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Report and Recommendation to the MSBA

Regarding MSBA Support for Lawyer Involvement With Public Interest and Pro Bono Organizations

**MSBA Legal Assistance to the Disadvantaged Committee
July 31, 2008**

RECOMMENDATION

RESOLVED, that the Minnesota State Bar Association affirms its support for Minnesota's public interest legal organizations; affirms its commitment to actively promoting the engagement of all lawyers and law students in pro bono and public interest legal work; objects to any effort to define public service as ideologically-based; and opposes any employment or internship selection practices by any government agency that discriminates against lawyers or law students for undertaking public interest legal work.

REPORT

As evidenced by an express policy supporting adequate funding for legal services, the MSBA has historically been strongly committed to equal access to justice: the principle that all Minnesotans, regardless of ability to pay, should have effective access to the justice system. In its efforts to realize that goal, the MSBA has actively promoted the engagement of all lawyers and law students in pro bono and public interest activities. These efforts have included establishment of the Legal Assistance to the Disadvantaged Committee, initially to support legal aid programs when their federal funding was threatened; advocacy for establishing a mandatory IOLTA system; creation of staff positions to coordinate support for legal aid and pro bono programs; establishment of the Law Firm Pro Bono Roundtable; advocacy for the adoption of Rule 6.1 of the Rules of Professional Conduct, which established a minimum of 50 hours of pro bono service as a professional obligation; and partnering in the creation of the Law School Public Service Program, which seeks to have students at all Minnesota law schools perform at least 50 hours of law-related public service before graduation. These, and other related activities, are ongoing and enjoy broad support from MSBA members. They have also helped make Minnesota's legal services system a national model. The American Bar Association has twice recognized the MSBA for its access to justice activities, awarding it the Harrison Tweed Award in 1994 and 2006.

Key to Minnesota's efforts to increase access to justice has been the non-political, bipartisan support of the legislature, the courts, the executive branch, and the private bar. Unlike many other states, Minnesotans of all political leanings have recognized the importance of legal aid and pro bono programs to the effective administration of justice. Thanks to this broad, non-ideological support, Minnesota enjoys a high level of state-based funding for legal services to the disadvantaged.

Nonetheless, numerous studies, including the Legal Services Corporation's 2005 *Documenting the Justice Gap in America*¹, confirm that the overwhelming majority of the civil legal needs of the poor go unmet. Federal funding for legal aid, in real dollars, is approximately half of what it was in 1981, while the eligible poverty population has increased approximately 14 percent². While Minnesota is a relatively high-funded state, due primarily to non-federal funding, estimates are that over 75% of the poor's civil legal needs go unmet³. The involvement of all Minnesota lawyers and law students with legal aid and pro bono organizations, as both staff and volunteers, is crucial to closing the justice gap.

A recent joint report by the U.S. Department of Justice Office of Inspector General and Office of Professional Responsibility revealed that involvement with a wide array of public interest and pro bono organizations likely resulted in law students and lawyers being rejected for prestigious DoJ appointments. The report found that applicants involved with these organizations were deemed politically suspect. The OIG/OPR report identified several Minnesota organizations, including the Minnesota Justice Foundation, the Immigrant Law Center of Minnesota, Advocates for Human Rights, the Minnesota Center for Environmental Advocacy, "Legal Aid Organizations", and "Public Defender Services", among those with which affiliation may have precluded a candidate's selection for employment.

The MSBA and the other stakeholders in the Minnesota justice system have a long-standing, bipartisan, non-ideological record of support for equal access to justice. Politicizing the issue of equal access to justice would inevitably lead to reduced resources for legal aid and pro bono programs, ultimately harming the most vulnerable Minnesotans. The DoJ report raises the particular and alarming concern that, despite the efforts of the MSBA, the Minnesota courts, and others to nurture an ethic of public service as a core professional requirement for lawyers, lawyers and law students could be dissuaded from participating in these efforts by fears that it could harm their careers.

¹ <http://www.lsc.gov/justicegap.pdf>

² *Documenting the Justice Gap*, p. 2.

³ Minnesota Legal Services Commission Final Report, 2005, available at <http://www.mncourts.gov/?page=2166>

In light of these developments, the MSBA should clearly and unequivocally confirm its support for Minnesota's public interest legal organizations; affirm its commitment to actively promoting the engagement of all lawyers and law students in pro bono and public interest legal work; object to any effort to define public interest legal work as ideological; and oppose any employment or internship selection practices by any government agency that discriminates against lawyers or law students for undertaking public interest legal work.

Respectfully submitted,

Legal Assistance to the Disadvantaged Committee

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