

STATE OF MINNESOTA

IN SUPREME COURT

C9-81-1206

C8-84-1650

C4-91-1728

**ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES RELATING TO
REGISTRATION OF ATTORNEYS AND RULE OF PROFESSIONAL CONDUCT**

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on December 15, 1999 at 10:00 a.m., to consider the joint petition of the Minnesota State Bar Association and Lawyers Concerned for Lawyers to amend the Rules Relating to Registration of Attorneys and the Rules of Professional Conduct. A copy of the joint petition is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before December 8, 1999 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before December 8, 1999.


Dated: September 24, 1999

BY THE COURT:

OFFICE OF
APPELLATE COURTS

SEP 24 1999

FILED



Kathleen A. Blatz
Chief Justice

**No. C8-84-1650 &
No. C9-81-1206
STATE OF MINNESOTA
IN SUPREME COURT**

In re:

Amendment to the Minnesota Rules of
Professional Conduct

and

Creation of and Funding for a Minnesota
Lawyers Assistance Program

**PETITION OF
MINNESOTA STATE BAR ASSOCIATION
AND
LAWYERS CONCERNED FOR LAWYERS**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Joint Petitioners Minnesota State Bar Association ("MSBA") and Lawyers Concerned for Lawyers ("LCL") respectfully submit this pleading to petition this Honorable Court to amend the Minnesota Rules of Professional Conduct by modifying existing Rule 8.3 and to create and fund a Minnesota lawyers assistance program (requiring an amendment to Rule 2 of the Rules of the Supreme Court for Registration of Attorneys). In support of this Petition, MSBA would show the following:

1. Petitioner MSBA is a non-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota. Petitioner LCL is a non-profit corporation of attorneys dedicated to helping members of the legal profession in this state who suffer from alcohol abuse or chemical dependency. LCL is a registered 501(c)(3) charitable institution.

2. This Honorable Court has the exclusive and inherent power and duty to administer justice and to adopt rules of practice and procedure before the courts of this state and to establish standards for regulating the legal profession and to establish mandatory ethical standards for the conduct of lawyers and judges. This power has been expressly recognized by the Legislature. *See* MINN. STAT. § 480.05 (1998).

3. This Honorable Court also promulgates the Rules regarding registration of attorneys in the state of Minnesota. *See* Rules of the Supreme Court for Registration of Attorneys.

4. The MSBA has, for a period of decades, supported various efforts and initiatives to provide assistance to lawyers who are experiencing difficulties relating to chemical dependency or mental health problems that interfere with their abilities to practice law consistent with the highest goals of the legal profession.

5. Petitioner LCL was first created in 1976 and has been actively involved in the recovery process of over 500 members of the legal community. LCL assists family members in conducting interventions designed to persuade the chemically dependent attorney to obtain treatment and performs support services for attorneys in all stages of recovery. In the process of that work, LCL has learned that confidentiality is important if lawyers and judges are to come forward about their problems. To date, LCL has been self-supporting through

donations, an effort that requires the majority of donated attorney time, throughout the year.

6. In its current form, LCL maintains a small office with one full-time staff member and a network of approximately 400 attorney volunteers. LCL has focused on chemical dependency issues, and does not currently possess the resources to assist lawyers and judges with other forms of mental illness, including but not limited to anxiety and depression. LCL has been in the unenviable position of turning away lawyers who self-identify as suffering from depression and other forms of mental illness, because no program had been developed.

7. It is now generally recognized that mental health impairments (e.g., depression and bi-polar disorder) affect significant numbers of the legal profession, and thus also affect the courts and the public. It is often difficult to separate chemical dependency from depression, and it is well accepted that people cannot fully recover from one, without recovering from the other.

8. In 1976, LCL pioneered a program to provide assistance to attorneys abusing alcohol or drugs. The LCL model has been instrumental in aiding many other states and Canadian provinces in setting up their own programs to help chemically dependent lawyers and judges. Unfortunately, Minnesota now lags behind other states, many of which have already adopted *expanded* programs, designed to assist lawyers with all types of mental health issues.

9. LCL is uniquely qualified to be the lawyers assistance program in Minnesota, because it has functioned exceptionally well in assisting chemically dependent lawyers and judges for over 23 years. It has never sought profit for this work, but has been motivated by the sincere desire of its stable of volunteers to help other lawyers and judges get help. These

volunteers, and the general experience of LCL, are valuable resources to the new venture.

10. Adoption of an expanded program was attempted once in Minnesota. In 1990, several attorneys spearheaded an effort to utilize attorney license fees to fund a lawyers assistance program. The proposal sought \$20/attorney from license fees, largely because it was to be operated exclusively by a commercial employee assistance program. LCL did not support an expansion at that time, and ultimately the proposal failed to gain the endorsement of the MSBA, and was not adopted.

11. In 1998, after learning from seminar materials published by the Conference of Bar Association Presidents that lawyers have the highest rate of depression of any field of work, the MSBA Life and the Law Committee formed the Depression Task Force ("DTF") to study the impact of depression on the legal community. The DTF met for a year, studying alternatives and weighing priorities. (*See* Exhibit 2 for a description of the matters considered by the DTF, and the bases for its conclusions.) The DTF concluded that the stigma surrounding depression and other mental impairments had changed significantly since 1990.

12. Nonetheless, the DTF recognized the importance of confidentiality for impaired lawyers, and sought ways to encourage lawyers to truthfully report their symptoms. The DTF believes that the mandatory reporting requirement of Rule 8.3 of the Minnesota Rules of Professional Conduct would deter impaired lawyers from seeking assistance, for fear that disclosing private mental health information to others lawyers would trigger a duty to report. The DTF learned that other states had memorialized an exception to the reporting rule, for just this reason.

13. Petitioners believe that Rule 8.3 should be amended to create an express, but limited, exception to the reporting requirements of the Rule. (See The Report and

Recommendation of the MSBA Rules of Professional Conduct Committee on Rule 8.3, attached as Exhibit 3).

14. Petitioners have drafted an amendment to Rule 8.3 of the Minnesota Rules of Professional Conduct that would implement the relief requested in this petition, and that rule and the proposed amendment is set forth as follows:

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Lawyers Professional Responsibility.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the Board on Judicial Standards.

(c) This Rule does not require disclosure of information that Rule 1.6 requires or allows a lawyer to keep confidential or information gained by a lawyer or judge while participating in a lawyers assistance program or other organization providing assistance, support or counseling to persons who are chemically dependent or have other mental disorders.

Comment:1991~~9~~

Self-regulation of the legal professional requires that members of the professional initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests. See the comment to Rule 1.6.

If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of the Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A

report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

~~While a lawyer is forbidden to report, without client consent, the serious misconduct of another lawyer when he or she learns of that misconduct through a privileged attorney-client communication, the lawyer may, in his or her discretion, disclose client secrets in order to report. See Rule 1.6(b)(6) and the accompanying Comment.~~

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in a bona fide lawyers assistance program or other organization that provides assistance, support or counseling to persons, including lawyers and judges who may be impaired due to chemical abuse or dependency, behavioral addictions, depression or other mental disorders. Twelve-step programs like Alcoholics Anonymous and other self-help organizations are included in this category. In that circumstance, providing for the confidentiality of information obtained by a lawyer-participant encourages lawyers and judges to participate and seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in additional harm to themselves, their clients, and the public. The Rule therefore exempts lawyers participating in such programs from the reporting obligation of paragraphs (a) and (b) with respect to information they acquire while participating. A lawyer exempted from mandatory reporting under part (c) of the Rule may nevertheless report serious misconduct in the lawyer's discretion, particularly if the impaired lawyer or judge indicates an intent to engage in future illegal activity, for example, the conversion of client funds. See the comments to Rule 1.6.

15. The proposed Rule was approved by the DTF, the MSBA Rules of Professional Conduct Committee, and ultimately approved by the MSBA Board of Governors and its House of Delegates on January 15, 1999.

16. Petitioners respectfully request that the proposed amendment to Rule 8.3 will constitute a significant advance in the administration of lawyer discipline and will serve the courts, lawyers, and public well.

CREATION OF AND FUNDING FOR A MINNESOTA LAWYERS ASSISTANCE PROGRAM

17. After examining the programs offered by several other states, the DTF

determined that to provide services to a broader spectrum of impaired attorneys, an effective lawyers assistance program must offer:

- a. A 24-hour crisis line;
- b. access to a network of mental health professionals and providers to perform face-to-face evaluations of impaired lawyers);
- c. intervention services (for alcoholism, chemical dependency, depression and other mental health concerns);
- d. volunteer services (through maintaining and expanding a volunteer roster and training volunteers);
- e. support groups for specific issues (e.g., depression, family issues);
- f. case management and follow-up services; and
- g. education for members of the legal community and for families of those who suffer.

18. The DTF determined that all of the above services could and should be provided by an expanded LCL organization, with the exception of an around-the-clock crisis line and professional evaluations, which could both be provided by an employee assistance program ("EAP") that offered the most appropriate services at the best price. The DTF interviewed and negotiated with third-party EAPs and received competitive bids from several well-qualified providers.

19. After ensuring that the LCL Board was in favor of expanding its functions to services lawyers with various mental health impairments, the DTF examined the current LCL budget. The DTF reviewed each line item of the LCL budget with the goal of providing the new services at the lowest possible cost. One staff member was added, to provide case

management and follow up, and to assist with education and "spreading the word" about the new expanded program. The proposed budget is attached to Exhibit 1.

20. The DTF plans to raise start-up capital costs from donations. Donations will also provide funds for an emergency loan fund, designed for lawyers who need financial assistance in order to receive professional services in a timely manner.

21. Because mental illness strikes attorneys of all ages and specialties, in all areas of the state, the DTF determined that funding should come from all Minnesota attorneys, not just those who pay bar association dues, or who elect to make a private donation to LCL. LCL Board members shared with the DTF the frustrations of attempting to support LCL's current budget, including the fact that private donors were few and far between, and grant proposals and donations had to be pursued each and every year. This required an inordinate amount of time by LCL volunteers. The DTF also recognized that time donated by lawyer volunteers would be most valuable in relating one-on-one with impaired lawyers, rather than seeking grants and private funding.

22. LCL has formally adopted the recommendations of the DTF and it supported the DTF's report and recommendation to the MSBA. On July 1, 1999, MSBA Board of Governors and the General Assembly adopted the joint recommendation of the DTF and LCL for an expanded lawyers assistance program to be funded through an increase in the attorney registration fee (*see* Exhibit 1). An overwhelming number of MSBA members approved the proposal in the General Assembly. LCL has also formally agreed to provide its name, reputation and good will to this lawyers assistance program venture, hereafter to be known as "Lawyers Concerned for Lawyers."

23. In September 1999, the Conference of Chief Judges and the Minnesota State

District Judges Association endorsed the LCL/DTF proposal.

24. Petitioners have drafted an amendment to Rule 2 of the Rules of the Supreme Court for Registration of Attorneys (*see* Exhibit 4), which adds an additional \$8.00 per attorney per year (or a portion of same, as outlined in Rule 2) to the current license fee. Such an increase in license fees will be sufficient to fund the operating costs of the expanded LCL on an annual basis.

25. Petitioners have studied various methods of disbursing funds to the expanded LCL, and have developed three alternative proposals (*see* Exhibit 4). Petitioners recommend Alternative 2 and the attendant amendment language as set forth in Exhibit 4, that the funds be disbursed to the Lawyer Trust Account Board ("LTAB"), but ear-marked for LCL.

Petitioners have discussed this method of disbursement with the Executive Director of the LTAB, who agrees that this is a plausible method of disbursement of the funds. Petitioners recognize that this Honorable Court may prefer a different method of disbursement, and have provided two additional alternatives in Exhibit 4.

26. Petitioners believe that the creation and funding of an expanded LCL, designed to include services to lawyers with mental illnesses other than chemical dependency, will enhance the well-being of the Minnesota legal community, assist in the monitoring and discipline of Minnesota lawyers, and help to protect the public.

Accordingly, Petitioners Minnesota State Bar Association and Lawyers Concerned for Lawyers respectfully request this Honorable Court to:

1. Amend Rule 8.3 of the Minnesota Rules of Professional Conduct as set forth in Paragraph 14, above; and

2. Create and fund a Minnesota lawyers assistance program (the expanded Lawyers Concerned for Lawyers), through an amendment to Rule 2 of the Rules of the Supreme Court for Registration of Attorneys, as set forth in Exhibit 4.

Dated: September 20, 1999.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

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Its President

and

By _____
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STATE OF MINNESOTA

IN SUPREME COURT

C9-81-1206

**ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES RELATING TO
REGISTRATION OF ATTORNEYS**

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on December 15, 1999 at 10:00 a.m., to consider the petition of the Minnesota State Bar Association to amend the Rules Relating to Registration of Attorneys so as to require mandatory anonymous reporting of *pro bono publico* services and financial contributions by all Minnesota lawyers. A copy of the petition is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before December 8, 1999 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before December 8, 1999.


Dated: September 24, 1999

BY THE COURT:

OFFICE OF
APPELLATE COURTS

SEP 24 1999

FILED


Kathleen A. Blatz
Chief Justice

No. C9-81-1206
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Amendment to the Minnesota Rules of the
Supreme Court for Registration of Attorneys

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association ("MSBA") respectfully submits this pleading to petition this Honorable Court to amend the Minnesota Rules of the Supreme Court for Registration of Attorneys to establish a requirement for the anonymous reporting of *pro bono publico* services and financial contributions by all Minnesota lawyers, in furtherance of the aspirational standards set forth in MINN. R. PROF. CONDUCT 6.1. In support of this Petition, the MSBA would show the following:

1. Petitioner MSBA is a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota.
2. This Honorable Court has the exclusive and inherent power and duty to establish the standards for regulating the legal profession and to establish mandatory ethical standards for the conduct of lawyers and judges. This power has been expressly recognized by the Legislature. *See* MINN. STAT. § 480.05 (1998). This Court has established rules for admission to the practice of law and for the registration of attorneys.
3. The MSBA has for decades been committed to serving the legal needs of the disadvantaged. It has consistently devoted itself to promotion of public service and performance of *pro bono publico* services by all lawyers.
4. The MSBA's Legal Assistance to the Disadvantaged Committee ("LAD Committee") has studied the myriad issues facing the Bar in its quest to devise and implement effective mechanisms to minimize the extent of unmet legal service needs of the disadvantaged. With respect to the proposed

reporting requirement, the LAD Committee issued its Report and Recommendations to the MSBA, a copy of which is appended to this Petition as an Addendum ("Add.") and made part hereof. The General Assembly of the MSBA adopted these recommendations at the Annual Meeting of the MSBA in Duluth in July 1999. This Petition was authorized at that time. Questions and Answers used to explain the proposal are included in Petition's Appendix ("App.") at 1.

5. The LAD Committee Report and Recommendations were published to the public and all MSBA member lawyers in the April/May 1999 issue of BENCH & BAR OF MINNESOTA. The Report and Recommendations were preceded by an article published in the March 1999 issue of BENCH & BAR OF MINNESOTA. See Thomas C. Mielenhausen & Charles A. Krekelberg, *A Better Idea: Reporting Pro Bono Services*, BENCH & BAR OF MINN, Mar. 1999, at 21. App. 7. The MSBA also participated in meetings throughout the State of Minnesota during the 1998 and 1999 Bar years to discuss required *pro bono* reporting and related issues. The MSBA and the LAD Committee believe there is broad support for a modest reporting program as proposed in this Petition. Minnesota Women Lawyers and Volunteer Lawyers Network support required reporting, and various organizations that have opposed required reporting in the past have now gone on record to support it, including the Minnesota Trial Lawyers Association, the Academy of Matrimonial Lawyers, and the MSBA's 12th District Bar Association, a county bar which expressed strong opposition in 1990.

6. As part of its efforts the MSBA petitioned this Honorable Court in 1990 to amend the Rules of the Supreme Court for Registration of Attorneys to adopt a requirement for the reporting of *pro bono* legal services and contributions. The Court declined to adopt required reporting at that time, but did state that it "unreservedly reaffirms the obligation of members of the legal profession to support and participate in *pro bono* activities." The Court also stated that a majority of the Court "is not persuaded that mandatory *pro bono* reporting would appreciably advance or assist in the discharge of that obligation." Order, No. C9-81-1206 (Minn. Sup. Ct., May 22, 1991).

7. Since 1991 there have been a number of significant developments making required reporting demonstrably necessary and helpful to the bench and bar in ensuring that legal services are made available to the public. These developments include the following:

- ▶ The unmet need for legal services in critical areas such as family and housing law is large and growing. In 1996 the U.S. Congress imposed a 30% cut in federal funding for legal services, greatly exacerbating the unmet need for these services in Minnesota. Each year the regional Minnesota Legal Services Coalition programs that serve the entire state must turn away over 19,000 people who request assistance. Another approximately 58,000 people do not even ask legal aid offices for assistance with legitimate legal problems for reasons including their perception that there are not enough resources to help them. There has been an approximate 60% increase in requests for legal aid since the early 1980s, while legal aid's income in real dollars has increased only 38%. The serious problem of unmet legal needs, and its debilitating effect on the public and the legal system in Minnesota, have been well-documented. *See* Report of the Joint Legal Services Access and Funding Committee (Dec. 31, 1995), at 6-8, 11-12. (App. 13). The problem requires ongoing and

comprehensive initiatives to ensure that legal services are available to all persons.

- ▶ In 1995, by amendment of MINN. R. PROF. CONDUCT 6.1, this Court recognized the need for greater levels of *pro bono* service by establishing an explicit aspirational standard of 50 hours of *pro bono* service per year by Minnesota lawyers, and the contribution of money by lawyers and law firms to organizations that provide legal services to persons of limited means.
- ▶ Also in 1995, this Court's Joint Legal Services Access and Funding Committee recommended that the idea of a *pro bono* reporting program be reexamined. By Order dated Sept. 21, 1995, this Court established the Committee and directed it to "[E]xamine the alternatives for addressing the critical civil legal needs of low-income people including systemic changes in the legal and judicial systems and the legal services delivery system to facilitate access . . . identify[ing] costs and funding options for these alternatives and make recommendations to the Court and the Legislature by December 31, 1995." *Id.* at 1. (App. 16). The Committee reported that its efforts in fulfilling

this mandate were frustrated by the absence of comprehensive, reliable data on the participation of Minnesota lawyers in addressing the unmet need for legal services. *Id.* at 34. (App. 49). Among other recommendations for improving access to legal services, the Committee recommended that *pro bono* reporting be thoroughly studied and reconsidered. *Id.* (App. 49).

- ▶ The concerns raised by the Joint Legal Services Access and Funding Committee have not subsided. Although it appears that lawyers have increased their performance of *pro bono publico* services, it remains impossible to quantify accurately or usefully the extent to which *pro bono* services are rendered or the amount of financial support given by the lawyers of Minnesota.
- ▶ Since 1990 the organized bar in this country has amassed substantial experience with reporting programs—both required and voluntary—and this experience militates strongly in favor of required reporting.

8. Required reporting has been adopted in Florida, and has worked well there. *See Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar - Pro Bono Public Service*, 696 So. 2d 734, 736 (Fla.) (Overton, J., concurring) (discussing the effectiveness of the reporting requirement), *rehearing denied*, (Fla., July 9, 1997); THE STANDING COMMITTEE ON PRO BONO LEGAL SERVICE'S REPORT TO THE SUPREME

COURT OF FLORIDA, THE FLORIDA BAR, AND THE FLORIDA BAR ASS'N (Feb. 1999) (reporting substantial increase in level of participation, including 76% increase in amount of *pro bono* services rendered, and 112% increase in financial contributions to legal aid organizations). As would be true in Minnesota if this Petition is granted, *pro bono* service is not required in Florida, but reporting is. Add. 6; App. 10. The constitutionality of the Florida requirement was affirmed by the federal courts. *See Schwartz v. Kogan*, 132 F.3d 1387 (11th Cir. 1998).

9. States that have adopted voluntary reporting programs have encountered unacceptably low levels of response, ranging from a response rate of 5.0% in Illinois to 35% in Arizona. Add. 11. These low response rates prevent meaningful conclusions to be drawn with confidence about the *pro bono* services performed by lawyers in those states.

10. Required reporting has had the salutary effect of increasing the level of voluntary *pro bono* services. The MSBA believes that a minimally intrusive requirement of anonymous reporting of *pro bono* activity is preferable to a requirement that lawyers perform *pro bono* services. At its July 1999 Annual Meeting, the General Assembly of the MSBA specifically supported a requirement of anonymous *pro bono* reporting, while opposing mandatory provision of *pro bono* service.

11. The data collected through required reporting will be immensely useful to this Court, the bar, and legal services programs in their efforts to insure that appropriate levels of service are available to meet the growing critical need.

12. The data collected should include some demographic information to permit useful application of the data by bar associations, legal service providers, and others involved in making policy about the delivery of legal services to the disadvantaged. It is important that data relating to individual attorneys be both anonymous and confidential. Access to the data is governed solely by rules adopted by this Court. *See* MINN. STAT. § 13.90. The MSBA and its LAD Committee are prepared to assist the Court and its boards in setting up the data collection process in a way that both collects useful data and maintains anonymity of those providing it.

13. The data collection process should also allow for identification of those who choose to identify themselves. This will facilitate public recognition of those lawyers who do meet or exceed the *pro bono* standards of Rule 6.1, and thereby encourage participation.

14. The MSBA has drafted a proposed Rule 2(F) of the Rules of the Supreme Court for Registration of Attorneys that would implement the relief requested in this petition, and that rule is set forth as follows:

RULE 2. REGISTRATION FEE

* * *

F. Every lawyer admitted to practice law in this state shall report the number of hours spent providing *pro bono publico* legal service and financial contributions as contemplated by Rule 6.1 of the Minnesota Rules of Professional Conduct. The report shall accompany the annual renewal of the lawyer's registration and be in such form as the clerk of the appellate courts may prescribe. The reporting form shall not require identification of the reporting lawyer.

15. The MSBA has proposed a form for implementing this rule, attached as an exhibit to the MSBA LAD Committee Report. App. 5-6. This form for reporting is suggested as a feasible way to implement the rule, although the specific form can be modified to suit the needs of the clerk of the appellate courts or other interested boards.

16. The MSBA respectfully submits that the proposed amendment to Rule 2(F) will constitute a significant advance in the administration of the legal system and in the delivery of legal services to all those with legal needs. It will further the Court's mission, consistent with the Minnesota Constitution, of giving all persons in Minnesota meaningful access to justice.

Accordingly, Petitioner Minnesota State Bar Association respectfully requests this Honorable Court to amend the Minnesota Rules of the Supreme Court for Registration of Attorneys by adopting a new Rule 2(F) as set forth in paragraph 14 above.

Dated: September 20, 1999.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

By _____
Wood R. Foster, Jr. (#31288)
Its President

and

MASLON EDELMAN BORMAN & BRAND, LLP

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ATTORNEYS FOR PETITIONER MINNESOTA STATE
BAR ASSOCIATION

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2. Thomas C. Mielenhausen & Charles A. Krekelberg, *A Better Idea: Reporting Pro Bono Services*, BENCH & BAR OF MINN, Mar. 1999, at 21.App-7

3. REPORT OF THE JOINT LEGAL SERVICES ACCESS AND FUNDING COMMITTEE (Dec. 31, 1995)App-13

4. THE STANDING COMMITTEE ON PRO BONO LEGAL SERVICE'S REPORT TO THE SUPREME COURT OF FLORIDA, THE FLORIDA BAR, AND THE FLORIDA BAR ASS'N (Feb. 1999).....App-78

Legal Assistance to the Disadvantaged Committee
Report on *Pro Bono* Reporting
April 15 1999

I. Recommendation

The Legal Assistance to the Disadvantaged Committee, to create an effective means of (1) increasing the amount of critically needed legal services to the disadvantaged in Minnesota and (2) providing reliable data about such services, recommends that the MSBA petition the Minnesota Supreme Court to order that, as part of their annual license renewal, all attorneys licensed to practice law in Minnesota report *pro bono* services and financial contributions provided in accordance with Rule 6.1 of the Minnesota Rules of Professional Conduct.

II. Findings

Based on extensive study and discussion, the LAD committee has found:

1. There is a serious and growing unmet need for legal assistance for low-income Minnesotans.
2. A *pro bono* reporting program is an effective means of encouraging attorneys to meet and exceed the aspirational standards set forth in Rule 6.1 of the Rules of Professional Conduct.
3. A *pro bono* reporting program would increase the amount of *pro bono* legal services provided by attorneys and the amount of money contributed to programs that provide *pro bono* legal services to the disadvantaged.
4. A *pro bono* reporting program would provide reliable data about the nature and extent of attorneys' efforts pursuant to Rule 6.1.
5. A *pro bono* reporting program can be used to analyze the extent to which the disadvantaged in Minnesota have access to justice.
6. A *pro bono* reporting program would provide reliable data that can be used to encourage the Legislature, private charities and others to increase funding for improving access to justice for all Minnesotans.
7. A reporting program will enhance public understanding about the contributions lawyers make to provide the disadvantaged with access to justice.

8. A *pro bono* reporting program is effective and yields reliable and useful data only when lawyers are required to respond.

9. The reporting form used in the program should request only the information necessary to achieve the objectives of the reporting program.

10. The reporting program should allow for anonymity.

11. The reporting program should provide for recognition of those who meet or exceed the aspirational standard in Rule 6.1 and who choose to identify themselves.

III. Discussion

A. Background

1. Summary There is a greater than ever need of the disadvantaged for legal services in critical areas such as family and housing law. Minnesota lawyers have done a lot to try to address the problem of access to justice, but we need to challenge ourselves, the Legislature and private charities to do more. For this and other good reasons, Minnesota needs an effective program for gathering accurate information on the *pro bono* legal services donated by the state's lawyers.

Florida, a state where lawyers are required to report *pro bono* work, found that their *pro bono* reporting program is an effective means of increasing the amount of volunteer legal services provided to persons in need. An annual reporting form increases the awareness of each lawyer in the state. Once a year, it reminds lawyers of their special responsibility to provide access to justice, including *pro bono* service. A reporting program helps to encourage lawyers to learn more about, and take advantage of, *pro bono* opportunities. It also allows recognition and commendation of individual lawyers, as well as organizations within the state, for outstanding *pro bono* efforts, which helps to inspire others to do more.

A *pro bono* reporting program can also document the Minnesota legal profession's strong commitment to improving access to justice – evidence that can then be used to develop broader legislative and community support for addressing the unmet legal needs of low-income Minnesotans. It will also enhance public understanding about the contributions lawyers make to give the disadvantaged in Minnesota access to justice. Minnesota's civil legal aid providers, including volunteer attorney programs, can use this evidence each time they seek desperately needed funds from the Legislature, foundations and other funders. These funding sources continuously ask, "What are the lawyers doing to help address the problem of unmet legal needs?" Legislators and private charities want to see matching contributions – a partnership with the lawyers who are licensed to practice in Minnesota. Legal aid providers, including volunteer attorney programs, know and appreciate that many Minnesota lawyers generously contribute both time and

money in an effort to address the problem of unmet legal needs. Yet the most legal aid providers can do in answering the basic question about lawyer involvement is to offer limited data and anecdotes.

With reliable statistical information, the Legislature, judiciary, bar, foundations and other funders can accurately assess the extent and most pressing areas of unmet legal needs, and the extent and effectiveness of lawyers' *pro bono* efforts in addressing those needs. Existing and additional resources can then be directed more efficiently. The data can also be used to recruit more attorneys and seek additional support. The end results of a *pro bono* reporting program would be increased *pro bono* legal services donated by a greater number of lawyers, increased and better-allocated funding for legal aid and volunteer attorney programs, more recognition of lawyers' individual and collective efforts, and increased public respect for the bar. The goal is that thousands of disadvantaged Minnesotans, whose critical legal needs would not otherwise be met, would be provided access to our justice system.

2. The Need for a Reporting Program

The need for accurate information on lawyers' *pro bono* work cannot be overstated. Several years ago, in response to sharp reductions in federal government funding for legal aid programs and the growing unmet need of the disadvantaged for legal services, the Minnesota Supreme Court and Legislature established the bipartisan Joint Legal Services Access and Funding Committee to examine the civil legal needs of low-income Minnesotans. The Committee membership represented the Legislature, the federal and state judiciary, lawyers in private and public practice, legal services and volunteer attorney program staff, and the public. After extensive study, the Committee found a serious and growing unmet need for legal assistance to low-income Minnesotans, particularly in cases involving family law, domestic violence, housing and other matters relating to basic subsistence. The Committee estimated that, at best, legal aid and volunteer attorney programs had resources sufficient to meet only 30% of low-income Minnesotans' legal needs. In 1994 alone, legal aid programs had to turn away more than 20,000 eligible people who came to them for help with critical legal needs. These problems were exacerbated in 1996, when Congress cut federal funding for legal aid programs by over 30%, and imposed restrictions and prohibitions on what federally-funded programs could do for their clients.ⁱ

The Joint Legal Services and Access Committee found that the severe reductions in federal funding for legal aid programs have significantly increased the gap in the ability of low-income Minnesotans to obtain basic legal services. The Committee recognized that legal aid and volunteer attorney programs play a vital role in our communities by, among other things:

- getting battered spouses and children out of abusive situations;
- preventing homelessness and school instability;
- protecting access to food, clothing and medical care;
- keeping people in safe and sanitary housing;
- obtaining child-support orders and Social Security disability payments that reduce taxpayer-funded public assistance; and
- helping people work themselves out of poverty and down the road to self-sufficiency.ⁱⁱ

The Committee also found that legal aid and volunteer attorney programs help to prevent legal problems. Often they provide appropriate legal services to avoid the *pro se* cases which would otherwise further clog and increase the costs of our court system. The Committee observed:

Legal problems don't disappear when legal services programs shrink. While some people simply abandon legitimate claims, many others pursue their cases without representation. They are forced to navigate the court system without a guide. They negotiate with landlords or other parties who have lawyers to help them. They file their own briefs and other papers. These cases clog the court system, increasing its costs. Legal services offices reach tens of thousands of persons each year through community legal education workshops, self-help materials, newspaper columns and radio and TV shows. Legal services staff also train public and private social service agency staffs in relevant areas of the law. This enables many clients to avoid legal problems or resolve them without having to use the legal system.ⁱⁱⁱ

The 1996 cutback in federal funding for legal aid programs substantially shifted the responsibility for the problem of unmet legal needs of low-income persons. Now more than ever, the problem is one of state and local concern. As a result, the need to expand the well-respected partnership among the Minnesota Legislature, foundations, other funders, and the lawyers who enjoy the privilege to practice in this state, has become critical. Understandably, the Legislature and foundations want to know more clearly what one of their other partners is doing to address the problem of unmet legal needs. Minnesota courts also have an increasing stake in obtaining accurate and useful information on lawyers' efforts to address the problem of unmet legal needs and *pro se* litigants.

3. Reporting Proposals in Minnesota -- Then and Now

The idea of *pro bono* reporting in Minnesota has been broached before. At their 1990 convention, the membership of the Minnesota State Bar Association ("MSBA") voted by a wide margin to support a reporting proposal. Subsequently, however, the Minnesota Supreme Court declined to adopt the MSBA's petition for a reporting program. In a brief order, the Court stated that it "unreservedly reaffirms the obligation of members of the legal profession to support and participate in *pro bono* activities," but that a majority of the Court "is not persuaded that mandatory *pro bono* reporting would appreciably advance or assist in the discharge of that obligation."^{iv}

Since 1990, numerous developments have shown that *pro bono* reporting will advance and assist in increasing available legal services to the disadvantaged in Minnesota.

First, as found by the Minnesota Supreme Court's Joint Legal Services Access and Funding Committee, there is a significant unmet need for civil legal services for the disadvantaged.

Second, the severe cutbacks in federal funding for legal aid, major changes in welfare and other laws affecting low-income people, and the increasing diversity of our population have exacerbated the unmet legal needs of low-income Minnesotans and placed a substantial funding burden on the Minnesota

Legislature and private charities. In determining their levels of contribution, those funding sources have increasingly insisted on reliable data demonstrating the *pro bono* efforts of Minnesota lawyers.

Third, in 1995 in response to an MSBA petition, the Supreme Court revised Minn. R. Prof. Conduct 6.1 to incorporate an aspirational standard of 50 hours of *pro bono* legal service per year for each lawyer licensed to practice law in Minnesota. The revised rule also contains definitions of what legal work meets the Rule's standards. The aspirational standard calls for the substantial majority of those legal services to be performed for persons of limited means. Additionally, the Rule encourages lawyers to contribute money to organizations that provide legal services to persons of limited means. The aspirational standard specifically emphasizing the importance of legal services to persons of limited means and recommending a minimum number of hours to be donated, arose in large part from the cutbacks in federal funding for legal aid. The added specificity in Rule 6.1 was viewed as one means of directly encouraging all Minnesota lawyers to address the growing unmet legal needs of low-income Minnesotans.

During the November 1995 hearing on the revised Rule 6.1, the Justices of the Minnesota Supreme Court asked several questions about how the success of the aspirational standard might be measured, and whether the MSBA had again considered a *pro bono* reporting program. The Joint Legal Services Access and Funding Committee raised similar concerns. The Committee had encountered substantial difficulty in obtaining reliable data regarding the nature and extent of *pro bono* legal work actually being performed by Minnesota lawyers. The Committee concluded that such data was important to the efforts of the bar, the courts and the Legislature in addressing unmet legal needs of low-income Minnesotans.^v Others supporting revisiting the issue of *pro bono* reporting include 1997-98 Hennepin County Bar President Brad Thorsen in an article in *The Hennepin Lawyer*.^{vi}

A fourth development warranting a fresh look at *pro bono* reporting is that reporting programs have been adopted in a number of other states over the past several years.^{vii} The Minnesota Supreme Court and bar now have the benefit of the experiences of those states in determining whether to adopt a *pro bono* reporting program in Minnesota and, if so, the best way to structure the program.

4. The Florida Experience

The experience in Florida, which has had a reporting program in place for five years, is particularly helpful.

In 1993 the Florida Supreme Court implemented a comprehensive plan to increase and improve the delivery of *pro bono* legal services by Florida lawyers.^{viii} The Court amended its rules of professional conduct to require each lawyer to sign an annual form which indicates the amount of *pro bono* legal services the lawyer provided to low-income persons, and the amount of money the lawyer contributed to

legal aid organizations during the preceding year. Although the donation of such time and money is purely voluntary under Florida's rules of professional conduct, the reporting of how much time and money was donated is required.^{ix}

The Florida Supreme Court's Standing Committee on *Pro bono* Services annually compiles the data from the *pro bono* reporting program. The Committee's reports illustrate the quality of information that can be gathered through a reporting program. The 1997-98 report, for example, sets forth precise and reliable data demonstrating the number of Florida lawyers who actually performed *pro bono* services for low-income persons (about 44%), and the amount of services actually performed (an average of about 15 hours per active lawyer statewide).^x Florida's 1997-98 report demonstrates that the Florida bar as a whole substantially increased its donations of both money and *pro bono* legal services since the inception of the state's *pro bono* reporting program, and contributed far more resources than the rest of the state's citizenry toward the problem of the unmet legal needs of low-income persons.^{xi} The number of lawyers providing *pro bono* legal services has increased 11.7 percent and the hours of service increased 76 percent since 1994-95, which is considered the base year. The number of those making direct monetary contributions has jumped 48 percent while contributions to legal aid organizations are up 112 percent. Assuming an average hourly rate of \$150, the Florida bar contributed the equivalent of nearly \$148 million in services (989,936 hours) to low-income persons in 1997-98. In addition, Florida lawyers reported a total of more than \$1.8 million in direct donations to legal aid organizations. The combined time and direct monetary contributions from the Florida bar far exceeded the 1998 total of \$24 million in direct funding for legal aid from the federal Legal Services Corporation and the Florida Bar Foundation which distributes state-appropriated and IOLTA funds.^{xii} Yet, despite these impressive donations of time and money, Florida Legal Services estimates that approximately 239,000 legal needs of eligible clients are unable to be met each year by legal aid and volunteer attorney programs.

Through the reporting program, the Florida bar has thus been able to document its substantial and increasing commitment to addressing the unmet legal needs of low-income persons, and to challenge both itself and its partners – the Legislature and other funding sources – to do more.

B. Creating a reporting program would be a legitimate action by the Minnesota Supreme Court and is constitutional.

State and federal courts in Florida have reviewed and upheld the Florida reporting program in the face of challenges to both the aspirational standard for *pro bono* and the reporting requirement. In 1993, the Florida Supreme Court explained its authority and reason for adopting its *pro bono* rules stating:

[T]his court, as the administrative head of the judicial branch, has the responsibility to ensure that access to the courts is provided for all segments of our society. Given the number of reports presented to this Court that document the legal needs of the poor, we find it necessary to implement the attached rules. Justice is not truly justice if only the rich can afford counsel and gain access to the courts. Consequently, these rules are being implemented in the hopes that they will act as a motivating force for the provision of legal services to the poor by the members of this state's legal profession.^{xiii}

In 1997, the Florida Supreme Court reiterated its finding that accurate reporting is essential for evaluating the Florida's bar's delivery of *pro bono* legal services to low-income persons, and for determining the areas in which those services are not being provided. The Court found no circumstances which would cause it to change that determination. To the contrary, the Court concluded, "[t]here is no more effective way to gauge the success of lawyers in meeting their obligation to represent the poor"^{xiv}

In upholding Rule 4-6.1's reporting requirement, the Florida Supreme Court referred to the bar's unique role in the justice system:

Lawyers have been granted a special boon by the State of Florida -- they in effect have a monopoly on the public justice system. In return, lawyers are ethically bound to help the State's poor gain access to that system. The mandatory reporting requirement is essential to guaranteeing that lawyers do their part to provide equal justice.^{xv}

In a concurring opinion, Justice Overton noted that the Florida Supreme Court developed its *pro bono* rule in response to "the glaring deficiency in the availability of legal services to the poor." The Court approved a "carefully crafted compromise" that kept the minimum standard for *pro bono* service voluntary and aspirational, while creating a required reporting mechanism "with which to gauge the amount of *pro bono* work actually being provided in Florida." Justice Overton observed:

There can be no doubt that the reporting requirement has been effective. Accurate statistics are now available as to the number of *pro bono* legal hours being provided in Florida each year. These statistics can be used by this court to analyze the extent to which the constitutional mandate of court access is being met. Additional resources can then be directed intelligently to areas of need. Without the reporting requirement, such evaluations would be made with incomplete information. Further, a positive side effect of our *pro bono* rule is that both *pro bono* legal services and contributions to legal services have increased. While the rule was not developed to force attorneys to provide *pro bono* legal services, the fact that the rule has raised consciousness and thereby increased the performance of such services does not disturb me.^{xvi}

In January 1998, in *Schwarz v. Kogan*, 132 F.3d 1387 (11th Cir. 1998), the United States Court of Appeals for the Eleventh Circuit affirmed the district court's grant of summary judgment against a Florida attorney who challenged the Florida Supreme Court's Rule 4-6.1, including the aspirational standard and the mandatory reporting provision of the rule. In his appeal, the attorney argued that the rule violated his constitutional rights, including his substantive due process rights under the Fourteenth Amendment to the United States Constitution, and his right to just compensation under the Fifth and Fourteenth Amendments for a governmental taking of his property.

The Eleventh Circuit rejected each of the claims. As to due process, the Eleventh Circuit noted that the plaintiff provided no support for his position that the court apply a "strict scrutiny" test, rather than the less demanding "rational basis" standard, to Rule 4-6.1. The court said:

Indeed, this Circuit has indicated that there is no fundamental right to practice law, let alone to practice law free of any obligation to provide *pro bono* legal services to the poor. See, e.g., *Kirkpatrick v. Shaw*, 70 F.3d 100, 103 (11th Cir.1995) (*per curiam*) (holding that rational basis review is the appropriate standard for classifications affecting the admission of applicants to the bar); *Jones v. Board of Commissioners*, 737 F.2d 996, 1000-01 (11th Cir.) (same finding with respect to equal protection and substantive due

process challenges to rules limiting the number of times an applicant could sit for the bar), *reh'g denied*, 745 F.2d 72 (1984).^{xvii}

In order to survive the minimal "rational basis" scrutiny, the challenged rule need only be rationally related to a legitimate governmental purpose. "In other words, if there is any conceivably valid justification for Rule 4-6.1, and if there [is] any plausible link between the purpose of the Rule and the methods selected to further this purpose, then no violation of substantive due process exists."^{xviii} The Eleventh Circuit concluded that the Florida Supreme Court has a valid justification for its rule relating to *pro bono* legal services, because it "undoubtedly has a legitimate interest in encouraging the attorneys it has licensed in the State of Florida to perform *pro bono* legal services as one aspect of their professional responsibility."

Citing a number of federal cases, the Eleventh Circuit observed:

We have recognized that states have an "especially great" interest in regulating lawyers, since "lawyers are essential to the primary government function of administering justice." [*Kirkpatrick*, 70 F.3d at 103]. Due to the unique and important role of the legal profession in this country, the free provision of legal services to the poor has long been recognized as an essential component of the practice of law. In *Waters v. Kemp*, 845 F.2d 260, 263 (11th Cir.1988), for example, this Circuit emphasized that one of the traditions of the legal profession is that a lawyer, as an officer of the court, is "obligated to represent indigents for little or no compensation upon court order." *Accord, United States v. Accetturo*, 842 F.2d 1408, 1412-13 (3rd Cir.1988). Similarly, in *Mallard v. United States District Court*, 490 U.S. 296, 310, 109 S.Ct. 1814, 1823, 104 L.Ed.2d 318 (1989), the Court commented that at a "time when the need for legal services is growing and public funding for such services has not kept pace, lawyers' ethical obligation to volunteer their time and skills *pro bono publico* is manifest."^{xix}

The Eleventh Circuit also concluded that "[t]here is plainly an adequate nexus between the establishment of aspirational *pro bono* goals for members of the Florida Bar and the Florida Supreme Court's legitimate interest in encouraging Bar members to provide legal services to the indigent." The court noted that the plaintiff

does not, and cannot, dispute that there is a powerful, documented need to broaden and improve the scope of legal representation available to the poor. The choice of a not terribly onerous goal of twenty hours of *pro bono* service per year advances the Florida Supreme Court's interest in at least two ways. It supplies individual Bar members with a benchmark for evaluating how many hours of *pro bono* work they should be performing, while at the same time suggesting that a lawyer's professional responsibility to perform legal services for the poor may easily be integrated with other tasks that draw on an attorney's time and energy.^{xx}

Turning to the mandatory reporting provisions of Rule 4-6.1, the Eleventh Circuit concluded that "there is a constitutionally sound basis for expecting bar members to report their compliance with the Rule's aspirational goals." The court said:

It was rational for the Florida Supreme Court to conclude that requiring Bar members to report their compliance with the Rule's aspirational *pro bono* goals both encourages lawyers to honor these goals and provides the Court with a pool of information that might lend some insight into what, if any, additional measures are needed to help the poor obtain counsel and secure access to the courts.^{xxi}

C. Elements of the Proposed Program:

1. **A *pro bono* reporting program yields reliable and useful data only when lawyers are required to respond.**

As illustrated in Table 1, states with voluntary reporting programs, in which lawyers are encouraged but not required to respond to a questionnaire, have experienced disappointingly low response rates. In fact, organizations conducting those voluntary programs have reported that lawyer response rates are so low that the resulting data is of limited value at best. The organizations have found that the data they receive cannot be considered reflective of the overall *pro bono* efforts in the state, because the voluntary reporting form is typically returned only by lawyers who do *pro bono*. As a result, the per capita amount of *pro bono* hours performed by all lawyers tends to be substantially lower than that performed by responding lawyers. Indeed, if extrapolated, the data can lead to starkly negative conclusions about lawyers' *pro bono* efforts. Since it appears that most lawyers who do not do *pro bono* do not return the reporting forms, the average number of *pro bono* hours per lawyer falls short of any aspirational standards.

Arizona	35.0%
Georgia	8.3%
Hawaii	33.5%
Illinois	5.0%
Kentucky	15.0%
Louisiana	8.0%
Maryland	7.0%
Missouri	8.0%
New Mexico	33.0%
Texas	27.0%
Wisconsin	23.0%

Florida, the only state with a required reporting program, has a nearly 100% response rate. The annual reports which analyze data from the program illustrate the reliability, accuracy and usefulness of the information that can be gathered through a required reporting form. When compared to data from states with voluntary reporting programs, there is no question that requiring lawyers to report is essential to ensuring data that are reliable and useful. Moreover, it is evident that Florida's required reporting program has moved the bar as a whole to increase substantially its donations of both money and *pro bono* legal services.

2. **The most effective reporting form is one that asks for only the information necessary to achieve the objectives of the *pro bono* reporting program.**

The principal reason for a reporting program is to gather accurate and reliable data that can be used to address the growing and critical unmet need for legal services to persons of limited means and to encourage attorneys to increase their efforts to address this problem. The form, a sample of which is

attached as Exhibit A, should ask lawyers to indicate the amount and nature of their *pro bono* legal services, as defined in Minn. R. Prof. Conduct 6.1, and the amount of money contributed to organizations providing such services. This data can then be used to document the overall contributions of the bar in addressing the unmet needs of low-income Minnesotans.

The form should ask for certain limited demographic information (e.g., year admitted, nature of practice, size of firm and zip code), which will enable legal aid and volunteer attorney organizations, the Legislature, foundations and other funders to direct their resources efficiently.

3. A *pro bono* reporting program need not be an administrative burden.

Most lawyers keep a daily record of their time serving clients, so recording time associated with *pro bono* cases should not add significantly to an already-existing task. Moreover, lawyers would need to keep track of only the amount of time spent on *pro bono* matters. Unlike client billable hours, they would not have to record a description of their activities. Thus, the task of recording the time spent on *pro bono* matters should involve only seconds of time during those days on which *pro bono* services were provided. At the end of the year, completion of the reporting form should take only a few minutes, particularly for the many lawyers who now use computerized time-keeping programs. Minnesota law students who provide *pro bono* services through the Minnesota Justice Foundation (MJF) report their time routinely. Within three to five years, MJF expects to have close to 80% of Minnesota law students participating in the tri-school Law School Public Service Program. So a substantial majority of law students will be used to reporting before they ever graduate.

The reporting system need not be costly to administer. The reporting form could be designed to be computer scannable. The form would be sent with the annual attorney registration statement so there should be no extra cost for mailing. While there would be some startup costs for computer programs to analyze the data, ongoing costs should be modest.

4. The reporting program should be designed to allow for anonymity.

Florida requires its lawyers to identify themselves on their report forms and individual data are publicly available. The LAD Committee believes that this may not be necessary in Minnesota. The Committee recognizes that many lawyers hold legitimate convictions about declining public recognition for *pro bono* work and that this reporting program should be an examination of personal conscience. The *pro bono* reporting program should be structured to allow for anonymity, while at the same time promoting the compliance that is necessary for accurate and useful data. We recommend that the *pro bono* report form be mailed to lawyers with the Supreme Court's annual registration statement. A lawyer would be required to certify on the registration statement that he or she completed and returned the *pro bono* reporting form. The form, while returned with the registration statement, would be separate and anonymous. We see no reason why the report form should be require lawyers to identify themselves.

5. The program could allow for recognition of those lawyers who meet or exceed the aspirational standard in Rule 6.1 and who choose to identify themselves.

The reporting form could permit lawyers to identify themselves even if they are not required to do so. Recognition of lawyers who do *pro bono* can be a good way to increase the overall amount of *pro bono* services delivered by the bar. Lawyers, especially new lawyers, learn from the example of their peers. A reporting form that allows for recognition (e.g., by including an optional signature line) enables the bar to promote both the individual and collective good works of Minnesota's lawyers, and in the process challenge us to do more *pro bono* work. Recognition could be done in many ways, for example, through an annual listing in *Bench & Bar*, membership in a *Pro Bono* College, or a certificate signed by a Supreme Court Justice.^{xxii}

6. The reporting program does not mean mandatory *pro bono*.

Pro bono reporting programs have not resulted in mandatory *pro bono* in any state in which such programs have been adopted. In fact, the evidence indicates that reporting programs reduce pressure by state legislatures and the public to enact mandatory *pro bono* measures. One state's reporting program, for example, grew in part from the state legislature's consideration of a law requiring lawyers to provide *pro bono* legal services as a condition of licensure.¹ With data from an effective reporting program, the bar can persuasively document the amount of *pro bono* services and the monetary value of lawyers' efforts to address the problem of unmet legal needs. The LAD Committee does not support mandatory *pro bono* service. The Committee is confident that a reporting program will document that the bar is already a major partner in the effort to meet the need. The Committee believes that reliable data documenting the millions of dollars of time and money contributed annually by Minnesota lawyers will enhance the stature of the profession. Thus, rather than posing a threat of mandatory *pro bono*, a reporting program can show there is no justification for mandatory *pro bono*.

IV. Conclusion

It's time for a *pro bono* reporting program in Minnesota. Thousands of Minnesotans with critical legal needs -- needs that affect their basic safety and subsistence -- would ultimately benefit from such a program. An effective reporting program would lead to increased efforts by Minnesota lawyers, the Legislature, foundations and other funders to address those unmet needs. It could also allow for recognition of the outstanding work of lawyers who exceed the aspirational standard set forth in Minnesota Rule of Professional Conduct 6.1, and thereby encourage others to do more. It would demonstrate the bar's commitment to providing equal access to justice. Our profession has nothing to fear and much to gain from such a program.

- i In 1998, a small amount of the federal funding was restored but legal services funding remains woefully inadequate.
- ii *Report of the Joint Legal Services Access and Funding Committee* (Dec. 31, 1995) (hereinafter *Joint Committee Report*), at 11-12.
- iii *Id.* Minnesota Legislators, the Committee noted, have estimated that steering just 5 people away from the risk factors of violent crime – including school disruptions and family instability, abuse and deprivation – saves taxpayers \$4 million in prison and corrections costs. See Sen. Ellen Anderson and Rep. Charles Weaver, “Put money into Prevention Programs, Not More Prisons,” *Star Tribune*, March 8, 1995, at 15A.
- iv Order, *In Re Petition to Amend the Rules for Registration of Attorneys*, No. C9-81-1206 (Minn., May 22, 1991).
- v *Joint Committee Report* at 34.
- vi Thomas Gallager, “An Interview with Bradley C. Thorsen, HCBA President 1997-98,” *The Hennepin Lawyer*, (July 1997) at 5, 17-18.
- vii As of this writing, 14 states have adopted a *pro bono* reporting program, and another 5 states are considering adoption of a program.
- viii See *Amendments to Rules Regulating the Florida Bar – 1-3.1(a) and Rules of Judicial Administration – 2.065 (Legal Aid)*, 630 So.2d 501, (Fla. 1993), as clarified on denial of rehearing, (Fla., Feb. 3, 1994). See also T. D’Alemberte, “Tributaries of Justice: The Search for Full Access,” 25 Fla. St. U. L. Rev 631 (Spring 1998).
- ix Legal challenges to Florida’s reporting requirement have been rejected by both the Florida Supreme Court and the United States Court of Appeals for the Eleventh Circuit, in thorough and well-reasoned decisions. See *Schwarz v. Kogan*, 132 F.3d 1387 (11th Cir. 1998); *Amendments to Rule 4-6.1 of the Rules Regulating the Florida Bar – ProBono Public Service*, 696 So.2d 734 (Fla. 1996), rehearing denied, (Fla. July 9, 1997) (hereinafter *Amendments to Rule 4-6.1*).
- x See *Florida Supreme Court’s Standing Committee on Pro Bono Services’ Report to the Supreme Court of Florida, the Florida Bar and the Florida Bar Foundation* (1998) (hereinafter *1998 Florida Report*), at 1. See also “Pro Bono reports show rise,” *Florida Bar News*, March 15, 1999 at 1, 19.
- xi *1998 Florida Report*. at 3.
- xii *1998 Florida Report*. at 1, 3.
- xiii Cited in *Amendments* at 735 (emphasis in original).
- xiv *Id.*
- xv *Id.*
- xvi *Amendments to Rule 4-6.1* at 735-736 (Overton, J., concurring).
- xvii *Schwarz*, 132 F.3d at 1390 n.2.
- xviii *Id.* At 1390-91.
- xix *Id.* At 1391.
- xx *Id.*
- xxi *Id.*

^{xxii} On one state's form, for example, a lawyer may certify that he or she has met or exceeded the bar's aspirational *pro bono* standard, and would like be identified as a member of the "College of *Pro Bono*" for that year.

**MINNESOTA SUPREME COURT
ANNUAL *PRO BONO* QUESTIONNAIRE**

PLEASE RETURN THIS WITH YOUR REGISTRATION STATEMENT.

Minnesota Rule of Professional Conduct 6.1 provides that a lawyer should aspire to render at least 50 hours of *pro bono publico* legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect the civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession.

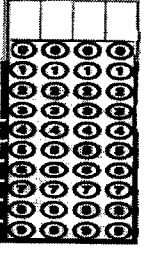
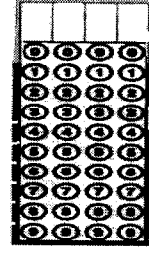
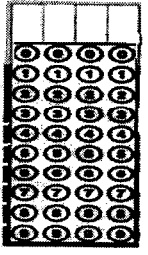
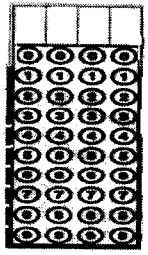
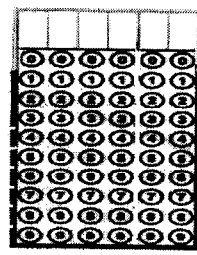
In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

This questionnaire is intended to determine the annual amount of money and *pro bono* legal services, as defined in Rule 6.1, donated by Minnesota attorneys.

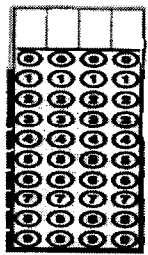
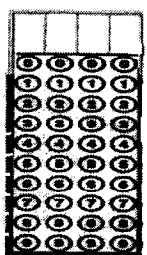
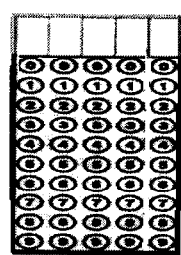
Please use a pencil or blue or black pen to complete the following.

1. During 1999, approximately how many hours of *pro bono* legal services did you volunteer, as defined in:

2. During 1999, how much money did you contribute to organizations that provide legal services to persons of limited means?

Rule 6.1(a)?	Rule 6.1(b)(1)?	Rule 6.1(b)(2)?	Rule 6.1(b)(3)?	(Please round to nearest dollar.)
				

PLEASE COMPLETE THE REVERSE SIDE >>>>

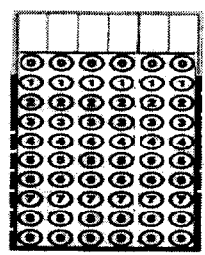
<p>3. What year were you first admitted to any bar?</p> 	<p>4. What is the nature of your practice or employment?</p> <p> <input type="radio"/> Private <input type="radio"/> In-House Corporate <input type="radio"/> Government <input type="radio"/> Non-Profit <input type="radio"/> Legal Aid <input type="radio"/> Judge <input type="radio"/> Retired <input type="radio"/> Non-Legal <input type="radio"/> Other </p>	<p>5. Approximately how many attorneys are in your firm or organization?</p> 	<p>6. What is the zip code of your place of employment?</p> 
--	--	--	--

7. OPTIONAL:

Name (please print): _____

Registration Number: _____

You are not required to identify yourself on this questionnaire. You are required only to certify, on the accompanying attorney registration statement, that you have completed and returned this questionnaire. We nevertheless encourage you to identify yourself. We would like to recognize attorneys who have met or exceeded the Rule 6.1 aspirational standard.



We also would appreciate receiving any comments you may have.

COMMENTS:

For information regarding pro bono opportunities in your area, please call 1-800-882-6722.

PLEASE RETURN THIS WITH YOUR REGISTRATION STATEMENT.

THANK YOU FOR YOUR PARTICIPATION.



DAVID K. PORTER
LAWYER

5208 BLOOMINGTON AVENUE
MINNEAPOLIS, MINNESOTA 55417
612 • 825-4611 or 722-1001

Frederick Grittner, Esq.
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-1500

OFFICE OF
APPELLATE COURTS

NOV 08 1999

FILED

re: Lawyer Assistance Program
Hearing Date: November 17, 1999, 1:30 p.m.
November 5, 1999

Sir,

Enclosed please find 12 copies of my request to make an oral presentation in the matter of the proposed Lawyer Assistance Program. Attached to each copy is a summary of the comments that I would offer.

If anything further is required, please let me know.

Kindest Regards,

David K. Porter

NO. C8-84-1650 &
NO. C9-81-1206

STATE OF MINNESOTA
IN SUPREME COURT

In Re:


Amendment to the Minnesota Rules of
Professional Conduct and
Creation of Funding for a Minnesota
Lawyers Assistance Program

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

The undersigned Attorney, David K. Porter, requests the honor of making an oral presentation at the hearing on this matter, presently scheduled for 1:30 p.m. November 17, 1999.

A summary of the statement that I will offer, if granted leave to make this oral presentation, is attached hereto. No exhibits are planned.

November 5, 1999



David K. Porter
Attorney I.D. No. 87622
5208 Bloomington Avenue
Minneapolis, Minnesota 55417
(612) 722-1001

NO. C8-84-1650 &
NO. C9-81-1206

STATE OF MINNESOTA
IN SUPREME COURT

In Re:
Amendment to the Minnesota Rules of
Professional Conduct and
Creation of Funding for a Minnesota
Lawyers Assistance Program

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

"The brotherhood of the bar" is a phrase with a long history. If we look back to the days of trial by combat, there must have been some way for the combatants to show their mutual respect and collective sense. From our collective experience with human nature, it is reasonable to assume that they shared more than blows with their lances, traveling from town to hamlet to village fair. When one of their number became ill, there must have been some accommodation to protect the reputation of their class as one which served the public need for truth.

"The brotherhood of the bar" is a phrase freighted with many meanings. In the days of circuit courts, Herndon, Lincoln, and their compatriots found ways to look after each other while serving the public. In the frontier days, this was done informally, as were most things. When the number of lawyers in a state was fewer than a thousand, everyone literally knew everyone else - at least by reputation.

"The brotherhood of the bar" meant so much to so many, for so long. It meant the collective sense of duty and discipline, as well as the sense that everyone looked over everyone else's shoulder. It also meant that many things were "taken care of" quietly, but effectively. When leadership was instinctively honored, and that leadership

reflected the common sense of the society, it was followed. This allowed the de facto resolution of messes created by lawyers who became incompetent.

In the social tumult of the past fifty years, the stage upon which we act has been flooded with new actors. This literally set the stage for chaos. The public lost its sense of trust for its leadership. Anything that sounded like "a back-room deal" became impossible. Negative connotations accumulated in the public mind. Like an old coal-burning locomotive with too many boxcars and too steep a grade, the brotherhood seemed doomed to rust away on a forgotten siding. Everything had to be resolved by rule, regardless of common sense, for fear of public backlash. This situation could not long endure without remedy.

In many circles, "The brotherhood" came to be regarded as a closed society for older males of northern European background, practicing the Protestant Christian faith. Others viewed themselves as excluded due to faith, gender, and race. Within the brotherhood, "things got taken care of," but outsiders felt left out and aggrieved. This perceived social division became intolerable, and the brotherhood largely disappeared over the past twenty years. Lawyers needing assistance for personal issues were left at the curb if their partners did not cover for them. Suicides, defalcations, and a general waste of lives and property resulted.

Fortunately for all of us, the bar is full of creative energy. People keep coming up with remedies for ills. The Lawyer Assistance Plan presently before this Court is a bona fide remedy, one that has been proven to work. This plan will offer a rational remedy for a real and persistent problem.

The bench and bar of this state is sworn to a central mutuality of purpose. We seek the truth and apply the law for the sake of justice. In carrying this burden, each of us is vulnerable to the pitfalls that life and nature bring. However we came to be as we are, no one of us is perfect. Any one of us can fall prey to the talons of something we never thought could attack us. The normal "comeuppances" of life are not at issue here. Those are a normal and desirable part of life. Mental and emotional illnesses that leave the lawyer a victim with no resources and no reliable intellect are an issue that must be dealt with. If we leave this issue alone, we default in our responsibility to the public.

William Styron, a Nobel prizewinner in Literature, has written a marvelously short book called "Darkness Visible." He describes the paucity of the impact of the word "depression." The word sounds like a pothole in the road of life when in fact it describes an infinitely dark and deep Grand Canyon, one which swallows its victim in hopeless despair. This is the illness befalling all too many of our members, whether on the bench, in-house with a corporation, or striving in the trenches at the storefronts. When we realize that as many as one in four of our members are likely to be overwhelmed with this illness at some time during their practicing careers, it is obvious that we must do something. "Do something, even if it's wrong" is a catch-phrase for my father-in-law. Here, we only need to do something, even if we will need to fine-tune it later.


In developing the law of product liability, our legal system looked to issues of predictability. If an untoward event is likely to happen, liability attaches to the manufacturer regardless of the specific chain of events. This seemed the only fair way to apportion risk and costs. The same logic applies to the need for a Lawyer Assistance Program.

A predictable number of lawyers will succumb to mental and emotional illnesses during their careers. It is one of the risks of the profession, a result of combining the types of people likely to go into the field with the stresses inherent in its practice. This risk should not be left to the public. If we as a group are going to assert ourselves as a licensed profession, we must be able to truthfully and literally assure the public that we take care of our predictable issues. Emotional and mental illnesses among members of the bar are statistically inevitable for a significant percentage of us. We need to provide more than sympathy to our peers and their clients.

The present petition of Lawyers Concerned for Lawyers and the Minnesota State Bar Association reflects the common knowledge and experience of people who have developed successful programs in other states. We do not need to re-invent the wheel. Following the successful examples of others takes no great leap of faith. Please allow us to provide the service to each other that we need. The only realistic way to do that is with mandatory funding.

What we are doing here is re-creating the essence of the "Brotherhood of the bar," free of its former limitations of gender, race and faith. Those limitations doomed its most recent incarnation, but we have no need to be bitter about its demise. What we must do is look forward, and resurrect the best parts. It is a truism that we will never see the "good old days." This may be just as well - perhaps they were not all that good. Looking backward to "the way things used to be done" will not do anything for the problems of the present or the future. We must do our best with what, and who, we have. This includes embracing a good idea when it comes forward.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David K. Porter", written in black ink. The signature is positioned above a horizontal line.

David K. Porter
Attorney ID No. 87622
5208 Bloomington Avenue
Minneapolis, Minnesota 55417
(612) 722-1001

MSBA



OFFICE OF
APPELLATE COURTS

December 3, 1999

DEC 6 - 1999

**Minnesota
State Bar
Association**

FILED

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402-1605

Mr. Frederick K. Grittner, Clerk
Minnesota Supreme Court
25 Constitution Av
St Paul, MN 55155

www.mnbar.org

Dear Mr. Grittner:

Telephone
612-333-1183
National
1-800-882-MSBA
Fax
612-333-4927

The MSBA requests the following time before the Court to present its petitions on December 15.

MSBA/LCL Petition regarding a lawyer assistance program (15 minutes):

Wood Foster, MSBA President
Jill Clark, MSBA Depression Task Force Chair
Gerald Freeman, Member – MSBA Depression Task Force and Lawyers
Concerned for Lawyers Board
George Widseth, Lawyers Concerned for Lawyers Board Chair

President
Wood R. Foster, Jr.
Minneapolis

MSBA Petition regarding pro bono reporting program (15 minutes):

Kent Gernander, MSBA President-Elect
Thomas Mielenhausen, Member – MSBA Legal Assistance to the
Disadvantaged Committee

President-Elect
Kent A. Gernander
Winona

Secretary
Jon Duckstad
St. Paul

Treasurer
Jarvis Jones
St. Paul

Thank you.

Sincerely,

Tim Groshens
Executive Director

Executive Committee
At-Large Members
Frederick E. Finch
Minneapolis
Barbara F.L. Penn
St. Paul
Hon. Jon Stafsholt
Glenwood

TG/jf

Tim Groshens
Executive Director

cc: Wood Foster
Jill Clark
Gerald Freeman
George Widseth
Kent Gernander
Thomas Mielenhausen
David Herr

OFFICE OF
HOVERSTEN, JOHNSON, BECKMANN, WELLMANN & HOVEY
APPELLATE COURTS

A LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW
807 West Oakland Avenue
Austin, Minnesota 55912

OCT 27 1999

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Kermit Hoversten *
Craig W. Johnson **
David V. Hoversten
John S. Beckmann ††
Fred W. Wellmann **†
Steven J. Hovey ◇
Craig M. Byram ◇◇

Telephone: (507) 433-3483
Facsimile: (507) 433-7889
E-Mail Address: auslaw@smig.net

Kenneth M. Strom
(1928-1995)

LEGAL ASSISTANTS:
Mary Huntley
Rhonda R. McCabe
Julie M. Noble
Lisa A. Gilbertson

◇ Also admitted in North Dakota
◇◇ Also admitted in Iowa
† Family Law Mediator
* Civil Mediator

†† Certified Civil Trial Specialist certified
by the Minnesota State Bar Association
** Certified Real Property Specialist certified
by the Minnesota State Bar Association

October 25, 1999

Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

RE: Pro Bono Reporting Petition

Dear Clerk:

Please consider this letter and the 11 copies attached hereto to be my comments with respect to the Petition of the Minnesota State Bar Association to the Supreme Court relating to the reporting of pro bono services and financial contributions by licensed attorneys.

More specifically, my concern relates to the proposed Pro Bono Questionnaire and the representation that information gathered with that questionnaire may be submitted anonymously.

It is my belief, at least with respect to attorneys practicing in the rural areas of the state of Minnesota or those Minnesota attorneys residing outside of the state, that the questionnaire is inadequately crafted to protect the anonymity of those individuals desiring the same. A truthful response to questions three, five and six and quick reference to Martindale-Hubbell or data maintained by the Minnesota State Bar Association will quickly reveal the identity of the reporting party.

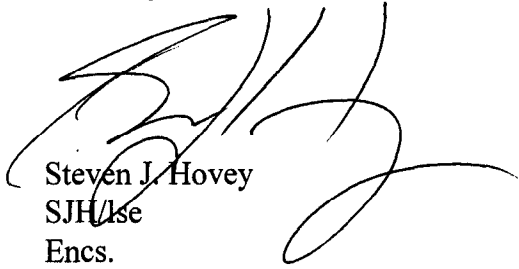
It has been represented that the proposed change in reporting requirements will serve the two-fold purpose of demonstrating the voluntary involvement of the Minnesota Bar in servicing the legal needs of the state's poor, while at the same time encouraging additional support. How do questions three, four and five on the proposed questionnaire further those purposes?

While I recognize there may be a need to organize the data into regions, wouldn't it be just as

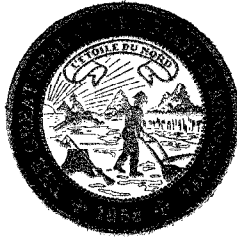
beneficial to request the identification of the judicial district in which the attorney practices, as opposed to the zip code?

Thank you for your consideration of these questions.

Sincerely,



Steven J. Hovey
SJH/lse
Encs.



STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
EIGHTH JUDICIAL DISTRICT

PAUL A. NELSON
JUDGE OF DISTRICT COURT

CHAMBERS AT
CHIPPEWA COUNTY COURTHOUSE
P. O. BOX 697
MONTEVIDEO, MINNESOTA 56265
TELEPHONE (320) 269-7774
FAX (320) 269-7733
e-mail: paul.nelson@courts.state.mn.us

December 7, 1999

Mr. Frederick K. Grittner
Clerk of Appellate Courts
Minnesota Judicial Center
25 Constitution Ave.
St. Paul, MN 55155-6102

OFFICE OF
APPELLATE COURTS

DEC - 8 1999

FILED

RE: Proposed Amendments to the Rules Relating to
Registration of Attorneys

Dear Mr. Grittner:

Enclosed for filing in the above-referenced matter, please
find the original and twelve copies of a letter to Chief
Justice Blatz.

Thank you for your assistance in these matters. If you
have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Paul A. Nelson".

Paul A. Nelson
Judge of District Court

PN/ce

Enclosure



STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
EIGHTH JUDICIAL DISTRICT

PAUL A. NELSON
JUDGE OF DISTRICT COURT

CHAMBERS AT
CHIPPEWA COUNTY COURTHOUSE
P.O. BOX 697
MONTEVIDEO, MINNESOTA 56265
TELEPHONE (320) 269-7774
FAX (320) 269-7733
e-mail: paul.nelson@courts.state.mn.us

December 6, 1999

The Honorable Kathleen A. Blatz
Minnesota Supreme Court
25 Constitution Ave.
St. Paul, MN 55155

In Re: Proposed Amendments to the Rules Relating to
Registration of Attorneys

Dear Justice Blatz:

The Minnesota State Bar Association's petition for mandatory reporting of pro bono publico services is a rule change that will further the judicial branch mission of providing "justice through a system that assures equal access for the fair and timely resolution of cases and controversies." Access to the courts is a core value of the Minnesota judicial systems strategic plan for the year 2005.

As a District Court judge I see, on a daily basis, the results of the unmet need for legal services to the poor.

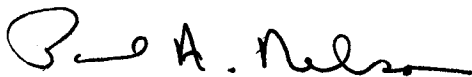
The minimal intrusion and inconvenience to lawyers in reporting their pro bono hours will be greatly offset by an increase in pro bono hours as well as a much clearer and more accurate picture of the hours actually provided.

Before being appointed to the bench I, as most attorneys, kept a daily record of all time spent which was included in our computer billing program. My pro bono hours were simply marked with a different code than billable hours and the system generated a total of those hours as a routine report.

As noted in the MSBA's petition, the experience in other states has been that there is a substantial increase in pro bono hours provided. While the reasons for that may be debated, the result speaks for itself. Accurate, rather than anecdotal evidence of the number of hours, will assist not only legal services providers in their quest for adequate funding but will also benefit the profession in counteracting commonly held stereotypes of the bar.

This simple rule change will help achieve the goal of "equal justice for all."

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul A. Nelson".

Paul A. Nelson
Judge of District Court

PN/ce

Executive Director
Richard E. Martin



*Representing
Justice*

Administrative Director
Lois Wiggin

December 3, 1999

OFFICE OF
APPELLATE COURTS

DEC - 8 1999

FILED

Minnesota Supreme Court
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

Re: Pro Bono Reporting

Dear Members of the Minnesota Supreme Court:

This letter is to advise the Court of the Minnesota Trial Lawyers Association's (MTLA) support for the Pro Bono Reporting proposal currently pending before the Court. In May of last year, members of the MSBA LAD Committee briefed the MTLA Executive Committee on this proposal. Following that presentation, we sent information on the Pro Bono Reporting proposal to all of our nearly 1,400 members via broadcast fax and solicited comments. We received no negative comments from our members. Following solicitation of the members' views, the Executive Committee voted to endorse the LAD proposal prior to the MSBA convention in June of last year.

The MTLA's membership includes both rural and urban lawyers, and lawyers in law firms of all sizes, from solo and small firms practices to large firms.

I hope that this letter and the position of the MTLA is of assistance to the Court as it reviews this worthwhile proposal.

Sincerely,


Richard E. Martin
Executive Director

Keith L. Miller
President

AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
MINNESOTA CHAPTER

December 6, 1999

OFFICE OF
APPELLATE COURTS

DEC - 8 1999

FILED

The Honorable Kathleen Blatz, Chief Justice
Members, Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

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Jane Binder

EXECUTIVE DIRECTOR
Nancy K. Klossner
nkklossner@uswest.net

Re: MSBA Petition for Pro Bono Legal Services Reporting

Your Honors:

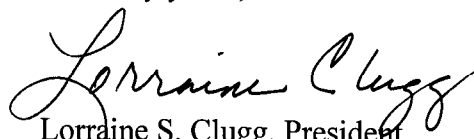
On behalf of the Minnesota Chapter of the American Academy of Matrimonial Lawyers, I am pleased to support the MSBA petition for the anonymous reporting of pro bono legal services.

As you may know, AAML is an organization dedicated to the improvement of family law advocacy. Our Minnesota members include both rural and urban attorneys, lawyers in solo practice and partners in large firms. All of us already do a great deal of pro bono legal work and do not believe that reporting that service would be a burden.

We agree with the LAD Committee that there is a crying need for legal services in the family law arena – the statistics all show it; we see it every day. We believe that if you grant the petition, you will see the marvelous increase in pro bono services/contributions to legal aid organizations which Florida experienced. It can only help families in Minnesota.

Our support is noteworthy because in 1991, when the court last considered a similar proposal, Minnesota's AAML Chapter opposed it. This year, at our annual meeting, the resolution to support was **unanimously adopted!** Our hope is that you will follow suit.

Sincerely yours,



Lorraine S. Clugg, President
Minnesota Chapter
American Academy of Matrimonial Lawyers

MSBA



OFFICE OF APPELLATE COURTS

DEC - 8 1999

FILED

November 6, 1999

**Minnesota
State Bar
Association**

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402-1605

The Honorable Kathleen A. Blatz
Chief Justice of the Minnesota Supreme Court
245 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Dear Chief Justice Blatz:

Please accept this letter as a written statement concerning the petition before the Minnesota Supreme Court to amend the rules relating to attorneys so as to require mandatory anonymous reporting of *pro bono publico* services and financial services by all Minnesota lawyers.

The Executive Council of the MSBA Public Law Section voted unanimously to support the above-referenced petition. The Public Law Section has in the past withheld its support for many mandatory *pro bono publico* proposals. The current proposal, however, represents a compromise and is the product of many years of discussion among our members. It is a reasonable proposal that seeks to provide an incentive for Minnesota attorneys to provide *pro bono* services to Minnesota residents and financial support for such services. The reporting of the level of *pro bono* support among members of the bar will provide useful information to the Minnesota Legislature as it makes important funding decisions regarding legal aid services in this state.

The MSBA Public Law Section represents more than 1,100 lawyers in Minnesota who work in local, state, and federal government, as well as members of the bar who represent governmental entities.

The Executive Council of the Public Law Section firmly believes that the time has come for mandatory reporting of *pro bono publico* services, and it respectfully requests that the Minnesota Supreme Court adopt the Petition of the Minnesota State Bar Association.

Sincerely,

Greg Brooker
Co-Chair
MSBA Public Law Section

President
Wood R. Foster, Jr.
Minneapolis

President-Elect
Kent A. Gernander
Winona

Secretary
Jon Duckstad
St. Paul

Treasurer
Jarvis Jones
St. Paul

*Executive Committee
At-Large Members*
Frederick E. Finch
Minneapolis
Barbara F.L. Penn
St. Paul
Hon. Jon Stafsholt
Glenwood

Tim Groshens
Executive Director



VOLUNTEER LAWYERS NETWORK, Ltd.

OFFICE OF
APPELLATE COURTS

December 8, 1999

DEC - 8 1999
eng all of
Hennepin County
Since 1966

Dear Minnesota Supreme Court Justices:

FILED

The Board of Directors of Volunteer Lawyers Network, Ltd. supports required, anonymous reporting of pro bono hours and financial contributions to organizations that provide legal services to those unable to pay for an attorney.

VLN is one of the oldest and largest pro bono organizations in the country and last year matched over 700 attorneys with 4,000 clients. Volunteers provided legal services in the areas of family, housing, bankruptcy, consumer, employment and immigration law. Experience has shown that reporting increases both the number of pro bono hours and the financial contributions of attorneys and law firms. Volunteer Lawyers Network, Ltd. strongly supports any initiative that will help increase access to justice for low income clients.

Respectfully,


James H. Patterson, Patterson & Keough, P.A.
Chair, Board of Directors


Geri Pederson
Executive Director

MWL Minnesota Women Lawyers

600 Nicollet Mall, Suite 390B
Minneapolis, Minnesota 55402-1641
Phone: 612/338-3205
FAX: 612/338-1507
Email: mwl@mwlawyers.org

OFFICE OF
APPELLATE COURTS

DEC - 8 1999

FILED

Jacqueline A. Mrachek

President
One Financial Plaza, Ste. 2500
Minneapolis, MN 55402
612/338-5815

December 7, 1999

M. Jacqueline Regis

President-Elect
385 Washington Street, MC 505X
St. Paul, MN 55101
651/310-6972

Hon. Kathleen Blatz, Chief Justice
The Minnesota Supreme Court Justices
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Hon. Miriam P. Rykken

Secretary
25 Constitution Avenue, Ste. 400
St. Paul, MN 55155
651/296-2454

Dear Honorable Kathleen Blatz and the Minnesota Supreme Court Justices,

Lisa Montpetit Brabbit

Treasurer
100 North Sixth Street, Ste. 550A
Minneapolis, MN 55403
612/333-3999

At the June 15, 1999 Board of Directors meeting, Minnesota Women Lawyers, Inc. (MWL) expressed unanimous support for the Pro Bono Reporting Program recommended by the MSBA Legal Assistance to the Disadvantaged Committee.

Julie Ritz-Schlaifer

Past President
600 South Highway 169, Ste. 650
Minneapolis, MN 55426
612/544-7558

MWL is a statewide organization and its membership encompasses a wide spectrum of legal professionals: rural and urban lawyers; government, corporate and private practice attorneys; judges; education professionals; attorneys practicing part-time; and lawyers engaged in non-traditional legal positions.

Board Members

Claudia J. Engeland
Jean F. Holloway
Joyce Laher
Tami L. Schroeder
Sara J. Schwebs
Tracy J. Van Steenburgh
Elizabeth A. Wefel
Nancy A. Wiltgen

Access to legal resources throughout the state is of great importance to our members as well as the citizens of Minnesota. By gathering comprehensive information on pro bono activities, as well as demographic data, Minnesota would be better positioned to understand and evaluate where legal assistance resources are most effective and needed. MWL also supports the proposed method of data collection to ensure confidentiality and thereby encourage more accurate pro bono reporting. MWL believes that the reporting requirement will create an incentive for donating more time to serving the disadvantaged in Minnesota.

**Central Minnesota
Chapter Representative**

JoAnn W. Evenson

MWL appreciates the work accomplished by the MSBA Legal Assistance to the Disadvantaged Committee in its effort to meet the needs of Minnesota citizens. Please feel free to contact the MWL office at 612/338-3205 for further information.

**South Central Minnesota
Chapter Representative**

Ann B. Barker

Student Liaisons

Kathleen Wilkinson
Hamline University School of Law

Sincerely,

Anita Arockiasamy
University of Minnesota Law School

Jacqueline A. Mrachek
Jacqueline A. Mrachek
President

Sue Roemer Feely
William Mitchell College of Law

Debra Pexa
Executive Director

To secure the full and equal participation of women in the legal profession and in a just society