

INSIDE: THE CHALLENGES AND BENEFITS OF WORKING FOR DELAWAREANS IN NEED

# Delaware Lawyer

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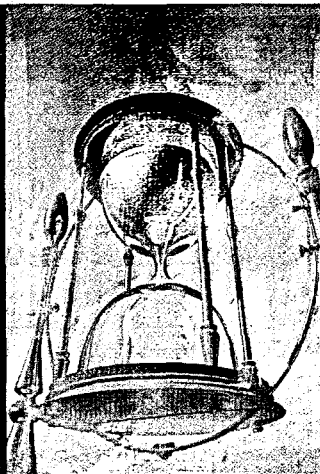
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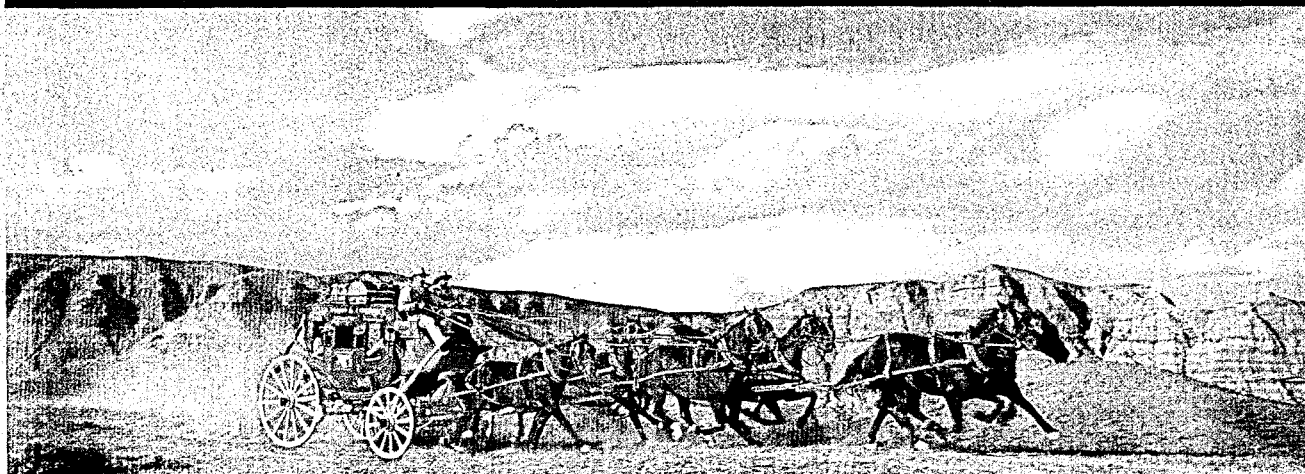
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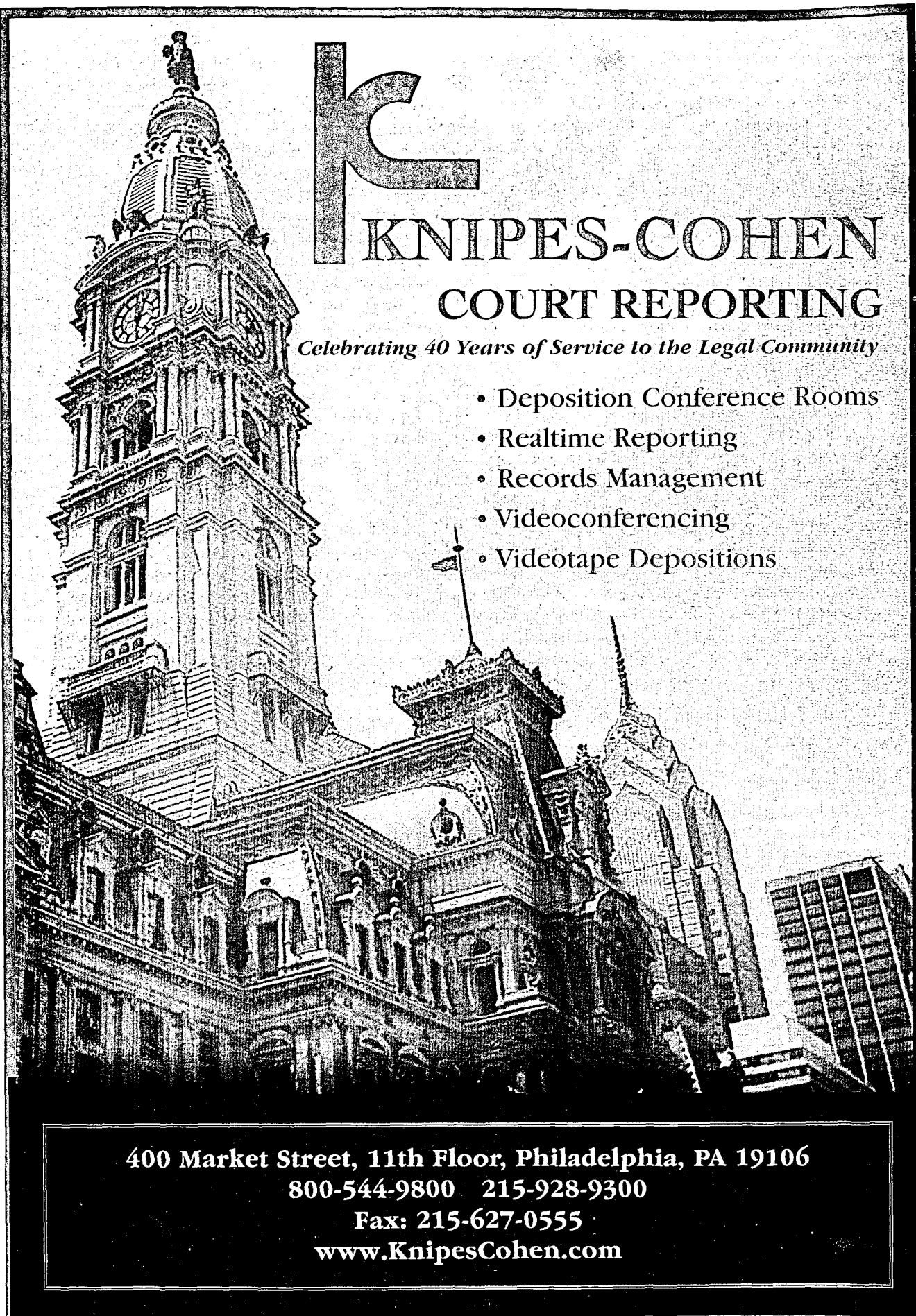
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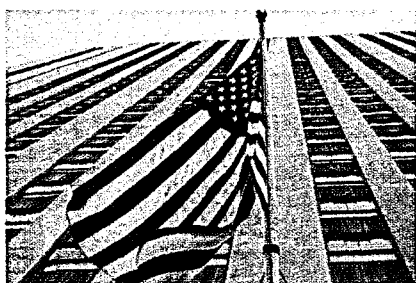
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## EDITOR'S NOTE

Lawrence S. Drexler

Pro bono efforts by our bar are essential and necessary to the success of our judicial system. The cost of navigating the halls of justice continues to grow, resulting in an ever increasing number of people who cannot afford legal counsel who desperately need legal advice. We lawyers must fill in these gaps in order to maintain the integrity of the system and the public's faith in the judicial system.

The authors who contributed to this issue present a compelling case for the need for pro bono effort in Delaware and the personal and professional rewards for such work. We are grateful for their effort.

Now is the time to act! Volunteer! Give of your time. These organizations need your help. Take on a pro bono representation; become affiliated with one of the service providers. Each needs help in administration, board members and other volunteers. A list of organizations and contacts is set forth below.

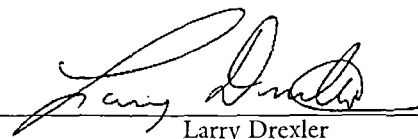
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*Credit for this issue goes exclusively to Janine Howard and Tom McDonough of Delaware Volunteer Legal Services (DVLS). Janine, as one of her first acts after being named executive director of DVLS, called to find out if the Delaware Lawyer was interested in an issue focusing on pro bono opportunities in Delaware. We jumped at the opportunity. I doubt Tom was told in the DVLS interview process that one of his first duties would be riding herd on a talented group of authors. Our thanks to each for the creativity and energy they brought to this issue.*



Larry Drexler

**Office of the Child Advocate:** For volunteer opportunities or questions, contact Tania Culley (302) 577-6830 <http://courts.state.de.us/childadvocate>


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### Thomas J. Allingham, II



is a partner in the Wilmington, Delaware, office of Skadden, Arps, Slate, Meagher & Flom LLP. Much of his practice revolves around issues of corporate valuation — whether directly in trying statutory appraisal actions, or indirectly in analyzing securities law class action damages or advising directors on share valuation issues in the corporate takeover defense context.

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His clientele includes the Minority Caucus of the Delaware State House of Representatives, for whom he acts as staff attorney. His firm was awarded the 2004 Distinguished Pro Bono Service Award by the Delaware State Bar Association. Prior to entering the private practice of law, Mr. Davis was a judicial law clerk to the judges of the Superior Court of Sussex County. He worked for the Delaware Department of Transportation for nearly six years, attending Widener University School of Law at night for four of those years.

### Hon. Randy J. Holland



presently serves on the Delaware Supreme Court. He is the youngest person to serve on the Delaware Supreme Court. Prior to his appointment and confirmation in 1986, Justice Holland was in private

practice as a partner at Morris, Nichols, Arsht & Tunnell. In January 1999, he was reappointed and confirmed unanimously for a second twelve-year term. Justice Holland graduated from Swarthmore College. He also graduated from the University of Pennsylvania Law School, cum laude, where he received an award for legal ethics. Justice Holland received a Master of Laws in the Judicial Process from the University of Virginia Law School. He also received an honorary Doctor of Laws from Widener University School of Law.

### Hon. Chandlee Johnson Kuhn

is Chief Judge of Delaware Family Court. A judge in Family Court since 1998, she was 22 when she got her first job on the court as a bailiff and later a staff development instructor. A law degree in 1988 from Delaware Law School — in the last class before the name was changed to Widener University law school — got her a job at the

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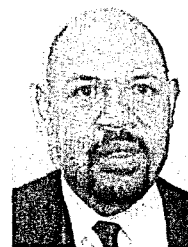
### Richard H. Morse



(Cornell University, 1970; Harvard Law School, 1974), is a trial lawyer and partner at Young Conaway Stargatt & Taylor, LLP, is treasurer of Delaware Volunteer Legal Services and a coordinator of the Federal Civil Panel. He represented the plaintiff in *Atkinson v. Taylor*. In 2002 and 2004, he was awarded the Caleb R. Layton, III Service Award by the District Court.

### Hon. Calvin L. Scott, Jr.

was appointed to the Superior Court of Delaware by Governor Ruth Ann Minner on February 19, 2003. Judge Scott received his B.S. degree from Carnegie Mellon University and his J.D.



### Thomas D. Shellenberger



and L.L.M. in Corporate Law and Finance from Widener University School of Law Prior to joining the Superior Court, he was a Deputy Attorney General in the Delaware Department of Justice, Civil Division.

is the Managing Director of Cooch and Taylor. He concentrates his practice in the area of family law. After graduating from Wilmington Friends School, he earned his undergraduate degree from the University of Delaware in 1982. In 1985, Mr. Shellenberger received his Juris Doctor with honors from the Western New England College School of Law.

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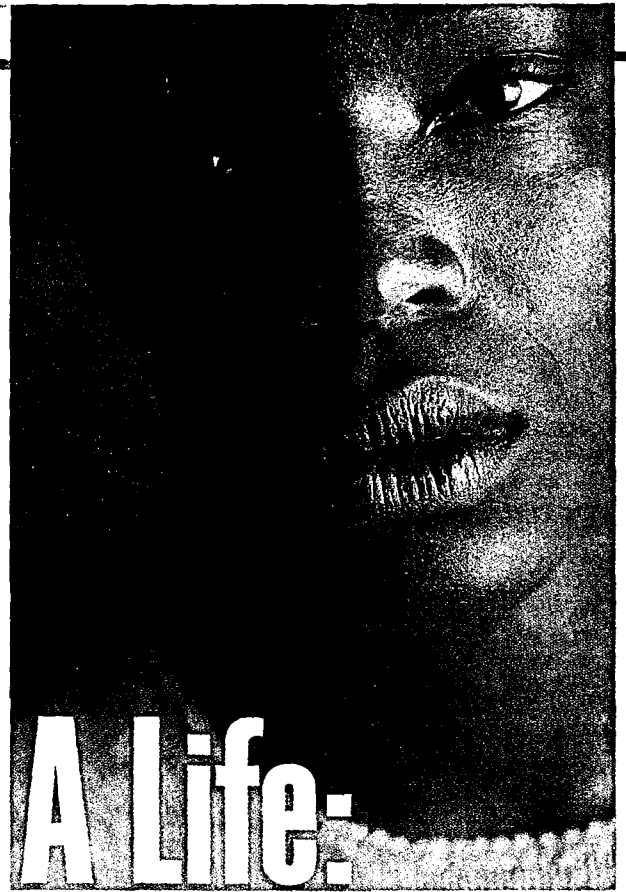
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# Saving A Life:

## Pro Bono Work's Immeasurable Benefits

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In early October 1991, I returned from a meeting outside the office to find a message slip with the name "George Kendall" and a New York City number. After several false positives, I recalled that George Kendall had been the name of my high school senior class president. I hadn't spoken to George in the more than two decades since our graduation, but remembered him as an interesting and intelligent character, so I dialed the number with some pleasant anticipation of trading stories about high school adventures and the post-graduation fortunes of mutual friends. From this pedestrian beginning evolved the most challenging and rewarding experience of my professional life.

**T**he substance of George's call was much different than I expected. It turned out that he had decided to become a lawyer when he grew up, and not just any lawyer: He was serving as the head of the NAACP Legal Defense Fund's Capital Punishment Group, which he explained was the purpose of his call. There was a man on Delaware's death row<sup>1</sup>, who was scheduled to be executed — to be hanged by the neck until dead, to be specific, under Delaware's old death penalty statute — in a couple of weeks. Could I help?

Of course, I said. I'll make some calls right away; I'm sure we can find him a good lawyer.

No, he said, we want you to take the case.

This was a laughable proposition, at least at first blush.

I was then 38, a junior partner in a large international law firm, on the cusp of a clichéd mid-life crisis. My practice at Skadden, Arps was limited to corporate litigation, mostly takeovers and related cases; I had never handled a criminal case, not even a traffic ticket, let alone a matter in

which the client's life hung in the balance. I knew nothing of criminal law, nothing of federal habeas law, nothing of the specialized field of death penalty law; in short, nothing that could be of use to the potential client. I didn't even know whether I was a categorical opponent of the death penalty.

I explained all of this to George, who assured me that none of it mattered. What mattered was that the potential client's lawyer on his habeas corpus petition could not continue; that no one had been found to pick up the cudgels; and that if someone did not appear for him to seek a postponement of his execution, he would die in a matter of days.

I agreed to take the case. In the course of the next 11 years, I and an extraordinarily dedicated and able team of young lawyers (especially Mary MaloneyHuss, now at W. L. Gore & Associates, and current Skadden lawyer Steve Dargitz) who signed on to represent this client experienced the highest of highs and the lowest of lows, the thrill of victory and the aching despair of seemingly final defeat. In the end we could not achieve for our client all that he hoped for, but we did reverse what we believed was a serious injustice — a "victory" that was the most gratifying I've ever had.

I agreed to describe this experience for the *Delaware Lawyer* in the hope that it may encourage some of my colleagues in our bar — who may have many of the same perfectly rational reasons (not to say excuses) that I had for not taking on such a representation — to reconsider. The need is very great, but the rewards are greater. You will not be disappointed.

Within 48 hours of George's call, we appeared before the District Court judge who was handling the matter, who graciously granted us permission to enter our appearance for our new client, and a postponement of the execution to permit us to review the file and educate ourselves about a field in which our ignorance knew no bounds. Noting that he hadn't seen Skadden attorneys in such a role before, the court remarked with good humor that he would expect the "mother of all amended habeas petitions" in short order. We promised to do our best to satisfy those expectations.

That timetable was wildly optimistic. It was not until after several years of procedural disputes, and a successful interlocutory appeal to the Third Circuit, that we were finally able to file our amended habeas petition in August of 1995. In the meantime, we had completed the critical factual investigation of our client's life, building a mitigation case that we hoped would give us a chance to convince a jury (in the new trial we never stopped believing we could achieve) or, in a worst case scenario, the Pardons Board (if our work to obtain a new trial came to naught) that this was never a proper case for the death penalty.

What we learned was sobering, even chilling. Billy's father was an alcoholic who brutally beat his mother; she escaped when Billy was no more than 3, but took up with another man who also beat her. One of Billy's earliest memories was watching his older brother throwing rocks at and trying to punch their "stepfather" in a futile effort to stop him from beating their mother. Billy's brother was then 6 or 7; Billy was 3 or 4. Their mother, whose own alcohol abuse had begun before Billy was born and continued during her pregnancy with him, began drinking more heavily — in the words of one family member we interviewed, "as if it was water from the faucet." His brother lost his way, and turned to crime; eventually he was convicted of armed robbery, and Billy was left to live alone with his despairing (and increasingly alcohol-dependent) mother. She began leaving him for days, then weeks at a time. Ultimately, she left Billy for good; the water, heat and electricity in the house in which they had been living were all turned off, and the building was condemned. But Billy stayed on alone for several months, in the cold and dark. He was 13.

Eventually, Billy's sister took him in. His mother occasionally resurfaced, usually to harass her teenage son for money. He tried very hard to make a stable home for her, working two jobs to try to afford a place where they could both live. But when he succeeded in renting an apartment, she refused to move in. During the same period,

Billy's father also returned (having nowhere else to go because, as another family member told us, he "had drunk himself to nothing" and lost the use of his legs). Despite the cruel treatment he and his mother had endured at his father's hands a decade before, Billy tried to care for him, too, taking him for rides, and bathing him when he vomited or soiled himself.

The trauma and strain of Billy's youth eventually took their toll, however. He began to abuse drugs, including marijuana and amphetamines, and experimented heavily with sniffing glue and solvents. For reasons that seemed clear from his family history, our client was diagnosed by one psychiatrist as "a traumatized, neglected child who grew up with no adult role model for emotional or moral development"; another opined that this "psychological and emotional void ... left him highly susceptible to being manipulated by individuals who would offer affection, attention or any degree of concern that appeared to him as elevating self esteem and offering acceptance." We came to believe that exactly that kind of manipulation had led to Billy's involvement with the crime for which he had been convicted.

None of this history had been presented at the penalty phase of Billy's trial; his trial counsel, a solo practitioner who was denied the assistance of a state-appointed investigator or co-counsel, was forced to devote virtually all of his efforts to the guilt phase of the trial, and simply lacked the resources in the time available to him to develop the history that we were able, with the luxury of more time, to put together. In the absence of such evidence, the death penalty had been imposed, it seemed, as if by default.

We also researched the constitutional infirmities of Billy's trial. There were many, though we were often frustrated by the procedural roadblocks that United States Supreme Court decisions have created in the last 10 to 15 years, which have made it extremely difficult to raise viable constitutional claims in post-trial federal habeas proceedings. Though we included every constitutional violation we could identify in our

amended habeas petition, we eventually focused most of our efforts on one: a so-called *Batson* claim.

In 1986, the United States Supreme Court decided *Batson v. Kentucky*<sup>2</sup>, reaffirming that the Equal Protection Clause prohibits discrimination on account of race in the selection of jurors. *Batson* held that this principle, which dates back to at least 1880<sup>3</sup>, recognized that racial discrimination in the selection of jurors harms “not only the accused whose life or liberty they are summoned to try,”<sup>4</sup> but also the potential juror himself, whose race “simply ‘is unrelated to his fitness as a juror.’”<sup>5</sup>

Our client is African-American. At Billy’s 1982 trial for the murder of a Dover liquor store owner, the deputy attorney general who prosecuted the case used peremptory challenges to strike every prospective African-American juror from the jury. This was, we were certain, not an accident. The state had done exactly the same thing in every Kent County murder trial that had occurred within a year of our client’s trial. Moreover, in defending its peremptory challenges of every black juror (on direct appeal in 1984 to the Delaware Supreme Court), the state had candidly (if startlingly) argued that its use of peremptory strikes on the basis of “group association” (a euphemism for race, as the Delaware Supreme Court explicitly found) was actually *beneficial*, as it avoided the unseemliness of the court having to strike black jurors for cause on the ground of their purportedly obvious and inevitable bias in favor of black defendants. This, we saw, was an admission that its peremptory challenges were race based; indeed, on direct appeal the state did not even *offer* race-neutral reasons for its peremptory strikes of the black jurors. On direct appeal, pre-*Batson*, the Delaware Supreme Court affirmed Billy’s conviction.

Then *Batson* issued, requiring at a minimum that the state offer race-neutral grounds for its peremptory strikes. Thus it was that, at an evidentiary hearing convened for that purpose six years after Billy’s trial, the prosecutor *for the first time and without the benefit of con-*

*temporaneous notes* recalled that one of the stricken black jurors had “paused” before affirming on voir dire that he could vote for the death penalty if circumstances warranted. The “pause” — which was not reflected in the trial transcript — had, the prosecutor testified, given him concern that the prospective juror would not vote for the death penalty. But a white juror who had given a verbatim response to the same voir dire question was seated with no objection from the state. As to another stricken black juror, the “race-neutral” rationale offered was that he would have been inattentive, because he had asked to be excused from jury duty — but in fact the record showed he had not done so, whereas a white juror who *had* asked

**“One of the principal objections to the death penalty in this country is that it is applied unevenly”**

to be excused had been seated, again with no objection from the state. Finally, in response to Billy’s evidence of the state’s pattern and practice at the time of Billy’s trial regarding the use of peremptory strikes against prospective black jurors, the state requested and was granted permission to supplement the record with its own rebuttal evidence, which it assured the court existed. After several weeks, however, the state quietly informed the court that it would be making no rebuttal submission. Despite the foregoing evidence, the trial court found (without discussion of Billy’s evidence) that the state had provided race-neutral explanations for its strikes, and denied post-conviction relief. The Delaware Supreme Court affirmed.

Our amended federal habeas petition addressed all of the foregoing evidence on *Batson* in detail, stressing the totality of the evidence and the state court’s fail-

ure to discuss Billy’s evidence that the state’s peremptory strikes had been motivated by racial reasons. Nevertheless, the District Court denied our petition for a habeas writ in a 1998 opinion, finding that the trial court’s post-conviction *Batson* findings were entitled to heavy deference. We were of course disappointed, but remained optimistic that relief could be obtained from the Third Circuit, and we took a prompt appeal.

On January 17, 2001, we received the Third Circuit’s ruling. In a 2-1 opinion, the court affirmed the District Court’s denial of Billy’s petition, rejecting all of our arguments, including the *Batson* claim. We were devastated. We knew realistically that our chances for certiorari were nil, and it thus appeared that we were out of viable judicial options. We reported the bad news to Billy, who took it with his usual equanimity. We discussed how we might proceed before the Pardons Board, another option that offered little realistic promise. And with heavy hearts we urged him to consider again his awful choice between hanging (Delaware’s mode of execution at the time of his sentencing) and the more “modern” lethal injection.

At the same time we began looking more closely at the Third Circuit’s opinion, and in particular the dissenting opinion of Judge Sloviter, who found that “the prosecution, in pursuing its express goal of ‘mak[ing] sure that [our client] received the death penalty,’ violated [our client’s] rights under *Batson*.” Her eloquent conclusion inspired us to regroup: “One of the principal objections to the operation of the death penalty in this country is that it is applied unevenly, particularly against poor black defendants. I am afraid that the majority’s decision will do nothing to dispel that view.”

So we pressed on. Relying on “common sense” statistical analyses (our application for an evidentiary hearing in the District Court had been denied, so we had no record evidence from statistical experts) that showed the extreme unlikelihood that the state’s striking of

all black jurors could be explained by chance, and reiterating the arguments that the state's late-blooming race-neutral rationales were pretextual, we moved for reargument *en banc*, which — to our shock and delight — was granted. The matter was argued to the entire court *en banc* in May 2001.

On December 28, 2001, the court ruled. Addressing the *Batson* argument, Judge Sloviter, writing for the majority, repeated what we had urged was the central question: "If not this case, what case? If the evidence in this case is insufficient to show that the prosecutors' race-neutral rationales, what case, short of a prosecutorial mea culpa, would do the job?"<sup>6</sup> The court's answer was all that we had hoped for. It withdrew its earlier opinion, reversed the District Court's denial of Billy's petition, and conditionally granted the writ (subject to the state's right to retry our client in conformance with constitutional principles).

It's impossible to describe the exhilaration and elation we felt. Our joy was only heightened when we visited Billy the next day in the maximum security unit at Smyrna. When we told him the good news, it was possible to see a great weight lifting from his shoulders, and no client of mine has ever been more grateful.

That was not the end, of course. The state chose to retry Billy, and we ultimately parted ways during the course of his retrial, in which he represented himself (with able counsel appointed by the court standing ready to assist). At the end of the day, he was convicted again, but though the state sought the death penalty again, the jury saw the matter differently, and Billy received a life sentence. Thus we didn't achieve all that we had hoped for — but we did reverse a death sentence that seemed to all of us manifestly unjust, and obtained judicial recognition that "long ago" prosecutorial practices in Billy's case<sup>7</sup> did not satisfy the requirements of our great Constitution. That was a result that we all counted as a victory.

The victories of course were thrilling. But for me the most rewarding part of this representation was coming to know our client, and through that relationship to better understand that we are all the product of our pasts, and that there

is humanity in all of us. In all our many meetings, Billy never failed to ask about my family, whose activities and interests he always remembered. He particularly asked after my middle son, who attended the Third Circuit arguments as a middle schooler and whom we all came to regard as something of a good luck charm. Billy somehow knew (and never forgot) my birthday. And in the wake of the devastating initial denial of relief by the Third Circuit, I had discussions with Billy that I have never had before with a client, and likely never will again — on the nature of life, and the existence of a higher being, and the magnitude of the weight that any human being can bear. Inspiration can come from strange circumstances, and Billy's perseverance and determination to bear whatever came was (and is) an inspiration to me. I think of him often.

There was another, even more remarkable, experience that came out of this representation — an experience that taught me more than anything in my life about the quality of mercy. I happened, well into my representation of Billy, to meet (in circumstances entirely unrelated to my representation of Billy) the son of the victim of the murder for which Billy was convicted. I would have expected him to treat me with disdain, if not contempt, but it was the contrary. He was respectful and thoughtful, inquiring (once we had made the connection) about how a corporate litigator had come to have such a matter, and about the status of our appeal. I answered his questions, and even offered a bland view about the difficulties of prevailing on federal habeas claims. He responded with the most charitable (in the old sense of the word) offer I have ever heard, or heard of. "I hope," he said, "that your guy will never see the streets again in his lifetime. But I don't believe in taking life — any life. And that includes the death penalty. And if the time should ever come that you need a witness for your side at a Pardons Board hearing, I'll be there."

I was speechless; I'm still astounded as I recount the story today. But that story exemplifies the completely unpredictable nature of the rewards of a case like this. I learned a lot from this case

about constitutional law, and criminal law, and federal habeas law. But I learned more about human nature and "moral values," and about the breathtaking goodness and courage of a man able to steer by his own moral compass no matter how strong the wind.

I said at the outset that I agreed to write about this case in the hope of inspiring others to consider taking on a death penalty case. In one sense, of course, most of us are not equipped to take on such a representation — we are not criminal lawyers, nor constitutional lawyers, and we don't have readily at hand the substantive knowledge that is ultimately required to handle a matter like this. But we *are* lawyers, and at the end of the day (and with all of the enormous resources available to help us get up to speed<sup>8</sup>) that can be more than enough. I am here to testify that the satisfaction of knowing that justice can be done is deep and wide.

#### FOOTNOTES

1. Our client is referred to in this article by the pseudonym "Billy."

2. 476 U.S. 79, 109 S. Ct. 1712. Much of the following discussion of *Batson* is taken from Judge Sloviter's dissent from the Third Circuit's original affirmation of the District Court's denial of our client's amended habeas petition.

3. *Strander v. West Virginia*, 100 U.S. 303 (1880)

4. *Batson*, 476 U.S. at 87, 106 S. Ct. at 1712.

5. *Id.* (quoting *Thiel v. Southern Pac. Co.*, 328 U.S. 217, 227, 66 S. Ct. 984 (1946) (Frankfurter, J., dissenting)).

6. *Riley*, 277 F.3d at 287.

7. I mean "long ago." Among the many things I learned in the course of this representation was a healthy respect for the fairness, and sense of justice and decency, of the deputy attorneys general who handled this matter for the state.

8. The resources available to anyone willing to take on a death case are truly vast. I called time and again on George Kendall and his colleagues and network of friends at the NAACP Legal Defense Fund. The American Bar Association has established a program called the Death Penalty Representation Project, which helps to match willing lawyers with clients in need, and provides the resources to support effective representation. Their website at [www.abanet.org/deathpenalty](http://www.abanet.org/deathpenalty) is a useful introduction to the field and the role that civil lawyers can play in it, with links to many other resources as well. Our Delaware courts, state and federal, recently hosted a presentation by this distinguished group. ♦

## Limited Pro Bono Legal Assistance Program

The Limited Pro Bono Legal Assistance Program (LPBLA), managed and coordinated by the Administrative Office of the Courts (AOC), presents a unique opportunity to perform pro bono work for the attorney who: has a couple hours available on his or her calendar, who would like to volunteer but may be unable to commit to an unknown duration, and/or who would like the opportunity to become more familiar with a legal area before volunteering to provide full representation. The program is intended to complement, not compete with, pro bono opportunities to provide full representation. Program sponsors include: the Delaware Judiciary, the Delaware State Bar Association (DSBA), Delaware Volunteer Legal Services, Inc. (DVLS), Community Legal Aid Society, Inc., Legal Services Corporation of Delaware, Inc., Widener University School of Law, and the Delaware Paralegal Association. The DSBA's Pro Se Litigation Assistance Committee (PSLAC) is responsible for program direction.

The LPBLA provides basic legal assistance to people who have simple legal questions about the judicial process and refers people, when appropriate, to other legal service providers. As part of the program, an attorney volunteers for two hours to be available to provide free fifteen-minute consultations. Before a person meets with the attorney, our volunteer staff (paralegals, legal secretaries, law students, interested law students, and paralegal students) screens the individual for program eligibility. Eligible persons are those who: do not have an attorney, have a question in the same area of law for which the attorney registered to provide assistance, have a clear fact pattern, and have a question(s) that the attorney can answer within the fifteen-minute consultation. Volunteer staff writes the question(s) and relevant facts on an intake form affording the attorney an opportunity to read the question(s) before initiating the consultation. Only when the attorney is ready, will the attorney meet with the individual.

The AOC has joined with DVLS to provide training for attorneys for continuing legal education credit to enable them to volunteer outside their practice area, if desired. For attorneys volunteering outside their practice area, the AOC will recruit an attorney knowledgeable in the practice area to be available via telephone to assist the volunteering attorney and ensure the attorney is comfortable providing assistance. Attorneys volunteering for the LPBLA are covered under DVLS's malpractice insurance.

Meaningful advice is rendered during the consultation because the intake process that precedes the consultation focuses the meeting on the question-answer session. Feedback from the people

using this service has been overwhelmingly positive. Mary MaloneyHuss, an attorney who participated in the pilot program recalls:

*Perhaps the most vivid memories I have from my experience in the pilot program are the changes in the faces of the clients using the service. In each case, they came into the interview room with anxious faces. They knew what they were trying to accomplish, but were worried and confused about how to start. In virtually every case, in fifteen minutes (or less) they stood up with a smile, a look of relief, or perhaps a look of determination. Their confusion was gone; their anxiety was substantially less. They understood the next step in the process and they had a plan for getting it done. Clearly, they were in a much better place than they had been when*

*they walked in. It was amazing to me how such a small donation of time could make such a dramatic difference in someone's life. Of course, not all of their problems were solved. But the stumbling block of the day had been removed.*

Current opportunities to volunteer for the LPBLA exist in the areas of family law and tenant's rights. However, the Court of Chancery is working with the PSLAC to expand the program in the area of Chancery Court guardianships where there is

a growing population of people who either cannot afford to retain counsel or who are filing for guardianship over property having a value that does not justify the cost of counsel.

The LPBLA is a great way for a law firm or organization to get involved in providing pro bono legal services. Volunteer opportunities are not limited to attorneys. The AOC seeks paralegals, legal secretaries, law students, paralegal students and interested law students to staff the program. If you are interested in volunteering, please contact Julie Dvorak, manager of Pro Se Services at the AOC, by telephone 302-255-2475 or by e-mail [Julie.dvorak@state.de.us](mailto:Julie.dvorak@state.de.us). Attorneys who would like to volunteer outside their practice area should look on the DSBA list serve for upcoming CLE seminars for volunteering for this program.

"The Judiciary owes special thanks to the program sponsors, the attorneys, the paralegals and other volunteers — too numerous to mention who participated in the development of this program. By providing basic legal assistance and referring income-eligible litigants to the appropriate legal service provider for representation, the LPBLA ensures essential legal services to self-represented litigants," says Justice Randy J. Holland of the Delaware Supreme Court.

— Julie S. Dvorak



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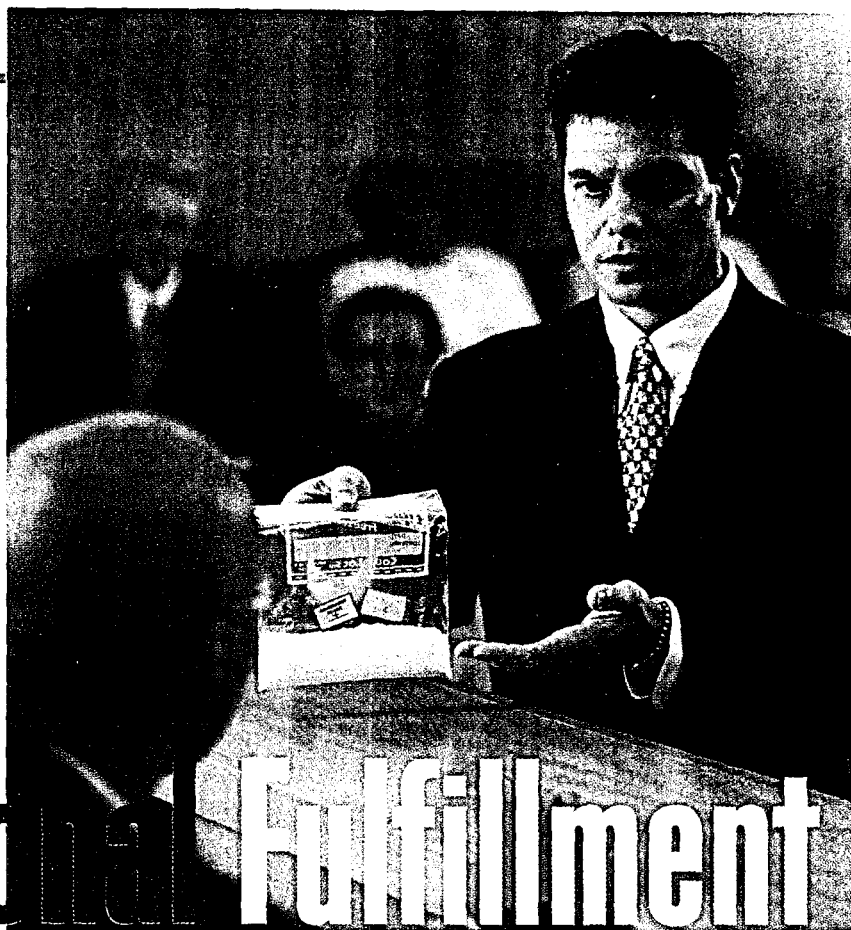
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# Professional Fulfillment

Pursuing a  
learned art as  
a common calling  
to promote  
justice and the  
public good

Every attempt to define professionalism includes an element of public service. Three definitions are illustrative. Roscoe Pound defined a “profession” as a group of people “pursuing a learned art as a common calling in the spirit of public service.” The former chief justice of the Georgia Supreme Court, Harold Clarke, defines a professional as “a member of a group which provides an essential service in which the public has a vital interest and requires of the performer extensive training and the exercise of qualitative judgment.” The American Bar Association has defined a professional lawyer as “an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.”

**T**he Delaware Supreme Court and the Delaware Bar Association encourage and support the legal profession’s proud tradition of public service. Delaware Lawyers’ Rules of Professional Conduct Rule 6.1 states:

*A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improv-*

*ing the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.*

The Principles of Professionalism for Delaware lawyers states:

*Public service. A lawyer should assist and substantially participate in civic, educational and charitable organizations. A lawyer should render substantial professional services on a charitable, or pro bono publico, basis on behalf of those persons who cannot afford adequate legal assistance.*

Justice Sandra Day O'Connor has observed that "both the special privileges incident to membership in our profession and the advantages those privileges give us in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth. That goal is public service." In fact, many American lawyers strive to meet or exceed the ABA's suggested goal of at least fifty hours of pro bono work per year. As Professor Rhode notes, however, "few lawyers come close," and "[o]nly about a third of the nation's 500 largest firms have agreed to participate in the ABA Pro Bono Challenge, which requires a minimum annual contribution of three percent of the firm's total billable hours."

Many lawyers assert that they do not have time for pro bono activity. I am reminded of a story. Imagine that you came upon a man in the woods working feverishly to saw down a tree. "What are you doing?" you ask. "Can't you see?" comes the impatient reply. "I'm sawing down this tree." "You look exhausted!" you exclaim. "How long have you been at it?" "Over five hours," he returns, "and I'm beat! This is hard work." "Well, why don't you take a break for a few minutes and sharpen that saw?" you inquire. "I'm sure it would go a lot faster." "I don't have time to sharpen the saw," the man says emphatically. "I'm too busy sawing."

This story appears in the well-known book by Stephen R. Covey: *The Seven Habits of Highly Effective People*. "Habit 7 is taking time to sharpen the saw. It surrounds the other habits on the Seven Habits paradigm because it is the habit that makes all the others possible." Habit 7 is personal. According to Covey, "it's preserving and enhancing the greatest asset you have — you." It involves renewing the four dimensions of your nature — "physical, spiritual, marital, and social/emotion." As Covey notes, no one can sharpen the saw for us. "We must do it for ourselves."

Although six habits preceded the seventh, I will only focus on Covey's third habit: "Put First Things First." The chapter discussing Habit 3 begins

by asking the reader to write down a short answer to two questions. Question 1: What one thing could you do ... that, if you did on a regular basis, would make a tremendous positive difference in your personal life? Question 2: What one thing in your business or professional life would bring similar results?

For many lawyers and judges, in answer to question 2, one thing that we do on a regular basis that makes a tremendous positive difference in our professional life is to help a deserving individual with a genuine legal need. This would come as no surprise to Covey, who identified what has been called the "character ethic" as the foun-

**Pro bono service is not only good for the public, it is good for the professional man or woman who makes time to engage in such an activity.**

ation of success. The character ethic teaches "that there are basic principles of effective living, and that people can only experience true success and enduring happiness as they learn and integrate these principles into the basic character."

The term "pro bono" is an abbreviation for *pro bono publico* — for the public good. But pro bono service is not only good for the public, it is good for the professional man or woman who makes time to engage in such an activity. It "sharpens the saw."

In the words of George Bernard Shaw, "This is the true joy in life — that being used for a purpose recognized by yourself as a mighty one." Victor Frankl focused on the need for meaning and purpose in our lives, something that transcends our own lives and taps the best energies within us. Dr. Hans Selye, in his monumental research on stress, states that a long, healthy, and happy life is the result of making contribu-

tions, of having meaningful projects that are personally exciting and contribute to the lives of others.

G.K. Chesterton, the British writer and polemicist, had a keen eye for the paradox. No paradox in life's lessons caught his eye more frequently than the inverse relationship between what he characterizes as "selfish materialism" and happiness. Accordingly, Steven Keever encourages us to develop a "helping heart." He explains:

*In every tradition that emphasizes the importance of the inner life, compassion and service are held up as preeminent virtues. Those who, through the ages, have been revered for their wisdom and empathy — have often been people who believed that the very purpose of life is to be of service to others.*

*Those who value the importance of their inner experience, are more apt to see personal enrichment as their purpose, at least in their professional lives.*

The satisfaction of practicing law is frequently the knowledge that others depended upon your judgment, your loyalty, and your abilities, and that at the end of the day you knew that you had, in fact, helped your client.

John W. Davis, a former U.S. solicitor general, eloquently summarized the public service provided by legal professionals:

*True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures. There is little of all that we do which the [human] eye ... can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men and women's burdens and by our efforts we make possible the peaceful life of men and women in a peaceful state.*

In his book *Finding a Life and a Higher Calling in the Practice of Law*, Judge Carl Horn, III, lists step 11, as follows: "Be generous with your time and money." The specific nature of the pro bono activity in which we engage is best left to each of our individual preferences. In conclusion, if "professional fulfillment" is one of your goals, after you provide for yourself and your family, you will experience professional satisfaction by generously giving of your legal skills and knowledge *pro bono publico*. ♦

## A Court's Perspective on Pro Bono Activity in Delaware<sup>1</sup>

**O**rganized pro bono efforts began in the mid-1970s.<sup>2</sup> The Legal Services Corporation, created in 1974 and approved by the Nixon administration, was instituted to create federal funding for the poor in civil matters.<sup>3</sup> The proposal to eliminate the Legal Services Corporation by the Reagan administration sparked an interest in Congress and the organized bar to ensure that it remained intact.<sup>4</sup> In 1981, there were approximately fifty pro bono programs.<sup>5</sup> A decade later, there were almost 600 voluntary programs.<sup>6</sup> More recently, pro bono work got a hand with the widespread use of the Internet. Web sites like [www.selfhelpsupport.org](http://www.selfhelpsupport.org) help the courts, community and pro bono practitioners to gain relevant information with a variety of Internet resources.<sup>7</sup>

In Delaware, pro bono work is at the forefront of legal activity. The bar and judiciary have taken great pride in the creation of the Delaware Pro Bono Inn of Court. The first of its kind in the nation, the inn could serve as a model for other state bars to follow. According to Charles McDowell, Esquire, past-president of the Delaware State Bar Association, the inn:

*is expected to provide an opportunity for in-house lawyers to team up with private practitioners; it will provide an outlet for senior/retired lawyers who want to continue to serve the community ... and it may also tap into the resources of the many Delaware paralegals who can be very helpful in the delivery of pro bono services.<sup>8</sup>*

"Despite the best efforts of the organized bar, pro bono advocates, and judges, pro bono participation among attorneys remains unacceptably low."<sup>9</sup> To increase pro bono participation, the Delaware Supreme Court has adopted several new rules that relax limitations on current and retired attorneys enabling them to contribute to the pro bono community. The first is Delaware Supreme Court Rule 69. This rule allows retired attorneys to work on a limited basis performing only pro bono activities.<sup>10</sup> In addition, the Rule allows inactive members of the Delaware Bar to provide a variety of uncompensated services for clients.<sup>11</sup>

The second rule, upon which this article focuses, is Delaware Lawyers' Rules of Professional Conduct Rule 6.5. The Rule states in pertinent part:

*(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:*

*(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and*

*(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to that matter.*

The American Bar Association's Ethics 2000 Committee created Rule 6.5. It was originally directed at part-time law firm volunteers but later extended to all full-time legal service lawyers. The purpose of Rule 6.5 is to relax the strict application of the conflict rules in order to promote lawyer participation in pro bono legal services or counseling.<sup>12</sup> Prior to Rule 6.5, the strict application of the conflict rules acted as a deterrent to lawyers considering volunteering in the legal community. Rule 6.5 is intended to change that effect.

For example, if a lawyer volunteered to work on a phone bank providing advice during his lunch, it would be difficult to run a conflict check and provide advice within an hour. Rule 6.5 allows lawyers to participate in such programs without being disqualified because of the activities of their firms and firms will not be disqualified from representing a client because of the lawyer's involvement in the program.<sup>13</sup> Similarly, in the landlord-tenant arena, if a lawyer's law firm represents the landlord in commercial lease matters, it should not bar that lawyer at the legal aid hotline from providing residential lease help.<sup>14</sup>

One pro bono program in Delaware that has stemmed from the adoption of Rule 6.5 is the Limited Pro Bono Legal Assistance Program (LPBLA). The LPBLA was a response to both the court and community's recognition that

certain barriers limit an individual's access to justice. The program is available at the Self-Help Center in the New Castle County Courthouse on the 2nd floor. Currently, assistance is available in the areas of family law (civil) and tenant's rights. The LPBLA began with a trial free legal assistance clinic held at the Delaware State Bar Association.

On May 23, 2002, following the lead of the Contra Costa County Bar Association in California, the Delaware Bar Association held a night clinic to help people in the community deal with landlord-tenant law, bankruptcy, and child custody issues.<sup>15</sup> Local attorneys performed counseling on the three topics with no strings attached. Only those individuals who were not currently represented by an attorney were eligible. Each individual was guaranteed fifteen minutes of free legal assistance.

Considering the complexity and financial burdens of many legal issues, the free legal assistance clinic allowed people in the community to get "a foot in the door." The lawyers were able to educate the individuals on their options including possible litigation. Others were told that they did not have a claim. Regardless of the advice, the night was rewarding for all involved.

The night's success can be attributed to Rule 6.5. With the relaxed application of the conflict rules, the attorney turnout was significant. The major problem, however, was community turnout. Steps are underway to develop a program that would meet in a consistent location with predictable hours of operation. The LPBLA was launched February 2, 2004. Volunteers have played a valuable role in getting this program underway.

The program's future relies on the continuing assistance of volunteer attorneys. The court stresses the need for volunteers to participate in these limited commitment programs. The benefit will be equally distributed between the attorney and the community. In the words of the Contra Costa County Bar Association we seek "smart, experienced, discreet attorneys for a one-night stand?"<sup>16</sup> ♦

## FOOTNOTES

1. I would like to thank my law clerk, Kate Schulhaus, for her help in writing this article.

2. See E. Brownell, *Legal Aid in the United States* 25-40 (1951 & Supp. 1961).

3. J. Dooley & A. Houseman, *Legal Services History* 1-16 (2d draft 1985).

4. See M. Kessler, *Legal Services for the Poor* 8-9 (1987).

5. See Jim Miskiewicz, *Mandatory Pro Bono Won't Disappear: Volunteerism Alone Not Enough*, *Nat'l L.J.*, Mar. 23, 1987, at 1, col. 1.

6. Esther F. Lardent, *Mandatory Pro Bono in Civil Cases: The Wrong Answer to the Right Question*, 49 *Md. L. Rev.* 78, 90 (1990).

7. Self-help Support's website is at <http://www.selfhelpsupport.org/>.

8. Charles S. McDowell, *Delaware Inns of Court - Welcome to the Newest Inn*, <http://www.dsba.org/may04pc.htm> (last visited Jan. 7, 2005).

9. Talcott J. Franklin, *Helping Lawyers Help Others: Creating A Pro Bono Program Designed To Attract And Retain A Large Volunteer Pool*, 27 *J. Legal. Prof.* 23 (2002-2003).

10. Arizona, California, Florida, Idaho, South Carolina, Texas, and Washington are other examples of state bar associations who have adopted emeritus rules promoting pro bono work. Stephanie Edelstein, *State Bar Emeritus Rules Encourage Pro Bono*, at <http://www.abanet.org/legalservices/probono/emertus.html> (last visited Jan. 14, 2005).

11. Supr. Ct. R. 69(d)& (f). The following are examples of uncompensated services that a retired or inactive member may work for: Delaware Volunteer Legal Services, Inc.; Community Legal Aid Society, Inc.; Delaware Council on Crime and Justice, Inc.; the Office of Child Advocate; the Office of the Public Defender; and the Department of Justice.

12. Emily K. Spitzer, *The Ethics of Unbundling Legal Services in America: Re-visiting American Legal Ethics at the Turn of the Millennium*, at <http://www.law.harvard.edu/academics/clinical/bellowsacks/papers/spitzer%20-%20unbundle.doc>. In addition, comment [3] of the Delaware Rules explains that because of the limited and quick nature of the representation, conflicts checks are only required in certain situations. If a lawyer knows that the representation presents a conflict of interest, he must comply with Rules 1.7 or 1.9(a). Similarly, if the

lawyer knows that there is a conflict because another lawyer in his firm would be disqualified under Rule 1.7 or 1.9(a), then he must comply with Rule 1.10.

13. Center for Professional Responsibility, *Reporter's Explanation of Changes* at <http://www.abanet.org/cpr/e2k-rule65.html>.

14. Thomas G. Wilkinson, *Changing the Rules of Conduct*, 26-DEC *Pa. Law.* 20, 27 (Nov.-Dec., 2004). Pennsylvania adopted a similar rule as Rule 6.5 that became effective January 1, 2005.

15. The event was sponsored by Delaware Supreme Court; Delaware Superior Court; Delaware Court of Common Pleas; Delaware Court of Chancery; Delaware Family Court; Delaware Justice of the Peace Court; Delaware Volunteer Legal Services, Inc.; Delaware State Bar Association; Widener University School of Law; Legal Services Corporation of Delaware; and Community Legal Aid Society, Inc.

16. Joshua D. Cohen, *CCCBA Seeking Smart, Experienced, Discreet Attorney[s] for One-Night Stand on February 22: Instant Gratification, No Commitment, No Recriminations, Contra Costa Lawyer*, 17-18 (Feb. 2001).

## The Delaware Pro Bono Inn of Court

Members of the Delaware bench and bar are leaders of the American Inns of Court (AIC). Four Inns of Court were established in Delaware between 1985 and 2001. Justice Randy J. Holland recently completed two terms as president of the AIC. Two of the AIC national awards have been presented to Delaware lawyers. Kevin F. Brady was recognized with the A. Sherman Christensen Award in 2004 and Dana Connor Harrington received the Sandra Day O'Connor Award for Professional Service in 2002.

For the most part, inns concentrate on issues surrounding civil and criminal litigation practice, and include attorneys from a number of specialties. There are also several inns that specialize in criminal practice, federal litigation, tax law, administrative law, white-collar crime, bankruptcy, intellectual property, family law, or employment and labor law. Existing Delaware inns followed both the litigation and subject matter specialization models. In 2003, Geoffrey S. Gamble, a member of the duPont Legal Department and a leader in the Delaware State Bar Association, advocated the creation of a new model inn, one that promotes the delivery of legal services on a pro bono basis to persons who could not otherwise afford such services.

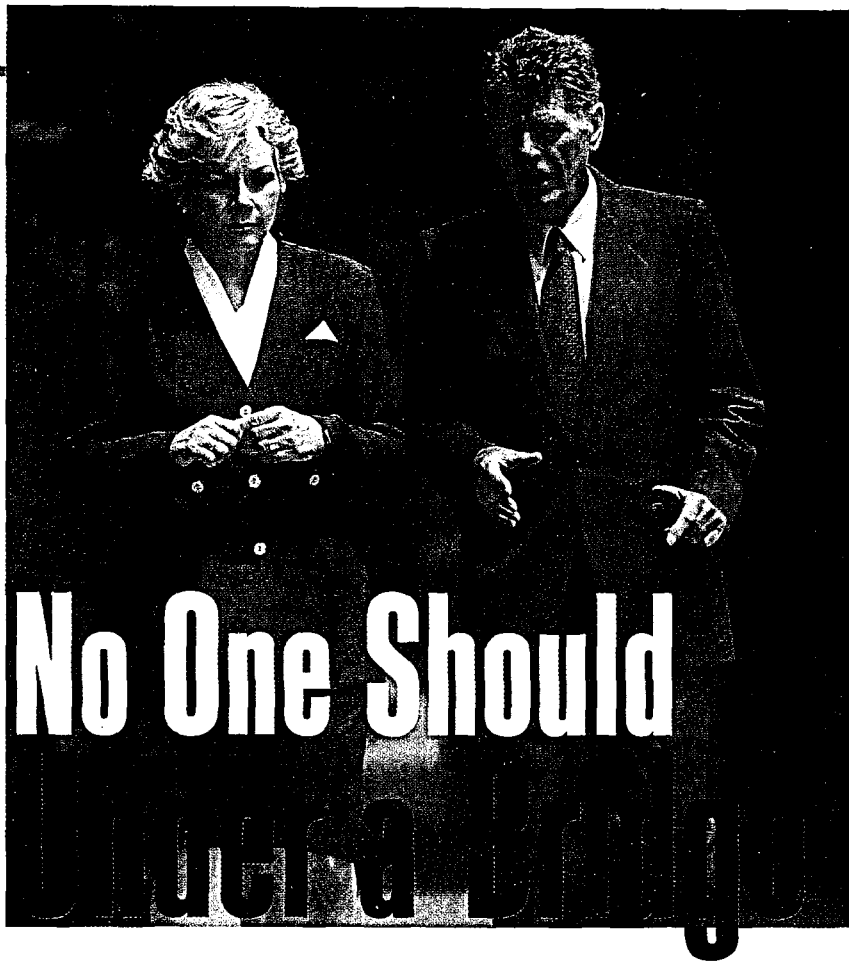
The Delaware Pro Bono Inn of Court was chartered in the spring of 2004 with its first meeting in September 2004. It is the first inn with a focus on the provision of services as opposed to an aspect of the practice of law. The Pro Bono Inn's organizers include Justice Holland and retired Justice Joseph T. Walsh, who is the first president of the inn. Members of each of the Delaware inns

assisted in the planning and formation of the Pro Bono Inn. The officers and members of the Melson Arshf Inn generously hosted the first monthly meeting of the Pro Bono Inn in September 2004 and continue to be a resource for the Pro Bono Inn.

The AIC are designed to improve the skills, professionalism and ethics of the bench and bar. The Pro Bono Inn provides an opportunity for lawyers in a broad range of practice circumstances to meet these objectives and to enjoy the fellowship of an Inn of Court. The Pro Bono Inn's membership consists of members of the judiciary, in-house counsel, transactional lawyers in private practice, senior or retired lawyers, and lawyers who have reduced their practice for family reasons. The members meet regularly to hold programs and discussions on substantive, procedural and ethical issues related to pro bono representation and provide direct pro bono service. The inn's membership also includes law students at Widener Law School and paralegals who join in inn's service activities. Members of the inn have participated in the limited counseling program for pro se litigants in the Self-Help Center at the New Castle County Courthouse, provided representation through Delaware Volunteer Legal Services and been appointed attorney guardians ad litem through the Office of Child Advocate.

The Pro Bono Inn meets monthly in Wilmington for dinner, conversation and a continuing legal education presentation. The inn welcomes interest in membership. Please contact Geoff Gamble at [geoffrey.gamble@usa.dupont.com](mailto:geoffrey.gamble@usa.dupont.com).

— Regina M. Mullen



# Sleep

## Our Duty to Provide Legal Services to Indigent Individuals

In a firm with many lawyers, one can spend time on a labor-intensive case without being missed

Anatole France famously observed that “[t]he law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”<sup>1</sup> In some respects, the disparate impact of an evenhanded law may be unavoidable, but we lawyers, who benefit handsomely from the legal system, have a duty to prevent limited access to legal services from compounding that problem. To that end, the courts and the organized bar have provided numerous opportunities for attorneys in private practice to provide assistance to low-income persons. Young Conaway Stargatt & Taylor, LLP has taken advantage of those opportunities.

**O**ne area where the firm has been active is with the District Court’s Federal Civil Panel, which was formed to provide representation to indigent individuals who file potentially meritorious civil cases pro se. Most of those cases have been brought by prison inmates. Young Conaway has taken two to trial, has two more on the trial calendar, and has another in the early stages of discovery.

The first case to go to trial was *Atkinson v. Taylor*. Atkinson was an inmate at the Multi-Purpose Criminal Justice Facility (Gander Hill), who filed

suit against several Department of Correction officials, alleging that he had been harmed by extended exposure to environmental tobacco smoke (ETS) in his cell. The cause of action he attempted to assert has been recognized by the Supreme Court, but not as Atkinson plead it. Judge Farnan granted a motion to dismiss, without prejudice, and referred the case to the panel. It was reviewed by a Young Conaway attorney who, after several meetings with Atkinson, filed a complaint that properly alleged an ETS claim. The complaint also alleged that

Atkinson had been repeatedly harassed by one of the defendants in his ETS suit, a prison guard, in retaliation for that suit, and that he was otherwise mistreated by prison guards. The case was actively litigated, including five separate case dispositive motions, an interlocutory appeal and a weeklong trial. The jury found that Atkinson was exposed to unreasonably high levels of ETS, but was not entitled to recover on that claim because the exposure did not cause actual injury. It awarded \$100,000 on the harassment claim. The case is now on appeal.

The case was labor intensive, but in a firm with many lawyers, Atkinson's lawyer could spend the time without being missed. Thus, one Young Conaway lawyer, John Shaw, is currently handling two panel cases set for trial this year.

The client in the first case, an inmate who was also being housed at Gander Hill, was assaulted in his cell by another inmate, suffering a broken jaw that required repair with permanent metal plates. Suit against corrections officials for failing to take appropriate precautions was filed pro se in 1994, and was dismissed in the District Court. On appeal, the Third Circuit reversed and ordered that counsel be appointed. After further proceedings in the District Court, a second interlocutory appeal was taken, plaintiff's counsel withdrew and Shaw became involved. He briefed and argued that appeal, and has been handling the case, including four contested motions and contentious discovery, since that time. A four-day jury trial is scheduled for March 2005.

In Shaw's other case, a prison inmate alleges that he suffered permanent vision damage as the result of an attack by corrections officers. Shaw assumed responsibility for the case when the lawyer who had been handling it left the firm and turned it over to him. He recruited two associates, Dawn Jones and Mike McDermott, who now have an early opportunity to participate as principals in discovery, and the three of them are working toward an October trial.

As John Shaw's experience demonstrates, the number of lawyers at a large firm facilitates the sharing of responsibilities in pro bono cases. Young Conaway has taken advantage of its size in its response to a plea from Delaware

Volunteer Legal Services (DVLS) for help in handling custody cases. DVLS is confronted almost daily with requests for help from victims of domestic violence who are engaged in disputes over child custody. The need for volunteer lawyers far exceeds the number the Family Court bar can supply. Assistance must come from the general trial bar as well. DVLS has sought to have several large firms form panels of lawyers who can handle the cases. Young Conaway put together a group of approximately 20 lawyers who expressed a willingness to handle the custody cases. The idea was that, while each attorney would take individual responsibility for cases, a group of lawyers handling one type of case in an area foreign to their everyday practices would develop expertise that could be shared among group members.

The firm's lawyers have also become active as attorney guardians ad litem in the program administered by the Office of the Child Advocate (OCA). Last year 22 attorneys represented the interests of children in 28 cases. The participating attorneys range from junior associates to the busiest corporate lawyer in the firm. Dave McBride, for example, represented three children, aged 7, 8 and 10, who had been placed in the state's custody when their mother was charged with endangering the welfare of a child and offensive touching.

The state placed the children with their maternal grandmother, who later sought custody. The father of two of the children, who had not had an ongoing relationship with them immediately prior to the state's acquiring custody, sought custody of his children and permission to relocate them to his home in Pennsylvania. After proceedings were begun to have the father's circumstances investigated by Pennsylvania authorities, he asserted that under the facts of the case he, as the father, was peremptorily entitled to custody. Thus, he sought termination of the investigation and dismissal of a pending custody petition. Believing that continuation of the investigation would be in the children's best interests, McBride filed a brief arguing that a decision awarding custody to the father would be premature. Along with one of Young Conaway's investigators, he also conducted his own investigation

in Pennsylvania.

A custody decision was deferred, and the case proceeded through a number of hearings and conferences with the court. McBride repeatedly met with the children and the adults in their lives, and had the privilege of watching them clamber through Chancellor Chandler's chambers, where they had been invited while visiting the Chancery courthouse. A little over a year after the case began, Family Court awarded custody of all three children to the grandmother.

Participation in pro bono work is important at Young Conaway, and is considered in compensation and advancement decisions. Young Conaway believes its pro bono clients benefit from its attorneys' efforts. But the firm benefits as well, from the personal and professional satisfaction the pro bono cases provide, and from the experience younger lawyers obtain in handling their cases. ♦

#### FOOTNOTE

1. Anatole France, *The Red Lily*, Chapter 7.



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## A Team Approach to Pro Bono

**R**ichards, Layton & Finger, P.A., has, since its founding, had a strong tradition of encouraging its attorneys to become involved in pro bono and community activities. During a period of rapid growth in the 1980s and 1990s, however, it became harder to involve our new attorneys in community activities. A number of factors were at work. Most importantly was the demand of our clients. No one seemed to have time. Second, many of our attorneys are not from Delaware and thus had no vested interest in the community. Third, as the firm grew, it became departmentalized, making it difficult to develop a cohesive firm-wide program. The result was a languishing pro bono program.

Several years ago the firm embarked upon an ambitious program to reverse these trends. The idea was to expand the pro bono program, to involve all attorneys in some form of community service, and to decrease the probability that associates would leave the firm and the community. First, the firm broadened the definition of pro bono activity to include community service so that all work, not simply legal service, in support of local non-profit organizations was included. Thus, raising money, serving on a board of directors, or any other community service activity counted. Second, we decided to develop programs that integrated associates from all departments to work on similar projects. We wanted our bankruptcy lawyers to interact with our corporate lawyers and litigators to interface with transactional lawyers in a team-like environment. The third step was to develop specific projects that were conducive to the work schedules of our attorneys and to our team approach. We looked for programs that could be completed within 20 to 40 hours and could be scheduled to limit interference with ongoing client matters.

Once we identified the projects, the final step was the creation of a team to work on a project — a group of attorneys working under the direction of one

or more partners who would specialize in handling a specific practice area. After identifying the project, we focused on promoting, recruiting, and training the team members.

Our new approach began with the creation of the Child Advocacy Team, a group of attorneys who represents the interests of children in child welfare proceedings in the Family Court system. The team members are trained by the Office of the Child Advocate and each represents the interest of a separate minor child. The team meets quarterly over lunch to share their experiences and seek advice from fellow team members about their proceedings. The team leader is a director who enthusiastically



encourages team participation and who has brought together approximately 15 attorneys from all firm departments.

In one matter, Allen Terrell and Brock Czeschin were appointed guardians of two brothers. Both parents had passed away and no family member assumed the boys' care or presided over their parents' estate. Mortgage payments had not been made on the parents' home since their deaths and foreclosure proceedings were underway. Allen and Brock immediately sought to enjoin the foreclosure. After the court enjoined the foreclosure sale, the guardians retained a realtor and marketed the house for sale. The house was sold a few months later and Allen and Brock were able to ensure that the children received some of the sale's profits for their care.

A second team, modeled on the first, works closely with Delaware Volunteer Legal Services (DVLS) to handle pro-

tection-from-abuses cases, also in the Family Court. Members represent spouses seeking to obtain protection from abuse orders and agree to be "on call" for a few Fridays each year. This team also gathers quarterly to consider evolving issues and identify areas for additional research and review. Members of the team then share their research results or findings with DVLS to assist all the dedicated Delaware attorneys handling these matters.

One of our team members, Stacey Smith, a transactional attorney, recently succeeded in obtaining a Protection from Abuse order for a woman being beaten by her husband. Neither the petitioner nor the respondent spoke

English thereby necessitating the use of a translator. Stacey, a novice litigator, made the decision not to use an eyewitness's testimony and instead relied on other physical evidence, which she felt was strong enough to obtain the protection order. Her judgment was validated when the court not only issued the protection from abuse order but

also temporarily awarded custody of the couple's three children to the petitioner along with a determination of support costs. Stacey described the entire experience as rewarding, from the smile and relief of the successful petitioner, to the kind words of appreciation from a victim's advocate.

Working with DVLS, a third team was established to provide wills and estate planning for elderly individuals who cannot afford to obtain an attorney. Members of this team receive extensive training and are assigned cases by DVLS. As with other teams, the members come from all departments but this particular project has special appeal for many of our transactional attorneys who are not interested in appearing in court.

Christine Morabito and Michelle Quinn have described working with DVLS to prepare wills for people in need as "very fulfilling." "We are able

to bring comfort to people who, while they may not have much, want to provide for those who have shared in their lives, whether it be a niece who has cared for them when they are ill, or a church that has become their family over the years. The smiles and words of thanks we receive in exchange for our assistance is a great reward."

Finally, the firm has established a relationship with an inner-city school, Bancroft Academy. We contribute to the school's art program and each school year display student art in our conference center. As a result of that relationship, a fourth team developed to act as mentors for students. We have approximately 34 associate and director attorneys who mentor fifth and sixth graders each week in reading and math. These attorneys enjoy the non-legal nature of their assistance and the prescribed and predictable schedule of mentoring sessions. This team also meets every three months to share their experiences and

identify any particular program issues that are then shared with the teachers coordinating at Bancroft.

This year I have been mentoring a sixth-grade student in reading. Each week we work on different exercises to develop her comprehension skills and build her vocabulary. The broad smile on her face when she summarizes a paragraph on her own reveals the progress we have made.

The team concept has worked well because associates enjoy the interaction of working with other attorneys within the firm on similar projects. Knowing that there is a group of attorneys handling similar matters makes it much easier to ask questions and obtain advice. As a result, there has been much more interaction between attorneys of different departments. The firm's long-standing service to the community is also simply more apparent and obvious to all at the firm since participating attorneys lunch with colleagues and learn about

their individual efforts. The resulting impact on firm culture has been palpable.

Other attorneys at Richards, Layton & Finger elect to handle other pro bono cases. A number of attorneys represent non-profits, perform legal services on a case-by-case basis, or represent prisoners in federal court proceedings.

Attorneys receive billable credit for both pro bono and community service work. Hours are monitored by a Pro Bono and Community Service Committee to make sure attorneys are not overwhelmed by their pro bono efforts. Community involvement is also a criterion for admission to the firm.

The most rewarding aspect of the firm's recent focus on pro bono activity is the fact that 100% of our full-time associates at the firm and most of the firm's directors are now actively involved in some pro bono or community service activity. Most importantly, our attorneys have more of a connection to our community. ♦

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## An In-House Counsel's Perspective on Delaware Pro Bono Work

I am an in-house lawyer who occasionally performs pro bono work in the Delaware courts — and likes it. This article attempts to explain why some of my friends, and perhaps others, find this to be so unusual, and offers a roadmap for making it less so. When I refer to pro bono work in this article, I mean the legal representation of indigent clients in Delaware. Depending on how one defines pro bono work (Delaware's definition is really quite broad), the term has been used to encompass a lawyer's volunteer work on school boards, churches, civic associations and the like. However, this article is about in-house lawyers providing legal assistance to indigent clients in Delaware.

### The Pro Bono Experience

My pro bono efforts have given me the opportunity to provide assistance to families and children who might otherwise be overwhelmed by the system. For instance, I represented two boys, aged ten and eleven at the time, in a dependency/neglect proceeding through the Office of the Child Advocate (OCA). The boys had different biological fathers, the same biological mother, but had been raised in different households, and for a good portion of their childhood they rarely saw each other. Shortly after they were reunited in their common mother's residence, an incident occurred resulting in the state assuming custody of both children. Foster care did not work out, and the boys were subsequently placed with different, paternal-side family members. In some respect, the boys were as different as night and day, but they loved each other and strongly desired to be together. We developed a very positive relationship with the Delaware Family Services (DFS) worker and through that succeeded in changing the placement of one of the boys to a family member who eventually became his guardian. Much of my "work" did not occur in the courtroom, but rather was spent meeting with the boys, family members, the DFS worker, teachers, and social workers. The most gratifying aspect of this representation was witnessing the brothers resuming and strengthening their relationship and, in the course of just over one year, a dra-

matic and positive transformation of one of the boys, both behaviorally and academically. Under the circumstances, the result was about as good as one could have hoped for.

A second "real life" example is actually a mosaic of experiences from various protection from abuse (PFA) proceedings. Delaware Volunteer Legal Services (DVLS) hands me cases that often are fairly straightforward on the facts, but the matters are not resolved consensually because the respondents are belligerent, unyielding (and, quite frankly, completely uninformed about the process). The respondents appear to be in control of the relationship with



petitioners and have no intention of yielding that control now. However, the respondents are also unrepresented. The hearings themselves last 45 minutes or so, delayed primarily by long-winded, untutored diatribes by respondents, and the petitioners obtain the requested relief. Here again, the most satisfying element is not what occurs in the courtroom, but what occurs outside the courtroom. The gratitude and relief displayed by the petitioners and the petitioners' supporting family members are genuine and stark. For the moment, and for the next several months, the petitioners have gained a modicum of control over their own life and the lives of their children.

### Opportunities

We are blessed in Delaware to have many agencies through which in-house counsel can render pro bono services in Delaware. Through DVLS, Delaware and non-Delaware lawyers can sign up for litigation or transactional matters, depending on their preference. The

most common litigation opportunity is to represent petitioners in PFA proceedings in Family Court. DVLS even offers different flavors of this type of work. One can pick a Friday or two in advance over the course of a year and simply show up to handle cases that will be distributed that day, or one can agree to be on a list to receive a case less predictably, but at least with a few days' advance notice before a Friday hearing. For both the in-house litigator and the in-house commercial lawyer, this pro bono opportunity offers a chance to get back into court and actually say something. The transactional opportunities through DVLS include, among other things, assisting (typically) elderly clients draft wills, living wills, and durable powers of attorney. Many in-house commercial lawyers find this type of work to be more palatable than litigation.

Another opportunity is to volunteer with the Office of Child Advocate (OCA) to represent minors in dependency/neglect proceedings. These types of cases tend to require a substantial commitment (typically, scores of hours over the course of more than one year). This is an opportunity not only to get into court, but also to develop a meaningful relationship with the client over time. Unfortunately, at least until the Delaware Code is changed or some clever lawyering is advanced, this course is generally not pursued by in-house counsel who are not Delaware attorneys, due to statutory restrictions explained below.

A third pro bono opportunity, of more recent vintage, is to assist pro se clients through the Landlord-Tenant Self-Help Center. For the schedule-conscious lawyer, the Self-Help Center option offers the advantage of a defined time commitment (typically two hours' worth of consecutive, fifteen-minute meetings).<sup>1</sup>

### Roadblocks & Solutions

There are plenty of reasons why Delaware lawyers in private practice struggle to find the time to do pro bono work in Delaware. Many in-house counsel face those same obstacles, plus a few additional roadblocks that are unique to in-house lawyers. First, many

in-house lawyers are not Delaware lawyers. Right off the bat, that eliminates, for all intents and purposes, a sizable number of in-house counsel from the ranks of possible volunteers to represent minors in dependency/neglect proceedings through OCA. Second, some corporate offices are not located in downtown Wilmington, which can complicate arranging for meetings with clients, as well as the filing and serving of pleadings. Similarly, many in-house lawyers are commercial lawyers rather than litigators and may feel inhibited about representing a client in a court proceeding. Finally, support staff for in-house lawyers also may not be accustomed to filing and service procedures, including recent electronic filing requirements.

For most roadblocks, however, there is a solution. Non-Delaware lawyers can still volunteer through DVLS by virtue of a special admission process under Supreme Court Rule 55. We have found the Delaware Supreme Court justices to be extraordinarily accommodating in scheduling times to admit non-Delaware in-house lawyers under this Rule to facilitate their rendition of pro bono services. Potential liability exposure to the corporate employer is mitigated by volunteering through DVLS, which maintains malpractice liability insurance covering not only the individual volunteer lawyer, but also that lawyer's employer. For non-Delaware lawyers who may wish to represent minors in dependency/neglect proceedings through OCA, the hurdle is a little bit higher. Family Court can only appoint Delaware lawyers to be guardians ad litem under 13 Del. C. §701(c), but the statutory indemnity provision under 29 Del. C. §9008A arguably applies to *any* attorney acting within the scope of his or her "appointment." Query whether the Family Court judge could appoint a non-Delaware attorney to assist the guardian ad litem such that the statutory indemnity provision would apply to both attorneys.

Perhaps the greatest stumbling blocks in-house lawyers face are that many are not litigators and do not have support staffs familiar with day-to-day litigation forms and procedures. I would suggest that the in-house lawyer

or legal department partner with a law firm (presumably a law firm with which the company already has an attorney-client relationship) in order to utilize the law firm's support staff. I can say from personal experience that this arrangement is very salutary. I suspect that the law firm may also have an interest in assisting its business client in this pro bono capacity as well. However, it is not just the support staff at a law firm that may be of assistance to the in-house lawyer. Associates and summer associates employed by the law firm may also be available for research projects to the extent they are needed.

Finally, but certainly not least of all, through the good imagination and graces of Justice Holland, Justice Walsh and Geoff Gamble, we are well into the inaugural year of the newly sanctioned Delaware Pro Bono Inn of the American Inns of Court. This inn (a one-of-a-kind inn in the nation) provides a truly unique opportunity for lawyers who otherwise may be reluctant to engage in pro bono services, including in-house lawyers in particular, to meet and learn from Delaware judges, pro bono service providers, seasoned practitioners and even a few in-house counsel in an environment that only an Inn of Court can provide. I would *strongly* advise any in-house lawyer who may be considering pro bono work in Delaware to consider joining the inn (feel free to contact me or Geoff Gamble if you would like to).

#### Setting Up the In-House Legal Department Pro Bono Program

As well intentioned as any individual lawyer may be, he or she may some-

times need a little encouragement from the rear to undertake yet another project such as representing an indigent client in Delaware. Here are a few suggestions to overcome that reluctance and to generate a network of support that is likely to facilitate pro bono services from the in-house ranks:

- Invite DVLS or OCA to come to your legal department and make a presentation or provide training (CLE credits are available).
- Circulate a sign-up list of attorneys who might be interested in providing pro bono services.
- Get non-Delaware lawyers admitted under Rule 55.
- Bring a colleague along to a Family Court hearing or pro se meeting so that he or she can observe first hand how things work.
- Send the sign-up list to DVLS, OCA and the Self-Help Center so they can add that list to their distribution lists for periodic e-mail notifications regarding potential new matters.
- Consider partnering with a law firm.

In-house lawyers are as capable as anyone else to perform pro bono work in Delaware. Perceived (and real) obstacles can be overcome — if you have the will to do so. ♦

#### FOOTNOTE

1. Of course, in-house lawyers can also contribute financially, and encourage their employers and colleagues in their respective legal departments to contribute, to the annual Combined Campaign for Justice fundraiser, which raises money not only for DVLS, but also for other excellent organizations that provide legal services to the indigent directly through paid staff attorneys, such as Community Legal Aid Society, Inc. and Legal Services Corporation of Delaware.

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## Rules for the Good Samaritan Lawyer

**M**any attorneys were attracted to the legal profession, at least in part, by the opportunity to serve the public. A noble few spend their entire legal careers in service to those members of the public who lack the means to obtain legal services on the open market. Others turn to providing services to the poor after careers in private practice or the corporate sector. But there are opportunities for lawyers working in private law firms to provide pro bono services. This article will explore some of the issues that must be addressed by practitioners when developing a pro bono policy for a mid-sized firm.

When considering pro bono representation, it is important to remember that the ethical rules and obligations that apply to paying clients apply with equal vigor to nonpaying clients. While good Samaritan statutes may provide some protection from malpractice claims for physicians rendering aid in certain circumstances, attorneys enjoy no such protection. Nonpaying clients cannot be given short shrift simply because they are not paying you.

### Screening of Potential Pro Bono Clients

To perform legal services on a pro bono basis, the private practitioner must have some method of screening potential clients. At a minimum, screening involves the following: 1) a check for conflicts of interest; 2) an analysis (and verification) of the potential client's inability to pay; 3) a determination that the attorney is qualified (or willing to become qualified) to assist the client with the issue presented; and 4) an analysis of whether the attorney's practice will allow the attorney to spend the time necessary to represent the pro bono client.

While the attorney must take responsibility for checking for conflicts and for the analysis of the attorney's qualifications and available time, there is no reason that the attorney should attempt to conduct the financial screening. Early in my career, I made the mistake of attempting to select my own pro bono clients. The result was untold hours spent on the telephone listening to tales of woe as potential clients attempted to

make themselves sound poor enough and desperate enough to convince me to represent them for free. This process was demeaning for potential clients, painful for me, and time consuming for all concerned.

While I continue to represent clients on a pro bono basis, I no longer conduct the preliminary screening. Instead, I accept referrals from agencies that do the screening for me. The agencies from which I have accepted referrals include Delaware Volunteer Legal Services (DVLS) and the Office of the Child Advocate (OCA).



DVLS screens potential clients for ability to pay. Files generally arrive nicely organized with an intake form completed by a student from the Widener University School of Law. In addition, students enrolled in the clinic may be available to assist with aspects of the representation of DVLS clients.

The OCA also screens cases. While ability to pay is not an issue (the clients are all children), they do review the files to verify the need for a guardian ad litem. Files from the OCA also generally arrive well organized. In addition, attorneys serving as guardian ad litem through the OCA are given a Family Court Order authorizing the release of all sorts of pertinent information. This order is very useful in representing children.

Several years ago, I was asked by DVLS to represent a mother who had separated from her husband. Although she had been the primary caretaker of the parties' children throughout their marriage, the husband simply threw her out of the house, keeping the children with him.

The long and bitter custody battle was followed by a property division hearing. At the conclusion of the property division hearing, the trial judge indicated that she would make an award to the wife for counsel fees. I explained to the court that I represented the wife through DVLS and that, consequently, she had not incurred any fees. The trial judge was of the opinion that the husband should not benefit from wife's ability to obtain free counsel and indicated that she would direct husband to pay me fees based on what I would normally charge for my services. I thanked the court but explained that my contract with DVLS did not allow me to be paid. The trial judge then directed husband to pay \$1,100 in fees to DVLS.

The husband appealed to the Supreme Court of Delaware. After briefing, the Supreme Court affirmed the trial court's decision, finding that the trial court's goal of curtailing of excessively litigious conduct justified the fee award despite the fact that my client was not paying any legal fees. The case was reported as *Lee v. Green*, 574 A.2d 857 (Del. 1990). Fortunately, that is the only pro bono case I have handled that went for appellate review.

### Firms Should Develop a Pro Bono Policy

A mid-size law firm should develop a policy with respect to pro bono services. Sole practitioners and those in small firms may be able to provide pro bono services as guided by their own conscience. In a larger firm, however, it is likely that there will be a difference of opinion as to the amount of pro bono service that is appropriate. For this reason, a mid-size firm needs a uniform policy concerning pro bono services.

At a minimum, the policy should address: 1) the number of pro bono hours expected (or permitted) annually; 2) How, if at all, pro bono hours are to be considered in the firm's compensa-



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tion scheme; and 3) the responsibility for payment of disbursements incurred in pro bono cases. The policy should also set forth which attorneys have the authority to assign pro bono work to associates or others employed by the firm.

While there can be no one policy that is correct for every firm, consideration of these issues should lead to a policy appropriate to the firm. The development of a policy should facilitate the acceptance of pro bono work, because every attorney knows and understands the rules set forth in the policy.

An additional benefit to having a pro bono policy is that it can be used as a foil to fend off requests for pro bono services. It is often difficult to say "no" to DVLS or the OCA when they come looking for volunteers. It is useful for an attorney to be able to say that the attorney has already committed to the amount of pro bono work permitted under the firm's policy.

### Pro Bono Pitfalls

While pro bono services can provide some of most personally rewarding work of one's career, there are some potential problems inherent to working with pro bono clients. Fortunately, most of these problems are easily addressed.

Pro bono clients are often grateful beyond words for the help you give them. Most, however, have no experience with lawyers, either professionally or socially, and do not understand that an attorney's time is money. In their effort to be cooperative, they may seek appointments or telephone contact far more often than a paying client would, or they may deluge you with paperwork.

Often this zeal can be channeled into more productive pursuits. For example, a client who calls daily to report each event or thought, no matter how trivial, might be asked to maintain a written log of such thoughts and events and to share that log at periodic intervals (verify the client's literacy level before

suggesting such a course). The client will be happier because they are able to provide a meaningful contribution to the preparation of the case and the lawyer will be happier receiving the information in a form that takes less time than daily telephone calls and conferences.

Another potential problem is the skeptical pro bono client. Because of the widely held belief that anything one gets for free cannot be of great value, some pro bono clients may be hypersensitive to how they are treated by attorneys and staff. While the majority of nonpaying clients are grateful for the assistance, some seem to focus a great deal of energy trying to accumulate evidence that they are not being well treated. Phone calls cannot be returned fast enough, office conferences are never long enough, and any attempt to explore a settlement is seen as proof that the attorney does not care and just wants to stop providing services to the nonpaying client.

The problem of the skeptical client can best be avoided by sharing information at the outset of the representation. Someone should explain to the client that the attorney will not always be available to take telephone calls, but that calls will be returned as promptly as practicable. Clients should be informed that most cases settle and that attorneys have a duty to explore settlement opportunities, but the client will always make the decision. Introducing the client to support staff may also help prevent the client's feeling neglected.

If communication fails, it may be helpful to involve someone from the referring agency to help solve the problem. Sometimes clients need to have a reasonable level of service described for them by someone other than the attorney providing the service.

Doing pro bono work provides an opportunity for attorneys to serve the public in a meaningful way. The development of a pro bono policy for the firm, coupled with screening of pro bono opportunities, will maximize the chances that both the pro bono attorney and the client will be satisfied with the experience. ♦

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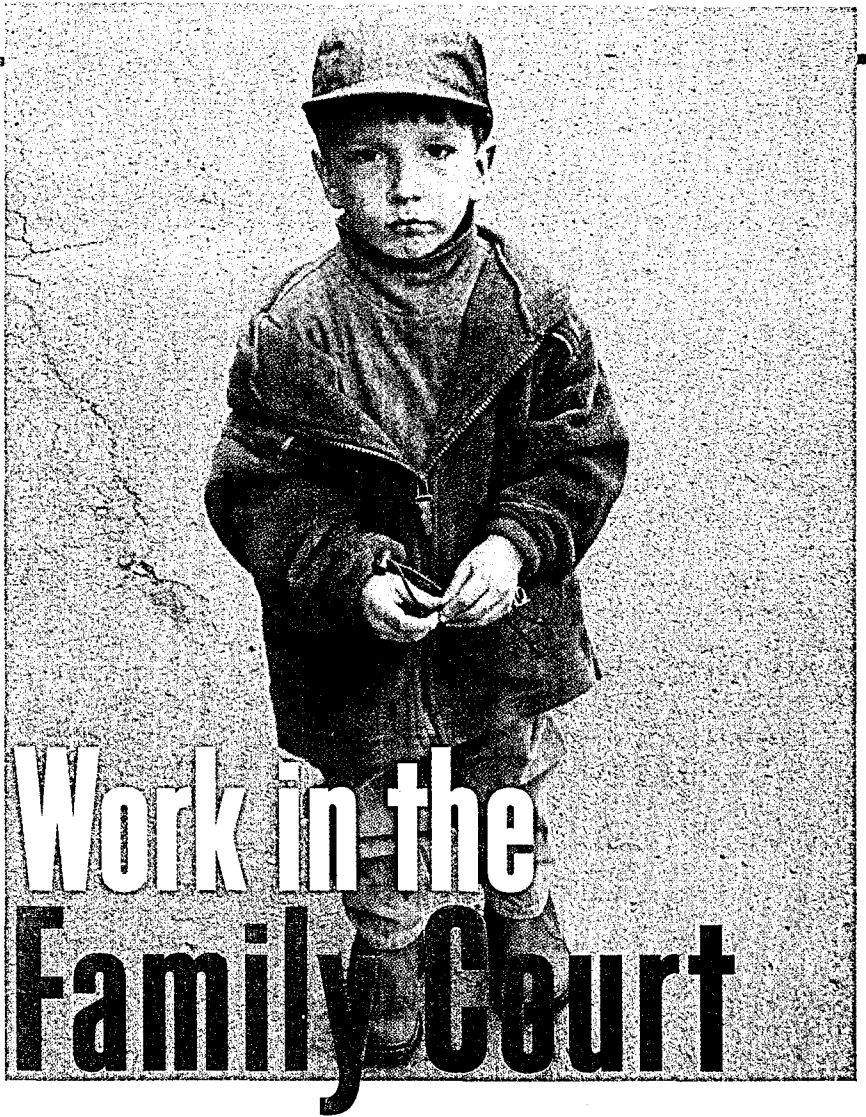
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# Pro Bono Work in the Family Court

The Office of Child Advocate currently represents more than 450 children, largely due to the contributions of members of the Delaware bar.

Pro bono work is critical to the everyday functioning of our court to an extent not presented any other Delaware court. There is, and will always be, an overwhelming need for representation in Family Court, where approximately 75% of litigants are self represented. Fortunately, The family law bar in Delaware is second to none when it comes to donating its time and services to pro bono work. The Delaware bar has risen to the challenge, volunteering time and energy to take on the representation of Delaware's families and children. The court appreciates and recognizes your contributions. On behalf of the court and on behalf of Delaware's families — thank you!

**I**t goes without saying that Delaware attorneys provide an invaluable service to the court when they undertake the pro bono representation of our litigants. The wheels of justice turn more smoothly and more quickly. But benefits to the court from such selfless work pale when compared to that received by the mother or father who is given a voice to fight for her or his child; the child who is given a champion; or the husband or wife

who has been empowered to end the cycle of abuse. Make no mistake, it is the attorney who has answered his or her calling who is rewarded by making a difference in someone's life.

The Honorable Michael K. Newell, the newest member of our Family Court bench, like many family law attorneys, donated his legal services in Family Court matters on countless occasions. He notes: "Pro bono work provides invaluable assistance to the

client, the community and the court. As a practicing attorney it was always rewarding to be able to help someone in need of legal assistance when they could not afford it. Unfortunately, the demand for pro bono services at times exceeds the supply of pro bono attorneys. As a result, some attorneys get more than their share of pro bono assignments. However, in my experience the family law bar has always stepped up to the plate when asked."

The generosity of the Delaware bar in this respect is overwhelming. Delaware lawyers have volunteered countless hours responding whenever a judge picked up the telephone to ask. Many family law attorneys have volunteered to act as a special master to hear visitation matters. Prior to 2001, members of the Delaware bar signed up to be appointed by the court, often without compensation, to represent parents in termination of parental rights and dependency/neglect proceedings. In 2001 Family Court contracted with its first of eight attorneys to provide legal representation to indigent parents in termination of parental rights proceedings. In recent years, agencies such as Delaware Volunteer Legal Services (DVLS) and the Office of Child Advocate (OCA) have recruited members of the bar to volunteer their legal services pro bono.

And, once again, our bar has risen to the occasion. The OCA has a statutory duty to provide legal representation to advance the best interests of the children whom they represent in Family Court proceedings. The OCA currently represents more than 450 children in large part due to the contributions of members of the Delaware bar. Family Court's Court Appointed Special Advocate (CASA) Program provides trained non-attorney volunteers to represent the best interests of abused and neglected children in court proceedings. These volunteers are represented by four CASA attorneys statewide. During the last fiscal year, 222 CASA volunteers served as guardians ad litem for 613 abused and neglected children in the Family Court.

Despite the tremendous contributions of the Delaware bar through its pro bono efforts, many litigants still must navigate the legal system without

the assistance of counsel. In an effort to bridge the gap when litigants are not eligible for legal aid and cannot afford an attorney, the court has developed programs and initiatives aimed at addressing the needs of its self-represented population. In 2000, Family Court opened a resource center for self-represented litigants in Kent County and subsequently expanded this service statewide. Family Court Resource Centers in Kent and Sussex counties and the Self-Help Center in New Castle County provide litigants with a central location where they can access resources they need to help guide them through the legal process and to deal with the emotional challenges resulting from their legal circumstances. The Resource Centers' function is part of a systems approach to enhancing a litigant's access to the court while maximizing cost effectiveness, individual accountability and the development of links with other existing community services. The Family Court assisted over 40,000 people statewide during the last fiscal year through the Resource Centers.

The court's pro se litigant program has enhanced the public's access to the court, has enhanced litigants' participation in the court process and has contributed to more efficient court opera-

tions. The bar has donated its services in this arena as well. The Family Law Section of the Delaware State Bar Association has provided advice in the development of pro se packets for litigants to use in to the course of representing themselves. Members of the bar have assisted self-represented litigants in the New Castle County Self-Help Center. Experienced family law practitioners have trained non-family law attorneys to be able to provide self-represented litigants with procedural assistance during the pendency of their court matters.

Despite the efforts of the court and the tremendous response of the Delaware bar, the need for attorneys to volunteer their time and services to pro bono work remains high. When we took our oath to practice law, we were entrusted with a tremendous privilege to speak on behalf of others. But with that privilege comes duty and responsibility. Part of the privilege of becoming an attorney is the duty to represent those who may not be able to afford to retain an attorney. Not only will the court and your client appreciate your efforts, I guarantee that the personal rewards that come from representing someone in need will far outweigh any monetary compensation that you may have forgone. ♦

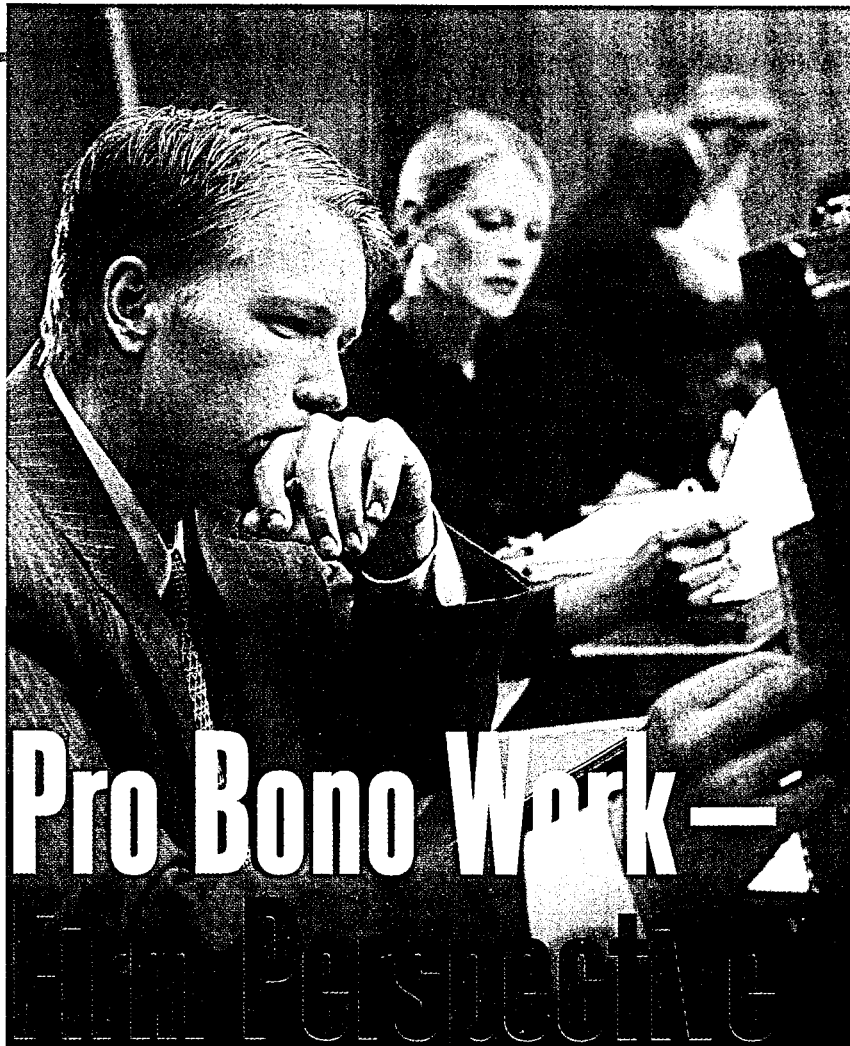
## The Office of the Child Advocate

The Office of the Child Advocate (OCA) was created by the Delaware General Assembly in June 1999 to safeguard the welfare of Delaware's children. Its duties include child welfare policy change, legislative advocacy, service on committees and commissions, training, community awareness and legal representation of children including the representation of abused and neglected children.

Since OCA's creation, 1074 children have received legal representation. Volunteer Delaware attorneys have represented 911 of those children. As of December 31, 2004, 514 children were being actively represented through OCA, and 415 of those children were in the custody of the Children's Department.

All attorneys licensed to practice law in Delaware are eligible to volunteer. Retired and inactive members are also eligible to volunteer under Delaware Supreme Court Rules 69(d) and 69(f). Currently OCA has about 350 attorneys on its roster. 307 currently have cases and the remainder are either temporarily inactive or waiting for a new assignment. Only 51 of the attorneys are family law practitioners. OCA provides initial training, advanced training and significant supports to its volunteers. CLE credits are provided for all training. In addition, attorneys can receive 1 CLE credit for every 6 hours of pro bono service (travel excluded) up to 6 CLE credits per reporting period. Finally, volunteers are indemnified from liability under the OCA statute. 29 Del. C. § 9008A. The greatest reward is feeling like you made the difference in the life of a child. If you don't believe me, just ask our volunteers.

— Tania M. Culley



# Pro Bono Work — The Small Firm Perspective

When did it  
become popular  
to be cynical  
about attorneys  
and their  
intentions?

It was somewhere in the 1960s when I first thought about being a lawyer. I was writing a grade school essay on what I wanted to be when I grew up. It was in the midst of the civil rights movement and I was very taken with the spirit of activism then prevalent. Lawyers were committing their time, many without pay, to positively influence society, crusading for the rights of those who were unable to access the legal system to fight for themselves. I recall thinking how wonderful these individuals must feel having taken a stand on what was right and then acting on it — Camelot in the hallowed halls of the Supreme Court! It was all very noble. Lawyers were heroes not the butt of bad jokes. I had not yet heard the term “shark” or “ambulance chaser” applied to attorneys. On the contrary, lawyers were perceived to be motivated by high ideals and a sense of justice as opposed to profit.

I honestly don't know where things went off track. When did it become popular to be cynical about attorneys and their intentions? Is it possible that as the profession swelled in ranks we began to value dollars more than ideals? Do we really have to make the choice between the two?

We have an amazing number of opportunities in our profession to give something back to society. Some of us do pro bono work because we feel that, as lawyers, we have an obligation to assure access to the legal system to the economically disenfranchised. I assume we all became lawyers because

of our own commitment to the legal system and our belief that it is the most important institution assuring justice in the world today. Yet that impact is destroyed if the access to the system is denied to those that need it most — those that cannot afford it. Whether the cause is representing indigent parents in a dependency/neglect case in Family Court, a spouse victimized by abuse or a child in foster care — our legal system and process is strengthened when lawyers donate their time.

As a lawyer in a small firm, I know the demands on our time are significant. You can argue that the grind of the daily practice and commitment to our families leaves little time for pro bono activities. Yet I have found that it is easier than you may think to incorporate this service into our practice and benefit from it both professionally and personally.

I have had countless opportunities to participate in a number of different pro bono activities. Initially I began working with Delaware Volunteer Legal Services (DVLS), providing help in various family law matters and representing abused spouses in protection from abuse proceedings in Family Court. Along the same lines, I have volunteered for the Attorney-in-Court segment of Child Inc.'s Victim Advocacy Program. Representing children as an attorney guardian ad litem through the Office of the Child Advocate (OCA) has become an activity that can break your heart and warm it at the same time, knowing that you have helped to provide a safe, loving environment for a child. One of the new opportunities I have undertaken is providing legal advice to individuals who are acting pro se in Family Court proceedings through the Limited Pro Bono Legal Assistance Program. In all these activities I have had the privilege of knowing that my representation has helped the judicial system to achieve a fair, just result and has helped to expedite the matter through an already crowded system.

I am not sure how many attorneys are aware that you can actually receive CLE credit for performing pro bono activities. CLE Rule 8(D) provides that

an attorney can receive up to six credit hours per biannual reporting period earned at the rate of one hour of CLE credit for every six hours of uncompensated legal services. For an attorney in a small firm the benefits of this rule are significant. First of all, you can earn six hours of CLE credit without having to leave your office for a full day. You earn the hours throughout the two-year reporting period just by doing your job. No returning to the office to find 25 missed phone calls and a stack of mail — the price you have to pay to attend a full day seminar. You don't miss a full day of billable hours either. For a practitioner in a small firm the benefits are obvious. In order to earn the maximum of 6 CLE hours you spend 36 hours spread over the course of a two-year period, much of it without leaving your office or disrupting your daily routine.

Of further benefit is the experience you get in expanding your practice. Most of us in small firms have a more general practice. You can expand that practice by doing pro bono work and using the mentoring programs available from the various agencies. For example you can volunteer to take a custody case in Family Court from DVLS and they will provide you with a mentor if you need one — an experienced family law practitioner to help in all aspects of the case. You get to take on a new matter with all the support of what amounts to an experienced partner to discuss ideas and help you prepare. The mentor can help you organize your entire case and this can be invaluable training. This also helps in expanding your practice, as you may now feel more prepared to take on these matters privately and for a fee.

You may also decide to volunteer with OCA and take on the responsibility of becoming an attorney guardian ad litem in a pending custody or dependency/neglect matter in Family Court. The OCA provides its own training (for which you receive additional CLE credit) before assigning you and is always available to handle questions and help out with whatever issues may arise. Once again, however, you have gained invaluable insight that can help expand

your practice and you have represented the best interests of a child — one of the most rewarding experiences the law provides.

One other positive aspect of doing pro bono work is that it provides positive public relations and good will for your firm and you. Even those you represent for free provide referrals and your service is always appreciated by the courts and the legal community.

Perhaps it is naïve to believe that by doing pro bono we can regain some of the prestige and respect lawyers have traditionally enjoyed. In my 18 years of practice I have seen the rewards and I know I have made a difference for many people who otherwise would have been shut out of the system. Their hugs and appreciation have been more gratifying than any fee and I have become a better lawyer as well. Please consider volunteering your time. I assure you it will be well worth it. ♦

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## A Small Practice View of Pro Bono Service

It was about two weeks after I had joined the "family practice" alongside my brother and my uncle when I got the call. My uncle was on the intercom, "Alan, there's someone I want you to talk to on line 2." I thought, "Damn, my first lousy assignment as an associate." (OK, maybe that's the PG rated version.) On the line was a nice woman asking if I would be willing to take on a pro bono assignment from Delaware Volunteer Legal Services (DVLS). Considering that I did not have much on my plate at the moment, I said it would be my pleasure.

Hanging up the phone, I found my uncle standing at my desk. "You did say you would help, didn't you?" I nodded yes. "That's good," he confirmed. "You'll have as much leeway in this practice as you can handle and it will be very infrequent when I say you have to take this case or that, but you have one rule to live by — if DVLS calls, you will answer." I've been answering, gladly, ever since.

It would be disingenuous to tell you that my pro bono service has given me the secrets to the universe or taught me to love my fellow man without condition or brought a keen sense of my place in this world. Far from it. Pro bono clients are just like regular clients in that they sometimes have unrealistic expectations, they call at inappropriate times, they make unreasonable demands of you, and, at times, they are not particularly appreciative of the fact that what you've done for them for free, you could easily charge someone else an arm or a leg or both.

What my pro bono clients do for me is ground me in the realization that I have (debatable) talents, and that I have been fortunate enough to translate those talents into a venerable and necessary profession. Also, they bring home that, though I may not literally "owe" anyone but my loan providers for the privilege of being a lawyer, it is nonetheless incumbent upon me to use

this opportunity to not only earn a living, but also to live up to some of the ideals of this honorable vocation. Finally, my pro bono clients remind me that the pursuit of justice should be dictated neither by the size of one's wallet nor the size of one's cause when honest belief in that cause is coupled with necessity.

Understanding and encouragement from the other members of our firm, each of whom has done and continue to do their part in the pro bono arena,

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less burdensome in  
both time management  
and finances.

makes the impact of my pro bono efforts less burdensome in both time management and finances. That is not to say that pro bono representation does not have an impact — it does. It is simply that I balance the effects on my practice and personal bottom line with the incalculable advancement of what I feel is a greater goal of this profession — to help, without reservation, those who have the greatest need.

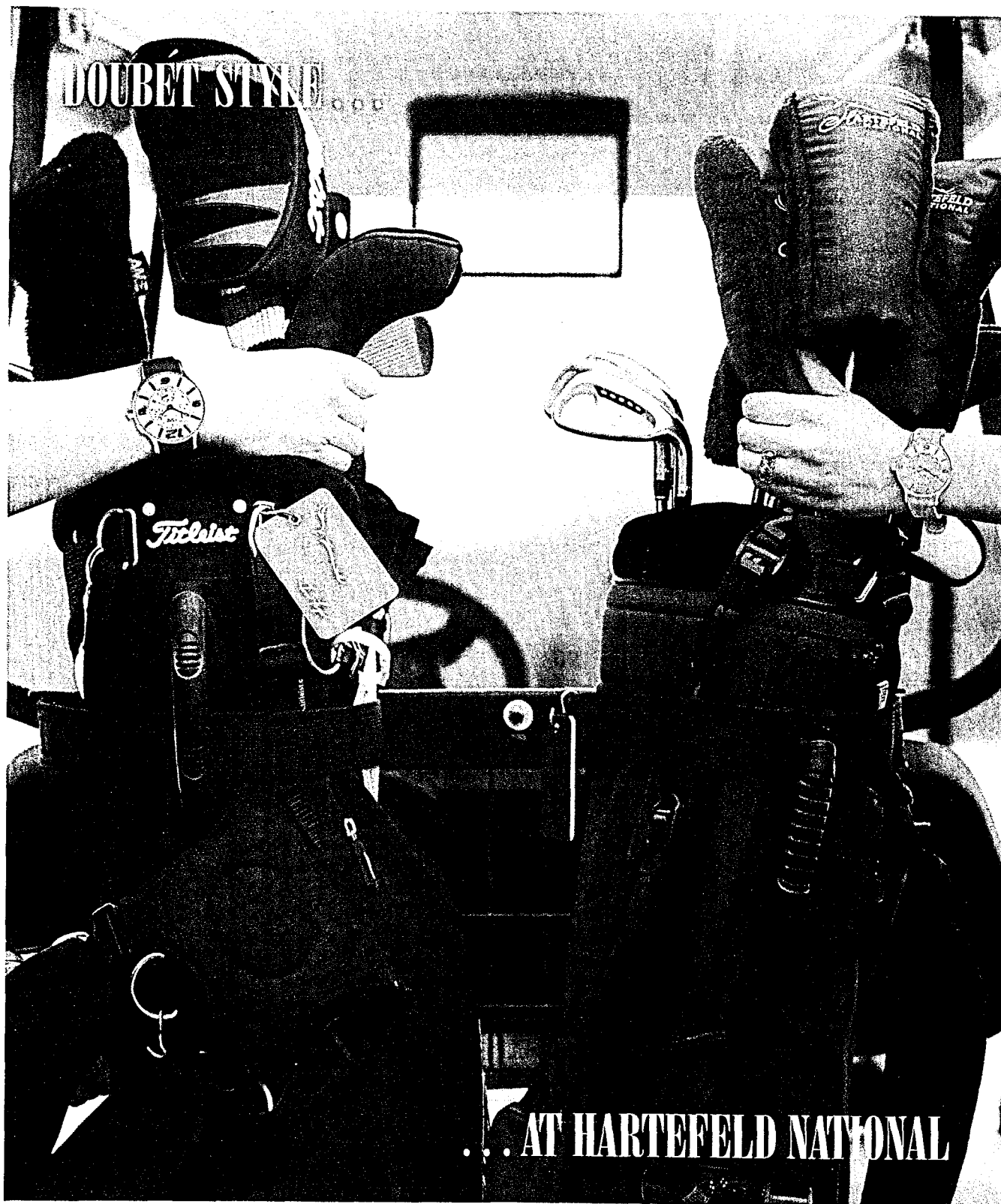
It is a fallacy that solo practitioners and small practices are too busy keeping

their heads above water to consider taking pro bono cases. It is my experience that those are the very lawyers who are best positioned to both recognize the need and, by addressing that need, advance the perception and reality that lawyers not only give back to the community but are an essential part of the community. And being a part of the community is one element that generates fee paying business for small firms.

In addition to work referred by DVLS, I regularly consult with people who can't afford an attorney. These are people who are either truly in need or feel wronged and need guidance. Even people who I turn away seem genuinely thankful and appreciative. Though I have no empirical proof, I like to think that the good will I generate, whether it be in a short consultation or a more extended pro bono service, will come back to me in spades one day. It is a hopeful, perhaps somewhat utopian thought, but it sustains me and fits well my view of what a lawyer should aspire to be.

I do know that, occasionally, you get a pro bono client who makes it all worthwhile. It is the client who eliminates the need to balance the pressures of practice and service to the community, because the scales are pinned to the side of doing what you can because it feels good, not because it pays well. In my case that was my very first client referred by DVLS.

I helped her with what seemed at the time a relatively inconsequential matter. She had some trouble with a moving company that was supposed to bring everything she owned to her new retirement home. I was her first contact with Delaware. It was resolved seamlessly, without a lot of the hassle. More than four years after the end of my representation she still expresses her gratitude by calling occasionally, referring me clients from among her friends, and bringing in cookies. Those are wages we all should be willing to work for. ♦



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# Pro Bono Cases and the Sole Practitioner

When one of  
my friends  
at DVLS calls,  
I just can't  
say no.

All law offices are busy — and mine is no different. If not, I would be worried. In the solo practice, there are never enough hands and there is never enough time. Like all attorneys, solo practitioners struggle to balance the demands of our new clients with the commitments necessary to help our old ones. But when you are the only one to meet the legal challenges in the office as well as keep the financial pots boiling, one extra client can sometimes feel like one too many. Even with these challenges, I want to help all who come through the door, even when I know they cannot pay me for my time. When one of my friends at Delaware Volunteer Legal Services (DVLS) calls, I just can't say no.

**T**he process is simple; it begins with a call from the DVLS staff who sound so friendly and make the cases seem routine. The call is followed by an e-mail summary and I begin to think that this new client will be an “ordinary child support case” — or the “run of the mill divorce.”

Convincing myself that I can fit it into my schedule, I accept the case. DVLS staff makes it clear that cases are taken for evaluation first and then if accepted, for limited representation on a single matter unless otherwise agreed by the attorney. For me, some of these “limited representations” turn out to

be life-long relationships.

I always try to have at least one pro bono case going at all times. It gives me a balance in my day and reminds me that my life is not so bad. The clients have unique concerns that differ from the rest of my Family Court cases. The circumstances of my pro bono clients add another layer of challenge, not only due to their legal matters, but because they lack the resources others take for granted. It could be just a simple problem of not having a car or a larger problem of a chronic physical ailment that may make it difficult for the

In many cases,  
the client  
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the support.

client to get to the office for an interview. There may be underlying mental health issues or educational limitations. I may have to spend extra time going over issues and explaining options for settlement because these limitations often affect the client's ability to understand the options and make choices.

On the other hand and more importantly, I have found that my pro bono clients are so proud to have me as their attorney, fighting by their side. In many cases, the client has never had an advocate and is grateful for the support. They are always willing to learn how to help themselves and they follow my instructions completely. My pro bono clients have become friends who return frequently and will call with various legal questions, even when they know it is not in my area. I have even received referrals as a result of my pro bono work. It is comforting to know that I have won their confidence and become their friend. ♦

## A Brief History of the combined Campaign for Justice

The Delaware bar's "Combined Campaign for Justice" (CCJ) is a nationally recognized fundraising partnership of the Delaware State Bar Association and Delaware's three legal services providers: Community Legal Aid Society, Inc. (CLASI), Delaware Volunteer Legal Services, Inc. (DVLS) and the Legal Services Corporation of Delaware Inc., (LSCD). These partners work to increase the availability of civil legal services to people of low income in Delaware by increasing the resources available to fund these legal services.

Delaware's legal services providers coordinate the delivery of services through the Delaware State Bar Association's Standing Committee on the Provision of Legal Services to Low Income Persons (LIP Committee). By virtue of this coordination, each organization concentrates on discreet areas of the law, in order to promote efficiency and reduce duplication. The areas served include domestic violence, illegal eviction, fraud, and government misfeasance.

Prior to 1999 each of the three legal service providers conducted their own separate fund-raising drives in the legal community. At that time, DSBA President-elect and LIP Committee Chairperson Donald F. Parsons, Jr. organized an historic campaign to combine their fund-raising efforts. Under Parsons' leadership, CLASI, DVLS and LSCD agreed to jointly raise funds from the bar for three years. The first "Combined Campaign for Justice" kicked off on March 1, 1999.

In their individual annual fundraising efforts prior to 1999, the three partners never raised more than \$175,000 in the aggregate. The first CCJ set an aggressive goal of \$250,000 and astounded everyone by raising \$360,000. This tremendous success attracted the attention of the American Bar Association, and the CCJ won the ABA's prestigious Harrison Tweed Award.

Campaign Co-Chairs Don Parsons, Victor Battaglia and Anne Naczi, along with volunteer lawyer-solicitors from law firms, banks and corporations, established the model for success in the inaugural campaign. The campaign volunteers engaged in solicitation face-to-face and a through a "phone-a-thon."

The partners continued this joint fund raising project with campaigns in 2000 and 2001. Don Parsons again co-chaired the 2000 effort, and he was ably joined by Rod Ward and Jan Jurden as co-chairs. In 2001, Claire DeMatteis and William D. Johnston joined Rod Ward as campaign co-chairs. The 2000 and 2001 campaigns garnered pledges of, respectively, \$389,000 and \$409,000.

In 2002, Charles S. McDowell joined Claire DeMatteis and William D. Johnston as co-chairs of the campaign and the amount raised jumped again to \$436,000. In 2003, Allen M. Terrell, Jr. joined DeMatteis and McDowell as a co-chair of the campaign. In light of the funding crisis caused by the reduction in IOLTA income to the Delaware Bar Foundation, the co-chairs set their sights much higher: \$500,000 — twice the original goal of the first 1999 campaign. The response to the appeal was overwhelming. More than 1,000 donors contributed to the campaign and the campaign goal was blown away when donations exceeded \$578,000!

In 2004, continuing the tradition of having those in line to become president of the DSBA as co-chairs of the campaign, Helen L. Winslow joined McDowell and Terrell at the leadership of the campaign. Working in an extremely difficult fund-raising climate, the 2004 campaign nevertheless raised more than \$560,000.

The 2005 campaign is led by Winslow, Terrell and new Co-Chair David Brown. They are committed to raising the money necessary for CLASI, DVLS and LSCD to continue providing high quality, professional legal services to people in Delaware who might otherwise be without access to justice.

— Charles S. McDowell, Christopher W. White

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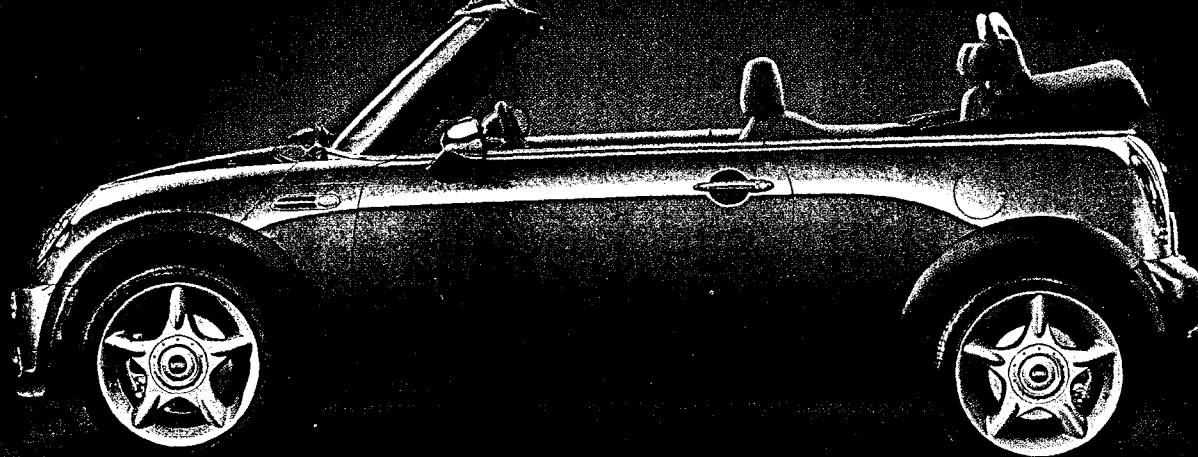
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