

# **PHILADELPHIA BAR ASSOCIATION**

## **REPORT OF TASK FORCE ON CLE AND PRO BONO SERVICE**

### **I OVERVIEW**

In October 2005, Chancellor-Elect Alan Feldman of the Philadelphia Bar Association commissioned a small group of lawyers to investigate the concept of providing approved continuing legal education (CLE) credits to lawyers who do pro bono legal work representing the poor, elderly, disabled and others, as well as non-profit entities serving these groups.

The Chancellor's charge was to investigate CLE credit for pro bono; to provide a thorough analysis and to prepare recommendations which, if approved by the Association's Board of Governors, would be submitted to the state Continuing Legal Education Board ("CLE Board") and the Pennsylvania Supreme Court for consideration.

The motivation for the Task Force charge is the recognition of the vast numbers of individuals who are in need of legal assistance, but who cannot afford counsel. The Task Force analysis begins with the acknowledgment that current vigorous efforts to serve these persons through legal services organizations, public interest law centers, intake and referral centers, private bar pro bono and law school clinics have been substantial. However, it remains clear that these efforts are simply not enough to meet the vast need.

Chancellor-Elect Feldman appointed representatives from a wide spectrum of the bar, including sole practitioner and small firms, mid-sized and large firms, the public interest bar, transactional and litigation bars and the judiciary, but endeavored to keep the group small to facilitate a review and report in approximately six months. The group includes Sharon Browning, executive director of Philadelphia VIP; Lenard Cohen and Harper Dimmerman, representing the small firm community; Merritt Cole, representing the business and transactional lawyer perspective; Judge Edmund V. Ludwig of the United States District Court, Eastern District; Kenneth Shear, executive director of the Philadelphia Bar Association, and Mary Gay Scanlon and Joseph Sullivan (chair), representing the large firm perspective and, with Sharon Browning, the diverse constituencies of the Delivery of Legal Services Committee.

In addition to the Chancellor, the Task Force consulted with 2006 Chancellor-Elect Jane Dalton and Vice Chancellor A. Michael Pratt; with the current and immediate past presidents and other leaders of the Pennsylvania Bar Association; with members of the Pennsylvania and federal judiciary; and with other members of the public and private bar on an informal basis.

## II. SUMMARY OF RECOMMENDATIONS

The Task Force recommendations are as follows:

- Recommendation 1

The Philadelphia Bar Association should recommend to the Pennsylvania CLE Board and to the Pennsylvania Supreme Court that a pilot project be approved in which lawyers could earn up to three (3) of the twelve (12) CLE credits required each year by providing approved pro bono legal services.

- Recommendation 2

The purpose of the project would be to help address the vast unmet need for legal representation by encouraging lawyers who have not performed pro bono to do so, and to recognize and further encourage those lawyers who have performed pro bono to expand their efforts and to encourage others. The Task Force also anticipates that a well-structured CLE for Pro Bono program will augment the already-thorough continuing legal education programs available with education in the form of supervised practice and skills-development. A more detailed analysis of the rationales, goals and benefits of the pilot project is set forth in the body of this report.

- Recommendation 3

The project would be a pilot project for a period of three years. An analysis of the operations and effectiveness of the program would be conducted in the third year. Unless renewed, the project would sunset at the end of the three-year period.

- Recommendation 4

The project would permit lawyers to earn one CLE credit for each six (6) hours of pro bono legal work on a case or other legal matter, up to a maximum of three (3) CLE credits per year.

- Recommendation 5

The three key “actors” in the process would be volunteer lawyers, approved CLE providers (typically legal services organizations and public interest law centers) and the Pennsylvania Continuing Legal Education Board.

- Recommendation 6

Pro bono matters would qualify for lawyers who take matters pursuant to a court appointment, or from an approved CLE provider.

- Recommendation 7

Participation by legal services providers would be voluntary. Providers who wish to participate would each request approval to serve as an “Approved CLE Provider” from the Pennsylvania CLE Board. If granted, the approval would be valid for three years.

- Recommendation 8

When an attorney accepts a case or matter from an Approved CLE Provider, the Provider sends an “Affirmation of Service form” to the volunteer along with the intake and case materials. The CLE Provider may also require the attorney to comply with other standing requirements of the Provider, such as attending a training program prior to taking a first case, submitting periodic case reports, and notifying the Provider when the case concludes, in order to be eligible for the CLE for pro bono project.

- Recommendation 9

Where an Approved CLE Provider already makes available two (2) free CLE credits for traditional CLE classroom training followed by acceptance of a case, the Provider could provide up to three additional CLE credits per year for actual pro bono representation of a client.

- Recommendation 10

Attorneys complete the affirmation, including name, contact information, PA attorney I.D. number, case category and number, and a description of services rendered and the number of hours of eligible services performed. The affirmation is then submitted to the Approved CLE Provider.

- Recommendation 11

The Approved CLE Provider then reviews the form, verifies compliance with the Provider’s specific requirements, and furnishes the participating attorney with a Letter of Participation verifying all data relative to the hours served.

- Recommendation 12

Approved CLE Providers submit an Annual Report to the PA CLE Board, which then approves up to three CLE credits to the attorney per year. These credits would be reflected in the “compliance period” reports currently provided to individual attorneys.

### **III. RESEARCH AND MATERIALS REVIEWED**

The Task Force met on seven occasions between November 2005 and April 2006. The Task Force researched, assembled and reviewed a wide variety of materials, including:

A. Web Sites and Materials from Participating States.

Task Force members reviewed and considered:

- Web sites and materials from state judicial offices, state bar associations and other law-related sites for the six states that currently have a CLE for Pro Bono program in place. These states are: Colorado, Delaware, New York, Tennessee, Washington, and Wyoming.
  - Web sites and materials from the American Bar Association Center for Pro Bono and other ABA division, section and program web sites.
  - Florida bar web site addressing impact of mandatory reporting by Florida attorneys of their voluntary pro bono hours and financial contributions to legal aid organizations.
  - Numerous New York State and New York City web sites, including: informational materials from the New York State Bar Association, marketing materials from the New York State Bar Association, and “Pro Bono Opportunities – A Guide For Lawyers in New York City” (providing information on twelve (12) city bar and public interest law centers currently participating in the New York CLE for Pro Bono program).
- B. Interviews with bar officials and pro bono directors in participating states including: state bar officials and pro bono directors in Tennessee, state bar officials and pro bono directors in New York, and large law firm pro bono directors in New York.
- C. Reports addressing pro bono and the need for counsel including the Report of the Third Circuit Task Force on Counsel for Indigent Litigants in Civil Cases (October 1998), Submission by the United States District Court for the Eastern District of Pennsylvania to the Pennsylvania Continuing Legal Education Board (August 10, 2004) regarding CLE and court-appointed litigators, and Recommendations by the Pennsylvania CLE Board re: Activities Attended by Court Appointed Federal Litigators (April 13, 2005).
- D. Formal and informal surveys including small firm attorneys and sole practitioners, litigation and transactional lawyers in firms of various sizes, in-house counsel at corporations, large firm pro bono volunteers, and directors and staff lawyers in legal services organizations and public interest law centers in Philadelphia and environs.

#### IV. PRELIMINARY CONSIDERATIONS

The Task Force began with the basic question: why consider a policy or program that would provide CLE credit for hours devoted to pro bono legal representation?

##### A. Assessment of Current Needs and Efforts.

As noted in the Overview, the need for legal representation by low-income, physically and mentally-disabled persons, the homeless, poor senior citizens and families and other disadvantaged persons is enormous. It also includes economically-disadvantaged persons who desire to start a community-based for-profit “microbusiness” or nonprofit organization, as part of a larger community economic development effort, who need but cannot pay for corporate, nonprofit, tax and real estate legal services. The areas of legal need include several unique to the poor and disadvantaged.

A short and selective list of areas of urgent need includes:

- assistance in applying for Social Security disability and Supplemental Security Income (SSI) benefits for qualified persons and/or their dependent spouses and children
- guidance in applying for Medicare and Medicaid benefits
- protection from predatory lenders who focus their efforts on senior homeowners and the disabled living in poor neighborhoods on fixed incomes
- assistance in gaining access to shelters, transitional housing and related services for homeless individuals and families
- representation of abused and neglected children in dependency court
- representation in divorce, custody and child support proceedings
- court-appointed representation in prisoner civil rights and plaintiffs’ employment matters, by appointment through referral panels of the United States District Court for the Eastern District of Pennsylvania, and its counterparts in the Middle and Western Districts
- guidance in navigating complex personal identification, residency and criminal records background checks for low-income persons seeking to enter, or re-enter, the workforce
- initial and appellate representation of applicants seeking green cards and/or asylum in the United States

- representation of low-income residents seeking to clear ancient tax liens, and resolve title disputes for their homes, thereby qualifying them for grants and loans to repair their homes and stay in their neighborhoods
- assistance with legal start-up needs for small neighborhood businesses and community organizations who supply “sweat equity,” but lack the financial resources to pay for legal assistance

This selective list, by itself, speaks eloquently of the need. Notwithstanding the vigorous efforts of legal services organizations, the public interest and private bar and law school clinics, much of this need remains unmet.

One way to address this unmet need is to achieve an incremental, systematic increase in pro bono services by lawyers in private practice, and in particular, to appeal to lawyers who have never done pro bono.

Many attorneys in private practice are already engaged in pro bono, not only because they recognize the importance of helping their neighbors and communities in need, but because they recognize other important priorities, including:

- satisfying a recognized duty of the profession – lawyers hold a privileged position, and with that privilege comes a responsibility to help others obtain access to the justice system
- developing practice-related skills (whether litigation or transactional)
- engaging in intellectually challenging legal work that differs from their day-to-day experience
- accelerating their experience level and developing a variety of perspectives
- contributing to their law firms’ record of community service, a criterion that has become increasingly important to discriminating corporate and institutional clients in selecting and retaining law firms
- achieving enormous personal satisfaction from helping someone in need

Unfortunately, many other attorneys simply have done no pro bono, and in some cases, we suspect that they have not even seriously considered it.

While we have no statistical studies to use to estimate the numerical impact of a CLE for Pro Bono program, if such a program causes even 10 or 20% of those lawyers in this second category to do one pro bono case a year, the increase in pro bono services could be substantial.

B. The Universals of CLE for Pro Bono Projects.

Six states have implemented a CLE for Pro Bono program. As noted, they are Colorado, Delaware, New York, Tennessee, Washington and Wyoming. The two states whose programs have been in place for the longest periods are Tennessee, whose program was inaugurated in January 1999, and New York, whose program was launched in January 2000.

The CLE for Pro Bono programs in these six states have three universals:

- The CLE for Pro Bono program satisfies a portion, but not all, of the annual, biennial or triennial CLE requirement in these states, ranging from 1/5 (one fifth) to 1/3 (one third) of the total required CLE. What this means is that these CLE for Pro Bono programs have not displaced traditional classroom CLE programming. Each of these states recognizes the importance of traditional classroom-style training to the practice of law, even while recognizing that lawyers also learn by practice in the field.
- The role of state CLE Boards in managing and monitoring CLE compliance is largely unchanged. CLE Boards in these states have continued to play essentially the same role in CLE for Pro Bono programs as they do in the standard CLE process.
- For each CLE credit to be awarded, a minimum number of hours of pro bono service is required. On average, these states require six (6) hours of pro bono work for each hour of CLE credit to be awarded. One state, Washington, awards up to six (6) hours of credit on an hour-for-hour basis, but only with a combination of two hours of classroom training and four hours of direct representation.

Thus, in order to receive three CLE credits for working on a pro bono matter in most of these states, an attorney must devote at least eighteen (18) hours of legal work, to the satisfaction of the Approved CLE Provider who referred the case, as well as the state CLE Board.

**V. ANALYSIS AND DISCUSSION**

As set forth above, the Task Force extensively reviewed materials from the six states that currently have CLE for Pro Bono programs. All of these states make information about their CLE for Pro Bono programs available on either the official judicial website for the state, or the state bar association's website.

Because the programs in most states are relatively new, our research efforts emphasized the experience in two states: Tennessee and New York. While all six states have clear, understandable websites, the Tennessee and New York websites are particularly comprehensive and clear in defining the purposes and goals of CLE for Pro Bono programs, as well as the policies and procedures to be followed under the programs.

In addition, some county or municipal bar associations have extensive materials about their state-approved CLE for Pro Bono programs and projects.

For example, the City Bar Justice Center, the pro bono affiliate of the Association of the Bar of the City of New York, contains extensive information about the CLE for Pro Bono program in New York state and about public interest law centers that participate in the program.

It should be noted that none of the six states that offer CLE credit for pro bono, including Tennessee and New York, has as yet conducted any formal statistical study of its CLE for Pro Bono program. However, officials of the Tennessee Bar Association and Tennessee Commission on Continuing Legal Education and Specialization, as well as officials of the New York State Bar Association's Department of Pro Bono Affairs were able to provide some statistical data, as well as references to knowledgeable state and local pro bono directors. Information from these sources is set forth in various parts of this Report.

A. Web Sites and Materials.

- Colorado

Colorado inaugurated its CLE for Pro Bono program just over one year ago on January 1, 2005, by approving a new Colorado Rule of Civil Procedure 260.8. The rule provides that one unit of CLE credit be granted for every five (5) billable-equivalent hours of representation, up to a total of nine (9) CLE credits in each three-year compliance period.

In an article in the February 2005 edition of *The Colorado Lawyer*, Judge JoAnn Vogt of the Colorado Court of Appeals, who serves as Chair of the state Access to Justice Commission, noted that "the rule is modeled after similar rules in Wyoming, Delaware, New York, Tennessee and Washington that appear to have significantly increased the provision of pro bono representation in civil cases in those states." The article does not offer details on the analysis or conclusions in Colorado. It does report that the new rule was endorsed by the Colorado Bar Association, the Denver Bar Association, Metro Volunteer Lawyers, the Colorado Access to Justice Commission, as well as two Colorado law schools.

Judge Vogt concluded the article announcing the new program by observing that the Colorado Constitution guarantees that "courts of justice shall be open to every person and a speedy remedy afforded for every injury to person, property or character" and by adding: "For many of our neediest citizens, the courthouse door is still closed. For every pro bono case a lawyer takes, that door opens a little wider." The article includes a list of pro bono coordinators, local bar programs, and local access to justice committees.

- Delaware.

The Delaware Rules for Continuing Legal Education require that attorneys "complete a minimum of 24 hours of actual instruction in approved continuing legal education activities during each two-year period" and that a minimum of 4 hours in each group of 24 hours

be obtained through programs or portions of programs “providing instruction in Enhanced Ethics.” Delaware Rule 4(A)(1) and (2).

Delaware Rule 8(D), entitled “Pro Bono Legal Services,” provides that an attorney may receive credit for up to six (6) credits of the 24-credit instructional requirement through pro bono services, defined as “uncompensated legal services for clients unable to afford counsel....”

Rule 8(D) provides that qualifying pro bono services must be performed pursuant to appointment by a Delaware court, including the United States District Court for the District of Delaware, assignment of a matter by any one of four legal services agencies: Delaware Volunteer Legal Services, Inc., Community Legal Aid Society of Delaware, Inc., The Office of the Child Advocate, and Legal Services Corporation of Delaware, Inc.

The attorney must apply to the Delaware CLE Commission to receive credit.

- New York

New York launched its CLE for Pro Bono program effective January 1, 2000. The New York State Bar Association website includes a section entitled “CLE credit for pro bono service” and has three hyperlinks: a link to the rules governing the program under the State CLE Board Regulations and Guidelines, Section 3(D)(11), effective September 1, 2004; a linked list of Pro Bono CLE Providers as of February 1, 2005, including thirty four (34) providers throughout the state; and, third, a printable tri-fold brochure on the CLE for Pro Bono program.

Section 3(D)(11) of the New York CLE Board regulations reflects a model that in many respects is comparable to the current CLE structure in Pennsylvania, and for that reason offers a number of features readily adaptable to a CLE for Pro Bono program in Pennsylvania, as reflected in Section II of this Report. The following are the principal features of the New York model:

Attorneys may receive one hour of CLE credit for every six hours of service, for a maximum of six credits for every two-year reporting cycle, in which New York attorneys must obtain twenty-four CLE credits. This amounts to 25% of required credits in the biennial compliance period.

Pro bono matters qualify if they are made pursuant to a court appointment, or by an Approved CLE Provider.

Legal services and public interest law centers apply to the state CLE Board for authority to offer the CLE for Pro Bono program, and the state Board makes a determination on the application. When granted, the approval is valid for three years.

Attorneys complete an “Affirmation” with required information, including a description of the services provided and the number of hours of eligible pro bono legal services performed. The Affirmation is then submitted to the Approved CLE Provider.

The Approved CLE Provider then furnishes the participating attorney with a Letter of Participation verifying all data relating to the hours served.

Approved CLE Providers submit an Annual Report to the CLE Board.

New attorneys are not eligible to participate for two years, although they may carry over six hours of CLE/Pro Bono credit into the next reporting period.

All parties are required to maintain records for four years.

Conceptually, a similar plan could be adopted in Pennsylvania with minor adjustments. Many, if not all, legal services and public interest law centers in the Commonwealth already monitor cases. Virtually all of them require volunteer lawyers to report periodically, and to notify the referring agency when a case or matter has been concluded, and should be closed. Moreover, virtually every referring agency provides subject matter training, as needed, often in conjunction with private firms. And virtually all centers have experienced lawyers who serve as mentors to lawyers who are newer to the subject area and seek guidance or advice.

As noted, the New York State Bar Association website includes a list of thirty four (34) Approved CLE Providers geographically dispersed around the state. The tri-fold brochure that forms the third part of the New York State Bar website is captioned: "NYSBA Pro Bono CLE – Do the Public Good And Earn CLE Credit." It provides photographs, graphics and basic descriptions of each aspect of the program in a Q&A format. A copy of the brochure is included in the appendix to this Report.

The brochure makes it possible to publicize the program on an ongoing basis, not only on the web but at bar association meetings, law firms, in-house counsel offices, law schools and various locations throughout the community. It can also be distributed at legal services and public interest law center recruiting and training meetings.

- Tennessee

Tennessee Supreme Court Rule 21, captioned "Rule for Mandatory Continuing Legal Education," requires attorneys to obtain twelve (12) general and three (3) ethics/professionalism credits, for a total of fifteen (15) CLE credits each year.

The Tennessee Commission on Continuing Legal Education and Specialization web site, in its "Frequently Asked Questions" section, states that Tennessee "pioneered credit for pro bono service." Tennessee CLE rules permit lawyers to earn up to three (3) ethics/professionalism ("E/P") credits through pro bono. For each hour of EP credit, the attorney must perform eight (8) hours of approved pro bono work.

In short, Tennessee permits lawyers to fulfill 20%, or one-fifth, out of the annual CLE requirement through pro bono service. To earn the required three E/P CLE credits, a lawyer must perform at least twenty-four (24) hours of pro bono work.

- Washington.

The Washington State Bar Association web site is captioned “*Working Together to Champion Justice*.” The web site page for the Pro Bono and Legal Aid Committee notes that the Committee’s “major focus has been the implementation of the Volunteer Attorney Legal Services (VALS) Action Plan, adopted by the association’s Board of Governors in 1994. The Committee wrote a Five-Year Progress Report on the VALS Action Plan in 1999, noting that the Plan is a “flexible document that continues to change with the needs of the community.”

The Committee cites as the first “significant accomplishment” in executing the VALS Action Plan the “amendment to MCLE Reg. 103(g) to award CLE credits for pro bono representation of low-income clients and mentoring of pro bono attorneys.”

Unlike the other five states with CLE for Pro Bono programs, Washington awards up to six (6) hours of credit on an hour-for-hour basis, rather than one hour of CLE credit for multiple hours of pro bono legal representation. However, CLE credit is awarded only with a combination of two hours of classroom training, followed by four hours of direct representation. That combination yields a total award of six CLE credits.

The Washington State Access to Justice Board web site highlights the key features of Regulation 103(g), “Pro Bono Legal Services,” which sets out the details. In addition to the basic rule, there are two other distinctive features to the Washington approach.

First, an attorney who mentors another attorney handling a pro bono matter for CLE credit can also qualify for the same level of credit. In order to qualify, “the supervising attorney must be mentoring for the qualified legal services provider when supervising the attorney doing the actual pro bono work.” Second, in Washington, qualifying credits are not deemed to be ethics credits, but rather are “general CLE credits.”

The Access to Justice web site concludes: “The training course must be approved just like any other CLE seminar. To claim pro bono credits, simply report the pro bono training and pro bono work on your CLE reporting form at the end of your 3-year reporting period.”

- Wyoming.

Attorneys in Wyoming must complete a minimum of fifteen (15) hours of CLE, including one hour of ethics credit, each year. Wyoming State Board of Continuing Legal Education Rule 4(g) provides that up to three (3) of the fifteen hours may be obtained by “those lawyers who provide representation or mentoring activities as approved by the Wyoming Pro Bono Organization (WYPBO).” One hour of CLE credit is granted for every five billable-equivalent hours of work.

The reporting process in Wyoming has many similarities to those in other states. Upon completing the WYPBO matter, “the participating attorney shall receive a letter from the WYPBO director certifying the number of hours of credit earned for the representation.” For all CLE programs, Wyoming attorneys must report credits earned on a form approved by the state

CLE Board. In the case of approved pro bono matters, the attorney reports the credits earned on the same form, and attaches a copy of the WYPBO certification letter.

Wyoming also provides CLE credit for mentoring in pro bono matters, but uses a somewhat different approach than Washington. Lawyers who supervise attorneys handling WYPBO-referred matters can receive one (1) CLE credit per case, and may supervise up to three cases, and earn up to three CLE credits for doing so, in each calendar year.

Wyoming attorneys may also earn CLE credits for mentoring a law student “who has successfully completed at least four semesters at an ABA accredited law school” on a case. A lawyer who mentors a law student will be awarded three (3) CLE credits, but will not be eligible for any other CLE credit for pro bono in the same calendar year.

Wyoming’s approach to CLE credit for pro bono mentoring is the most highly-articulated plan among the six states that currently provide any form of CLE credit for pro bono.

#### B. Interviews with Bar Officials and Pro Bono Directors in Participating States.

The Task Force research revealed the highest levels of activity and analysis of the CLE for pro bono concept in the programs adopted in Tennessee and New York.

As a result, Task Force members contacted various state bar officials in those states, and through those officials, contacted other state and municipal officials, legal services providers and pro bono directors and coordinators in the private bar.

In New York and Tennessee, these interviews, conducted by telephone and email, led to some statistical information about the operations, and successes, of the CLE for Pro Bono programs in those states.

Equally important, these interviews provided substantial input that reflects some of the leaders’ actual experience with CLE for Pro Bono programs and their discussions with public and private bar pro bono directors and attorneys participating in the programs.

- Tennessee State Bar Officials and Pro Bono Directors

1. Bar Officials

In addition to obtaining detailed information on the web, Task Force members contacted Rebecca Rhodes, Access to Justice Coordinator for the Tennessee Bar Association and David N. Shearon, Executive Director of the Tennessee Commission on Continuing Legal Education and Specialization (“Tennessee CLE Board”). These officials provided detailed information by email and through telephone conference calls.

Tennessee launched the first CLE for Pro Bono program in the country, effective January 1, 1999. Mr. Shearon of the Tennessee CLE Board advised that neither the state nor the CLE Board has conducted any formal statistical study or formal evaluation of the program. He

was able to provide the following partial statistical information for the first three years for which such statistics have been assembled:

2003	528 “attendees” reported 7,023.92 hours of pro bono work for which they sought CLE credit on a 1 CLE credit per 8 hours of work ration
2004	836 “attendees” reported 10,358.56 hours
2005	588 “attendees” reported 7,790.16 hours (partial results, more coming in)

Mr. Shearon acknowledged that the 2004 numbers reflected more than 300 additional requests for credit than for 2003. The numbers for 2005 were inconclusive as they did not reflect all credits expected to be claimed for 2005 pro bono work.

Mr. Shearon advised that the participation rate was about 6% of the 14,500 members of the Tennessee bar. While 6% may seem low, most Task Force members believe that an opportunity to obtain anything in the range of 10,000 additional hours of pro bono is not insignificant.

Rebecca Rhodes, coordinator for the Tennessee Bar Association’s Access to Justice office declared that the anecdotal reports are mixed as to whether the CLE for Pro Bono program is a good recruiting tool. Some pro bono directors report it is an excellent recruiting mechanism, while others disagree, but think the program is worthwhile as a way of recognizing and thanking pro bono volunteers.

## 2. Pro Bono Directors

At our request, Ms. Rhodes contacted legal services and public interest law centers who participate in the Tennessee CLE for Pro Bono program to obtain their views on the effectiveness of the program.

Ms. Rhodes reported responses from four legal services pro bono directors, which were made available “in only slightly edited versions of their own words,” as follows:

“I think it is a great program and very valuable. Every year I get calls from attorneys who are desperately in need of and want those hours. It is a great part of the recruitment package”

and

“Providing CLE credit for pro bono work has only been a motivator for a small percentage of the attorneys. The CLE credit hasn’t been the main factor that gets them to volunteer but they have been open about saying that the CLE credit is a great bonus or thank you for volunteering. Everyone knows that no matter how much a person protests that they don’t need a thank you or a bonus for what they do, it’s always very much appreciated when they are given one”

and

“Every time I remind a lawyer she or he can get CLE credit, he or she says ‘you should publicize that,’ (as if I hadn’t already included it in every brochure, memo, letter, etc. that I write). Based on reports received in 2005, 51% of our volunteers reported the amount of time they spent on pro bono cases to get CLE credits”

and

“It isn’t hard to report the pro bono work for CLE credit, and for some of the lawyers it is a very important aspect that they get the CLE credit; they seem to be excited when I tell them this and it helps to motivate them to get the final paperwork turned in. I think for others that are truly committed to the idea of pro bono work, the credit isn’t that important. They get their reward just knowing they have given something back.”

- New York State Bar Officials and Pro Bono Directors

1. Bar Officials

In addition to reviewing substantial materials available on the web, Task Force members spoke extensively with Cynthia Feathers, Esq., director of the Department of Pro Bono Affairs of the New York State Bar Association. Ms. Feathers provided extensive contact information and source information for further investigation.

As with Tennessee, no formal statistical analysis or other formal evaluation has been conducted on a statewide basis to determine the effectiveness or popularity of CLE for Pro Bono programs in New York, even though there are thirty four approved CLE providers dispersed throughout the state.

2. Pro Bono Directors – Public Interest Law Centers.

With the assistance of Ms. Feathers of the bar association, Task Force members were able to communicate by email and telephone conference calls with a number of public interest agency pro bono directors.

Representative agency responses are set forth here.

The Legal Project, Albany, New York. The Project’s jurisdiction is a four-county area that includes Albany, Rensselaer, Schenectady and Saratoga counties. The Project provides extensive clinic assistance and direct representation including bankruptcy and credit counseling, affordable housing assistance and domestic violence services, among others. Ellen Schell, legal director of The Legal Project, states that volunteers do not frequently report that they are doing pro bono in order to obtain CLE credits and that the number of credit certifications the Project provides is not very high.

However, Ms. Schell advises that, in talking with volunteers about why they do pro bono, the topic of CLE for pro bono comes up in one of three ways. A number of volunteers have advised that the fact that CLE credit is given for pro bono makes them feel that pro bono is “legitimate legal work” since the state’s highest court and state bar leaders “think it is important

enough to give CLE credit for.” Another frequent comment is that volunteers are encouraged by the availability of CLE to try pro bono matters in areas outside the scope of their usual fee practice and that “they feel that they are continuing their education by working with the agency and mentors to learn a new area of law” and develop the skills necessary to do it.

Finally, Ms. Schell believes the CLE for pro bono option has been particularly appealing to relatively new lawyers, because it has given them the opportunity to take on cases that will get them into court, and gain experience. “The CLE option has made it easier for them, and they are very willing to learn.”

Legal Services for the Elderly, New York City. The agency provides a wide variety of legal services to elderly residents in the city. Ann Biddle, deputy director, reports that CLE credit for pro bono is “the cherry on the top,” and not the primary motivator to take pro bono matters. In her view, factors such as the “desire to give back,” personal satisfaction and gaining legal experience are more important. However, Ms. Biddle reports that the CLE for Pro Bono program is a “marvelous marketing tool,” that attracts the attention of lawyers to the severe need for legal assistance, and does in that way bring lawyers in to the agency’s office to volunteer.

Ms. Biddle also reports that bringing the lawyers in, and getting them to do at least one pro bono case, can have long-term benefits beyond any incentive to obtain CLE credit because, once the lawyers have the experience of handling a pro bono matter, it could lead to a greater awareness of the need, and “lead to donating more time, and donating more money,” for the provision of legal services. Ms. Biddle concludes that “anything that encourages pro bono legal services is a great idea.”

Several legal directors also addressed the practical aspects of a CLE for Pro Bono program, noting that at the time New York launched its program, not all legal services organizations and pro bono referral centers were aware of the new option, and information on the program was not readily available to some agencies. Directors emphasized that a well-coordinated launch, involving advance planning by the CLE board, members of the judiciary, approved CLE providers, bar associations and law firms would likely lead to widespread participation in any such initiative.

### 3. Pro Bono Directors – Private Firms

Task Force members also contacted private firm pro bono directors in three large New York City law firms, Shearman Sterling, White and Case and Chadbourne Park, to obtain their views on the impact of the CLE for Pro Bono program on their lawyers’ pro bono activities. Task Force members also interviewed other large firm representatives from New York at the recent Equal Justice Conference in Philadelphia.

Representatives of these large firms, many of which have between 500 and 1000 lawyers in their New York City offices alone, report that the CLE for pro bono option has had no real impact on their activities. The primary reason is that these firms conduct multiple in-house CLE programs all year round. Indeed a number of large firms have at least one or two CLE

programs every week throughout the year. Lawyers in these firms typically obtain well over their required CLE hours each year at no expense and without having to leave their offices. The majority of these programs relate to the attorneys' fee practice areas, although some public interest law centers conduct in-house training programs at firms if special requests are received.

The Task Force determined that the large New York firm experience is not particularly useful in assessing the potential impact of CLE for pro bono in Pennsylvania. While some of the larger firms offer CLE-eligible training from time to time, very few, if any, offer the kind of continuous, week-to-week CLE courses offered in large New York firms. Rather, in addition to periodic in-house CLE programs, large Pennsylvania firms encourage lawyers to seek out CLE from among the many courses presented by the Pennsylvania Bar Institute and other providers. In short, even the largest firms in the Commonwealth do not typically provide a full complement of in-house CLE programs for their lawyers.

#### C. Surveys and Interviews in the Philadelphia Region.

The Task Force directed its primary focus on the experience of those states that already have a CLE for Pro Bono program or project in place. Our view has been that the statistical data, formal interviews and anecdotal reports from these states would be the best barometer of the interest level, quality and effectiveness of such programs.

Nonetheless, in the interest of being thorough, the Task Force conducted a number of informal surveys and interviews with a wide swath of practicing attorneys in the Philadelphia metropolitan region. The following are brief summaries of those interviews.

- Small firm lawyers and sole practitioners.

Task Force members Lenard Cohen and Harper Dimmerman created a brief survey directed to the membership of the Philadelphia Bar Association's Solo and Small Firm Management Committee and other small firm practitioners. While the response rate was too small to constitute statistically-reliable evidence, the majority of those who did respond supported the concept of providing partial CLE credit for pro bono service. Respondents who already do pro bono generally believe that CLE for pro bono does not provide them with greater incentive, but do believe that the program may cause more small firm lawyers to try pro bono. Several lawyers cited the great need for more pro bono lawyers, particularly in family law matters. While most respondents support the idea, a few expressed concerns about "procedural safeguards," including the accuracy of time records submitted. Most respondents, however, support the concept.

- Transactional lawyers and in-house counsel.

Task Force member Merritt Cole conducted a number of in-person and telephone interviews with transactional lawyers and in-house counsel. Again, the view of most of those interviewed was that offering CLE credit for pro bono was an ingenious way to expand pro bono. While most lawyers in larger firms do not seem concerned about how to meet their CLE requirements, several lawyers expressed the view that a CLE for Pro Bono program would

encourage them to learn a new area of law, either through a combination of classroom training and pro bono cases, or by working with an experienced attorney already conversant in the area, or with an experienced mentor. Very few of these lawyers thought that the program would make CLE more financially attractive, but most felt it would encourage them, or their colleagues, to do pro bono.

A common theme expressed in comments from younger associates in firms was that there are many competing pressures on their time, and that a program that would help them satisfy their CLE requirements and make doing pro bono more manageable at the same time, is worth the effort. Some in-house counsel reported that, as with some law firm lawyers, they are encouraged to find CLE programs at a low rate. These counsel said that in-house lawyers who want to do pro bono could cite the costs savings of a CLE for Pro Bono program as a practical consideration in doing it.

- Large firm lawyers.

Informal interviews with large firm lawyers yielded a variety of responses, from supportive to neutral views. Supporting comments were comparable to positive assessments from other sectors of the bar, and in particular, the view that a formal CLE for Pro Bono project would send a strong message about the importance of pro bono and the view that such a project would encourage lawyers to both get training and take cases in areas outside their typical practice areas.

Most lawyers in large firms did not think that there was a meaningful financial incentive built into the CLE for Pro Bono concept, as the project would address only one-fourth of the annual CLE requirement and because in many cases, law firms pay the cost of CLE programs. Nonetheless, most of those interviewed thought CLE for pro bono was worthy of experiment for a period long enough to assess whether it has a real impact on participation in pro bono by private practitioners.

- Legal services and public interest lawyers.

Task Force members conducted informal interviews and discussions with the directors of several public interest law centers that are members of the Philadelphia Bar Association's Delivery of Legal Services Committee and that refer cases to pro bono lawyers in private firms. As noted at the outset of this Report, these executive directors, as "Approved CLE Providers," would be one of the three principal "actors" in the process, along with the lawyers themselves and the Pennsylvania CLE Board.

These directors expressed some concerns about plan design, including whether individual Providers would be free to impose their own requirements for participation, such as specific training or demonstrated expertise; whether Providers who currently offer free CLE for classroom training followed by acceptance of a case would be able to offer additional CLE for actual representation of a pro bono client; and whether CLE credit can, or should, be conditioned on completion of the representation, as opposed to completion of a minimum number of hours of work.

The Task Force recommendations set forth above respond to these concerns, recommending that Approved CLE Providers be allowed to continue to apply the same specific requirements that they currently have in place, such as requiring specific training or mentoring arrangements, and requiring periodic case reports, independent of the Affirmation Form that an attorney submits in order to receive CLE credit under the program.

Some directors were concerned about the lack of statistical evidence from other states on the track record of their CLE for Pro Bono programs, and about potential administrative and financial burdens on public interest law centers if the CLE for Pro Bono program became widely popular, substantially increasing the number of volunteers for a particular Provider's program. As noted earlier, public interest Providers often operate on very tight budgets, and do not want to re-allocate scarce personnel and other resources to such a program. Although the CLE for Pro Bono program, as recommended, is designed to fit closely with existing referral and evaluation processes, if the concept "catches fire," some additional funding may be necessary to assist Providers with the administrative tasks associated with the program.

## **VI. CONCLUSION**

The principal impetus for investigating and reviewing the model in other states is to develop a means, consistent with the nature of continuing legal education, to help address the vast unmet need for legal representation. This need encompasses people and families who are low-income, physically and mentally disabled, elderly and otherwise disadvantaged, as well as potential small businesses and non-profits without adequate funds to obtain corporate, tax, real estate and other legal assistance. Notwithstanding the immense and sometimes heroic efforts of legal services attorneys, public interest law centers, the private bar and law school clinics, there remains a substantial gap in legal services in many areas. Many legal needs, such as child custody and support, divorce, adoption and predatory housing and lending practices directed to the elderly, address basic human requirements such as food and shelter.

The Task Force found that those states adopting CLE for Pro Bono programs began their efforts with these legal needs in mind. It is no accident that several state CLE for Pro Bono programs are classified as "Access to Justice" campaigns.

As the Task Force reviewed practices in other states, it also became apparent that these states recognize the value of incremental gains in addressing the legal needs of low-income people. It appears clear to bar association and legal services directors, as well as pro bono directors in private firms, that providing partial CLE credit for pro bono service is not a "cure all". The Task Force was not charged with investigating other aspects of access to justice, such as the need to build and expand efforts to increase financial support for legal services through such means as organized fundraising by state and local bar associations, filing fee surcharges and loan forgiveness for law students dedicated to practicing public interest law, to name just a few.

At the same time, all of these states recognize the power of the private bar to make a difference through volunteer legal services by attorneys. State officials, leaders of private firms and public interest legal directors all recognize the professional responsibility of lawyers to help

make the justice system available to all, and to work to improve the efficiency and effectiveness of the delivery of legal services.

Although no state has yet done a comprehensive statistical analysis, and interviews suggest that the number of attorneys who actually seek CLE credit for pro bono varies widely by agency and area, some common themes emerged from interviews, namely, that the CLE for pro bono option has been a strong vehicle for getting some lawyers in the door, for encouraging others to do pro bono as a means to explore and learn new areas of law, and for still others, it has been an excellent “thank you” that may have the effect of gaining repeat volunteers.

From another perspective, there appears to be growing recognition of the value of pro bono services as a tool in professional education. Many public interest law centers in Philadelphia, Pittsburgh, Harrisburg and other parts of Pennsylvania, as well as regional and local bar associations, have expanded their pro bono training and mentoring programs, recognizing that the better trained and supervised pro bono lawyers are, the more likely they are to effectively represent their clients.

Private firms are also stepping up to the plate, as they become increasingly aware that pro bono not only is a professional obligation, but an excellent educational tool. Increasingly, firms are recognizing that with proper preparation and supervision, lawyers learn substantive law and practical skills by doing pro bono. Firms are building stronger partnerships with public interest law centers, some of whom likely would be Approved CLE Providers under an approved project. Firms are investing more resources in their pro bono programs because leaders in the judiciary, as well as bar, public interest and law schools leaders, have become more eloquent in giving voice to the professional responsibility to do pro bono. But firms are also expanding efforts because they see their lawyers developing a wider range of skills. They see their lawyers gaining experience, whether they are litigators who learn brief-writing and oral argument techniques or transactional attorneys who learn how to negotiate and draft agreements and untangle regulatory red tape. They also observe lawyers broadening their perspectives and client skills.

Public interest law center directors in Tennessee and New York say that that it appears that, in some cases, participation in CLE for Pro Bono programs has served as a strong recruiting tool. Volunteers have told them the availability of CLE for pro bono is the reason they contacted the law centers in the first place. Directors report that some volunteers first thought of doing pro bono when they learned that that their state judiciary had “endorsed” pro bono service by making CLE credit available. Others were attracted because they viewed CLE for pro bono as the vehicle through which they could explore and learn new areas of legal practice. Many in this latter group thought that handling such matters as Supplemental Security Income hearings or representing clients in landlord-tenant court is something they would never encounter in their fee practices. These volunteers were excited about the opportunity CLE for pro bono provides.

Public interest law center directors also said that CLE for pro bono was particularly appealing to relatively new lawyers, who are eager to learn from and work with mentoring attorneys provided by the law centers to assist them.

The Task Force concludes that there are sufficient reasons to support a pilot project through which the Pennsylvania CLE Board, working with Approved CLE Providers, grants up to 25% of the annual CLE requirement for attorneys who handle approved pro bono matters.

The available evidence from other states suggests that CLE for Pro Bono programs do recruit new volunteers; that volunteers recognize and appreciate the benefits of the programs, and that a number of lawyers who first considered pro bono when advised of the CLE feature reported that their views were broadened and their understanding of the plight of low-income and poor persons expanded, such that they came back to do more. Evidence is less clear in other states as to whether lawyers actually or fully take advantage of the CLE credit feature. The programs bring the lawyers in, but in some cases, lawyers remain because the pro bono work itself and the learning experience are compelling.

The Task Force believes the specific recommendations set forth in this Report, if adopted, lay the proper framework and a set of ground rules for a practical, and relatively simple pilot program with enough transparency to permit evaluation at or near the end of the three-year pilot period.

The program will help to address an urgent need, satisfy a recognized duty of the profession, and assist lawyers in the development of useful practice-related skills and relevant experience.

The most common questions raised in Task Force interviews involve program management issues, quality assurance, training and supervision and the long-term effectiveness of such a program. We address each briefly here:

Management. We believe the recommendations suggest a practical approach to management that is consistent with existing management techniques, both for the Pennsylvania CLE Board and for CLE providers. Based on the existing models, any CLE provider could apply to the state CLE Board for approval to participate, and would be designated as an Approved CLE Provider. This could include legal services organizations like Neighborhood Legal Services in Pittsburgh and Community Legal Services in Philadelphia, as well as pro bono referral centers like Philadelphia VIP and the Senior Law Center that provide subject matter training and supervision, and assign and monitor cases.

The Approved CLE Provider would send an “Affirmation of Pro Bono Service” form when it sends the case materials to the volunteer attorney. The affirmation form requires the attorney to supply essential information, as described in the recommendations. The form must be dated and signed by the attorney.

The form would be sent back to the Approved CLE Provider at whatever point the Provider deemed appropriate. For example, the form might be sent at the end of the matter; after twenty hours of work is completed; three months after the case is referred, or whatever other time is deemed appropriate given the type of case and the CLE Provider’s requirements.

The Approved CLE Provider would then create annual, quarterly, or “compliance period” reports for all participating volunteers, certifying the accuracy of the affirmations submitted and then send those reports directly to the state CLE Board. At this stage, two verifications will have been supplied, that of the attorney and that of the Approved CLE provider.

No CLE credit would be granted unless the volunteer attorney returned the affirmation form with all information required by the Approved Provider.

Many public interest law centers already do much of this – from conducting trainings to referring cases to offering mentoring assistance to seeking periodic status reports. Virtually all pro bono referral organizations require volunteer lawyers to report periodically and to notify the agency when a case or matter has been concluded and should be closed.

Quality. At the outset, some concerns were raised about whether the quality of the pro bono work might suffer if lawyers do it to get CLE credit rather than for the “right reasons.”

Most Task Force members believe that this is not a serious issue. We believe that lawyers who opt for the CLE for Pro Bono program to fulfill part of their CLE requirement will be doing so to do the most good for themselves and for clients in need. Taking the CLE for pro bono option by definition will be more time consuming than a three-hour classroom program, and therefore we assume volunteers will actively choose it, and do a good job.

Training and Supervision. Some questions were also raised about whether most of the burden would fall on already hard-pressed public interest law centers.

Public interest law centers already do a substantial amount of training. If there appears to be significant interest in a CLE for Pro Bono program, these law centers may have to expand such programs, and there likely would be some costs associated with expanded training. But the law centers who choose to participate would not be starting from scratch. The feedback received by the Task Force suggests that if the project generates significantly more volunteers, the additional costs would be worth the associated costs, although the law centers would need to find additional funding to support this effort.

Other considerations. Questions were raised about what might happen if the CLE for Pro Bono turned out to be a “flash in the pan.” Put slightly differently, what might happen if there is significant interest at the outset, but then after a couple of years the interest wanes.

The Task Force addresses that concern in its recommendations that call for a pilot program of three years with an assessment of the program’s popularity and effectiveness to be conducted during the third year.

Even a modest CLE for Pro Bono project may well generate volunteer lawyers who find the pro bono cases so rewarding that they come back for more cases, even though they will not gain any more CLE credit.

From all these perspectives – serving a need, training, mentoring and the possibility of adding a new population of repeat pro bono volunteers – the Task Force believes a properly-structured CLE for Pro Bono program is a worthy undertaking. As discussed herein, when paired with training as needed, and mentoring and supervision, such a program could offer a meaningful form of continuing legal education that supplements the traditional classroom approach. The recent expansion of training, mentoring and clinical projects involving public interest law centers and private firms suggests that both private firms and the legal services entities recognize the educational value of such efforts. A properly-structured CLE for Pro Bono program also opens new views into pro bono and the importance of expanding access to justice, particularly for members of the private bar not currently engaged in addressing access to justice issues. For these reasons, we believe a CLE for Pro Bono program, as outlined in this Report, is a worthy pilot project that offers the possibility of becoming a meaningful addition to overall efforts to address the unmet need for legal services.

Respectfully submitted,

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Task Force on CLE and Pro Bono Service

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