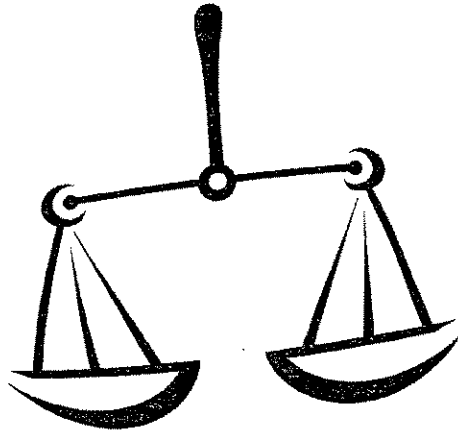


The New Mexico Ten Step Plan for Improving Access to Justice

A Proposal
Submitted to the Commission on Access to Justice
by its System Planning Committee, Christine Chandler, Chair,



The Committee thanks the following for their work and effort
in producing the Ten Step Pro Bono Plan, which this plan revises:
New Mexico Bar Association, Legal Services and Programs Committee
Judge Frank Sedillo, Kathleen Brockel – Co-Chairs
Richard Spinello, Chair Pro Bono Subcommittee
Tina Sibbitt, Chair Pro Se Subcommittee
Angelica Anaya-Allen, Chair Attorney Incentives Subcommittee
Bryan J. Davis – Judicial Involvement Memo
Joey Moya – Draft Rule Changes

March 3, 2006

APPENDIX NO. 2
ATJ REPORT
to
SUPREME COURT
April 19, 2006

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Summary of Proposed New Mexico Ten Step Plan for Improving Access to Justice

Rationale. The most successful and effective statewide plans for improving access to justice by low-income persons come from states in which the judiciary assumes a leadership role. For that reason, the Ten Step Plan calls upon the New Mexico Supreme Court and the District Courts to exercise major roles in implementing and overseeing the Plan. The Plan also proposes rule changes and expanding pro bono participation.

The Plan. The ten steps in the proposed Plan are divided into three central elements:

- A. Involvement of the judiciary;
- B. Change of the Rules;
- C. Expansion of pro bono participation.

The Elements.

- A. Involve the judiciary by requesting the New Mexico Supreme Court to:
 - 1. Assume responsibility for general oversight of the Plan; appoint the Access to Justice Commission to receive and evaluate reports and requests on its behalf, and to report to it.
 - 2. Establish district court pro bono committees by an addition to current Rule 16-601 of the Rules of Professional Conduct relating to pro bono public service.
 - 3. Permit the housing of Plan support staff in the Administrative Office of the Courts (AOC)(or other appropriate location), approve a budget and assist the Commission in seeking financial support.
 - 4. Endorse the establishment of a statewide Office of Pro Se Services that will coordinate statewide pro se services.
- B. Change the Rules of Professional Conduct:
 - 5. Revise Rule 16-601 of the Rules of Professional Conduct to reflect a reporting requirement for attorney pro bono services.
 - 6. Revise Rule 16-601 of the Rules of Professional Conduct to reflect a goal of 50 annual pro bono service hours or an annual contribution of \$500.
 - 7. Revise Rule 18-201 of the Rules of Minimum Continuing Legal Education to provide MCLE credit to attorneys providing pro bono services.
- C. Expand participation through ongoing Commission study and action, including:
 - 8. Coordinating recruitment of pro bono attorneys and other volunteers with the courts, the New Mexico Bar Foundation (Bar Foundation), and statewide providers.
 - 9. Establishing an internet-based pro bono case recruitment program via website or email.
 - 10. Promoting participation by law students, new lawyers and Law Firms.

Plan Goals And Recommendations

Goal of the Ten Step Plan

The goal of the New Mexico Ten Step Plan (the Plan) is to improve access to justice for persons of limited means.

Introduction

The Plan endeavors to meet this goal by involving the judiciary, by promoting opportunities for attorneys, paralegals and law students to provide pro bono civil legal services, and by improving the delivery of legal services through regional and statewide programs integrating pro bono and pro se support and services provided by courts, judges, attorneys, paralegals and legal service providers.

The Plan recommends changes to the Rules of Professional Conduct to call for the establishment of an access to justice committee in each Judicial District and charging each committee with establishing a pro bono plan. The Plan recommends two additional changes to Rule 16-601: one change to reflect an increase in suggested donations in lieu of pro bono hours; a second to recommend required reporting of pro bono work. The Plan also recommends a revision to Rule 18-201 to grant limited CLE credits for attorneys providing pro bono work.

Development of the New Mexico Ten Step Plan

The State Bar of New Mexico Legal Services and Programs Committee (LSAP) and the New Mexico Commission on Access to Justice System Planning Working Group have worked together to develop this Plan. The Plan has been approved by the New Mexico Board of Bar Commissioners and is now submitted to the Access to Justice Commission, with non-substantive revisions made by the Systems Planning Working Group of the Access to Justice Commission, which offers it to the Commission for its consideration for final submission to the New Mexico Supreme Court.

Problems Addressed by the Plan

New Mexico has a high poverty population with a high number of legal problems and limited free and low cost legal services. A recent report to the New Mexico

Commission on Access to Justice notes that 25% of New Mexico residents live at or below 125% of the federal poverty guideline. In dollars and cents this means that 25% of New Mexico families with four people have a total annual income less than \$24,000. The report estimates that among this poverty population there are 450,016 legal needs annually and that 72% of these legal needs go unaddressed. *Please see Attachment A.*

In 16 of New Mexico's 33 counties there are 25 or fewer attorneys – some counties have no attorneys at all. New Mexico's high poverty population, spread over a large geographical mass with a limited number of attorneys in rural areas, results in limited legal services to the poor in many parts of the state. While New Mexico has about a dozen nonprofit legal services organizations working together to provide legal services to the poor, demand exceeds capacity. Those driven to represent themselves receive little or no assistance.

Court programs in place work in conjunction with the legal service programs to offer a variety of legal services throughout the state. However, the current delivery system can be improved with the implementation of a comprehensive pro bono plan to help meet the legal needs of the poor.

While some of New Mexico's problems may be unique to this state, the issue is far broader. The ABA House of Delegates has addressed it by adoption of a Pro Bono Resolution. *See, American Bar Association State Pro Bono Reporting: A Guide for Bar Leaders and Others Considering Strategies for Expanding Pro Bono*, August, 1999, update August 2002, reproduced at the ABA site: <http://www.abanet.org/legalservices/probono/reportingguide.html>

The Guide says of the resolution: *In 1995, the ABA passed a resolution urging national, state and local bar associations to make the expansion of pro bono legal services a critical priority. The resolution encourages bar associations "to develop effective and innovative strategies to promote pro bono service and to allocate sufficient bar resources to ensure that these strategies can be effectively implemented."*

1

Judiciary:
*Request the
 New Mexico
 Supreme Court
 To Oversee
 Implementation and
 Administration of
 the New Mexico
 Ten Step Plan*

STEP ONE OF THE TEN STEP PLAN:

The New Mexico Supreme Court will assume responsibility for oversight of the Plan and will appoint the Access to Justice Commission to receive and evaluate reports and requests on its behalf, and to report to it.

Implementation of Step One:

- a. The Access to Justice Commission will receive all reports, requests for funding and support for district plans, will evaluate the same and will report and make recommendations to the Court.
- b. To the extent that funding is sought, the Commission will be coordinate funding requests through the Courts' unified budget process.

PROBLEM ADDRESSED BY STEP ONE:

The lack of centralized judicial oversight and management of a statewide plan to establish court provided services and to define their relationship to community legal service providers and attorney pro bono services compounds the current gap between legal needs and existing services in New Mexico. As discussed in the Problems Addressed by the Plan section above, legal service providers and court-provided services are currently overwhelmed by the sheer number of legal needs of low income New Mexicans. In addition, such providers may not be aware of services provided by other organizations, resulting in inefficient or no referrals, as well as in perhaps unnecessary competition for limited funding when referral would be the more logical option. Provider services may or may not include attorney pro bono legal services. Although the New Mexico Supreme Court has successfully approved a limited number of statewide legal forms for pro se use in simple matters, judicial leadership now rests largely in each judicial district struggling to manage pro se litigants with extremely limited resources, personnel and referral options to organizations or to pro bono attorney services. Uncertainty as to whether the New Mexico Supreme Court would approve or support such management efforts compounds these struggles.

RATIONALE FOR STEP ONE:

Following the 1995 ABA resolution several states implemented statewide pro bono plans. The most successful included the state supreme court and the judiciary in leadership roles. For that reason, the proposed Ten Step Plan begins with oversight by the New Mexico Supreme Court.

STEP TWO OF THE TEN STEP PLAN:

The New Mexico Supreme Court will establish district pro bono committees in each judicial district.

Implementation of Step Two:

- a. The New Mexico Supreme Court will charge the Chief Judge in each judicial district with the responsibility of appointing a local access to justice committee, to include pro bono and pro se elements, and convening the first meeting.
- b. The Bar Foundation pro bono coordinator and the AOC's ATJ project director will provide support to the judicial district committees.
- c. Each judicial district committee will initially be local attorneys, district court, metro, magistrate, and tribal judges, legal service providers, and other interested participants.
- d. Each judicial district committee will be charged with selecting a chair and with developing a local plan within a time period established by administrative order of the Supreme Court issued under revised Rule 16-601.
- e. Each judicial district committee will establish a local plan for improving access to justice by persons of limited means; the local plan will identify local needs, establish eligibility criteria and address the division of responsibility among the courts, the local bar association, the private bar, legal service providers and the public.
- f. Each judicial district plan will encompass opportunities to provide direct pro bono representation, unbundled services, pro se assistance and systemic advocacy. It may also incorporate law student and new lawyer mentoring, public legal education, and participation in activities for improving the law and the legal system. Pro bono activities may also include serving on Bar committees or on the boards of pro bono committees or legal service programs.
- g. Initially, the Plan will be activated in the First, Second, Third, Eighth and Eleventh and Thirteenth Judicial Districts, and then implemented into all the remaining Judicial Districts.

2

Judiciary:

*Establish
a local
committee in
each judicial
district.*

- h. Each judicial district committee will submit its plan, once established, to the New Mexico Supreme Courts' Access to Justice Commission (the Commission), the body designated by the New Mexico Supreme Court for review of such plans and for other responsibilities.
- i. Each judicial district committee will submit annual reports with benchmark assessments and resource requests to the Commission.
- j. The Commission will report annually to the New Mexico Supreme Court.

PROBLEM ADDRESSED BY STEP TWO:

Although centralized judicial oversight is essential to this Plan as discussed in Step One, such oversight must be flexible enough to take into account the very different legal needs and existing services in different parts of New Mexico. For example, low income people in urban areas might have transportation by car or by public transport to go to the court or to an organization's office, whereas the distances in rural or isolated areas might make such travel impossible. Such needs are best addressed by the various judicial districts, which are also more familiar with existing service providers and attorneys. Judicial leadership on both the New Mexico Supreme Court and local levels is necessary not only to encourage attorneys to provide pro bono services, but also to communicate to all parties involved that the provision of legal services to those in need, or Access to Justice is recognized as an obligation and a public duty at all levels of the New Mexico judiciary and legal community.

RATIONALE FOR STEP TWO:

The key provision of proposed Rule 16-601 is the convening of the judicial district committees around the state by the chief district judges, charged by the New Mexico Supreme Court with developing local plans to help meet the legal needs of the poor in that district. The rationale for Step Two is similar to that of Step One and is intended to encourage local bar committees to focus on access to justice issues within their districts.

3

Judiciary:
*Ten Step Plan
 Implementation –
 Staffing, Funding,
 Training and
 Other
 Considerations*

STEP THREE OF THE TEN STEP PLAN:

The New Mexico Supreme Court will support efforts taken through the Commission to identify and obtain funds to support the pro bono plan implementation, train staff, and assist judicial district committees.

Implementation of Step Three:

- a. The Commission will identify funding sources to obtain additional funding to support Plan implementation.
- b. The New Mexico Supreme Court will support the Bar Foundation with its plan to house the pro bono coordinator.
- c. The Commission will explore, in coordination with the State Bar of New Mexico or the Bar Foundation, a means to provide malpractice of insurance that would include private attorneys who provide pro bono services.
- d. The Commission will assist the courts, as requested, with training on the local bar committees and on the Judicial Code of Conduct as it applies to support of the Plan.
- e. The Commission will establish mechanisms for soliciting local committee reports, evaluating the same, and reporting to the New Mexico Supreme Court.

PROBLEM ADDRESSED BY STEP THREE:

Funding, staffing, training and support for the judicial district committee structure will need to be established. Funding sources are limited and drawing upon them should not adversely impact current efforts to fund legal services programs. If the Commission determines that existing funding sources could be more effectively leveraged, it may pursue sources such as IOLTA, MCLE, and the Civil Legal Services Fund. The Plan contemplates a program evaluation component will need to be established and implemented by the Commission.

RATIONALE FOR STEP THREE:

The Plan contemplates a first year start-up for staffing, training and support of the judicial district committees. With the Pro Bono coordinator being housed by the Bar Foundation, administrative costs should be held in check.

Malpractice Insurance for Pro Bono Activities

The Commission will coordinate with the State Bar of New Mexico or the New Mexico State Bar Foundation to explore a malpractice insurance coverage that would include malpractice coverage for private attorneys providing pro bono assistance outside a legal service program or agency.

- Attorneys would be required to register their pro bono case with the foundation to bind coverage if available.
- This is to encourage private attorneys to provide pro bono assistance in a wide variety of cases and assist attorneys with the informal pro bono assistance they provide.
- Attorneys providing pro bono assistance in conjunction with a legal services provider should be covered on that provider's malpractice insurance plan.

Training

The judicial district committees, judges, local bar associations and others will need some training to assist them to convene the district court committees, recruit and train pro bono attorneys and implement a district plan. The Commission will plan and coordinate training with the Bar Foundation and MCLE. Additionally, as the Plan is implemented into all of the judicial districts, the experience of the participants in the pilot will be built upon to train and assist those in the other judicial districts.

Some courts already have pilot projects operating and they also can participate in training. For example, over the last several months the Taos Bar Association, Judge Peggy Nelson of the 8th Judicial District Court, the New Mexico Legal Aid Taos office and UNM Law Student Maija Blaufuss have been working together to establish a pro bono system in Taos. Albuquerque Metro Court Judge Frank Sedillo is working with UNM Law School and New Mexico Legal Aid (NMLA) to pilot a project involving UNM law students in representing parties in landlord tenant cases. NMLA attorneys are supervising the students and Law Access New Mexico is assisting NMLA in identifying appropriate cases for the project. Those involved with these pilot projects have expressed willingness to assist the district committees.

Judges may have questions concerning their role in organizing and promoting attorney participation in district

committees, and training should include this aspect. The Code of Judicial Conduct sets the parameters for judges' activities. Rule 21-500 NMRA allows judges to participate in "advocational activities," such as lecturing concerning the law, the legal system, or the administration of justice and "civic or charitable activities," such as state appointed commissions to "improve[e] the law, the legal system, or the administration of justice." The rule encourages judicial involvement in advocational, civic and charitable activities. However, a judge may not participate in membership solicitation nor improperly use the prestige of the judicial office. Rule 21-500 allows and appears to encourage judicial participation in the judicial district committee plans. Other states considering similar issues have determined that judges can promote pro bono services and help on district committees.

Evaluation

As changes are implemented a system will be developed to evaluate success. The New Mexico Supreme Court will establish mechanisms for evaluation of changes and assigning this task to the Access to Justice Commission. The Commission will create a series of benchmarks to measure the success or failure of the plans and suggest ways for improving each component.

STEP FOUR OF THE TEN STEP PLAN:
Recommendations relating to coordination of pro se services are reserved for a later submission as part of a comprehensive evaluation of resource needs.

4

Judiciary:
*Statewide
Coordination
Of Pro Se
Services*

STEP FIVE OF THE TEN STEP PLAN:

The New Mexico Supreme Court will adopt revisions to Rule 16-601 of the Rules of Professional Conduct to reflect a reporting requirement for attorney pro bono services. (See Attachment B)

Implementation of Step Five:

After the Plan has been accepted by the New Mexico Supreme Court, the necessary action to implement the revision will be initiated and followed through by the Commission.

PROBLEM ADDRESSED BY STEP FIVE:

New Mexico currently has a purely voluntary pro bono reporting system. In 2003, only 32% of New Mexico attorneys reported pro bono hours on their dues form. Consequently, little is known about pro bono services in New Mexico. Nothing is known about what types of legal problems are addressed or what services are provided or how many clients are assisted.

RATIONALE FOR STEP FIVE:

Step Five is based on the assumption that a change in the pro bono reporting rule will not only increase the reporting of pro bono work, but encourage more attorneys to provide more pro bono work. The adoption of the rule will require pro bono reporting. The proposed rule change does not require that attorneys actually provide pro bono service. Attorneys may report zero pro bono hours, but the report must be completed. Other states that have adopted a reporting requirement rule are gathering information on types of services provided, location of services, and numbers of clients served. They report that the information is helpful in encouraging, recognizing and rewarding good service by volunteer attorneys and paralegals, as well as collecting data on the impact of the Plan. A change in the rule now will assist the advance pro bono efforts, particularly by encouraging service within the district court committees.

The draft rule provides for pro bono reports to be kept confidential. The purpose of the data collection is to track improvements and systemic changes. No attorney pro bono reports will be revealed to the public.

5

Rule Change:

*Revise Rule
16-601 to
Reflect Reporting
Requirement Of
Attorney Pro
Bono Services*

The Plan recognizes that rule changes often cause controversy among the bar membership. Therefore additional information is provided about reporting rules in other states. The ABA Pro Bono website reports the following:

- **4 states have mandatory pro bono reporting:**
Florida, Maryland, Mississippi, Nevada
- **8 states rejected mandatory pro bono reporting:**
Colorado, Indiana, Massachusetts, Minnesota, New York, Pennsylvania, Tennessee, Utah
- **12 states have voluntary pro bono reporting:**
Arizona, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Missouri, Montana, New Mexico, Texas, Utah, Washington

<http://www.abanet.org/legalservices/probono/reporting.html>

The ABA Pro Bono website also includes a list of points in favor of a rule requiring the reporting of pro bono hours. Some of those points are:

- Effective mechanism for collecting reliable, accurate, consistent data to evaluate delivery of pro bono legal services to the poor
- Can increase monetary contributions
- Promotes increased access to justice/courts
- Promotes involvement in pro bono services/activities
- Data can send message to non-legal community about their responsibility to fund legal services for poor
- Enables recognition of contributing lawyers
- Facilitates engendering confidence in the bar
- Encourages fulfillment of professional responsibility
- Can raise awareness of opportunities for pro bono involvement.

<http://www.abanet.org/legalservices/probono/reportingareuments.html>

Florida has required reporting of pro bono services since 1993. The ABA reports these findings from Florida:

- the committee system creates local responsibility for using the data acquired through reporting to develop plans and projects
- significant increase in participation, the number of volunteer hours and monetary contributions.

- reporting response rates in recent years range from 87% - 90%.
- the Florida reporting rule measured an increase in participation in the early years of 5% - 7% and then leveled off at 3% - 5%.
- Florida system costs about \$10,000 per year to implement – including collecting and evaluating the data, modifying the membership form, distributing information to bar committees and members.

Steve Scudder, counsel for the ABA Pro Bono Committee
<http://www2.mnbar.org/committees/lad/minutes-archives.htm>

6

Rule Change:

*Revise Rule
16-601 to
Reflect a
Goal of 50
Pro Bono
Service Hours
Or A
Contribution of
\$500 or a
Combination of
The Two*

STEP SIX:

The New Mexico Supreme Court will adopt revisions to Rule 16-601 of the Rules of Professional Conduct to reflect a goal of fifty annual pro bono service hours or a contribution of \$500, or a combination of the two. (See Attachment B)

Implementation of Step Six:

This step will be implemented at the same time and in the same manner as suggested for the implementation of Step Five.

PROBLEM ADDRESSED BY STEP SIX:

Rule 16-601 of the Rules of Professional Conduct recommends attorneys provide 50 hours of pro bono service or contribute \$350 to support legal services for the poor. Several problems are noted with the current rule:

- 1) the percentage of attorneys reporting pro bono hours is low (32%);
- 2) the average contribution for those contributing to the Equal Access to Justice bar dues check off is \$142.

This Step encourages participation in both pro bono and financial contributions and revisions to the rule will encourage a combination of both.

RATIONALE FOR STEP SIX:

The rule revisions reflect a goal of reporting 50 pro bono hours per year or a financial contribution to civil legal services of \$500, or a combination of both.

The draft rule suggested displays a range of suggested options to encourage participation in a variety of ways at the convenience of the attorney. The 50 hours/\$500 combination is intended to provide a simple calculation. For example, an attorney providing 20 hours pro bono service has corresponding financial contribution of \$300. The Commission recognizes that the formula does not represent a one-for-one value for hours of service. The formula is simply intended to provide a simple means of calculating voluntary contributions of time and money.

Pro bono Hours	0	5	10	15	20	25	30	35	40	45	50 +
Suggested Contribution	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	Attorney discretion

The Pro Bono report form should be revised to include an option for the attorney to contribute under this rule. Contributions will be credited to the Bar Foundation.

7

Rule Change:
*Revise Rule
 18-201 to
 Provide for
 MCLE Credit
 To Attorneys
 Providing Pro
 Bono Services*

STEP SEVEN:

The New Mexico Supreme Court will adopt revisions to Rule 18-201 of the Rules for Minimum Continuing Legal Education to provide for MCLE credit to attorneys providing pro bono service.

(See Attachment C)

Implementation of Step Seven:

This step will be pursued in conjunction with the implementation of steps five and six.

PROBLEM ADDRESSED BY STEP SEVEN:

There is little in the way of incentives and rewards that encourages pro bono participation by private attorneys. The Plan proposes that attorneys providing free legal services receive thanks and credit for fulfilling a critical need. One form of this recognition is MCLE credits since they are a requirement of practice in New Mexico.

RATIONALE FOR STEP SEVEN:

This step recommends a change to Rule 18-201 to provide up to 4 CLE general credits for attorney pro bono services. The MCLE credit is intended as a mark of appreciation, but also will promote participation. The proposed draft rule allows for one CLE credit hour for every 6 hours of pro bono service donated through an approved provider. Frequently, pro bono cases offer the handling attorneys research and skills challenges at least equal to MCLE lecture opportunities.

Several states, including Colorado and Mississippi, have adopted rules that provide CLE credit for pro bono services. Some of the rules administer the program by monitoring pro bono services through accredited pro bono entities – legal service providers and courts. The programs provide credit for direct client services, law student and new attorney mentoring programs, court administered pro se, mediation programs and more. The rules do not provide for a one to one match of pro bono service hours and credits, instead, 3 to 6 hours of pro bono service equal one CLE credit.

The LSAP Committee will draft a CLE Self Study Ethics Program that will instruct attorneys about the New Mexico Professional Conduct rule's goal to provide pro bono legal services to the poor. The committee will seek MCLE approval for the self-study program and will sell the program to raise funds for the Bar Foundation. The Bar Foundation will combine these funds with the pro hac vice funds for distribution to legal services programs.

8

Expand Participation:
Coordinate Recruitment Efforts among the District Committees, the Courts, the State Bar, and Statewide Providers

STEP EIGHT OF THE TEN STEP PLAN:

The Commission will coordinate efforts to recruit pro bono attorneys and other volunteers among the new district Access to Justice committees, the courts, the Bar Foundation, and statewide providers.

Implementation of Step Eight:

The Commission, in coordination with the Courts, district committees, the Bar Foundation and statewide providers, will develop and coordinate statewide recruitment efforts.

PROBLEM ADDRESSED BY STEP EIGHT:

New Mexico currently has both formal and informal structures in place to provide pro bono assistance. Attorneys at present can offer pro bono services through court-related programs, service providers, and several Bar Foundation programs, and in other ways. This leads to multiple demands on willing attorneys from various sources. Attorney confusion results. Providers report frustration in calling on attorneys who are giving services through other providers.

RATIONALE FOR STEP EIGHT:

Unless recruiting efforts in New Mexico focus on how the recruitment will dovetail into the local access to justice plans, current frustration will continue. Since attorneys have limited time to offer, a coordinated recruiting plan can identify areas of greatest need in particular fields of law, and can then focus on seeking help for matters within attorney's areas of competence. Competence should also be developed among attorneys who do not normally practice in areas in which low income people routinely have legal needs. Recruitment goals should support the local plans so that the plans achieve success. Currently, the Bar Foundation provides some coordination for statewide pro bono efforts, and the coordinator of that program reports that support and recruitment really go hand in hand. At the same time, the recruiting effort should be coordinated with legal service providers so that legal service providers are prepared to assign cases and projects to new recruits. Expanding this system will require additional staff support.

9

Expanding
Participation:
*Establish an
On-line Pro
Bono Clearing
House*

STEP NINE OF THE TEN STEP PLAN:

The Commission will assist in establishing an internet-based pro bono case recruitment program via website or email.

Implementation of Step Nine:

The Commission will coordinate efforts among the Bar Foundation, district committees and service providers to establish a website that will offer attorneys a variety of pro bono cases, and provide a means for scanning and transmitting client documents, pleadings and negotiation tools.

PROBLEM ADDRESSED BY STEP NINE:

New Mexico currently has a fractured system of coordinating pro bono efforts. With the addition of district court programs, the challenge will increase. The Bar Foundation currently operates a "blast fax" program to participating attorneys. The Bar sends a brief case description by fax to a list of attorneys in a geographical region or by substantive law area. If an attorney is interested in more information about the case and will consider assisting the client pro bono, the attorney then contacts the Bar Foundation for more information and to make client contact arrangements. Legal service programs send cases to the Bar Foundation to request pro bono recruitment. This system requires updating and expanding.

RATIONALE FOR STEP NINE:

The Commission will determine the most appropriate location for launching an internet based pro bono case recruitment effort via e-mail or website. This type of system is particularly amenable to unbundled services. Client documents can be scanned and e-mailed to a participating attorney anywhere in the state. Likewise, such a system will permit an attorney to prepare client pleadings and instruct clients to proceed pro se. Also, pro bono attorneys may negotiate with client creditors, landlords and others to assist clients in resolving problems outside the court system. This type of service, if promoted widely, can provide limited legal assistance to a large

number of clients all over the state – particularly to rural areas. One state set up a program with the legal aid provider to allow legal aid staff to act as interpreters for attorneys assisting pro bono clients who spoke languages other than English – a three way call system can accomplish this goal.

STEP TEN OF THE TEN STEP PLAN:

The Commission will promote recruitment of law students, new lawyers, and law firms to provide pro bono services.

Implementation of Step Ten:

- a. The Commission will request the UNM School of Law, in conjunction with the New Mexico Bar's Legal Services and Programs Committee and others, to offer targeted pro bono projects for law students.
- b. A mentor program will be developed.
- c. A pro bono "fair" will ultimately be offered in conjunction with the new admittee swearing in ceremony.
- d. The Commission will develop a law firm challenge to encourage pro bono service by firm members.

PROBLEM ADDRESSED BY STEP TEN:

Law students and new lawyers are a ripe source of potential pro bono volunteer service. However, since New Mexico has only one law school, our student and new lawyer population is somewhat limited. Additional steps can be developed to expand student, new lawyer and law firm participation in pro bono work.

RATIONALE FOR STEP TEN:

The Commission, with the support of the Bar Foundation, will encourage initiatives that instill in new attorneys an awareness of the legal needs of those with limited means and will encourage a sense of public service.

The American Bar Association has an extensive report on law school pro bono programs. Some schools include pro bono service as a graduation requirement, some schools have school-sponsored programs, and others support independent student projects. The ABA provides models of law school pro bono programs.

The Commission will request the University of New Mexico School of Law in conjunction with the LSAP and others, to develop targeted pro bono projects for law students and new lawyers, develop a mentor program and organize a pro bono "fair" in conjunction with the swearing in ceremony. Thus far discussion

10

**Expanding
Participation:**
*Law Student,
New
Lawyer and
Law Firm
Challenge*

of law student involvement has included providing law student assistance to attorneys accepting pro bono matters and providing discrete legal issues for students to prepare and present at court under the direction of a supervising attorney, such as Landlord / Tenant issues. In addition, those participating in the Taos pro bono project have suggested the recruitment of UNM law students to help with local pro bono committee plans and to assist in the implementation of those plans.

Local law students, new attorneys and law firms are under-tapped resources for pro bono assistance from whom participation should be sought.

CONCLUSION

This Plan comes from the combined efforts of the State Bar of New Mexico Legal Services and Program Committee, the persons named on the cover page and the Systems Planning Working Group of the New Mexico Commission on Access to Justice. The proposals contained in this Plan have been approved by the Board of Bar Commissioners of the State Bar of New Mexico. The System Planning Working Group urges the New Mexico Commission on Access to Justice Commission to approve this Plan with the view towards presenting it to the New Mexico Supreme Court for adoption.

Respectfully submitted:
The System Planning Committee,

by Christine Chandler
Christine Chandler, Chair

ATTACHMENTS

- Attachment A: New Mexico Poverty Statistics
- Attachment B: Proposed Rule 16-601 NMRA
- Attachment C: Proposed Rule 18-201 NMRA

State	Population	Poverty Level Population (at or below 125%) (Individuals)	Poverty Level Population (at or below 125%) (Households)	Average Number of Local Problems Per Household in Last 12 Months ¹	Estimated Total Problems Each Year	As Applied to New Mexico's Poverty Statistics: Estimated Total Problems Each Year ²	Legal Help Sought	Legal Assistance Obtained (of those seeking help)	Total Unmet Legal Needs	As Applied to New Mexico's Poverty Statistics: Estimated Unmet Legal Needs ³
New Mexico	1,819,046	437,747	166,444	2.41	450,016	450,016				324,520
Connecticut	3,425,074	270,581	107,000	2.7	288,900	449,399	10.0%	16.4%	260,010	404,459
Illinois ⁴	12,419,293	2,152,488	818,436	1.7	1,391,341	353,161			1,183,181	295,243
Massachusetts ⁵	6,349,097	943,692	375,973	2.4	902,335	498,614			591,030	326,592
Montana	902,195	174,900	71,388	3.47	247,716	577,551			207,091	482,841
New Jersey ⁶	8,414,350	1,246,000	464,552	1.8	836,194	504,884	31.2%	17.8% ^a	575,301	347,360
Oregon ⁷	2,842,321	483,194	102,656	1.9	195,046	281,559			160,328	231,442
Tennessee	5,689,283	1,001,908	403,995	3.3	1,333,184	549,255	75.3% ^b		328,630	134,570
Vermont ⁸	608,827	78,143	32,026	1.1	35,229	286,431	25.0%		26,386	214,823
Washington ⁹	5,894,121	1,039,000	350,000	3.3	1,159,000	549,285		12.0%	1,016,400	483,353

¹For New Mexico, this value is equal to the average of all nine legal needs studies

²Illinois sampled individuals at or below 160% of the poverty level for its study. New Mexico's number of poverty households was adjusted for calculations with this State

³Massachusetts sampled individuals between 125% and 186% of the poverty level. New Mexico's number of poverty households was adjusted for calculations with this State

⁴New Jersey sampled individuals at or below 200% of the poverty level. New Mexico's number of poverty households was adjusted for calculations with this State

⁵Oregon used 1990 Census numbers (individuals at or below 200% of the poverty level). New Mexico's number of poverty households was adjusted for calculations with this State. Oregon did not rely on Census numbers to calculate households, but the 1996 Oregon Population Survey, since such numbers were not available for New Mexico, households were calculated based on 1990

⁶Vermont sampled individuals at or below 187.5% of the poverty level, because this figure was not available for New Mexico, the poverty level population for households at or below 186% was used instead in calculations with this State

⁷The Washington Legal Needs Study calculated the number of individuals at or below 125% by using the 2000 Census figure of 815,000, plus 223,000 (the number of individuals not included in the Census because their population group was excluded - undocumented farmworkers, individuals incarcerated or institutionalized, etc.), because this figure was not available for New Mexico, the poverty level population for households at or below 125% was used in calculations with this State

⁸DIFFERENT MEASURES OF LEGAL ASSISTANCE OBTAINED:

-Illinois, Montana, New Jersey, Oregon, Vermont and Washington's values are based on the percentage of individuals who did not receive legal assistance (regardless of whether they sought it or not)

-Connecticut's value is based on the percentage of those who did not seek help to solve their problem

-Massachusetts and Tennessee's values are based on the percentage of those who did not take action of any kind

Attachments:

16-601. Pro bono public service:

1. A lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. In fulfilling this aspiration, the lawyer may:
 - A. provide a substantial majority of the fifty (50) hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means; or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
 - B. provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of the standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession; or
 - C. alternatively, fulfill this aspiration by contributing financial support to organizations that provide legal services to persons of limited means, in the amount of five hundred dollars (\$500) per year, or provide a combination of pro bono hours and a financial contribution as suggested in this table:

Pro bono Hours	0	5	10	15	20	25	30	35	40	45	50+
Suggested Contribution	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	Attorney discretion

2. Members of the judiciary and their staff are exempt from the provisions of this rule. Nevertheless, exempt attorneys are encouraged to assist in meeting the needs of the poor for legal services to the extent that they can, whether by monetary contributions or otherwise. Attorneys licensed in New Mexico who reside outside of New Mexico may fulfill the aspirational goals of this rule in their own state.
3. Each member of the bar shall annually certify whether the member has satisfied the member's

professional responsibility to provide pro bono legal services to the poor. Each member shall certify this information through a form that is made a part of the member's annual membership fees statement which shall require the member to report the following information:

- the number of hours the attorney dedicated to pro bono legal services, and
- if the attorney has satisfied the obligation by contribution, the amount of that contribution.

If the attorney has not provided pro bono legal services to the poor in the current year, the form shall so state, and the reason for non-compliance shall be stated. If the attorney is exempt from the obligation to provide pro bono services to the poor, the report shall so state and indicate the nature of the exemption.

4. The provisions of Rule 16-601 are aspirational goals and an affirmation of professional responsibility, but are not mandatory and do not constitute a basis for discipline under the Rules Governing Discipline for the State Bar of New Mexico. However, the reporting requirements of Rule 16-601 are mandatory and the failure to report this information shall be treated in the same manner as failure to pay dues or comply with mandatory continuing legal education. The information provided pursuant to this Rule is designed for statistical purposes only and shall be used by the State Bar of New Mexico and distributed only in statistical form. Individual attorney responses shall remain confidential.

5. To facilitate the goals of this rule, the chief judge in each judicial district shall be charged with convening a local pro bono committee comprised of local attorneys, judges, legal service providers, and other interested participants. Each local pro bono committee shall establish a local pro bono plan. The time deadlines and content for local pro bono plans shall be established by administrative order of the Supreme Court.

18-201. Minimum educational requirements:

A. **Hours required.** Every active licensed member of the state bar shall complete twelve (12) hours of continuing legal education during each year as provided by these rules.

B. **Legal ethics.** At least one (1) hour of the twelve (12) hours shall be devoted to legal ethics or code of professional responsibility subjects.

C. **Professionalism credits.** At least one (1) hour of the twelve (12) hours of continuing education shall be devoted to the subject of professionalism. During the 2001 compliance year, every active member of the State Bar of New Mexico shall be required to take a standardized two-hour course on professionalism to be developed and provided by the State Bar of New Mexico. Course credit can be obtained by attending the live course or viewing a self-study standardized course. After the 2001 compliance year, additional course providers may provide a professionalism course of approved content.

D. **Credit for pro bono legal services.** Continuing legal education credit may be earned for performing eligible pro bono legal services for clients unable to afford counsel. Eligible pro bono legal services are legal services provided by an attorney without compensation pursuant to assignment by a court or participation in a pro bono program administered by an approved legal services organization, state bar committee or court program whose primary purpose is the furnishing of legal services to indigent persons who have been screened for financial eligibility. Credit for pro bono legal services shall be awarded in the following ratio: one (1) CLE credit hour for every five (5) 60-minute hours (300 minutes) of eligible pro bono legal service. Credit shall be awarded in increments of no less than 1 CLE credit hour. Ethics and professionalism credit is not available for participation in pro bono CLE activities. A maximum of four (4) pro bono CLE credit hours may be earned during any one reporting cycle.

1. The MCLE Board shall promulgate regulations outlining the record keeping and reporting procedures to be used for claiming MCLE credit earned by performing pro bono legal services.

E. **Carry-over.** Any member may carry up to twelve (12) hours of credits earned in one (1) compliance year over to the next compliance year only. One (1) ethics credit may be carried-over as part of the twelve (12) hours of credits. One (1) professionalism credit may be carried over as part of the twelve (12) hours of credits. While excess ethics credits can be converted to be used toward the substantive (general) requirement, excess professionalism credits cannot be converted. Self study credit hours cannot be carried over.

F. **Judges.** Judges, retired judges who are active licensed members of the state bar, domestic violence special commissioners and domestic relations hearing officers shall be required to complete the same number of hours of continuing legal education as other active licensed bar members but may satisfy such requirement by attending judicial education programs:

- (1) provided by the Judicial Continuing Education Committee;
- (2) approved by the Minimum Continuing Legal Education Board;
- (3) provided by the Judicial Education Center; or

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