

# President's Column

Bonnie Sudderth

In my previous column, I asked a simple question: If we would agree that the lawyer who represents himself has a fool for a client, then why are we spending so much time and money trying to assist non-law-trained pro se litigants in representing themselves in court? If we would agree that, generally speaking, justice is best served by access to quality legal representation, then why not focus our efforts on achieving that? Instead of trying to figure out how to make the courthouse more easily maneuverable to pro se litigants, perhaps we should concentrate on making attorneys accessible and affordable to all persons who seek justice.

The ABA Code of Professional Responsibility states that "the basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer." What can lawyers and judges do to live up to our responsibility to make legal representation accessible and affordable? What's being done now?

At least one law firm, Vinson & Elkins, an international law firm with headquarters in Texas, is trying to answer that challenge. At Vinson & Elkins, every hour an attorney spends working on a pro bono case is recorded and treated as though that time were reported, billed, and collected at the standard hourly rate. There are no asterisks, no differentiation between hours recorded for paying clients and those recorded for pro bono clients when it comes to an attorney getting credit for work performed at the firm. With this approach, attorneys can provide pro bono assistance when needed without having to be concerned with the appearance of decreased productivity or longer work hours to make up for the lost time spent on pro bono matters. Rather than being penalized for pro bono efforts, pro bono hours and community involvement are actually included in the factors to be considered in evaluation and compensation decisions at the law firm.

Does it work? According to the law firm, in 2000, Vinson & Elkins lawyers provided more than 33,116 hours (an average of about 50 hours per lawyer) of free legal services. These services ranged from cases as serious as habeas appeals, death penalty litigation, political asylum, and civil rights cases to matters involving family, juvenile, criminal, elder, mental health, tax, and environmental law, as well as Social Security, pension benefits, and landlord/tenant disputes.

If every lawyer and every law firm in every state in the United States would take a lesson from Vinson & Elkins and step up to the challenge of providing quality and affordable pro bono representation, millions of hours of free legal representation would be available to those in need. This kind of pro bono effort would go a long way toward achieving the goal of access to justice for all persons.

Several states have also taken up the challenge. Many states include a voluntary contribution to pro bono legal services in

their billing for bar dues and license renewals. Most states leave it up to the individual lawyer to add a suggested amount to their payment, but at least two states, Texas and South Carolina, factor a contribution amount into the total bill, requiring lawyers to "opt-out" of contributing if they do not desire to do so. As a general rule, the "opt-out" approach results in more contributions than those allowing an "opt-in." Either way, all across our nation, attorneys are voluntarily contributing millions of dollars to pro bono efforts. Yet, it appears that less than 50% of the lawyers in the nation chose to voluntarily participate in this way.

What can judges do? Obviously, the ethical constraints of most states would prevent judges from offering traditional pro bono legal services. However, that doesn't mean that judges can't contribute. First, judges, as leaders in the legal community, should encourage pro bono representation at every turn. Judges should speak out about the need for attorneys to provide pro bono legal services in order to achieve a fair and accessible justice system for all.

Second, judges should seriously consider selecting a pro bono organization or effort and designating it as their number-one priority for charitable giving. Because medical and health issues affect everyone from every walk of life, there will always be broad support for health-related charities. Americans can always be counted on to contribute to disaster relief. And as long as there are graduates, schools across this country will be able to count on alumni support.

The support base for pro bono organizations, however, is much more narrow. Public support is virtually nonexistent, which is understandable, since few persons outside the justice system can appreciate firsthand the need for legal representation. Not everyone comprehends how vital it is that our court systems provide access to justice, which includes affordable legal representation. But judges do.

So, it's not surprising that, aside from government subsidies, virtually the only funding sources for pro bono charities are judges and lawyers. If we are one of only a few who understand the need to contribute to these efforts, then we need to give more. That's why we, as judges, should focus our charitable contributions on pro bono charities. Give a little to health issues, disaster relief, alma maters, and other worthy causes, but give most where others will not, because if we won't, no one else will.

If we do our part to speak out whenever possible on the need for accessible and affordable legal representation and to dig deeply into our pockets and contribute toward this worthy effort, then the vision of our forefathers of assistance of counsel in our justice system will be realized. And in doing so, we will take a giant step forward in providing justice for all.

