

## 2005 Equal Justice Conference

### Involving Senior Lawyers in Pro Bono Work

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Legal services providers and bar groups are engaged in a seemingly never-ending campaign to increase private bar participation in pro bono work. Most recruitment efforts have focused on attorneys who are actively employed. Another valuable volunteer source is retired and semi-retired lawyers. Many do volunteer, but tapping this group for pro bono raises unique issues. How does one go about recruiting them? Are certain types of work more likely to appeal? What about management and supervision? How can attorney practice rules and other barriers be addressed? Where are the success stories?

#### I. Introduction

*Late 1980's:* Ford Foundation funded survey of retired lawyers to examine reasons for volunteering or not volunteering.

*Early 1990's:* Ford Foundation funded Legal Counsel for the Elderly and the ABA Commission on Law and Aging to study existing senior attorney volunteer projects and to examine barriers and ways to overcome them. Project used sub-contracts and other foundation funding to initiate demonstrations in Nashville, Toledo, and Cincinnati. Some other projects in existence at the time include: Washington, D.C., St. Louis, Denver, and Savannah.

*Today:* In addition to those above, there are multi-volunteer projects in Salt Lake City, Atlanta, Baltimore, Boston, Chicago, Los Angeles, New York, Salem (Oregon), Minneapolis, and other locations. Numerous legal services programs and other non-profits use volunteers.

*SAVE:* ABA Senior Lawyers Division, in collaboration with Legal Counsel for the Elderly and ABA Commission on Law and Aging, sponsors Senior Attorneys Volunteering for the Elderly (SAVE), which matches interested volunteers with legal services programs serving older people.

*More Recently:* Mayer, Brown "Senior Tour" and other programs for lawyers in large firms.

#### II. Volunteer Backgrounds

- a. Private firm
- b. Corporate
- c. Government
- d. Academia
- e. Judiciary

### III. Reasons for Volunteering

#### Motivations vary, may include:

- give something back to the community
- further a commitment to public service
- make productive use of their skills
- learn more about issues that they or families may be confronting (elder law)
- personal satisfaction that comes with representing “live” clients
- professional growth
- opportunity for social interaction

### IV. Recruiting Volunteers - *Creativity Counts!*

#### a. Mass mailings

- inactive or retired attorneys not always on bar lists
- less personal

#### b. Peer recruitment

- bar support
- involve judge, bar leader, or respected local attorney(s).
- in person contact.

#### c. Some successful examples

- *Washington DC, AARP Legal Counsel for the Elderly*  
AARP member lists for initial mailing.
- *Washington DC, Legal Aid Society of the District of Columbia.*  
Media: longtime volunteer featured in newspaper and television campaign.
- *St. Louis, Legal Services of Eastern Missouri*  
Legal aid and the bar jointly recruit all volunteer attorneys.
- *Nashville, Legal Aid Society of Middle Tennessee*  
Letters signed by respected local lawyer board member, invitation to a luncheon at which program described and volunteers solicited.
- *Marion-Polk Legal Aid Service, Inc. (see below)*

#### d. Initial recruitment → word of mouth

## **V. Barriers**

- a. Office space and administrative support**
- b. Malpractice insurance coverage**
- c. Scheduling**
- d. Substantive experience**
- e. Licensing (see below)**

## **VI. How Senior Lawyer Volunteers Can Help**

- a. Own caseload**
- b. Discrete projects**
- c. Litigation**
- d. Advice and brief services cases**
- e. Intake**
- f. Mentor on trial practice or appellate advocacy**
- g. Public speaking, consumer education**
- h. Outreach**
- i. Serve on community boards**
- j. Management and personnel matters**
- k. Staff self-help or courthouse resource centers**
- l. Dispute resolution**
- m. Long term care ombudsman programs.**

## **VII. Management Issues**

- a. Screening**
- b. Training**
- c. Supervision**
- d. Quality control**
- e. Cultural and other personnel issues**

## VIII. Licensure

### a. Barriers

- Inactive bar status
- Living in state in which never licensed

### b. Solution - Emeritus rules

Emeritus, Pro Bono Emeritus, Active Emeritus, Inactive Pro Bono, and Pro Bono Publicus) Pro Bono Emeritus Rules

- Not a *pro hac vice* rule
- Not age-based waiver for fully retired lawyers.

*Goal:* to encourage pro bono by experienced lawyers no longer in active practice. Originally aimed at retirees; in recent years, audience has broadened to include younger lawyers not in active practice but interested in public service.

Rules more prescriptive in recent years.

- Permit pro bono work, BUT
- Usually for legal services or other public interest program
- Under supervision of a licensed attorney.
- Some states, must be licensed in the state
- Others can be licensed in another state.
- May waive bar dues
- May waive or discount CLE fees
- May require certification of volunteer's status, proof of malpractice insurance, and of supervision by a licensed attorney.
- May have a length of practice requirement (usually 10 years)
- May have age restriction

### c. States with Pro Bono Emeritus Rules (as of January 2005)

Arizona, California, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Maine, Montana, Oregon, South Carolina, Texas, Utah, Virginia, and Washington.

### d. Sponsoring organization

- Must be a qualified not-for-profit legal services organization.
- Will provide malpractice insurance coverage.
- Will not accept a fee for services rendered by volunteer.
- Will supervise volunteer.
- Supervisor is member of bar in good standing, employed by or volunteer in organization.
- Supervisor will co-sign pleadings and assume personal professional responsibility for volunteer's legal work.
- Organization entitled to court-awarded attorney fees for representation by volunteer.

e. **Permissible activities**

- Render legal advice in consultation with supervising attorney, where appropriate.
- Appear in court or administrative proceeding (in some states with client's written consent and supervisor's written approval).
- Accept reimbursement from organization for actual expenses incurred.

**IX. Special Issues and Innovative Models**

a. **Rural Initiative – Emeritus Lawyer Volunteers in Service (E.L.V.I.S.)**

- Collaboration of Marion-Polk Legal Aid Service, Inc., Marion-Polk Volunteer Lawyer Project, and Mid-Willamette Valley Senior Service Agency.
- Oregon Emeritus rules: Emeritus or Active Retired.
- Recruitment: Bar Association notifies MPLAS and Volunteer Lawyer Project of lawyers and judges taking retired status. VLP contacts them. Other volunteers recruited through bar publicity and word of mouth (peers). *Most effective: word of mouth.*
- Annual Bar recognition
- Who are the volunteers?
- What do they do? Conduct community education programs and provide brief advice and more complete representation to seniors at senior centers in rural Oregon. Also do home-visits and take appointments in legal aid offices.
- MPLAS manages and supervises volunteer staff, provides office space and administrative support. Volunteers cover for each other as needed. Cases include wills and powers of attorney, collection defense, public benefits, landlord-tenant and others. Volunteers meet monthly with MPLAS staff for case review, clinic assignments, training, and general discussion.
- Pros and cons from program point of view.

b. **Large Firm Model - Mayer, Brown, Rowe & Maw LLP Senior Tour**

(description below adapted from article by Adrian Steele for 2005 edition of *Senior Attorney Volunteer Projects: A Resource Manual*.) Contact Adrian Steel at [asteel@mayerbrownrowe.com](mailto:asteel@mayerbrownrowe.com)

- Project is integral part of firm protocol for assisting partners 55 and older with planning for future. Partners may opt for regular compensation plan until

retirement (age 65 “normal” retirement, 60 “early” retirement), or may choose a three-year program of reduced billable hours and firm business such as training, mentoring, and pro bono projects, as well as compensation. Partner retains status during this three-year period.

- Benefits: improved transition of clients; opportunity to sustain practice area expertise, depth and leadership; opportunities for partners nearing retirement to undertake meaningful roles in common welfare and pro bono matters; and more dignified and respectful manner of handling compensation reductions that accompany reduced practice.
- Attorneys have worked on variety of projects on international, national, and local levels, including Eastern European law reform projects, supportive housing projects for homeless, and representation of charitable organizations. Firm helps identify potential projects.

- c. **Large Firm Model - D.C. Bar Senior Lawyer Public Interest Project**  
Helps prospective volunteers find projects that meet their interests. Website includes issues to consider for lawyers not yet retired. See [http://www.dcbbar.org/for\\_lawyers/pro\\_bono/senior\\_lawyer\\_public\\_interest\\_project](http://www.dcbbar.org/for_lawyers/pro_bono/senior_lawyer_public_interest_project)

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