensure that justice has true meaning for all citizens.").

<sup>7</sup> Marilyn Smith, American Bar Association, Clark County Legal Services Pro Bono Project: Opening the Door to New Volunteer Attorneys, 8 DIALOGUE 1 (Winter 2004), available at [http://www.abanet.org/legalservices/dialogue/04winter/dial\\_04winterprobono.html](http://www.abanet.org/legalservices/dialogue/04winter/dial_04winterprobono.html).

the ethical issues and embrace their leadership role in encouraging pro bono work.<sup>9</sup> In many states judges are now taking a more active role in pro bono projects.

The trend towards judicial leadership in encouraging and promoting pro bono services has taken many different forms through out the country. First, in many states, such as Florida, Maryland, New York and Indiana, the judiciary has taken an active role in organizing, facilitating, and monitoring pro bono services by establishing statewide and local commissions or committees. Second, the judiciary has been successful in a variety of different recruiting efforts by using their leadership roles and prestige to encourage lawyers and law firms to either contribute free services and representation or make financial contributions. Third, judges are donating their own time in teaching and providing training to lawyers involved in pro bono projects. Fourth, courts are adopting many creative means by which to facilitate more easy access to the courts for pro bono lawyers and their clients, such as offering scheduling flexibility and docket priority or even providing free parking spaces to pro bono lawyers at the courthouse. Judges have many opportunities and avenues by which to get involved in public services.

## II. JUDICIAL INVOLVEMENT IN STATEWIDE AND LOCAL PRO BONO COMMISSIONS AND COMMITTEES

### A. Judicial Commissions on Pro Bono

An increasing number of states have established central statewide programs and infrastructure to involve the judiciary in public service. By establishing a centralized system, usually consisting of a number of local committees and one standing committee, judges are involved in all aspects of furthering public service initiatives. These committees are responsible for conducting surveys that evaluate the current state of pro bono programs, developing a plan for improvement, implementing the plan, monitoring its implementation,

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<sup>8</sup> Report of Task Force, *supra* note 1 at 11.

<sup>9</sup> *See id.* at 19 (Justice Shepard suggested “judicial education curricula should be developed to provide judges with the tools to assume the leadership role anticipated by the proposed revisions”).

and ultimately reporting on its level of success. Judges are involved at the local level and at the supervisory level.

Additionally, a number of states have adopted mandatory pro bono obligations or mandatory reporting of pro bono service. Mandatory reporting is seen as an effective complement to the central statewide system because it is a means by which the judiciary can get accurate information about pro bono participation and areas of need. This information, in turn, leads to a more equitable and efficient distribution of resources throughout the state. Furthermore, mandatory reporting forces lawyers to be conscious of their own public service participation. This awareness tends to prompt action and has expanded pro bono participation.

### 1. *Florida*

Florida was one of the first states to establish a statewide pro bono system to promote the state's goal of expanding pro bono services and programs, and the judiciary plays a central role in the system. Florida's Rules of Professional Conduct outline the system, which involves one Standing Committee and twenty Circuit Pro Bono Committees—one for each judicial district in the state.<sup>10</sup> Members of the Standing Committee are appointed by the president-elect of the Florida Bar, and it includes one trial judge and one appellate judge.<sup>11</sup> The Circuit Pro Bono Committees are convened by the chief judge of the circuit, and the chief judge appoints the committee's chair.<sup>12</sup>

The individual circuit pro bono committees are responsible for evaluating the pro bono needs of the circuit and writing a plan to address these needs.<sup>13</sup> The circuit committees implement and monitor their pro bono plans and submit annual reports to the Standing Committee.<sup>14</sup> Additionally, under the Florida Rule of

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<sup>10</sup> FLA. BAR REG. R. 4-6.5 (2005). *See also* New York State Unified Court System's Pro Bono Convocations, Report and Recommendations, *Volume two: The Future of Pro Bono in New York* (Jan. 2004) [hereinafter *Future of Pro Bono in New York*].

<sup>11</sup> FLA. BAR REG. R. 4-6.5(b)(C) (2005).

<sup>12</sup> FLA. BAR REG. R. 4-6.5(c) (2005).

<sup>13</sup> FLA. BAR REG. R. 4-6.5(c)(2) (2005).

<sup>14</sup> FLA. BAR REG. R. 4-6.5(c)(2) (2005).

Professional Conduct, the circuit committees are charged with encouraging lawyers to partake in pro bono work and providing educational services for those lawyers.<sup>15</sup> This involves referring and screening clients and matching qualified attorneys, providing legal education and training, providing malpractice insurance for pro bono lawyers, and recognizing volunteer lawyers for their services.<sup>16</sup> The Standing Committee is responsible for receiving the reports of the circuit committees, evaluating the circuit plans, and submitting an annual report to the Florida Bar Foundation and board of governors and the Supreme Court of Florida.

By placing members of the judiciary within the Standing Committee and charging chief judges of each circuit with responsibility over the circuit committees, the judiciary is inextricably involved with establishing the state's pro bono goals, developing a plan, implementing the plan, and assessing its success. Additionally, because the Standing Committee submits its annual report to the Supreme Court, the judiciary is primarily responsible for the oversight of the entire system. Such a centralized system utilizes the leadership role of the judiciary to establish expectations and standards with respect to public service obligations.

Additionally, in October of 2000, the Supreme Court of Florida created the Task Force on Pro Bono Activities by Judges and Judicial Staff.<sup>17</sup> The Task Force was responsible for studying and reporting means by which members of the judiciary could become more involved in pro bono services.<sup>18</sup> Of the seventeen members on the Task Force nine were judges. This committee was not only formed by the judiciary, but reported its findings and recommendations back to the Supreme Court. In this way, judges were involved in surveying and evaluating the state of pro bono activities and involved in developing proposed solutions and improvements.

## 2. *Maryland*

With the aim of expanding pro bono services in the state of Maryland, Chief Judge Robert Bell, in 1998, created the Maryland Judicial Commission on Pro Bono to investigate and make recommendations on

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<sup>15</sup> FLA. BAR REG. R. 4-6.5(c)(2)(E) (2005).

<sup>16</sup> FLA. BAR REG. R. 4-6.5(c)(2)(E) (2005).

<sup>17</sup> Report of Task Force, *supra* note 1 at 1.

the judiciary's role in such an expansion.<sup>19</sup> Among the members of the Commission were appellate, circuit and district court judges.<sup>20</sup> One of the significant recommendations made by the committee, which was implemented in 2002 was the establishment of a centralized system of committees to coordinate and oversee the implementation of pro bono efforts.

Similar to the centralized system in Florida, Maryland's system consists of a Standing Committee, which has thirteen members all appointed by the Court of Appeals,<sup>21</sup> and Local Pro Bono Committees, for which a number of members are appointed by local administrative judges.<sup>22</sup> The local committees develop local pro bono goals and plans that are overseen by the Standing Committee.<sup>23</sup> Members of the judiciary "establish[] the framework for a pro bono initiative, and participate[] in the initiative."<sup>24</sup> Judges are involved at every level of this system, through sitting on the various local committees or the Standing Committee, making appointments to the committees, and receiving annual reports and providing over site.

### 3. *Indiana & Others*

Indiana also has a similar centralized system to that of Florida and Maryland intended to "expand pro bono representation at the grass roots level."<sup>25</sup> The Indiana Supreme Court established the Indiana Pro Bono Commission,<sup>26</sup> which "is a partnership of the Indiana Bar Foundation and the Supreme Court."<sup>27</sup> Eleven of the Commission's members are appointed by the Supreme Court and 10 are appointed by the Bar

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<sup>18</sup> *Id.*

<sup>19</sup> The Maryland Judicial Commission on Pro Bono, *Report and Recommendations* at iv (March 2000) [hereinafter MD Report].

<sup>20</sup> *Id.*

<sup>21</sup> MD. RULE 16-901(a)(2) (2004).

<sup>22</sup> MD. RULE 16-902(a)(2) (2004).

<sup>23</sup> MD Report, *supra* note 19 at 20-21.

<sup>24</sup> *Id.*

<sup>25</sup> Randall T. Shepard, *Introduction: Building Indiana's Legal Profession*, 34 IND. L. REV. 529, 529 (2001).

<sup>26</sup> IND. R. PROF. COND. 6.5.

<sup>27</sup> *Future of Pro Bono in New York*, *supra* note 10 at 11.

Foundation.<sup>28</sup> The Commission manages and supervises fourteen district pro bono committees, each chaired by a local trial judge, who appoints all its members.<sup>29</sup>

Indiana is just one of an increasing number of states that has followed Florida's lead in establishing a centralized means of judicial control and oversight of pro bono programs. Additionally, the supreme courts of New York,<sup>30</sup> Nevada<sup>31</sup> and Minnesota<sup>32</sup> have established systems of local or district pro bono committees, which report to a statewide commission, which then reports to the state supreme court. As in other states, Indiana's Pro Bono Commission was initiated and organized by the Judiciary. It is yet another example of the judiciary exercising its leadership role in an effort to control, monitor, encourage and expand pro bono services in the state.

#### B. Mandatory Pro Bono Service Reporting

In addition to centralized systems to develop, implement and oversee pro bono plans, some state judiciaries have also enacted mandatory service or mandatory reporting requirements in the hope that they will motivate lawyers to participate in pro bono activities. New Jersey is the only state that makes pro bono service mandatory.<sup>33</sup> Yet, it has not proven successful given the resentment it generates and unevenly administered exemptions that excuse nearly half the lawyers in many counties.<sup>34</sup> Although a number of states have implemented voluntary reporting programs, they have also met with little success and lack of

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 16. See also Daniel Wise, *Survey Sent to 12,000 Lawyers to Assess Pro Bono for Indigent*, N.Y.L.J., Mar. 14, 2003, at 1 (discussing a survey sent out by the Office of Court Administration in order for the New York courts to assess the levels of pro bono service throughout the state).

<sup>31</sup> MD Report, *supra* note 19 at 18.

<sup>32</sup> *Id.* at 19.

<sup>33</sup> Kellie Isbell & Sarah Sawle, *Pro Bono Publico: Voluntary Service and Mandatory Reporting*, 15 Geo. J. Legal Ethics 845, 855 (2002).

<sup>34</sup> *Id.* at 858.

compliance.<sup>35</sup> An emerging alternative is the coupling of voluntary pro bono service with mandatory reporting of pro bono hours served, the idea being that it will increase the amount of service by “focusing lawyers’ attention on the number of hours they spend in service each year.”<sup>36</sup>

Florida’s Supreme Court, made it the first state, in 1993, to enact a mandatory reporting requirement, and it has proved successful in increasing participation in pro bono service.<sup>37</sup> In fact Florida now has the highest pro bono participation rate in the country.<sup>38</sup> Lawyers report the number of pro bono hours they have served in their annual bar membership dues statement.<sup>39</sup> The Florida Supreme Court set a suggested goal for lawyers of 20 hours of pro bono service per year or a \$350 donation to a legal services organization,<sup>40</sup> however participation is voluntary. If a lawyer completes no pro bono activity, however, she must report that she completed zero hours because “the failure to report this information shall constitute a disciplinary offense.”<sup>41</sup> In addition to increasing the amount of pro bono service done every year, the Florida reporting system has achieved nearly a 100% response rate, which provides the judiciary with accurate statistics about pro bono participation.<sup>42</sup> Not only does this allow the court to better assess its success in meeting its goals

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<sup>35</sup> MD Report, *supra* note 19 at 59 (“Several states have experimented with voluntary pro bono reporting programs, in which lawyers are encouraged but not required to respond to questionnaires. Texas . . . has achieved the highest voluntary reporting response rate: close to 40%. Most states that have used voluntary reporting have experienced disappointingly low response rates, however.”).

<sup>36</sup> Isabell & Sawle, *supra* note 33 at 845.

<sup>37</sup> *See* MD Report, *supra* note 19 at 60-61 (“Using 1994-1995 as a base for reporting, by 1997-1998 the number of Florida lawyers rendering pro bono services had increased by 11.7%. During that same time period, the number of hours donated increased dramatically, by about 76%. In addition, there was a surge in financial contributions, with the number of contributors increasing by over 48% and the amount of contributions increasing by more than 112%.”).

<sup>38</sup> *Id.*

<sup>39</sup> Isabell & Sawle, *supra* note 33 at 860.

<sup>40</sup> *Id.*; MD Report, *supra* note 19 at 60.

<sup>41</sup> FLA. BAR REG. R. 4-6.1 (2005).

<sup>42</sup> MD Report, *supra* note 19 at 61.

with respect to expanding pro bono, but it also allows for a more intelligent and efficient distribution of resources.<sup>43</sup>

Maryland's Court of Appeals recently followed Florida's example, and in 2002 it revised the state's Rules of Professional Conduct. While in Florida, lawyers submit reports with their annual bar dues, lawyers in Maryland must file annual reports of pro bono service directly with the Administrative Office of the Courts.<sup>44</sup> In Maryland, the Court of Appeals is responsible for oversight of the reporting process.<sup>45</sup> If lawyers fail to file their reports they may be decertified and prohibited from practicing within the state.<sup>46</sup> When the Maryland Judicial Commission recommended a mandatory reporting requirement, it emphasized the importance of taking an "accurate accounting" of pro bono services being provided.<sup>47</sup> Additionally, the Standing Committee can then use the accurate information to monitor and evaluate the effectiveness of the Local Pro Bono Action Plans and the State Pro Bono Action Plan.<sup>48</sup> This mandatory reporting requirement implemented and enforced by the Maryland judiciary is a means by which to communicate the importance of public service, and for the judiciary to encourage participation in pro bono service.<sup>49</sup>

### III. RECRUITING

Recruiting lawyers to participate in pro bono work is one of the best ways that judges can use their leadership position to encourage and expand pro bono services. While mobilizing the entire state's judiciary

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<sup>43</sup> *Id.* at 61-62.

<sup>44</sup> MD. RULE 16-903(a) (2004).

<sup>45</sup> MD. RULE 16-903(b) (2004).

<sup>46</sup> MD. RULE 16-903(c) (2004).

<sup>47</sup> MD Report, *supra* note 19 at 63.

<sup>48</sup> MD. RULE 16-903(a) (2004).

<sup>49</sup> MD. RULE 16-903(a) (2004). *See also* Pro Bono Resource Center of Maryland, The Latest, *Summary of Pro Bono Rules*, available at <http://www.probono.org/latest.html> ("The purpose of required reporting is to obtain accurate information about the amount and nature of pro bono service rendered by Maryland lawyers, to track the results of the Local Pro Bono Plans, and to provide reliable data from which to make decisions regarding the funding and planning of legal services programs and initiatives.").

to organize a central system for implementing pro bono plans may be a daunting endeavor, recruitment efforts can be as simple as sending out personal letters or giving speeches on the importance of public service work. These are tactics that individual judges can employ with relative ease.

One of the simplest means by which judges can recruit and encourage lawyers to participate in pro bono work is by sending personal letters requesting volunteers.<sup>50</sup> As one New York attorney, who received a recruitment letter from a judge, noted, receiving a personal letter from a judge “provides more incentive to participate than a letter from the . . . Bar Association.”<sup>51</sup> He stated that he felt “proud” to be chosen by the judge,<sup>52</sup> which demonstrates the significant influence that such letters can have. Some express concerns that letters from judges can be coercive, in that recipients will think that there will be negative repercussions if they choose to not participate or volunteer.<sup>53</sup> So it is important that letters remain general and avoid solicitations for funding or recruiting on behalf of a particular organization.

Another means by which judges can recruit lawyers to participate in pro bono work is by writing newspaper articles and editorials, giving speeches at conferences and summits, visiting law firms, and generally working to educate lawyers about the need for public service. In Fort Lauderdale, there is an annual View from the Bench Seminar, at which judges encourage attorneys to volunteer time or money to pro bono efforts.<sup>54</sup> In New York, Chief Judge Judith Kaye organized an Access to Justice Conference, which “provided the opportunity for participants to meet and learn from their access to justice colleagues, and

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<sup>50</sup> See Letter from Ronald M. George, Chief Justice of California, to State Bar Members (Oct. 3, 1996), *available at* <http://www.lawhelp.org/Program/2670/RFTF1.cfm>.

<sup>51</sup> Leigh Jones, *NY Judge's Methods of Recruiting Pro Bono Help Draws Scrutiny*, N.Y.L.J., Apr. 13, 2004, *available at* <http://www.nylawyer.com/news/04/04/041304g.html>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* See also MD Report, *supra* note 19 at 15 (discussing a judicial opinion that found a solicitation letter from a judge to violate the Code of Judicial Conduct to be “having a chilling effect on judicial participation in encouraging members of the Florida Bar to fulfill their professional obligation to provide pro bono legal services to the poor”).

<sup>54</sup> *Attorneys Honored for Helping Poor*, SUN-SENTINEL, Feb. 13, 2001, at 18A.

created a reservoir of energy for ongoing efforts.”<sup>55</sup> Additionally, in both Washington DC and San Francisco, judges successfully recruited pro bono volunteers by contacting law firms directly. In Washington, a number of prominent members of the judiciary organized a meeting with the managing partners of the city’s largest law firms at which the judges “ticked off a laundry list of alarming developments in legal services funding.”<sup>56</sup> The result was that 54 firms pledged to increase their pro bono work.<sup>57</sup> The San Francisco judiciary also sought to increase the pro bono contribution of the city’s law firms by circulating a pledge.<sup>58</sup>

Judges can also compile lists of lawyers interested in taking on pro bono clients and use the list to easily match attorneys with assignments. In Chicago, Circuit Court Judge Maureen E. Connors started a guardian list for those in need of guardianship and without an attorney.<sup>59</sup> The list comprises about 50 attorneys who have indicated that they are interested in participating, and it allows judges to easily assign those in need of help to an attorney.<sup>60</sup> The Supreme Court of Montana employed another means by which to create a list of attorneys willing to be assigned a pro bono assignment. The Supreme Court encouraged every judge in the state to participate in recruitment efforts and suggested three methods: 1) “All-in” where lawyers were sent a letter stating that they were expected to participate; 2) “Opt-out” where lawyers received notice that they were expected to participate unless they informed the judge otherwise; 3) “Opt-in” where lawyers were asked to enroll.<sup>61</sup> Once the list was compiled, judges could then use it to make assignments.

Furthermore, judges will have more success recruiting attorneys to participate in pro bono work if the lawyers feel that their efforts are acknowledged and appreciated. This is why it is important for judges to honor and recognize volunteers. Judges can express their appreciation in a number of ways. They could

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<sup>55</sup> Justice Initiatives, *The Access to Justice Conference*, available at <http://www.courts.state.ny.us/ip/justiceinitiatives/lsp2.shtml>.

<sup>56</sup> Amy Boardman, *D.C. Firms Answer the Call . . . Again*, LEGAL TIMES, Mar. 4, 1996 at 2.

<sup>57</sup> *Id.*

<sup>58</sup> Bob Egelko, *14 S.F. Law Firms Pledge Free Work for Poor Clients*, S.F. CHRONICAL, Dec. 15, 2000, at A26.

<sup>59</sup> David Ferrara, *Nominations Flowed in Praise of Pro Bono Lawyers*, CHICAGO LAWYER (Jan. 2004) at 53.

<sup>60</sup> *Id.*

<sup>61</sup> MD Report, *supra* note 19 at 29-30.

personally send thank you notes to pro bono lawyers.<sup>62</sup> Judges can present awards at receptions, judicial conferences, or other events and allow their name to be used for awards and honors.<sup>63</sup> And judges can acknowledge pro bono lawyers in publications or on a plaque in the courthouse.<sup>64</sup> Because judges occupy a prestigious leadership role within the profession, their acknowledgement of volunteer work will have a positive and reinforcing effect.

#### IV. TEACHING & TRAINING

Another means by which judges can encourage and facilitate pro bono activity is by providing training for pro bono lawyers and pro se litigants. This can be done in a variety of different ways, through participation of continuing legal education (CLE) programs, by hosting clinics or seminars in a particular expertise, and producing instructional videos or written material such as brochures and manuals.<sup>65</sup>

CLE programs provide a means by which to encourage and facilitate pro bono work. In 2000, New York adopted a proposal that allowed CLE credit for pro bono work.<sup>66</sup> Additionally, CLE is a crucial component of The Rural Law Center of New York's inventive means by which to address the particular pro bono needs in rural areas through its "Judges' Best Practices" Pro Bono/CLE Project.<sup>67</sup> Because lawyers in rural areas have a difficult time meeting CLE requirements and participating in pro bono work, the Rural Law Center organized a program in which local judges design curriculum and teach seminars that focus on certain

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<sup>62</sup> Ohio Legal Assistance Foundation, *supra* note 6.

<sup>63</sup> *Id.*; MD Report, *supra* note 19 at 33.

<sup>64</sup> MD Report, *supra* note 19 at 33.

<sup>65</sup> *See* MD Report, *supra* note 19 at 8 (discussing possible judicial services such as "training of pro bono and legal aid lawyers, participating in Teen Court, providing general community education, and participating in pro se clinics explaining court procedure and decorum").

<sup>66</sup> *See Future of Pro Bono in New York*, *supra* note 10 at 6 ("Up to six such hours may be earned for performing uncompensated legal services for clients unable to afford counsel."); John Caher, *CLE-Pro Bono Plan is Close to Approval; But Details on Hours, Types of Work Are Unclear*, N.Y. L.J., Feb. 9, 2000 at 1.

<sup>67</sup> Rural Law Center of New York, Inc., News From the Center, "Judges' Best Practices" CLE/Pro Bono Project, available at <http://www.rurallawcenter.org/news.html>.

practice areas in which there is a particular need, such as family law.<sup>68</sup> Attorneys attend these seminars free of charge if they pledge to do pro bono work for a local legal services program.<sup>69</sup> In addition to encouraging and facilitating pro bono activity, judges also have an opportunity to explain and teach practicing lawyers about the court's expectations and protocol.

Judges can also effectively encourage pro bono work by teaching training seminars. In fact evidence suggests that lawyer participation and attendance at training seminars increases when they are taught by members of the judiciary.<sup>70</sup> To encourage its judges to get involved in training programs, the Maryland Court of Appeals has a policy of allowing judges take administrative leave when absent because of involvement in training sessions.<sup>71</sup> Having judges actively involved in the teaching and training of pro bono lawyers clearly demonstrates that the judiciary places great importance on public service work.

Additionally, courts can help educate pro bono lawyers by making information and resources, such as videos, brochures and manuals available to pro bono lawyers or pro se litigants. Courts should provide access to and disseminate up to date directories and lists of pro bono resources and organizations.<sup>72</sup> Such materials can be particularly useful to pro se litigants who may not be familiar with courtroom procedure and decorum. A conference of chief judges in Minnesota recommended that judges develop basic, uniform, understandable information for pro se litigants.<sup>73</sup> Further more these materials should be provided in multiple languages.<sup>74</sup> As Michigan Trial Judge Patrick Bowler stated, “[j]udges can provide needed training, education, and monies to support the Bar’s efforts to access justice. The court has many tools and processes

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*; LSC Resource Library, *Rural Law Center of New York ‘Judges’ Best Practices’ CLE/Pro Bono Program*, available at <http://www.lri.lsc.gov/abstracts/abstract.asp>.

<sup>70</sup> MD Report, *supra* note 19 at 34.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* (Maryland Courts provide the *Guide to Legal Services in Maryland* and an abbreviated version, the *Guide*).

<sup>73</sup> Recommendations from the Minnesota Conference of Chief Judges, *available at* <http://www.unbundledlaw.org/Recommendations/Sourcematierial/Minnesotachiefjudges.htm>.

<sup>74</sup> *Id.*

available to it to ensure that the lawyer representing the pro bono client is spared time, money, and needless effort in accomplishing their representation of their client.”<sup>75</sup>

#### V. FACILITATING/EASY ACCESS

There are an infinite number of ways in which judges can make the lives of pro bono attorneys and their clients easier and help facilitate their access to the courts. In its Report and Recommendations, the New York State Unified Court System specifically stated that “each local Pro Bono Action Committee, in conjunction with a Judicial District’s or court’s Administrative Judge, should develop specific accommodations that take into consideration the needs of the court, pro bono lawyers and litigants.”<sup>76</sup> Additionally, the Maryland Judicial Commission recommended that “local pro bono committees should be creative in designing their local pro bono plans and determining practical approaches to easing access to their courts for pro bono litigants.”<sup>77</sup>

Common accommodations include flexible scheduling and docket priority for pro bono lawyers and their clients.<sup>78</sup> The Maryland Judicial Commission suggested instituting special pro bono court days, setting aside certain days on the calendar specifically for pro bono matters.<sup>79</sup> Additionally some judges permit “piggybacking” a pro bono matter on other litigation in order to provide the advantage and incentive of flexible scheduling.<sup>80</sup> Additionally judges can be flexible with regard to scheduling pro bono matters by allowing routine hearings to take place via conference call, or scheduling hearings during off-hours or during

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<sup>75</sup> Patrick C. Bowler, *Access to Justice – The Judge’s Role*, 79 MICH B.J. 79 (2000) cited in *Future of Pro Bono in New York*, *supra* note 10 at 16.

<sup>76</sup> See *Future of Pro Bono in New York*, *supra* note 10 at 27.

<sup>77</sup> MD Report, *supra* note 19 at 46.

<sup>78</sup> *Id.*; MD Report, *supra* note 19 at 43; Report of Task Force, *supra* note 1 at 16; Talcott J. Franklin, *Helping Lawyers Help Others: Creating a Pro Bono Program Designated to Attract and Retain a Large Volunteer Pool*, 27 J. Legal Prof. 23, 30 (2002).

<sup>79</sup> MD Report, *supra* note 19 at 43.

<sup>80</sup> *Id.*

lunchtime.<sup>81</sup> District Court Judge Merrill Hartman in Dallas, Texas consistently goes above and beyond in accommodating his pro bono lawyers and litigants by holding court at legal clinics once a month.<sup>82</sup>

In addition to scheduling accommodations, courts can provide other simple conveniences to pro bono lawyers such as “providing courthouse space, free copying and telephone access for pro bono attorneys with limited resources.”<sup>83</sup> Courts could further facilitate access by granting “automatic advanced waivers of filing fees to litigants who have been screened for income-eligibility.”<sup>84</sup> And many courts provide malpractice insurance to pro bono attorneys for the specific pro bono matter.<sup>85</sup> Judge Bowler even suggested reserving special parking at the courthouse for pro bono attorneys.<sup>86</sup> By reducing administrative hassles and making facilitating easy access to the courts judges can provide effective incentives for lawyers to take on pro bono work, or at the very least reduce some of the obstacles.

## VI. CONCLUSION

Although judges are prevented by judicial codes of conduct and ethical restrictions from certain means of pro bono work, there are still many ways in which the judiciary can encourage and expand public service. In fact, because judges sit in a unique leadership role, they are better situated than anyone else in the profession to set the tone and standards for lawyers to live up to. By publicly setting goals and establishing central statewide and local infrastructures to implement pro bono plans the judiciary can supervise and influence levels of pro bono participation. Additionally, judges are uniquely persuasive in recruiting efforts on account of their prestige. Third, judges can convey the importance of public service by actively engaging

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<sup>81</sup> *Id.*

<sup>82</sup> Dallas Bar Association, Judicial Profiles, Merrill Hartman, *available at* <http://www.dallasbar.org/judiciary/profiles.asp> (“Hartman began holding court at legal clinics as a convenience to clients and their pro bono lawyers. He continues to hold court at clinics at least once a month to accommodate their needs by bringing access to justice for many who might not otherwise be able to make it to court.”).

<sup>83</sup> *Future of Pro Bono in New York*, *supra* note 10 at 27; MD Report, *supra* note 19 at 44.

<sup>84</sup> MD Report, *supra* note 19 at 47.

<sup>85</sup> *Id.* at 50; Jones, *supra* note 51.

in training and education programs. And lastly, judges can ease access to the courts and eliminate scheduling and administrative hassles for attorneys volunteering their time and work.

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<sup>86</sup> MD Report, *supra* note 19 at 16.