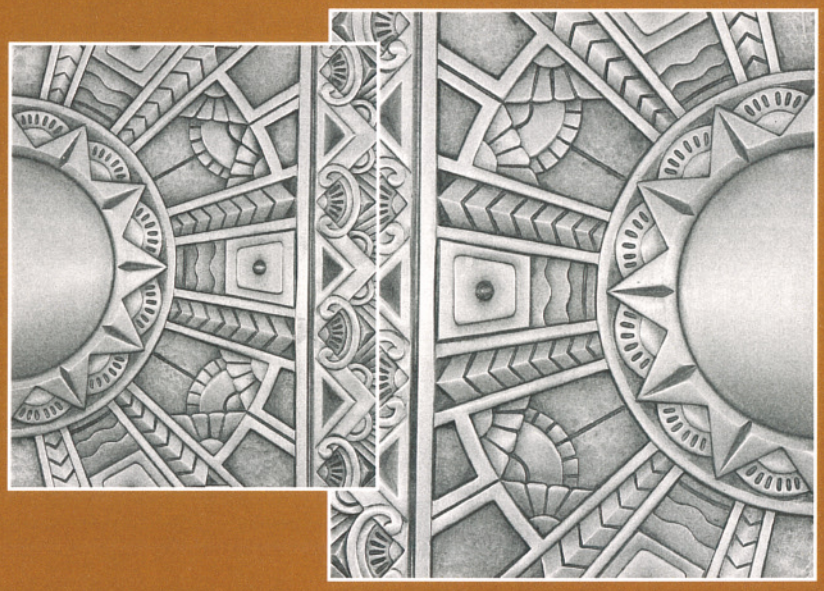
THE SUPREME COURT *of* OHIO

REPORT *and* RECOMMENDATIONS OF THE SUPREME COURT Task Force on Pro Se & Indigent Litigants



April 2006

REPORT AND RECOMMENDATIONS OF

The Supreme Court *of* Ohio

TASK FORCE ON PRO SE & INDIGENT LITIGANTS

Honorable John Adkins, Chair

April 2006

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I. INTRODUCTION

When Chief Justice Thomas J. Moyer announced the appointment of a task force to recommend improvements to the programs assisting pro se and indigent litigants, he noted, "Providing indigent representation at all levels of the state court system has become a challenge." The impetus behind formation of the task force is the recognition that access to justice is a fundamental right that is not being afforded to all citizens, especially indigent and pro se litigants. The 52 recommendations of this report are based on one simple premise: to fulfill its duty of "justice for all", our legal system must become "user friendly" to the pro se litigant and afford timely access to effective legal counsel for indigent parties.

One of the court's most critical duties is to ensure that all citizens drawn into our criminal justice system receive the protections guaranteed them by the U.S. and Ohio Constitutions. The task force has concluded that reorganization of the public defender system will advance this critical principle.

In the civil arena, the task force believes that Ohio must increase the availability of legal assistance for our poorest citizens. The private bar plays an important role in delivering these services. We have made recommendations that we believe will support and encourage provision of pro bono services in Ohio. Documentation of pro bono activities will enhance the public perception and delivery of these services.

Pro se litigants present a tremendous challenge for Ohio's courts. Pro se litigants, whether voluntarily unrepresented or unable to afford counsel, must be able to participate in a meaningful way in our justice system. We believe that the use of standardized forms and procedures, enhanced guidance and support for pro se litigants, and wide, convenient availability of information are important steps in achieving this goal.

Funding for civil and criminal representation needs to be increased before Ohio can meet the goals recognized in this report. We have proposed specific revenue enhancements, together with estimates of how much money they might generate.

Like all challenges, the effort to assist pro se litigants and indigent parties will require vision, allocation of resources and persistent oversight if we are to satisfy our duty to provide "justice for all". With that challenge in mind, the task force offers these recommendations to the Supreme Court of Ohio and ultimately, those responsible for their implementation.

II. RECOMMENDATIONS TO IMPROVE INDIGENT CRIMINAL DEFENSE

Among the many Constitutional protections that are pertinent to all citizens is protection from the arbitrary and capricious power of the state. Among those most precious are the protections of life, liberty and property which are underpinnings of the right to counsel for individuals facing criminal prosecution.

It is the opinion of this task force that the system of providing counsel to indigent criminal defendants is inefficient and ineffective, and in need of significant improvements.

The recommendations require modification of the current system by making the Ohio Public Defender Commission an independent entity within the judicial branch of government and implementing local indigent representation commissions to oversee the provision of indigent criminal legal services. A paramount concern of the task force is to ensure provision of adequate funding to fully implement the recommendations.

It is important to note that in 1992, a task force chaired by then-Justice Craig Wright, made many of these same recommendations; however, for a variety of reasons, the recommendations were not implemented. The time has come for systemic changes to occur. The absence of a fully-funded, effective system creates the risk of denying an individual's constitutional right to counsel.

1. THE TASK FORCE RECOMMENDS THAT THE STATE PUBLIC DEFENDER COMMISSION BE AN INDEPENDENT ENTITY WITHIN THE JUDICIAL BRANCH.

Discussion: Although the Ohio Revised Code is silent on the issue, the Ohio Public Defender Commission has historically operated under the auspices of the executive branch of government. The task force, however, believes that the function of ensuring proper constitutional protections for individuals entitled to representation is that of the judicial branch. It is the judiciary that is in the unique position to decide when either Ohio law or the laws of the United States require protection of an individual's rights to due process and equal protection.

The Supreme Court of Ohio promulgated rules governing all aspects of the conduct of Ohio's courts and the persons and counsel appearing before those courts. It is therefore logical that determining the necessity and proper provision of legal counsel is the responsibility of the judiciary. Twenty other states and the federal government have their public defender systems operating under the judicial branch. In Ohio, there is already precedent for such a move as two other organizations — the Office of Disciplinary Counsel and the Ohio Criminal Sentencing Commission — operate as independent entities within the judicial branch. It is the position of the task force that the judiciary will fully appreciate the constitutional necessity of the public defender system.

2. **THE TASK FORCE RECOMMENDS THAT THE STATE PUBLIC DEFENDER COMMISSION MEMBERSHIP BE EXPANDED IN BOTH NUMBER AND APPOINTING AUTHORITIES TO INCLUDE REPRESENTATIVES FROM MORE STAKEHOLDERS. THOUGH NOT EXCLUSIVE, THE FOLLOWING ENTITIES SHOULD HAVE APPOINTMENTS TO THE COMMISSION:**

   Governor
   Supreme Court of Ohio
   General Assembly
   Ohio Judicial Conference
   Ohio State Bar Association
   Ohio Municipal League
   County Commissioners Association
   Ohio Law Schools
   Ohio Association of Criminal Defense Lawyers
   Local (County) Public Defenders
   Ohio Clerks of Court Association
   General Public.

Discussion: The current state public defender commission is comprised of nine appointees, five gubernatorial and four Supreme Court. Of the nine members, five must be attorneys licensed to practice law in Ohio, and membership must be balanced between the two major political parties. The task force believes that although professional and political balance must be maintained, increasing the number of commission members and opening the appointments to groups often unrepresented in the public defender system would give the commission a broader overall perspective on the provision of indigent defense. The task force determined that representatives of funding authorities, including county commissioners

and members of the General Assembly, would aid in navigating turbulent budgetary cycles. In 1992 the Task Force to Study Court Costs and Indigent Defense ("the Wright report") recommended a similar expansion of the membership of the commission. The time has come for this recommendation to be implemented to promote a more inclusive interaction of all stakeholders and the broadest possible perspective on the indigent representation system.

3. THE TASK FORCE RECOMMENDS THAT EACH COUNTY SHOULD BE REQUIRED TO ESTABLISH AN INDIGENT REPRESENTATION COMMISSION OR PARTICIPATE IN A REGIONAL INDIGENT REPRESENTATION COMMISSION. EACH COUNTY OR REGIONAL COMMISSION SHOULD BE REQUIRED TO DEVELOP A PLAN FOR THE DELIVERY OF INDIGENT REPRESENTATION SERVICES IN THAT COUNTY OR REGION. THE PLANS SHOULD BE REVIEWED AND APPROVED BY THE STATE COMMISSION.

Discussion: It is axiomatic that one kind of delivery system will not work in all 88 Ohio counties. Allowing counties to select a local delivery system that best meets their needs will help ensure provision of the most efficient and effective public defender services. Although the task force envisions counties using both public defender offices and appointed counsel, this does not preclude a county from showing that an "all-appointed" system would be the most cost-effective and provide the constitutionally required representation. Indeed, counties might find that an agreement among a few contiguous counties to form a regional commission might fulfill the needs of the participating counties. The task force believes that the local commission should include a representative of the county commissioners, the township trustees, the local bar association, the judiciary and the general public; however, each county or region should be given authority to determine if other members are appropriate.

The county or regional plan would have to comply with authorized delivery systems and minimum standards promulgated by the state public defender commission under its rule-making authority (discussed below). The newly configured state public defender commission would have the ability to review and approve any plan. If a county or regional plan were found by the commission to be inadequate, the state commission should be given authority to determine the local delivery system to be used. If a local or regional commission did not comply with the mandates of the state public defender commission, that county or regional indigent representation commission would not be reimbursed its authorized expenses.

4. **THE TASK FORCE RECOMMENDS THAT THE STATE PUBLIC DEFENDER COMMISSION BE GIVEN THE RESOURCES TO ENFORCE RULES AND STANDARDS GOVERNING THE PROVISION OF INDIGENT DEFENSE SERVICES.**

Discussion: The task force believes that the current rule-making authority of the state public defender commission under R.C. 120.03 should continue. It has been apparent, however, that the commission often does not have the resources, either in personnel or finances, to enforce the rules promulgated. In order to ensure fair and adequate representation for indigent defendants, the public defender commission must be able to enforce its rules regarding standards for the provision of services. Currently, under R.C. 120.03 the public defender commission must promulgate rules for the following:

- Standards of indigency and minimum qualifications for legal representation by a public defender or appointed counsel
- Standards for the hiring of outside counsel
- Standards for contracts by a public defender with law schools, legal aid societies, and nonprofit organizations for providing counsel
- Standards for the qualifications, training, and size of the legal and supporting staff for a public defender, facilities, and other requirements needed to maintain and operate a public defender office
- Minimum caseload standards
- Procedures for the assessment and collection of the costs of legal representation that is provided by public defenders or appointed counsel
- Standards and guidelines for determining whether a client is able to make an up-front contribution toward the cost of legal representation
- Procedures for the collection of up-front contributions from clients who are able to contribute toward the cost of legal representation
- Standards for contracts between a board of county commissioners, a county public defender commission, or a joint county public defender commission and a municipal corporation for the legal representation of indigent persons charged with violations of the ordinances of the municipal corporation.

The task force believes that the state commission should be given additional authority to promulgate standards on the training and qualifications of assigned counsel providing representation, maximum caseloads or billable hours per attorney for both public defender offices and assigned counsel, and minimum funding requirements for indigent defense delivery systems including, but not limited to staff, experts and operating facilities.

5. THE TASK FORCE RECOMMENDS THAT CONSIDERATION BE GIVEN TO HAVING THE STATE MANAGE ALL APPELLATE REPRESENTATION FOR INDIGENT CRIMINAL DEFENDANTS.

Discussion: The task force supports the current division of labor between the local public defender offices and the state office. The state office is better equipped to manage the state and federal appellate work along with other postconviction matters, while local public defender offices dedicate themselves primarily to trials. The Wright report stated that appeals are "extremely expensive, and few attorneys have the expertise to handle appellate cases or are willing to accept those cases at the low fee schedules currently in place." The task force determined that these conditions have not changed over the last decade and, therefore, the state public defender office is in a better position to manage appeals.

The task force believes that a centralized method of providing appellate representation to indigent defendants will result in an improvement in the quality of appellate representation. The task force envisions that the state public defender commission would be given responsibility for overseeing the provision of these services. However, understanding the budgetary constraints that the state public defender commission currently operates under, the task force believes that this recommendation might best be implemented incrementally, with pilot programs leading the way.

6. THE TASK FORCE RECOMMENDS THAT THE OHIO PUBLIC DEFENDER COMMISSION ADOPT PERFORMANCE-BASED STANDARDS FOR DEFENSE COUNSEL.

Discussion: There is a wide disparity in the ability and competency of defense counsel and the quality of representation provided. The task force believes that performance-based standards would lead to better representation both in public defender offices and with assigned counsel.

7. **THE TASK FORCE RECOMMENDS THAT TRIAL COURTS SHOULD CONTINUE TO HAVE THE OPTION OF APPOINTING THE OHIO PUBLIC DEFENDER TO REPRESENT CRIMINAL DEFENDANTS AT TRIAL WHERE A CASE ARISES FROM ALLEGED CONDUCT AT A STATE CORRECTIONAL INSTITUTION. THE COST OF PROVIDING SUCH REPRESENTATION SHOULD BE THE RESPONSIBILITY OF THE STATE.**

Discussion: The 1992 Wright report determined that counties should not be financially responsible merely because a state correctional institution was located within the county's borders. Therefore, the Wright report recommended that any case arising out of criminal conduct in a state correctional institution be paid for wholly by the state. The Wright report did not limit trial courts to appointing the state public defender as counsel in these cases; however, even if the trial court appointed private counsel, the state should bear the financial burden.

8. **THE TASK FORCE RECOMMENDS THAT THE LEGISLATIVE SERVICE COMMISSION FISCAL ANALYSES SHOULD INCLUDE AN IMPACT STATEMENT TO MEASURE THE EFFECT OF ALL PENDING LEGISLATION ON INDIGENT DEFENSE.**

Discussion: Legislation that has a direct impact on the costs of providing indigent representation is regularly introduced in the General Assembly. Currently, the Ohio Judicial Conference issues Judicial Impact Statements regarding the costs of pending legislation on the overall administration of justice. In addition, the Legislative Service Commission Fiscal Analysis includes some discussion of costs to local governments if a bill is passed. The task force believes that although these publications are helpful to members of the General Assembly in their consideration of pending legislation, they do not go far enough. Every time legislation is introduced to increase penalties for specified conduct or create new offenses, there is a direct, significant impact upon the cost of providing indigent representation. The preparation of an impact statement on the overall cost to the justice system, with particular attention paid to the costs to the state and counties for indigent defense, will permit a complete analysis of pending legislation by the members of the General Assembly. The task force notes that the Wright report made this recommendation in 1992, and it has yet to be implemented.

9. THE TASK FORCE RECOMMENDS THAT MONIES CURRENTLY APPROPRIATED TO THE OHIO PUBLIC DEFENDER BY THE OHIO GENERAL ASSEMBLY BE PRESERVED FOR REPRESENTATION OF CRIMINAL DEFENDANTS. STATE-MANDATED REPRESENTATION OF PARTIES IN NON-CRIMINAL CASES SHOULD BE MANAGED BY AN ENTITY OTHER THAN THE PUBLIC DEFENDER, AND FUNDED FROM ALTERNATIVE SOURCES.

Discussion: The task force recognizes that the public defender system is neither organized nor adequately funded to accept responsibility for providing legal representation in non-criminal matters, such as termination of parental rights, or guardian ad litem representation. Further study is needed to develop recommendations for how best to manage and fund such statutorily-mandated representation. The task force recommends that such representation should be funded by a new source rather than the budget of the state public defender.

10. THE TASK FORCE RECOMMENDS THAT THE RULES OF CRIMINAL PROCEDURE BE AMENDED TO FACILITATE DISCOVERY BY CRIMINAL DEFENDANTS.

Discussion: As stated in the Wright report, more open and uniform discovery will "reduce the need for court intervention in the discovery process, facilitate settlement and result in better case preparation." Allowing for such discovery, however, should not result in the wholesale exclusion of evidence at trial and any rule allowing such discovery should take into account the risks of witness intimidation and the facilitation of perjury.

There has been long-standing debate regarding any rule amendments that facilitate a more open discovery process. Indeed, the task force itself faced internal conflict over whether recommending a more open discovery system was appropriate. In the end, however, a majority of the task force believed that such discovery will aid not only attorneys, but those indigent individuals who proceed without the aid of counsel. It is therefore the recommendation of the task force that the Supreme Court of Ohio amend the Rules of Criminal Procedure to facilitate this open discovery process.

11. THE TASK FORCE RECOMMENDS THAT INDIGENCY STANDARDS SHOULD BE MANDATED BY STATUTE FOR STATEWIDE USE.

Discussion: The Ohio Public Defender currently recognizes three tiers in determining indigency: presumptively indigent (under 125 percent of the poverty level), marginally or partially indigent (125 to 187.5 percent) and presumptively not indigent (187.5 percent and above). Though codified in the Administrative Code, guidelines often go unrecognized, resulting in wide disparity in indigency determinations from county to county. These standards should be placed in the Revised Code to ensure consideration and equitable enforcement across the state.

III. RECOMMENDATIONS TO INCREASE THE PARTICIPATION OF OHIO ATTORNEYS IN PROVIDING PRO BONO LEGAL SERVICES

The task force has researched strategies for more adequately meeting the civil legal needs of low-income Ohioans, and for addressing the needs of self-represented civil litigants in Ohio's courts. The recommendations emphasize increasing the involvement of private attorneys acting in a pro bono capacity as a primary means of reducing the number of litigants who are appearing pro se because they are indigent. The task force has also kept in mind litigants who choose to go forward without an attorney even though they could afford one. Some recommendations will aid these "voluntary" pro se individuals to access the court system and may have a secondary effect of aiding pro bono and legal aid attorneys who practice in a variety of jurisdictions. The task force also advocates additional resources for legal aid and pro bono programs, and for court-based pro se assistance.

12. THE TASK FORCE RECOMMENDS ADOPTION OF THE FOLLOWING RULE REQUIRING ALL ATTORNEYS LICENSED IN OHIO TO REPORT THEIR PARTICIPATION IN PRO BONO ACTIVITIES AS PART OF THEIR BIENNIAL REGISTRATION.

Professional Responsibility. Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono

publico legal services per year. In fulfilling this responsibility, the lawyer should:

a. provide a substantial majority of the 50 hours of legal services without fee or expectation of fee, or at a nominal 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 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.

Alternatively, because there may be situations in which it is not feasible for a lawyer to engage in pro bono services, a lawyer who annually contributes financial support totaling $500 or more to organizations that provide legal services to persons of limited means will be considered to have fulfilled this responsibility.

Reporting: Discharge of Professional Responsibility. All attorneys licensed to practice law in the state of Ohio shall complete a Pro Bono Legal Service and Contribution Report to be submitted to the Supreme Court of Ohio biennially as part of the attorneys' certificate of registration. The form for such report shall specify that the attorney need not disclose privileged matter, the identity of any client or the identity of any organization receiving contributions as provided above. The professional responsibility to provide pro bono services as established under this rule is aspirational rather than mandatory in nature. Accordingly, the failure to render pro bono services or to make a financial contribution will not subject an attorney to discipline.

Credit toward Professional Responsibility in Future Years. In the event that more than 50 hours of pro bono legal service are provided and reported in any one year, the hours in

excess of 50 may be carried forward and reported as such for up to two succeeding years for the purpose of determining whether a lawyer has fulfilled the professional responsibility to provide pro bono legal service in those succeeding years.

Discussion: The task force, in conjunction with other interested parties, conducted a survey of Ohio attorneys regarding their pro bono and other volunteer activity. The survey results (Attached as Appendix A) showed that Ohio attorneys are participating in a variety of volunteer activities, but many are not involved in the provision of legal services to the poor. The recommended rule that attorneys report their hours of pro bono service may spur some attorneys to spend more of their volunteer time on these services. The proposed language, including the 50 hour benchmark, is based in part on ABA Model Rule 6.1. However, the task force did not take a position on whether this rule should be included as part of the proposed revised Ohio Code of Professional Responsibility or included in the Ohio Rules for the Government of the Bar.

It is important to note that the task force proposal differs in one small but important way from a similar rule proposed by the Ohio State Bar Association and the Ohio Legal Assistance Foundation. The paragraph in the rule proposed by the task force that deals with the reporting of pro bono activity reads as follows:

> **Reporting: Discharge of Professional Responsibility.** All attorneys licensed to practice law in the state of Ohio shall complete a Pro bono Legal Service and Contribution Report, to be submitted to the Supreme Court of Ohio biennially as part of the attorneys' Certificate of Registration. The form for such report shall specify that the attorney need not disclose privileged matter, the identity of any client, or the identity of any organization receiving contributions as provided above. The professional responsibility to provide pro bono services as established under this rule is aspirational rather than mandatory in nature. Accordingly, the failure to render pro bono services or to make a financial contribution will not subject an attorney to discipline.

The last sentence of this paragraph in the rule proposed by the OSBA and OLAF reads as follows:

> Accordingly, the failure to render pro bono services, make a financial contribution o*r complete a Pro Bono Legal Service and Contribution Report* will not subject an attorney to discipline. [Emphasis added.]

The task force considered and unanimously rejected the language contained in the OSBA/OLAF version of the rule. The task force concluded that attorneys should be required to file a Report even if the Report indicated that no pro bono services or related financial contributions had been made.

Furthermore, the task force was extremely uneasy about the fact that the rule itself says that the form "shall" be completed for submission to the Supreme Court but then later says that there will be no consequence for the failure to comply with that mandatory duty. The task force hopes that the Supreme Court, when considering this point, recognizes the general risk to the disciplinary rules of telling lawyers that something is mandatory and at the same time telling them that there is no consequence for failing to follow that mandate.

The task force urges the Court to leave open the possibility of consequences, rather than providing attorneys an express safe harbor, for failure to file the report. The adoption of this task force's version of the rule would also suggest the elimination of proposed Note 12 to the OSBA/OLAF version of the rule which reads: "The responsibility set forth in this Rule is not intended to be enforced through the disciplinary process." Again, the task force prefers that the rule remain silent on these matters, leaving the subject open for consideration by the Court.

Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing direct services as outlined in paragraphs (a)(1) and (2). Legal services under this rule consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law. Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing a variety of services outlined in paragraph (b).

13. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO SPONSOR PERIODIC MEASUREMENT AND EVALUATION OF PRO BONO ACTIVITY IN OHIO.

Discussion: Periodic evaluation is important, not only to determine if the legal needs of low-income individuals are being met, but also to determine whether or not the implementation of these recommendations, and other efforts of pro bono programs, are having their intended effect.

14. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ENCOURAGE ALL OHIO LAW SCHOOLS TO PRESENT PRO BONO SERVICE AS PART OF THEIR EDUCATIONAL PROGRAMS IN ORDER TO INCULCATE THE EXPECTATION THAT PROVIDING PRO BONO SERVICES IS AN INTEGRAL COMPONENT OF ATTORNEY PROFESSIONALISM.

Discussion: The task force believes that exposing law students to the expectation that they will participate in pro bono service is an important part of the students' introduction to the concept of professionalism. They should learn, while still in school, that participation in pro bono activity is a part of what defines the practice of law as a profession and not merely as a business pursuit. Also, a pro bono educational component will help law students begin to understand the unmet need for legal services. They may also come to appreciate that respect for the rule of law and the justice system as a whole depends in part on access to that system, regardless of financial means.

15. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ENCOURAGE ALL TRIAL COURTS TO FACILITATE PRO BONO REPRESENTATION BY SCHEDULING CLINIC DOCKETS AND ACCOMMODATING COURT APPEARANCES BY VOLUNTEER LAWYERS WHO APPEAR THROUGH ORGANIZED PRO BONO PROGRAMS.

Discussion: The task force recognizes that the time of attorneys acting in a volunteer capacity should be respected. Moreover, courts can help reduce the number of indigent litigants proceeding pro se by accommodating attorneys who are willing to represent these individuals on a pro bono basis. This recognition will encourage more attorneys to provide pro bono services because of its practical benefit, and because this accommodation will signal the courts' appreciation for pro bono services.

16. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO IDENTIFY WAYS TO RECOGNIZE ATTORNEYS AND LAW FIRMS MAKING A SUBSTANTIAL COMMITMENT TO PRO BONO REPRESENTATION, AND THAT IT ENCOURAGE OTHER COURTS, BAR ASSOCIATIONS AND PRO BONO PROGRAMS TO RECOGNIZE OUTSTANDING VOLUNTEERS.

Discussion: The task force determined that recognition of outstanding volunteers, by the Supreme Court of Ohio and others, will help foster the continued growth and practice of pro bono representation by contributing to the visibility and status of pro bono work.

17. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ISSUE APPROPRIATE GUIDANCE TO THE OHIO JUDICIARY CONCERNING THEIR IMPORTANT ROLE IN PROMOTING PRO BONO LEGAL SERVICES AND VOLUNTEER RECRUITMENT.

Discussion: The current Code of Judicial Conduct does not provide adequate guidance as to how much a judge can do to promote pro bono legal representation, nor does it specifically encourage judges to support or promote pro bono representation. The task force therefore recommends a review of the Canons and commentary, and the adoption of appropriate language to help guide and encourage judges in promoting and supporting pro bono representation in their courtrooms and elsewhere.

18. THE TASK FORCE RECOMMENDS THAT GOV. BAR R.VI(4)(B) BE AMENDED TO ALLOW AN ATTORNEY WHO IS ADMITTED TO THE PRACTICE OF LAW IN ANOTHER STATE, AND WHO IS GRANTED CORPORATE STATUS PURSUANT TO GOV. BAR R.VI(4)(A), BE PERMITTED TO PRACTICE ON A PRO BONO BASIS BEFORE COURTS OR AGENCIES OF THE STATE, IN ASSOCIATION WITH A CIVIL LEGAL AID PROVIDER, A PUBLIC DEFENDER AGENCY, A PRO BONO PROGRAM OPERATED BY A CIVIL LEGAL AID PROGRAM OR BAR ASSOCIATION, OR A LEGAL SERVICES CLINIC OPERATED THROUGH AN OHIO LAW SCHOOL.

Discussion: Currently the pro bono opportunities for attorneys employed as in-house corporate counsel are limited by the provisions of the Rules for the Government of the Bar. This recommendation would expand the pool of attorneys available to assist indigent clients. If not licensed in Ohio, corporate counsel should undertake pro bono work in conjunction with an organized legal aid provider, public defender or pro bono program. The task force has

also relayed its belief to the Task Force on the Rules of Professional Conduct that an addition to the comment to proposed Rule 5.5 is necessary to clarify that those granted corporate status are permitted to practice on a pro bono basis.

19. THE TASK FORCE RECOMMENDS THAT CONSIDERATION BE GIVEN TO ALLOWING LAW SCHOOL PROFESSORS WHO ARE NOT REGISTERED IN OHIO TO PRACTICE ON A PRO BONO BASIS BEFORE COURTS OR AGENCIES OF THE STATE IN CONJUNCTION WITH A LEGAL AID PROVIDER, A PUBLIC DEFENDER AGENCY, A LEGAL SERVICES CLINIC OPERATED THROUGH AN OHIO LAW SCHOOL OR A PRO BONO PROGRAM OPERATED BY A CIVIL LEGAL AID PROGRAM OR BAR ASSOCIATION.

Discussion: Many professors at Ohio law schools are registered to practice law in states other than Ohio. The task force believes that, in order to increase the pool of practitioners who can provide pro bono services, the Supreme Court of Ohio should give consideration to any necessary rule amendments to allow law school professors to undertake pro bono work in conjunction with an organized legal aid provider, public defender agency or pro bono program.

20. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ENCOURAGE LAW FIRMS, BAR ASSOCIATIONS AND LEGAL AID PROGRAMS TO REPLICATE EFFECTIVE PRO BONO PROJECTS.

Discussion: Dissemination of information about successful approaches to meeting the legal needs of the indigent through pro bono activity will help to ensure that the time and money devoted to pro bono activities are effective.

IV. RECOMMENDATIONS RELATED TO IMPROVING ACCESS FOR SELF-REPRESENTED (PRO SE) LITIGANTS

Although there is no substitute for competent legal counsel, some litigants will represent themselves, either voluntarily or involuntarily. Incomprehensible forms, as well as complex court rules and procedures, impair the ability of self-represented litigants to present their

cases. The task force recognizes that the courts of Ohio operate independently of one another and each jurisdiction has developed its own forms and procedures. With the following recommendations, the task force has determined that there should be a "safe harbor" in which an unrepresented litigant can present his or her case. In other words, although local courts may continue to develop their own forms for use in their courts, the standard form, if presented, would be accepted in every jurisdiction. In addition, wide dissemination and easy access to standard forms is necessary to increase access to the justice system by those of limited means.

21. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO TAKE THE LEAD ON DEVELOPING STANDARD FORMS.

Discussion: The task force believes that the Supreme Court of Ohio is the best entity to take the lead on developing standardized forms. This seems like an appropriate role for the state's highest court to take, and would leave no issue about the authority for development and implementation of the forms. The task force did not see any other entity that would be a reasonable candidate to fill this role. There is precedent in the areas of probate and domestic violence, and the Supreme Court's leadership in those areas has been very effective. The Court could perhaps look to those precedents in deciding how to approach this task.

22. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO SHOULD BE THE ENTITY IN CHARGE OF DISSEMINATING FORMS AND RELATED MATERIALS AND THIS SHOULD INCLUDE MAKING THEM ALL AVAILABLE ON A WEB SITE.

Discussion: The reasons the task force recommends that the Supreme Court of Ohio be the entity in charge of disseminating forms are similar to the reasons concerning the preceding recommendation. The 2004 OSBA Bench Bar Conference reached the same conclusion about the Supreme Court of Ohio taking this role in the report on Uniform Case Management and Uniform Rules of Practice. As for the availability of the forms on a Web site, the task force believes that this is by far the most cost-effective means of making these materials widely available. The Futures Commission reached the same conclusion, recommending that materials should be "accessible to court users around the clock online or by other remote-access technologies."

23. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ENSURE THAT ALL LOCAL COURT RULES AND LOCAL STANDARD OR REQUIRED FORMS BE POSTED ON A WEB SITE ACCESSIBLE TO OHIO ATTORNEYS AND PRO SE LITIGANTS.

Discussion: The task force believes that statewide access to local rules would be beneficial not only to pro se litigants, but also to attorneys who practice in multiple jurisdictions, especially those working with organized pro bono organizations and volunteering their time.

24. THE TASK FORCE RECOMMENDS THAT FORMS SHOULD BE DESIGNED AND INTENDED FOR USE BY BOTH SELF-REPRESENTED LITIGANTS AND ATTORNEYS.

Discussion: The provision of standardized forms and instructions is essential to meaningful access to the courts for self-represented litigants. As the Futures Commission stated, "Clear plain-language forms, instructions and sample documents should also be developed and made available to accommodate persons representing themselves before the courts." The task force also believes, though, that standardization will help legal aid and pro bono attorneys and particularly those who have multiple-county practices. In addition to being good in and of itself, helping attorneys in this way is directly related to the work of the task force because increased efficiency will make the provision of legal services less expensive and therefore available to more people. It will also be much easier to get private attorneys to engage in pro bono work if forms are standardized so that the representation is simpler. Standardization will facilitate attorney participation in programs, especially in rural areas, that will utilize their services in more than one county. As the Futures Commission observed, "Standard statewide rules, forms and procedures ... promote efficiency ... [for] court users, attorneys and courts." The 2004 Bench Bar Conference also recognized that "the variance in local rules of practice creates difficulty for practitioners, who may not practice regularly in a particular court and are unfamiliar with the nuances of local rules." The practical impact of the task force's recommendation that standardized forms be designed to help attorneys, as well as self-represented litigants, is that standardized forms should be developed in as many areas as possible, and not only in those areas where self-represented litigants can be expected to appear.

25. THE TASK FORCE RECOMMENDS THAT TO THE EXTENT POSSIBLE, CLEAR PLAIN LANGUAGE INSTRUCTIONS FOR USE OF FORMS SHOULD BE DEVELOPED, PRIMARILY FOR USE BY SELF-REPRESENTED LITIGANTS.

Discussion: Even where standardized forms are available, self-represented litigants will need help in completing them. The most efficient way to provide that help is through clear plain-language instructions, as opposed to assistance by court personnel, legal aid attorneys, pro bono attorneys, etc. Personal assistance will certainly be necessary in some cases, but provision of plain language instructions should minimize that need. The Futures Commission recommended provision of "clear, plain-language … instructions … and explanatory materials to guide citizens through their dealings with the courts."

26. THE TASK FORCE RECOMMENDS THAT, ALTHOUGH MORE DIFFICULT AND POTENTIALLY COSTLY, CONSIDERATION BE GIVEN TO ENSURING THAT STANDARD FORMS CAN BE COMPLETED ON A COMPUTER AND PRINTED BY THE PERSON PREPARING THE FORM. IN ADDITION, SUBJECT TO THE SAME COST CONSIDERATIONS, THE TASK FORCE RECOMMENDS THAT CONSIDERATION BE GIVEN TO PROVIDING FOR STANDARD FORMS TO BE CREATED BY DOCUMENT ASSEMBLY SOFTWARE.

Discussion: Having the forms be available for preparation online would be convenient for self-represented litigants. Litigants would have the ability to fill in the standard form and then print it off to increase legibility and correctness. Several states have systems where a person answers a series of questions online and then completed pleadings are automatically produced using document assembly software. Such a system would be highly desirable if the necessary resources exist to develop and maintain the program online.

27. THE TASK FORCE RECOMMENDS THAT CONSIDERATION BE GIVEN TO INNOVATIVE WAYS OF SUPPORTING ACCESS TO FORMS AND COURTS, SUCH AS KIOSKS, LIBRARIES AND COMPUTER TERMINALS IN COURTHOUSES.

Discussion: Low-income, self-represented litigants usually do not have Internet access from their homes. This recommendation recognizes that fact and suggests that consideration be given to other ways for people without Internet access of their own to gain easy access to

materials needed to access the courts. The task force believes that one goal of this system should be for people to only need to go to the courthouse once. The Futures Commission recommended that "court users who lack remote-access technology should have other expeditious means to obtain user-friendly written materials to prepare for their appearance or transaction with the court." It is important to note that any system, whether computer-based or not, needs to be updated regularly. A system needs to be implemented so that, as laws and court rules change, the forms can be updated in a timely manner.

28. THE TASK FORCE RECOMMENDS A "SAFE HAVEN" APPROACH, UNDER WHICH STANDARDIZED FORMS DO NOT HAVE TO BE USED, BUT MUST BE ACCEPTED IN ALL COURTS.

Discussion: This recommendation seeks to strike a balance between centralization and local autonomy. The task force's vision is that there should be forms which can be used in all 88 Ohio counties. We believe that it is critical that standardized forms be universally acceptable and that the user friendly system we envision cannot be achieved in any other way. However, we also recognize the need for flexibility and the interests of local court autonomy. The Futures Commission found that "adoption of standard statewide rules, procedures and forms will make electronic access to courts and uniform administration of justice much easier." However, they also recognized that "individual courts should retain authority to adopt additional local rules they deem necessary, consistent with the intent and requirements of the general rules." While this latter statement refers specifically to rules, we believe the rationale applies as well to forms. We hope that resistance from local courts will be lessened if it is clear that standardized forms must be accepted by the court, but that other forms can be accepted as well.

29. THE TASK FORCE RECOMMENDS THAT FORMS MAY BE APPROPRIATE, AND SHOULD BE CONSIDERED, FOR THE FOLLOWING MATTERS: ROUTINE PRE-DECREE AND POST-DECREE MATTERS IN DOMESTIC RELATIONS (INCLUDING JOURNAL ENTRIES WITH ALL STANDARD DOMESTIC FORMS); AGREED JOURNAL ENTRIES; AGREED CUSTODY; VISITATION; SUPPORT FINANCIAL AFFIDAVITS (INCLUDING TAX, DEPOSITS, CHILD SUPPORT AND INSURANCE); CONTEMPT; COMPLAINT FOR DIVORCE; COMPLAINT FOR UNPAID WAGES; EXPUNGEMENT; GUARDIANSHIP; STEPPARENT ADOPTION; EVICTION;

EVICTION ANSWER; RENT WITHHOLDING; COMPLAINT FOR RETURN OF SECURITY DEPOSIT; CONSUMER COMPLAINT FORMS; REQUEST TO RETURN FUNDS HELD BY CLERK; MOTION FOR RELIEF FROM DISABILITY; REQUEST FOR COURT APPOINTED COUNSEL IN POST-CONVICTION MOTIONS; AFFIDAVITS OF INDIGENCY ON MANDATORY DRUG FINES; GARNISHMENT; AND JUDGMENT DEBTOR EXAM.

Discussion: The task force attempted to identify situations in which a standard form might be appropriate. Because of the complexity of the issues involved in determining where standard forms could be used, the task force only identified those matters that are, in the mind of the task force, routine in nature, and even with respect to those, we recommend only that creation of forms be seriously considered, recognizing that the ultimate decision may be that creating some of these forms is not practical. By the same token, this list is not offered as being exhaustive and there may be good areas for standard forms not specifically mentioned. Forms seem best suited for situations where there is little or no judicial discretion involved, a standard that has been proposed in other reports. (See *Handbook on Limited Scope Legal Assistance*, A Report of the Modest Means Task Force, American Bar Association, Section of Litigation.) Understanding that the development of forms is best left to those with expertise in particular areas of the law, the task force recommends that the Supreme Court of Ohio undertake this task with input from the various judicial associations, practitioners and others identified by the Court.

30. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO CLEARLY ASSIGN RESPONSIBILITY FOR MOVING FORWARD ON ALL TASKS IN THIS AREA, WITH A REASONABLE TIME LINE TO ENSURE PROMPT ACTION.

Discussion: The task force is concerned that it will be difficult to implement the recommendations regarding standard forms. We have quoted from the recommendations of the Futures Commission and the Bench Bar Conference to show precedents for many of our recommendations. It also must be noted, though, that the recommendations in those two reports have not been implemented. We fear that our recommendations on this topic will meet the same fate unless responsibility for moving forward is clearly assigned as recommended.

31. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO EVALUATE ALTERNATIVE MEANS FOR PRO SE LITIGANTS TO ACCESS INFORMATION REGARDING COURT PROCEDURES AND PROCESSES.

Discussion: With many litigants choosing not to hire a lawyer, or not being able to afford a lawyer, courts are challenged to service the needs of these litigants. Some states currently utilize some form of a "self-help center" in providing litigants access to information regarding court procedures. There are many different forms of the "self-help center". Some, like the one in Maricopa County, Arizona are very comprehensive, offering court forms, instructions, links with existing community services and other services of use to pro se litigants. Others, like those in Georgia, Delaware and Idaho, provide similar information on a less comprehensive basis. The information provided by the "self-help center" is vital to the efficient and equal access to justice. Use of the centers allows court personnel to spend less time helping pro se litigants and more time doing their appointed duties. The task force therefore recommends that the Supreme Court of Ohio consider establishing self-help centers in Ohio to increase access to the courts for pro se litigants.

The task force also recommends that local courts develop an automated telephone system that provides litigants with general court information (including directions to the courthouse and hours of operation). The automated telephone system could also provide information on legal assistance available in the immediate vicinity for low-income individuals, social services available, court processes in specified areas or information on what forms are necessary for specified actions, where to get them and how to file them.

The task force also recommends that signage be placed around the courthouse to direct visitors who are unfamiliar with the physical layout of the building. This recommendation would be helpful to pro se litigants who are already nervous or overwhelmed and would also aid those attorneys who provide services in multiple counties.

Finally, the Supreme Court of Ohio, in conjunction with local bar associations and/or law schools should develop a videotape that provides an overview of court processes and procedures that could be viewed by the public at a local library. The videotape could be very general in nature, or with the cooperation of the local court, contain more specific information for that particular jurisdiction.

32. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO SPONSOR TRAINING FOR COURT STAFF ON HOW THEY SHOULD ASSIST PRO SE LITIGANTS.

Discussion: Although training has been given in the past to court personnel on handling pro se litigants, the task force believes that this training should be a regular component of course offerings through the Judicial College.

33. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ADOPT WRITTEN GUIDELINES FOR COURT PERSONNEL WHO ARE RESPONSIBLE FOR PROVIDING INFORMATION TO PRO SE LITIGANTS.

Discussion: The task force researched and discussed the difficulties faced by court personnel in assisting pro se litigants. Court personnel are frequently unsure of what information they can provide. They currently operate without clear guidelines to help them distinguish information that they may provide to pro se litigants from legal advice that crosses the line of permitted activity. Sample guidelines have been included with this report as Appendix B.

34. THE TASK FORCE RECOMMENDS THAT LOCAL COURTS CONSIDER USE OF A SYSTEM TO REVIEW CASES FILED BY PRO SE LITIGANTS.

Discussion: Some courts in Ohio utilize magistrates or a special docket to facilitate resolution of pro se cases. Case managers are currently used in New Hampshire in the Family Division to help pro se litigants with completing forms correctly, explaining processes and procedures and helping to clarify issues in cases. A New Hampshire Supreme Court Task Force on Self-Representation determined that the retention of "additional case managers is one of the most important measures to meet the challenge of pro se litigation."

Ohio could make use of a similar system where each court would have at least one individual who was qualified to help litigants, without being an advocate, navigate an often complex system. The task force is aware that this will have a fiscal impact on local courts; however, the task force believes that the case managers in certain circumstances will have a more significant impact on resolving disputes early and efficiently, saving courts both time and money.

35. THE TASK FORCE RECOMMENDS THAT THE RULES OF SUPERINTENDENCE BE USED TO SUPPORT THE PRINCIPLES SET FORTH HERE, INCLUDING LIMITING THE USE OF LOCAL RULES TO IMPEDE OR UNDERCUT THEM.

Discussion: The task force is concerned that the Supreme Court of Ohio will need to take a strong stand in favor of the principles set forth here. The Rules of Superintendence seem to us to be the most logical means for doing that.

36. THE TASK FORCE RECOMMENDS THAT LEGAL AID PROGRAMS, PRO BONO PROGRAMS, PUBLIC DEFENDER PROGRAMS AND THE COURTS MAKE APPROPRIATE PROVISION TO ENSURE THAT INDIGENT CLIENTS WHO HAVE SPECIAL NEEDS, SUCH AS LIMITED ENGLISH PROFICIENCY, DISABILITY (INCLUDING MENTAL ILLNESS), IMPAIRED HEARING OR VISION, OR LIMITED LITERACY SKILLS HAVE ACCESS TO MEANINGFUL LEGAL SERVICES AND TO THE COURTS.

Discussion: Legal services providers and the courts will need to modify their customary approach and provide additional assistance to a variety of individuals who may not benefit from, or be able to utilize, services or materials designed for the public at large. Some modifications in service delivery may be required to meet legal standards related to disability and accessibility. Some individuals may be unable to benefit from pro se support, advice or other limited services, and should be considered for full representation in situations that would otherwise be appropriate for more limited assistance. Guidelines for assistance provided by court personnel should address special needs issues. (See Recommendation 33). Provision should also be made for competent language interpreter services, such as Language Line, so that individuals seeking help can discuss their issue and receive advice and other assistance without relying on children, other family members or acquaintances to serve as interpreters.

37. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO REQUIRE THE UTILIZATION OF QUALIFIED INTERPRETERS IN OHIO COURTS.

Discussion: In 1999 the Ohio Commission on Racial Fairness recommended that the Supreme Court of Ohio develop and implement guidelines for certification and qualification

of interpreters in Ohio courts. The Commission also recommended that the Court adopt a code of conduct for interpreters in Ohio courts.

In 2003, the Supreme Court of Ohio launched its Interpreter Services Program and joined the Consortium for State Court Interpreter Certification. The national consortium aids states in developing policies and other resources. In turn, the Interpreter Services Program works with local courts in providing training, technical assistance and policy development on the effective and appropriate use of interpreters.

The task force believes that these initiatives provide the basis for a comprehensive court interpreter program in Ohio. The Supreme Court of Ohio should continue to support local courts in developing interpreter programs and should provide continued guidance. In that vein, the task force recommends that the Court adopt a Rule of Superintendence regarding the appointment of interpreters in Ohio courts. The rule should provide local courts with an outline of how and when it is appropriate to appoint an interpreter and, in addition, how to ensure that the interpreter is qualified and can provide an effective interpretation. For guidance, the Court could look to the rule proposed by the Racial Fairness Implementation Task Force in Appendix 4 of its Action Plan of 2002.

The task force also believes that it is important that interpreters be accountable for the interpretations they provide in Ohio courts. Therefore, the task force recommends that the Supreme Court of Ohio adopt a code of ethics that will provide guidance for interpreters in dealing with conflicts of interest and require interpreters to provide accurate and proficient translations.

38. THE TASK FORCE RECOMMENDS EXPANSION AND INCREASED USE OF FEE SHIFTING PROVISIONS TO MAXIMIZE THE LIKELIHOOD THAT INDIGENT LITIGANTS CAN SECURE COUNSEL.

Discussion: Ordinarily, each party bears its own costs of representation. There are some situations, however, where an award of attorney's fees from the adverse party is justified to facilitate representation to achieve an important public purpose. In Ohio, as in other states, certain statutes that are remedial in nature allow or require an award of attorney's fees to a prevailing plaintiff. The potential award of attorney's fees to a prevailing plaintiff will increase the likelihood that an indigent litigant will be able to retain counsel. This will reduce the

number of pro se litigants, and will alleviate the need for legal aid representation in situations where the General Assembly has created enforceable rights. The task force encourages a review of current Ohio law to identify opportunities for adding a fee shifting provision, so that indigent litigants will more likely obtain legal representation in these matters. The Supreme Court of Ohio should encourage Ohio judges to consistently utilize fee shifting provisions, particularly in consumer and domestic relations cases.

V. RECOMMENDATIONS TO FACILITATE LIMITED REPRESENTATION BY OHIO ATTORNEYS

39. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ADOPT APPROPRIATE RULE AMENDMENTS TO FACILITATE LIMITED REPRESENTATION BY OHIO ATTORNEYS.

Discussion: Many, if not most, unrepresented litigants need more than procedural assistance (e.g., what form to use, how to docket their case or what time to appear in court). They also need assistance with decision-making and judgment; they need to know their options, possible outcomes and strategies to pursue their objectives. In order to provide more of this kind of service, counsel, in addition to providing critical advice, might appear for a limited purpose such as handling a key hearing, preparing a key document, or providing that litigant representation in the portion of a case least amenable to self-representation. The task force believes that pro se litigants can, in appropriate cases, optimize their outcomes if they can obtain assistance from a lawyer with discrete, limited phases or aspects of their respective cases. The opportunity for limited representation is especially valuable to the otherwise unrepresented individual when that individual cannot afford or otherwise obtain representation with respect to all aspects of a case. Counsel's limited appearance may not only advantage that attorney's client but also may help the justice system operate more smoothly.

Such limited representation (sometimes known as "unbundled" legal services) is akin to the generally accepted practice of providing a limited scope of work when representing business interests or in transactional matters. As a means of enhancing access to justice, "unbundled" representation might well be initiated through a legal aid society hotline, court-sponsored self-help program or pro bono project.

The task force believes that the lack of express authority for lawyers to provide limited representation in Ohio's current disciplinary and civil rules has dissuaded those who might be inclined to provide limited representation from doing so. Because of the task force's special concern with indigent pro se litigants who are involuntarily pro se (as opposed to those who can afford counsel but choose not to), the task force has endorsed the following recommended changes to Ohio's disciplinary and civil procedure rules in an effort to facilitate and encourage limited representation for pro se litigants in appropriate circumstances.

The task force's recommendation regarding unbundling is intended to unambiguously authorize licensed attorneys to provide a limited scope of services to a client. The recommendation is not intended to circumvent long-standing policies and regulations that limit the practice of law to licensed attorneys. Authorized unbundling is not intended to open the door to non-attorneys providing legal advice and assistance.

Some steps important to accomplishing the above-stated objectives are already underway. Two new disciplinary rules proposed by the Supreme Court of Ohio Task Force on the Rules of Professional Conduct (TFRPC), proposed Rule 1.2(c) and proposed Rule 6.5, which are discussed below, go a long way toward providing assurance to practitioners that limited representation arrangements are, in appropriate cases, entirely permissible. Still, various additions to the comments to a number of the TFRPC's proposed rules, along with amendments to Ohio Rules of Civil Procedure 5(B) and 11, and a new Rule 3(B), would further assure counsel that limited representation is permissible and that agreements to participate in matters in a limited way will not obligate attorneys to provide more extensive representation.

A. Task Force on the Rules of Professional Conduct's Proposed Rules of Professional Conduct

Before proceeding with a discussion of this task force's recommendations regarding unbundled services, it is important to briefly address the context in which these recommendations are made. The Supreme Court of Ohio Task Force on the Rules of Professional Conduct has already proposed the adoption of two rules of professional conduct which will help to enable limited representation as follows:

Proposed Rule 1.2(c) and the comments to it:

Expressly authorize limited representation (Rule 1.2(c))

Establish that limited representation must be "reasonable under the circumstances" [Rule 1.2(c)]

Require that the nature and scope of the limited representation must be communicated to the client in writing (Rule 1.2(c))

Establish that whether the client has given informed consent is a factor to be considered in determining whether limited representation is "reasonable" (Rule 1.2(c) and Comment [8])

Provide that any limitations on representation are to be taken into account when determining what constitutes "competent representation" for purposes of Rule 1.1 (Comment [8])

Proposed Rule 6.5 and the comments to it:

Excuse conflicts checks for limited services programs. If the lawyer providing limited representation has actual knowledge of a conflict, then the rules governing conflicts for the attorney and imputed conflicts for members of the lawyer's firm continue to apply; otherwise a lawyer providing limited representation is excused from the obligation to check for conflicts of interest if he/she is participating in a non-profit or court program that offers "short-term limited legal services" under circumstances in which there is no expectation of continuing representation.

This task force believes that the following recommended additions would further enable and encourage limited representation. Because these four recommendations are interrelated, and since they are also interrelated with the three recommended amendments to the Ohio Rules of Civil Procedure that are described below, the adoption, as a unified whole, of all seven of these recommendations regarding "unbundled" legal services, is encouraged. Furthermore, because the various recommendations contain cross-references to each other, a decision to pursue the enactment of some but not all of this task force's seven "unbundling" recommendations would likely necessitate redrafting of those being advanced.

Note: Underlined or ~~stricken~~ material represents modifications to the ABA Model Code provision recommended by the Task Force on the Rules of Professional Conduct. Additions recommended by the Task Force on Pro Se and Indigent Litigants are reflected in **BOLDED SMALL CAPS**.

Recommendation One. Disciplinary Rule 1.1 [Note: Rule 1.1 requires a lawyer to handle each matter competently and replaces DR 6-101(A)(1) and DR 6-101(A)(2).]]

Summary of Recommendation:

Add three sentences to Comment 5's general discussion of competent representation to further specify what an attorney needs to do in order to competently provide limited representation in a matter.

Recommended Language:

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the

representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c). **When a lawyer is providing limited representation, as permitted by Rule 1.2(c), the consultation with the client shall include an explanation of the risks and benefits of such limited representation. A lawyer must provide legal services consistent with the limited scope of the lawyer's representation. The services of a lawyer providing limited representation may be based upon the recital of facts provided by a party to whom limited representation is being provided, unless a reasonable attorney would believe that such recital is false or materially insufficient to sustain that party's claims**. The lawyer should consult with the client about the degree of thoroughness and the level of preparation required, as well as the estimated costs involved under the circumstances.

Recommendation Two. Disciplinary Rule 1.2 [Note: Rule 1.2 outlines the scope of representation in which an attorney may engage on behalf of a client, including limited representation.]

Summary of Recommendation:

Add a new Comment 7, which seeks to make clear that limited representation can be important to facilitating access to justice by low income or indigent litigants.

Recommended Language:

[7] Permitting attorneys to assist a client on a limited basis without undertaking the full representation of the client enlarges access to justice in Ohio's courts. Limited representation agreements may be particularly appropriate and beneficial when used to provide legal assistance to low income or indigent litigants unable to retain counsel for an entire matter. [Note: All comments thereafter would then need to be renumbered.]

Recommendation Three. Disciplinary Rule: 1.16: [Note: Rule 1.16 discusses the circumstances in which an attorney can withdraw from representation.]

Summary of Recommendation:

Add material to each of two Comments dealing with attorney withdrawal to make explicit that:

1) Withdrawal by an attorney undertaking limited representation is automatic once work associated with the limited representation is complete (Comment [1]); and

2) If an attorney providing limited representation wants to withdraw from the limited appearance itself, then the attorney must comply with the normal withdrawal standards set forth in Rule 1.16(e) (Comment [8]).

Recommended Language:

[1] ~~A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.~~ Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4]. **When an attorney who has entered into a limited representation agreement has fulfilled the duties of the limited representation agreement, the attorney's role terminates without the necessity of leave of court, upon the attorney filing a "notice of completion of limited appearance" as provided in Rule of Civil Procedure 3(B).**

~~[7]~~ [8] A lawyer may withdraw from representation in some circumstances**, including limited representation permitted by Rule 1.2(c).** The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services

were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

Recommendation Four. Disciplinary Rule 4.2 [Note: Rule 4.2 prohibits a lawyer from communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.]

Summary of Recommendation:

Add to Comment [2], which deals with communication with represented parties, to make clear, in that regard, the obligations of an attorney providing limited representation.

Recommended Language:

[2] This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates. **A party to whom limited representation has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule, but a lawyer for another party who knows or should know that the party has obtained limited representation shall, during the course of that limited representation, comply with this rule with respect to matters about which the party is represented.**

B. Recommended Amendments to the Ohio Rules of Civil Procedure

Recommendation Five. Civil Procedure Rule 5. [Rule 5 states when, how and upon whom pleadings and other documents involved in the legal matter shall be provided to each of the parties in the matter.]

Summary of Recommendation:

Amend the rule regarding service obligations to require service upon both the attorney providing limited representation and that attorney's client during the pendency of the limited representation; add an explanatory staff note in that regard.

Recommended Language:

(B) Service: how made. Whenever under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon the attorney unless service upon the party is ordered by the court. **Whenever a party is not represented by an attorney, service shall be made upon the party. Whenever an attorney has filed a notice of limited appearance pursuant to rule 3(b), service shall be made upon both that attorney and the party in connection with the proceedings for which the attorney has filed a notice of limited appearance.** Service upon the attorney or party shall be made by delivering a copy to the person to be served, transmitting it to the office of the person to be served by facsimile transmission, mailing it to the last known address of the person to be served or, if no address is known, leaving it with the clerk of the court. The served copy shall be accompanied by a completed copy of the proof of service required by division (D) of this rule. "Delivering a copy" within this rule means: handing it to the attorney or party; leaving it at the office of the person to be served with a clerk or other person in charge; if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion then residing in the dwelling house or usual place of abode. Service by mail is complete upon mailing. Service by facsimile transmission is complete upon transmission.

Proposed Staff Note:

This and other provisions in the Ohio Rules of Civil Procedure and Rules of Professional Conduct permit attorneys to assist a client on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Ohio's courts. The amendment to Rule 5(B) makes clear that service on both a party being represented by an attorney on a limited basis, and on the attorney providing that representation, is required when the notice of limited appearance has been filed. The purpose of the amendment is to assure appropriate service upon counsel to represented parties but also to assure that a client being represented on a limited basis has copies of all key documents in the litigation. The rule simply requires that when the notice of limited appearance has been filed, an opposing party shall continue serving documents upon the party while also serving counsel throughout the duration of the limited appearance.

Recommendation Six. Civil Procedure Rule 11. [Rule 11 states when, how and by whom documents submitted to the court must be signed.]

Summary of Recommendation:

Amend the Rule and add explanatory staff note to:

(1) Require parties to notify the court when a document has been prepared with the assistance of counsel not appearing in the case; and

(2) Permit an attorney to rely on the client's recital of relevant facts unless the attorney reasonably believes the recital to be false or insufficient to sustain the client's claims.

Recommended Language:

RULE 11. Signing of Pleadings, Motions or Other Documents

Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address, attorney registration number, telephone number, telefax number, if any, and business e-mail address, if any, shall be stated. A party who is not represented by an attorney shall sign the pleading, motion or other document and state the party's address. Except when otherwise specifically provided by these rules, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. **If an attorney who has not filed a notice of limited appearance assists a party by drafting or assisting in drafting any document to be submitted to a court, the attorney is not obligated to sign the document. However, the party who has received such assistance must indicate "Prepared with the assistance of counsel" on the document. The attorney, in providing such assistance, may rely on the party's recital of the facts, unless the attorney has reason to believe that such recital is false or materially insufficient to sustain that party's claims. The court may order the party to identify the attorney who has provided assistance with the preparation of a document if the court has concerns about the adequacy of the assistance provided by the attorney according to the standards established by the Rules of Professional Conduct.** If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted.

Proposed Staff Note:

The provision requiring a party to acknowledge assistance by counsel in the drafting of a document submitted to the court is included to avoid misleading the court which might otherwise be under the impression that the person, who appears to be proceeding without assistance from an attorney, has received no such assistance. the phrase "assists a party by drafting or assisting in drafting" contemplates the actual composition of a document and therefore the provisions of this rule would not apply to the mere distribution of standard forms.

Recommendation Seven. Civil Procedure Rule 3 [Rule 3 states how and where to initiate a civil action.]

Summary of Recommendation:

Amend the rule to add a new subsection providing that an attorney may enter a limited appearance, which terminates upon the filing of a Notice of Completion of Limited Appearance (section (B)).

Recommended Language:

RULE 3. Commencement of Action; limited Appearance by Attorney; Venue

(B). limited Appearance by Attorney

An attorney's role may be limited in scope if that scope is specifically described in a "notice of limited appearance" filed and served prior to any such appearance. The attorney's limited appearance terminates without the necessity of leave of court, upon the attorney filing a "notice of completion of limited appearance." No entry by the court is necessary for the termination of the limited appearance to take effect.

[Note: All subsequent sections of Rule 3 would then need to be re-lettered.]

Proposed Staff Note:

This and other provisions in the Ohio Rules of Civil Procedure and Rules of Professional Conduct permit attorneys to assist a litigant on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Court has sought to enlarge access to justice in Ohio's courts. Section 3(B) permits attorneys to enter a limited appearance on behalf of an otherwise unrepresented litigant. The effect of the limited appearance is to permit the attorney to represent the client on one or more matters in the case but not on all matters. While normally leave of court is required if an attorney seeks to withdraw from representation, under this provision, leave of court is not required for withdrawal from the case at the conclusion of a properly noticed limited appearance, provided the attorney files the proper Notice of Completion of Limited Appearance. The benefits of Section 3(B) are obtained only by filing a notice of limited appearance identified as such. The notice of limited appearance must clearly describe the scope of the limited representation. Any doubt about the scope of the limited representation should be resolved in a manner that promotes the interests of justice and those of the client and opposing party.

VI. FUNDING RECOMMENDATIONS

40. THE TASK FORCE RECOMMENDS THAT FUNDING FOR INDIGENT CRIMINAL DEFENSE AND FUNDING FOR CIVIL LEGAL REPRESENTATION BE INCREASED.

Discussion: Currently, criminal and civil indigent representation in Ohio is seriously under-funded. Competent representation of indigent criminal defendants is constitutionally mandated, yet the level of funding provided for that defense fails to allow for the minimum

level of competent representation to be universally provided. Funding dedicated to indigent criminal defense in Ohio from the state's General Revenue Fund and from sums appropriated by county governments totals $128.8 million in fiscal year 2007. The task force believes, based on its understanding of the needs of the system, that $148.7 million is a more appropriate figure.

In addition, the task force recognizes that funding will need to be provided to implement some of the recommendations contained in this report. The task force also discussed at length that it seems logical that there should be equity between the budget of the criminal division of the prosecutor and the budget of the public defender. This would include funding sufficient to maintain equitable salaries between the prosecutor's office and the public defender's office. A failure to provide sufficient funding for indigent criminal defense puts at risk an individual's constitutional right to representation.

The adequate representation of indigent persons in civil proceedings, although not constitutionally mandated, is a matter of substantial interest to the people of Ohio. Representation of indigent Ohioans in civil disputes is critical to the fair administration of justice and helps assure that indigent persons have meaningful access to the courts as a means of peacefully resolving their disputes. Currently, funding from all sources, including revenue provided through court filing fee surcharges, IOLTA, IOTA, LSC and other public and private sources totals $36 million for the provision of civil legal services to indigent persons in Ohio. The task force estimates that at least four times that amount, or $144 million, is necessary to adequately meet the legal needs of indigent Ohioans involved in civil legal matters.

Substantial additional funding for the legal needs of indigent Ohioans is necessary to meet the state's constitutional obligations to criminal defendants, and to move closer to the funding levels necessary to provide legal assistance to all indigent Ohioans involved in civil legal matters.

41. THE TASK FORCE RECOMMENDS THAT NO LESS THAN 50 PERCENT OF THE FINANCIAL RESPONSIBILITY FOR INDIGENT CRIMINAL DEFENSE BE BORNE BY THE STATE OF OHIO.

Discussion: An excessive portion of the burden of providing indigent criminal representation is being borne by county governments. Until about 1991, approximately 50 percent of the financial burden of the criminal indigent defense system was borne by the counties/local governments and about 50 percent was covered by the State through the collection of "court cost surcharges" applied to criminal convictions. At about that time, with system costs rising and the General Assembly reluctant to raise court costs enough to maintain the 50/50 split, the State decided to allocate General Revenue Funds to cover the state's 50 percent share of the criminal indigent representation system costs. From that point forward, the State retained the revenue generated by the court costs. Since 1995, allocation of General Revenue funds to the criminal indigent representation system has not kept pace with the increase in costs, leaving the county governments with an ever-increasing share of the responsibility for those costs. Today, despite increases during the intervening years in court costs which have generated additional revenue to the State, the counties are paying more than 70 percent of those costs, with the State covering less than 30 percent of the total. Without further changes to the current biennial budget, by the end of that budget period, the split will be approximately 75/25.

Although some members of the task force believe that the state should bear 100 percent of the financial responsibility for the provision of indigent criminal defense services, the 50/50 split in criminal indigent representation system costs between the state and the counties is equitable and reflects the political realities in Ohio. The task force strongly believes that counties should be responsible for no more than 50 percent of the costs. The state needs to dedicate more General Revenue Funding to indigent criminal defense or find other revenue sources to return the funding burden borne by the counties to 50 percent of the system cost.

42. WHEN NEW FUNDING SOURCES FOR THE INDIGENT CRIMINAL REPRESENTATION SYSTEM ARE IMPLEMENTED, NEWLY GENERATED FUNDS SHOULD BE USED TO IMPROVE THAT SYSTEM, NOT TO FACILITATE SIMULTANEOUS REDUCTIONS IN GENERAL REVENUE FUNDING. IN ADDITION, COURT FEES THAT HAVE BEEN REDIRECTED TO OTHER PURPOSES SHOULD BE RESTORED TO THE SUPPORT OF CRIMINAL INDIGENT DEFENSE.

Discussion: As long as General Revenue funding remains an important funding source for the criminal indigent representation system, funding for the system will increase only if General Revenue funding provided to that system remains constant or increases. Since General Revenue funding increases seem unlikely, the General Assembly must be encouraged to allow new funding sources to provide the increased funding the system needs. Reductions in the level of General Revenue funding in an amount equal to any funding enhancements accomplished will provide a substantial disincentive to efforts to find new funding sources.

For example, in 2005 the General Assembly enacted a $25 application fee to be paid by individuals who access the public defense system. Simultaneously, the General Assembly elected to decrease the General Revenue funding for indigent criminal defense by an amount considered equal to the amount to be gained from the application fee.

The same situation occurred with regard to indigent defense funding supported by criminal court costs. In the fiscal year 2004-2005 biennium, the County Commissioners successfully spearheaded an effort to increase criminal court costs from $11 to $15 per case. In the 2004-2005 biennium, $77.7 million was appropriated, of which $49.1 million was generated by court costs and $28.6 million from other sources.

For the 2006-2007 biennium, $76.2 million in General Revenue funds have been appropriated to indigent defense. Of this, $51 million is generated from court costs and $25.1 million is from other sources. At the same time that court costs are expected to generate an additional $20 million per year in General Revenue funds, indigent defense funding has been reduced by $1.5 million. This occurred despite an overall increase in state General Revenue funding.

These outcomes strike the task force as punishment for creative and innovative thinking on the part of indigent defense proponents. In the future, innovative ideas that increase revenue should bolster the provision of services instead of resulting in a reduction of much-needed

General Revenue funds. Accordingly, so as to avoid the continuing reduction in General Revenue funds and even further reliance on the counties for funding, the criminal indigent representation system should once again receive the full benefit from all revenues generated through court costs, as well as maintaining or increasing the level of General Revenue fund appropriations allocated from other sources. In addition, the task force recommends that the state redouble its effort to ensure the collection of unpaid court costs.

43. THE TASK FORCE RECOMMENDS THAT A SURCHARGE BE ADDED TO ALL MISDEMEANORS, EXCEPT MINOR MISDEMEANORS, AND ALL FELONIES, TO FUND INDIGENT CRIMINAL DEFENSE SERVICES.

Discussion: The task force envisions a sliding scale of surcharges related to the degree of the felony or misdemeanor. In the alternative, the task force recommends that surcharges be assessed as follows:

a. The task force recommends that a surcharge be added to DUI offenses to fund indigent criminal defense services.

Discussion: Surcharges on DUI offenses are used in Kentucky ($200), New Jersey ($1,000 per year for 3 years), South Carolina ($100), Vermont ($160), New York ($150 to $175), Pennsylvania ($100) and West Virginia (20 percent of the fine imposed). In Kentucky, a portion of the surcharge is used to fund indigent defense. In 2004 there were 52,246 DUI convictions in Ohio. If a $100 surcharge were paid by all who are convicted, $5.2 million would be generated. Assuming only 80 percent actually paid, $4.16 million would be generated.

b. The task force recommends that a surcharge be added to speeding tickets to fund indigent criminal defense services.

Discussion: Surcharges on speeding tickets are used in New Jersey ($100 for 6 points on license, $25 more for each additional point), South Carolina ($25), New York ($100 per year for 3 years if 6 or more points) and West Virginia, though none of the states uses the revenue for indigent defense. In 2004 there were 457,523 speeding violations in Ohio. Assuming an 80 percent collection rate, a $25 surcharge could raise $9 million.

44. THE TASK FORCE RECOMMENDS THAT CONSIDERATION BE GIVEN TO ADDING A SURCHARGE TO PARKING TICKETS TO FUND INDIGENT DEFENSE SERVICES.

Discussion: Although statewide statistics are not available, statistics were obtained from Columbus, Cleveland, Cincinnati, Akron, Dayton, Toledo and Youngstown. Combined, these seven cities issued about 730,000 parking tickets in 2004. These cities represent most of Ohio's major metropolitan areas, and the counties in these metropolitan areas represent 44 percent of Ohio's population. Assuming a $5 surcharge and an 80 percent collection rate, a parking ticket surcharge in these cities alone could generate as much as $2.9 million. Extrapolating from these figures, a statewide total could be as high as $6.6 million. However, the task force had some concerns that these large metropolitan areas disproportionately represent the number of parking tickets issued per capita because many smaller communities do not have parking systems. Actual collections based on this model are likely to be closer to $3.0 million than $6.6 million.

The task force also expressed some concern regarding whether adding a state surcharge to violations charged under a local ordinance would violate the home rule provisions of the Ohio Constitution. Research indicates that it would not; however, the task force believes that home rule issues should be considered prior to adopting this funding mechanism.

45. THE TASK FORCE RECOMMENDS THAT COURTS NOTIFY PEOPLE POSTING BONDS THAT COURT COSTS WILL BE TAKEN OUT OF THE BONDS BEFORE THEY ARE RETURNED. IN ADDITION, THE TASK FORCE RECOMMENDS THAT SURCHARGES ON SURETY AND APPEARANCE BONDS BE IMPLEMENTED TO FUND INDIGENT DEFENSE SERVICES.

Discussion: Bonds posted for defendants prior to their initial appearance before a court are generally governed by Rule of Criminal Procedure 46. The Supreme Court of Ohio has determined that such a defendant may utilize any of three methods to post such bonds: cash, surety or 10 percent. In bonds involving cash or 10 percent, funds are deposited with the office of the clerk of court. If a court requires that those funds be deposited in the name of the defendant, then at the completion of the case, in the event that a fine or costs are levied against the defendant, execution can be imposed against the funds on deposit as bond. In addition, the court could add a surcharge of $25 on the bond, the proceeds of which would be

used to fund indigent defense services. This relatively simple procedure can help assure the timely collection of monies due the State of Ohio and the local funding authority.

46. THE TASK FORCE RECOMMENDS THAT A "REOPENING FEE" BE IMPLEMENTED AND THE PROCEEDS OF THAT FEE BE USED TO FUND CIVIL INDIGENT LEGAL REPRESENTATION.

Discussion: Several other states, including Nevada, New Mexico, Oklahoma, Florida, Idaho and Arkansas use reopening fees in a variety of cases to fund various programs. When a litigant wishes to reopen a closed case, the court can impose a fee to process the reopening.

47. THE TASK FORCE RECOMMENDS THAT THE GENERAL ASSEMBLY ENACT LEGISLATION TO CODIFY THE SUPREME COURT OF OHIO RULING IN *DARDINGER V. ANTHEM BLUE CROSS & BLUE SHIELD*, ALLOWING FOR A PERCENTAGE OF PUNITIVE AWARDS TO BE PAID TO A STATE OR COURT-ADMINISTERED FUND. THIS MONEY SHOULD BE USED, IN PART, TO FUND CIVIL INDIGENT LEGAL REPRESENTATION.

Discussion: In December 2002, the Supreme Court of Ohio decided *Dardinger v. Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113, and determined that a portion of the punitive damages awarded in that case should be paid to a fund recognizing the importance of the "societal element" of punitive damages. *Dardinger* at ¶187. Although the majority opinion stated that determinations regarding the distribution of punitive damages be made on a case-by-case basis, the dissent convincingly argued that, if such a mechanism should be used in Ohio, it is best done through legislative enactment.

Allowing a percentage of punitive awards to be paid into a fund that will benefit civil indigent legal representation recognizes the importance of competent legal counsel to the administration of justice.

48. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO IMPLEMENT A FEE ON ADMISSIONS PRO HAC VICE AND THE REVENUE GENERATED BE USED TO FUND CIVIL INDIGENT LEGAL REPRESENTATION.

Discussion: Several states have instituted fees that are paid by attorneys from out of state who appear in a particular case upon application to the court. At least four of these states use the revenue from these funds to bolster support for civil indigent legal representation. The task force recommends that a fee of $250 be implemented in order to support civil indigent legal representation.

49. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ENCOURAGE COURTS TO MAKE CY PRES AWARDS TO FUND CIVIL INDIGENT LEGAL REPRESENTATION. ADDITIONALLY, THE COURT SHOULD CONSIDER WHETHER THERE SHOULD BE MANDATORY DISTRIBUTION OF A PORTION OF CY PRES FUNDS FOR INDIGENT CIVIL LEGAL SERVICES.

Discussion: The cy pres doctrine allows residual funds from class action awards to be distributed to the "next best" use. When damages are awarded in a class action suit a fund is created. After a specified period of time during which members identified as part of the class make their claims on the fund, the judge may order, under the cy pres doctrine, that the unclaimed funds be put to their next best use. The argument could be made that the providers of civil indigent legal representation should be the beneficiaries of these residual funds. Legal service providers are often providing services to those people most like members of the original class – those who cannot afford legal services. The Supreme Court of Ohio should develop and implement an education program to encourage local courts to award these residual funds to legal services, and should consider whether any such awards should be mandatory.

50. THE TASK FORCE RECOMMENDS THAT CIVIL FILING FEE SURCHARGES, IOLTA, AND IOTA CONTINUE AS FUNDING STREAMS DEDICATED EXCLUSIVELY TO CIVIL INDIGENT LEGAL SERVICES IN OHIO.

Discussion: In the mid-1980s, the Ohio General Assembly created a structure for funding civil legal aid programs and authorized funding for civil legal services from interest

on lawyer trust accounts (IOLTA), and an increase in the filing fee surcharge on most civil actions. Later, interest on real estate trust accounts (IOTA) was added. These are the core funding sources for civil legal services in Ohio and need to be protected. The task force strongly supports continued funding of civil legal aid from these sources, through a dedicated legal aid fund.

51. THE TASK FORCE RECOMMENDS SEPARATE FUNDING STREAMS FOR CRIMINAL AND CIVIL INDIGENT LEGAL SERVICES BE MAINTAINED TO HELP MAXIMIZE THE TOTAL FUNDING AVAILABLE FOR THE LEGAL NEEDS OF ALL INDIGENT OHIOANS.

Discussion: Historically, criminal and civil indigent legal services funds have been provided from separate funding streams, with revenue from each funding stream dedicated exclusively to either civil or criminal indigent legal services. The task force opposes funding structures which encourage a "robbing Peter to pay Paul" relationship between the civil and criminal indigent representation systems in Ohio. Both systems need additional funding and problems of inadequate funding should not be addressed, and will not be solved, by moving funds from one system to the other.

VII. IMPLEMENTATION

52. THE TASK FORCE RECOMMENDS THAT THE SUPREME COURT OF OHIO ESTABLISH AN IMPLEMENTATION COMMITTEE TO IMPLEMENT THE RECOMMENDATIONS SUGGESTED IN THIS REPORT.

Discussion: In making this recommendation the task force underscores the importance of bringing these improvements to the justice system to fruition. The task force has considered many entities and strategies for ensuring implementation of these recommendations but has decided that the Court is in the best position to choose the model that will most effectively serve this purpose. The task force does, however, have recommendations for the composition and role of the committee.

The committee should include judges, representatives of the public, business, law schools, the General Assembly, lawyers, the organized bar, law enforcement, local funding authorities,

clerks of court and other members the Court deems appropriate. The committee's function should be to coordinate and advocate for the implementation of these recommendations with the Ohio Legal Assistance Foundation, the Ohio Public Defender Commission, the Governor, the General Assembly and other interested parties. The committee should coordinate and oversee the steps toward implementation, and should invite participation of the aforementioned groups in the process of implementing the recommendations.

In the future, the Court may decide whether to make the committee a permanent organization, like an Equal Access to Justice Commission, to continue in a coordinating role for the provision of legal services to the indigent and pro se populations. Regardless of whether the committee becomes a permanent entity, the successful implementation of these recommendations should remain the primary focus of the committee until such time as that work is concluded.

VIII. CONCLUSION

It is important that the judicial system be accessible to all Ohio's citizens, regardless of financial means. The recommendations of the Supreme Court Task Force on Pro Se & Indigent Litigants will promote the ability of those of limited means to, first, access affordable legal services. If a litigant chooses to appear without the benefit of legal representation, these recommendations will also benefit the litigant and the court in providing information as to form and process. Finally, the recommendations will make a system of providing representation to indigent criminal defendants more efficient and effective, sustaining the provisions of the Ohio Constitution mandating the provision of legal services.

THE SUPREME COURT OF OHIO

Attitudes Toward and

Provision of Volunteer, Pro Bono and

Bar Association Activities

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Toledo, Ohio 43615

March/April, 2005

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Introduction

This study for The Supreme Court of Ohio covers the following facets:

A. Levels of pro bono service
B. The extent of other pro bono activity
C. Conditions that impact providing pro bono services
D. Problems hindering such services
E. Attorney demographics

Methodology

During March/April, six hundred attorneys selected at random across the State of Ohio were interviewed by telephone.

Two hundred interviews were completed among lawyers in Cuyahoga, Franklin and Hamilton Counties (59.0% of lawyers) and identified as "Large Metropolitan Areas."

Two hundred interviews were completed among lawyers in Summit, Lucas, Montgomery, Stark and Mahoning Counties (20.0%) and identified as "Urban Areas."

Two hundred were completed across the remaining counties (21.0%) and identified as "Suburban/Rural."

Letters were sent from the Supreme Court to the random selection of eighteen hundred lawyers (six hundred per category) telling them they might be called to participate in the study. There was an excellent level of co-operation.

Data is weighted to reflect the relationship of the three survey categories.

The weighted total line based on six hundred interviews selected at random is +/- 3.9% at the 95% confidence level. Each category of two hundred completions is +/- 6.9% at the 95% confidence level.

SURVEY REPORT

Survey Report

1. One in five attorneys (20.4%) are sole practitioners, a similar percent are in over fifty member firms (19.8%). Slightly less are in government (17.3%).

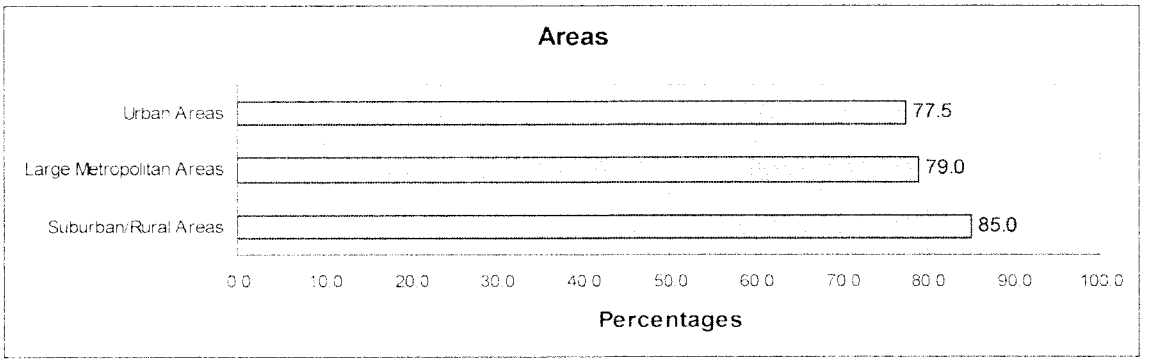
   Sole practitioners are disproportionate in suburban/rural areas (32.0%) and urban areas (28.5%).

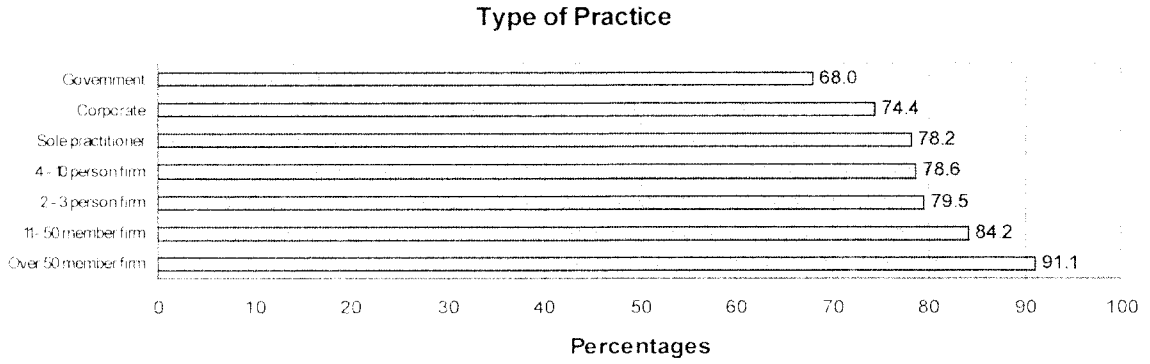
   Attorneys in the larger firms (over 50) show the highest percent (29.5%) in large metropolitan areas.

	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
Sole practitioners	20.4	13.5	28.5	32.0
Over fifty member firm	19.8	29.5	10.5	1.5
Government	17.3	18.5	15.5	15.5
A two to three person firm	12.7	9.5	11.5	23.0
Four to eleven person firm	11.6	8.5	15.5	16.5
Eleven to fifty person firm	10.7	12.0	14.0	4.0
Corporate	5.9	7.0	2.5	6.0

VOLUNTEER ACTIVITIES

2. Eighty percent (80.0%) of attorneys indicate they have personally been involved in volunteer activities in the past twelve months. Highest volunteer incidence is from those in Suburban/Rural Areas (85.0%).

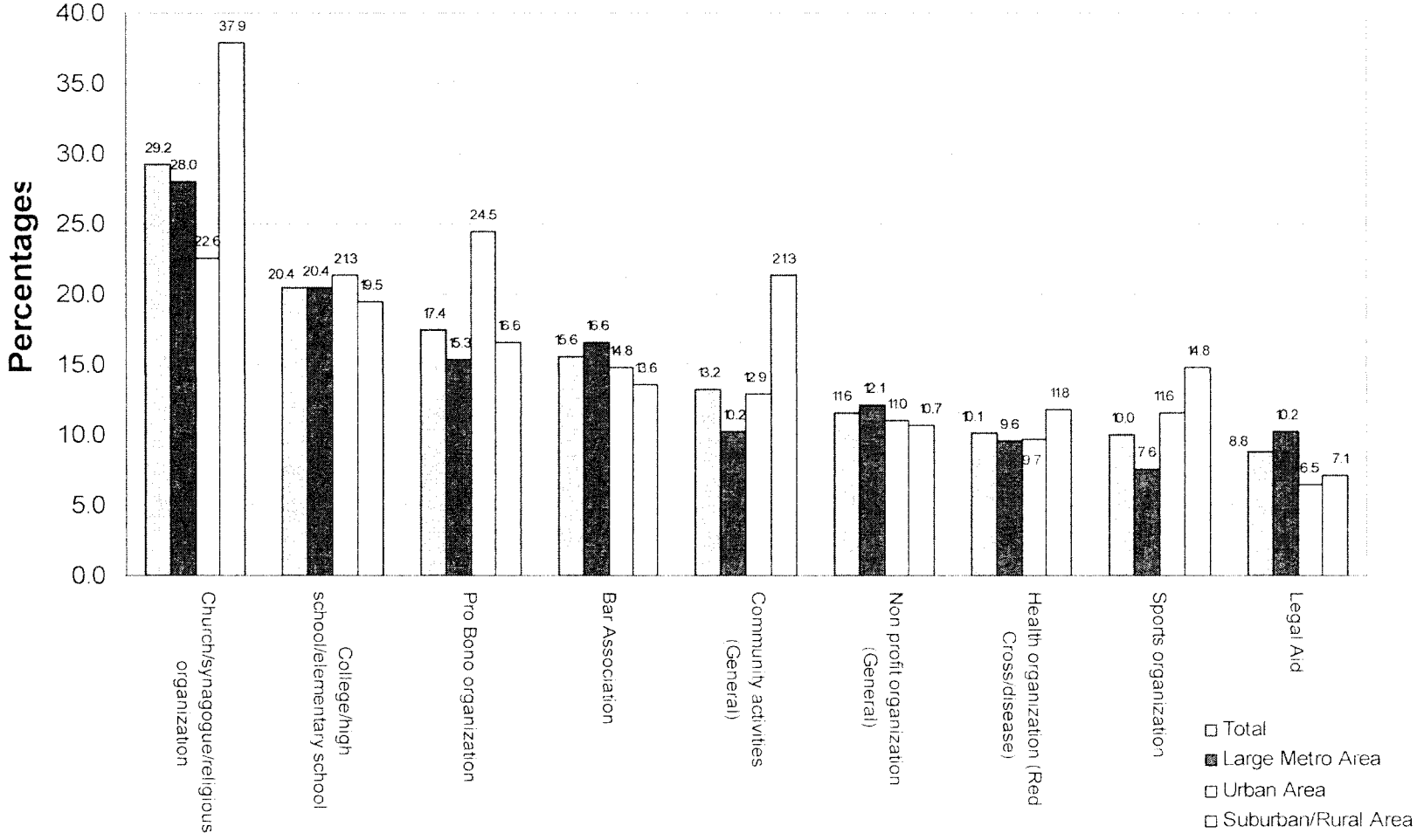




3. Among those volunteering, three in ten (29.2%) give their time to church/synagogue or religious organizations. One in five volunteer for college/high school or elementary schools (20.4%).

   One in six (17.4%) cite involvement in Pro Bono organizations. Slightly less (15.6%) mention Bar Association.

Type of Volunteer Activities Involved In



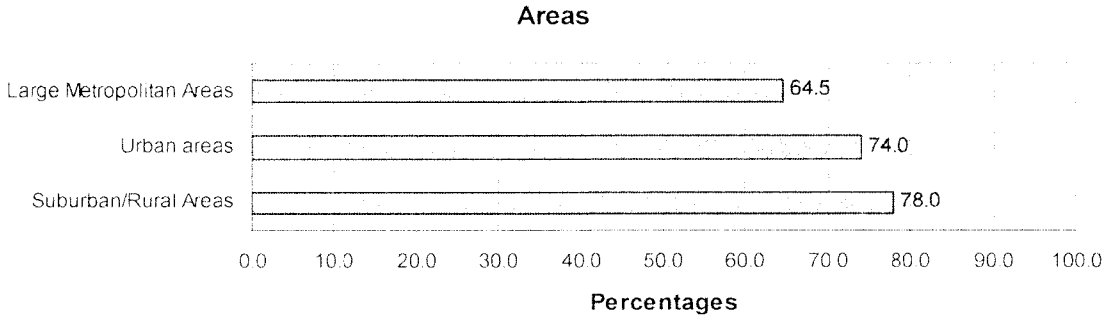
4. On average attorneys spend 34.8 hours a year on volunteer activities.

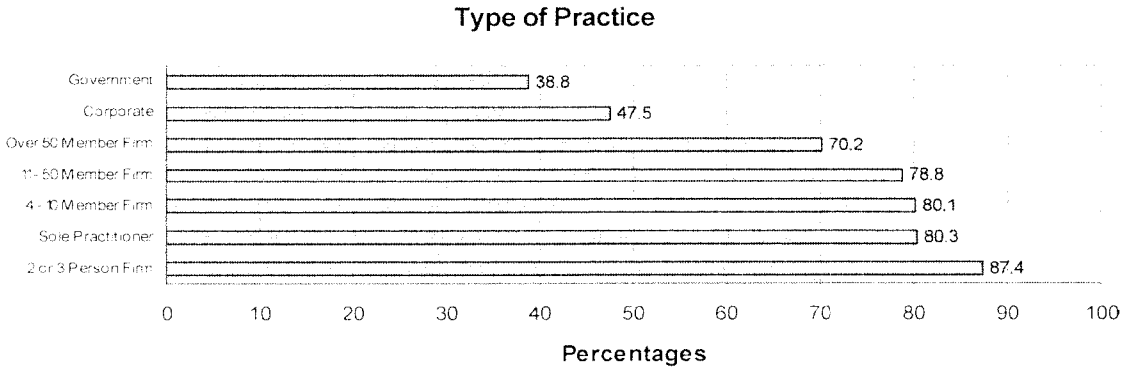
	Average Number Of Hours
Total	34.8
Large Metropolitan Areas	35.1
Urban Areas	33.8
Suburban/Rural Areas	34.9

Sole practitioners spend the most hours (40.0) and corporate lawyers the least (30.0).

PROVIDING LEGAL SERVICES WITHOUT EXPECTATION OF PAY

5. Over all, seven in ten (69.2%) have personally provided legal services without a fee in the last twelve months.





6. Services were provided for:

	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
A. A relative or acquaintance in need of legal advice	77.5	81.4	70.3	74.4
B. A current or former client on a matter unrelated to his/her billable case	56.3	57.2	55.4	54.3
C. A low income individual or group	53.9	42.5	64.9	69.5
D. A charitable Non-Profit (designed to primarily serve low-income persons; religious, civic, community, governmental, or educational)	31.4	30.2	27.0	37.8
E. A Non-Profit organization of limited resources (when payment would significantly deplete its economic resources)	27.3	30.2	16.2	30.5
F. A civic organization in my community (i.e. children's sports org., garden club, arts org.)	25.0	20.9	26.4	33.5
G. An individual, group or organization seeking to protect civil rights or liberties	10.3	11.5	7.4	9.8

7. The average number of hours spent each year among volunteers in each category is:

	Average Hours			
	Total	Large Metropolitan Area	Urban Area	Suburban/ Rural Area
Charitable non profit	27.1	28.7	23.3	26.8
Services for a low income individual	26.2	26.8	26.3	25.2
Services for an individual, group seeking to protect civil rights or liberties	25.3	24.6	24.4	27.8
Services for a civic organization	22.1	25.4	20.0	18.9
Services for a relative or acquaintance	22.0	22.7	21.7	20.4
Services for a current or former client on a matter unrelated to his/her billable case	19.8	16.8	25.4	21.8
Services for a non profit organization of limited resources	18.1	17.8	19.8	18.2

8. Fifty eight percent of attorneys (58.4%) have been involved in both volunteering and Pro Bono activity.

   Twenty one percent (21.5%) volunteered but were not involved with Pro Bono.

   Eleven percent (10.8%) were involved with Pro Bono and no volunteering.

   One in ten (9.2%) did neither.

9. Attorneys participate in Pro Bono activities to give back to the community (32.7%), it's their duty/responsibility/obligation (24.1%) or it feels good/like it/satisfying (15.1%).

Why do you participate in Pro-Bono activities?

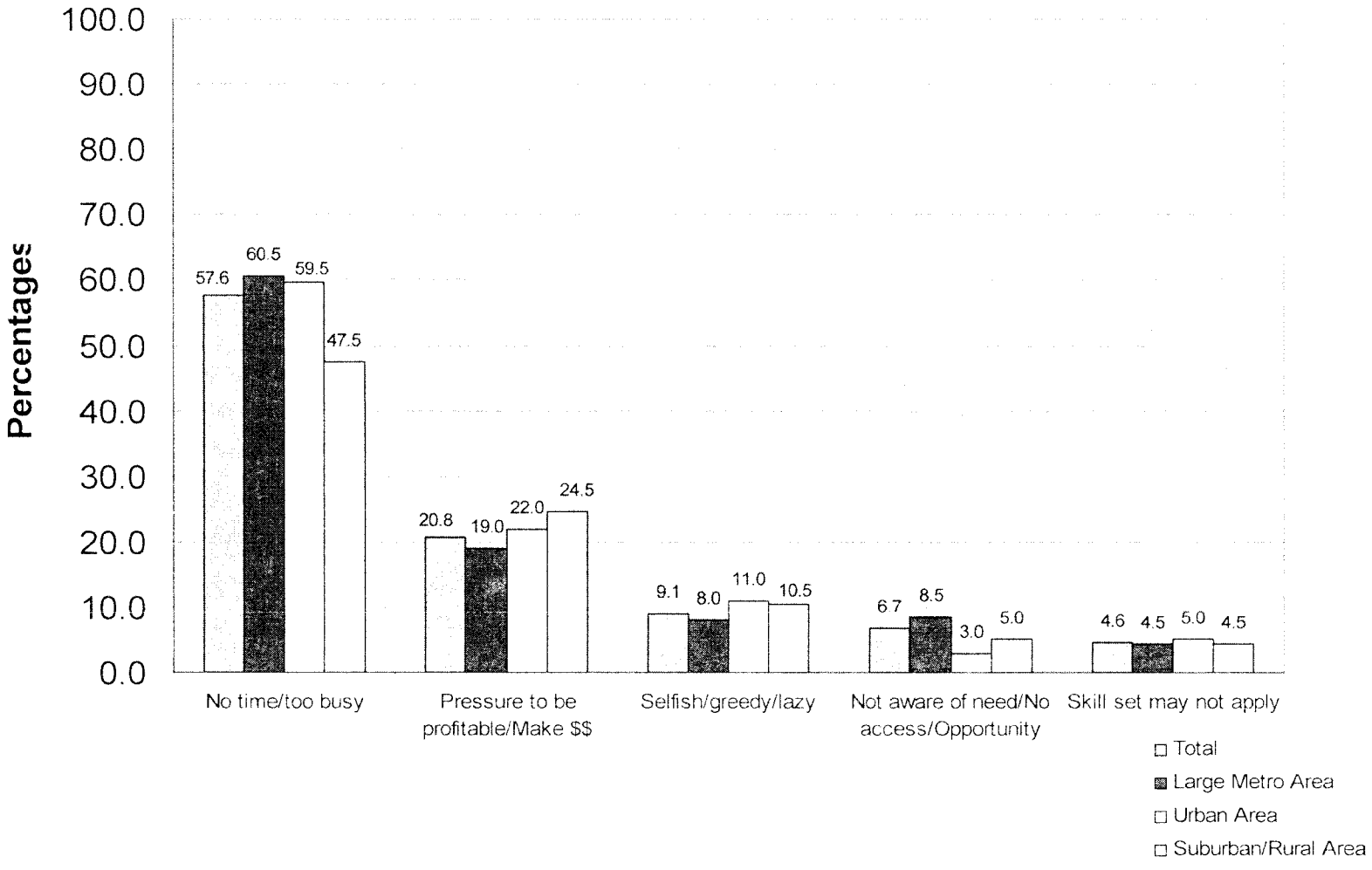
	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
Give back to the community	32.7	31.5	32.5	36.5
Duty/responsibility/obligation	24.1	23.5	20.0	29.5
Feels good/like it/satisfying	15.1	15.0	15.5	15.0
It's the right thing to do	11.6	8.5	16.0	16.0
It is needed/necessary	9.2	8.5	6.0	14.0

Type of Practice:

	2-3 Firm %	4-10 Firm %	11-50 Firm %	50+ Firm %	Govt %	Corp %
Give back to the community	35.8	41.6	43.5	23.4	37.6	31.0
Duty/responsibility/obligation	31.2	34.8	28.7	25.8	15.6	6.8
Feels good/like it/satisfying	6.3	16.5	7.4	18.9	19.7	23.5
It's the right thing to do	11.2	16.6	13.0	7.5	7.6	8.6
It is needed/necessary	12.7	11.6	7.5	9.0	4.1	6.8

10. Respondents say some do not participate mainly because of no time/too busy (57.6%) and pressure to be profitable/make money (20.8%).

Why Some Attorneys Do Not Participate in Pro Bono Activities



11. For each of the following attorneys agree that: (Strongly agree = 5.0)

		Mean	% Strongly Agree
A.	Pro Bono work is often-times personally satisfying.	4.53	62.0
B.	I share a sense of professional obligation to share our legal talents with those who would not otherwise have access to the legal system.	4.47	61.7
C.	Our community outreach involves serving on community boards and supporting local charity and civic projects.	4.30	50.4
D.	Pro Bono work can be a great training for young lawyers.	4.19	46.1
E.	While our leadership does not make Pro Bono work mandatory, it is encouraged.	4.17	42.7
F.	We must perform Pro Bono legal work for people who are in need of legal assistance but cannot afford it.	4.11	44.4
G.	Support from management improves willingness to get involved in Pro Bono work.	4.06	35.5
H.	Pro Bono program staff support improves my willingness to participate in Pro Bono work.	3.64	21.2
I.	From a business development standpoint, you never know whom you are going to meet while working at a homeless shelter or a soup kitchen.	3.63	25.3
J.	Pro Bono work is a fundamental part of my firm or office culture.	3.17	21.8
K.	Many lawyers suggest Pro Bono projects that they'd like to get involved in.	3.00	6.5
L.	I don't have to spend a lot of time on administrative paperwork, so I can interact with Pro Bono clients.	2.34	5.6

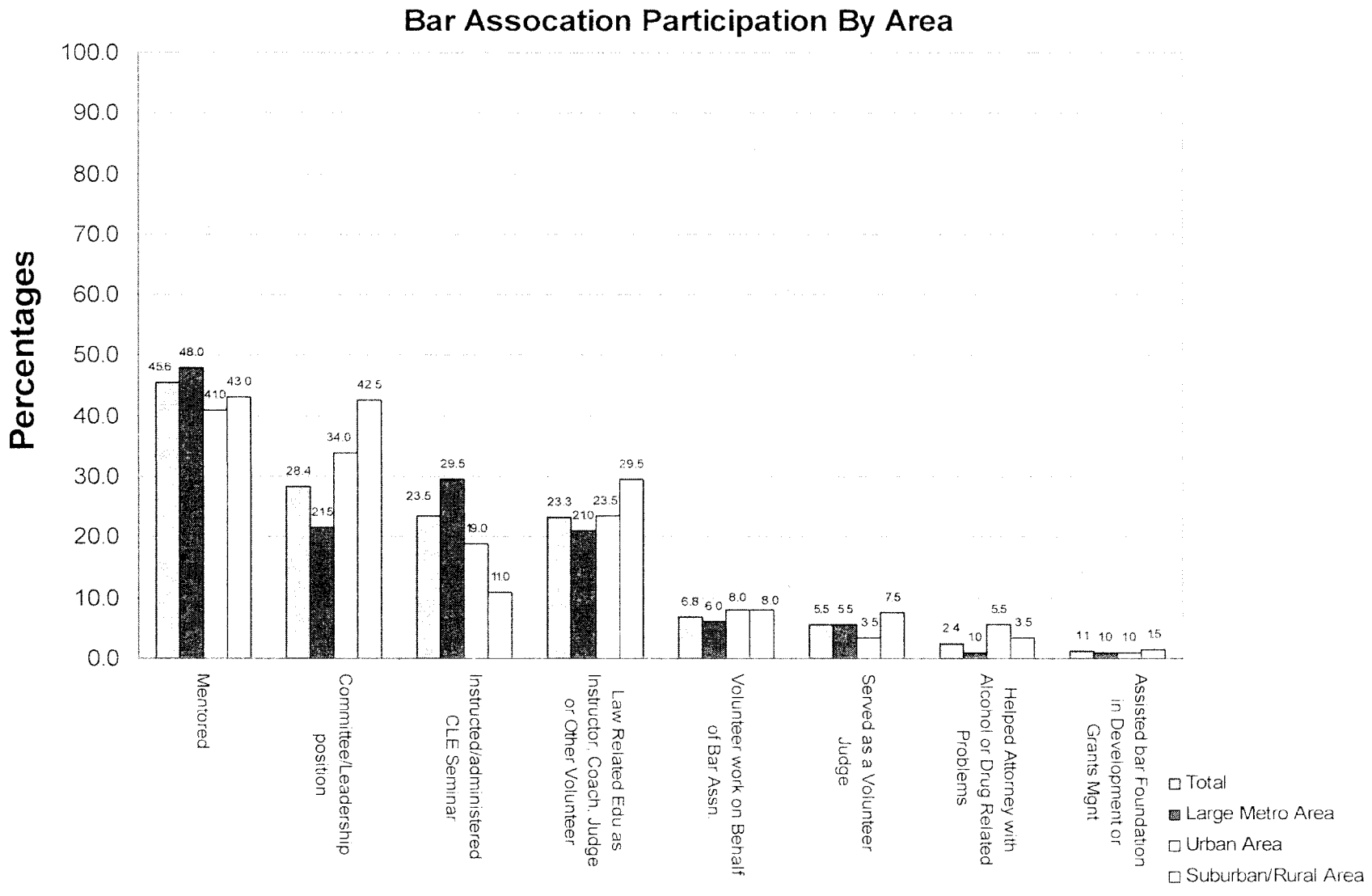
12. Some differences are noted in the responses across areas in the top three statements.

	Strongly Agree %			
	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
Pro Bono work is often-times personally satisfying.	62.0	58.5	68.0	66.0
I share a sense of professional obligation to share our legal talents with those who would not otherwise have access to the legal system.	61.7	58.5	70.0	63.0
Our community outreach involves serving on community boards and supporting local charity and civic projects.		50.4	49.5	50.0	53.5

BAR ASSOCIATION PARTICIPATION

13. In the past year almost half the attorneys (45.6%) were involved in mentoring. Three in ten (28.4%) served on a Bar Committee or a Bar leadership position. Slightly less than one in four instructed or administered a CLE seminar (23.5%) or were involved in law related education as an instructor, coach, judge or other volunteer (23.3%).

    Seventy percent of attorneys (70.5%) participated in one or more Bar Association activities.


Bar Assocation Participation By Area
Percentages
100.0
90.0
80.0
70.0
60.0
50.0
40.0
30.0
20.0
10.0
0.0
45.6
48.0
41.0
43.0
28.4
21.5
34.0
42.5
23.5
29.5
19.0
11.0
23.3
21.0
23.5
29.5
6.8
6.0
8.0
8.0
5.5
5.5
3.5
7.5
2.4
1.0
5.5
3.5
1.1
1.0
1.0
1.5
Mentored
Committee/Leadership position
Instructed/administered CLE Seminar
Law Related Edu as Instructor, Coach, Judge or Other Volunteer
Volunteer work on Behalf of Bar Assn.
Served as a Volunteer Judge
Helped Attorney with Alcohol or Drug Related Problems
Assisted bar Foundation in Development or Grants Mgnt
Total
Large Metro Area
Urban Area
Suburban/Rural Area

Attorneys in large firms show the highest peer mentoring (68.6%).

Attorneys in eleven to fifty member firms have the highest percent serving on Bar Committees or in Bar Leadership positions (39.8%).

Large firm attorneys have instructed or administered CLE seminars most (44.7%). Similarly for law related education (28.9%) and volunteer work on behalf of the Bar Association (9.9%).

14. The average hours spent each year by activity is:

	Hours Spent			
	Total	Large Metropolitan Area	Urban Area	Suburban/ Rural Area
Mentored	25.8	27.4	23.3	23.1
Committee/leadership position	23.2	28.5	18.6	19.1
Instructed/administered CLE seminar	21.0	22.4	17.3	17.0
Law related education as Instructor, coach, judge or other volunteer	15.7	14.4	14.6	19.0
Volunteer work on behalf of Bar Association	11.1	8.2	7.7	20.8
Served as a volunteer judge	8.4	7.1	18.3	6.7
Helped attorney with alcohol or drug related problems	8.2	10.0	8.9	5.7
Assisted Bar Foundation in development or grants management	15.0	15.0	4.5	21.7

VOLUNTEER/PRO BONO/BAR ASSOCIATION PARTICIPATION

15. Recap:

	Total %
Volunteer/Pro Bono/Bar Association	47.6
Volunteer and Bar Association	14.1
Pro Bono and Volunteer	10.9
Volunteer only	7.5
Pro Bono only	5.4
Pro Bono and Bar Association	5.4
Bar Association only	3.4
No participation	5.8

ATTORNEY DEMOGRAPHICS

16. Respondents described their primary areas of law practiced in the last twelve months as:

	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
Civil transactional	22.0	20.0	20.5	29.0
Civil litigation/defense	15.3	18.0	12.5	10.5
Corporate/business/commercial	14.8	15.0	16.5	12.5
Probate	12.5	8.0	13.0	25.0
Civil litigation/plaintiff	12.2	10.5	11.5	17.5
Family (divorce/support/custody)	10.9	4.5	11.0	29.0
Criminal defense	8.2	5.5	7.0	17.0
Labor and employment	7.8	9.5	8.0	3.0

The Suburban/Rural Area varies most from the total.

17. Almost half of attorney's interviewed (46.1%) have been in practice over twenty years. Two thirds of the sole proprietors (66.5%) have been in practice over two decades.

	How long an Attorney?			
	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
Up to 5 years	16.0	18.0	16.5	10.0
6 up to 10 years	14.0	16.0	12.0	10.5
10 up to 20 years	23.9	21.5	27.0	27.5
Over 20 years	46.1	44.5	44.5	52.0

18. Age array is:

	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
20 – 29	6.9	8.0	5.0	5.5
30 – 39	25.7	27.5	27.1	19.5
40 – 49	26.0	24.5	25.6	30.5
50 – 59	31.1	32.5	27.1	31.1
60 – 69	7.7	6.5	10.1	9.0
70 or more	2.5	1.0	5.0	4.5

19. Seven in ten attorneys (68.2%) are male. The percent increases (80.0%) in Suburban/Rural areas.

	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
Female	31.8	36.5	30.5	20.0
Male	68.2	63.5	69.5	80.0

20. The percent of attorneys in each income range varies by area served.

	Total %	Large Metropolitan Area %	Urban Area %	Suburban/ Rural Area %
Less than $75,000	13.8	11.0	18.0	17.5
$75,000 up to $150,000	40.8	38.0	40.5	49.0
$150,000 or more	34.5	38.0	33.5	25.7
Refused	11.0	12.9	8.5	7.1

APPENDICES

QUESTIONNAIRE

CRB-510
Pro-Bono/Volunteerism Survey
February/March, 2005

Name _____

Telephone # _____

Interviewer Initials _____

SAMPLE:

01( ) Large metropolitan area
02( ) Urban area
03( ) Suburban/Rural area

Hello, this is Jo Canfield calling for Stanford H. Odesky And Associates. We are calling on behalf of the Chief Justice of the Ohio Supreme court to ask a few questions of (insert attorney name).

1. Please tell me the primary area(s) of law in which you practiced in the last twelve months? (Check all that apply.)

01( ) Criminal (Fraud/scams)
  02( ) Prosecution
  03( ) Defense
04( ) Juvenile
05( ) Family (divorce, child support, child custody)
06( ) Probate
07( ) Civil Litigation (personal injury)
  08( ) Plaintiff
  09( ) Defense
10( ) Civil Transactional (tax, bankruptcy, consumer protection, credit and collections, renters rights, real estate, intellectual property)
11( ) Appellate
12( ) Government (non-prosecutor, non-public defender)
13( ) Corporate
14( ) Other (Specify) _____

2. How long have you been an attorney?

01( ) Up to 5 years
02( ) 6 up to 10 years
03( ) 10 up to 20 years
04( ) Over 20 years

3. Are you.....**(read list)**?

01( ) A sole practitioner
02( ) A two or three person firm
03( ) Four to ten person firm
04( ) Eleven to fifty member firm
05( ) Over fifty member firm
06( ) Government
07( ) Corporate
08( ) Other (Specify) _____

4. How old are you?

01( ) 20 – 29
02( ) 30 – 39
03( ) 40 – 49
04( ) 50 – 59
05( ) 60 – 69
06( ) 70 or more

5. Gender: 01( ) Male 02( ) Female

6. In the past twelve months have you personally been involved in any volunteer activities?

01( ) Yes - Continue 02( ) No – Skip to Q7

6A. **(If yes)** What types of volunteer activities have you been involved in?

1 Church/synagogue/religious orgs
2 University/college/high school/elementary
3 United way
4 Health orgs (Red Cross/disease)
5 Symphony/opera/other arts organizations
6 Political orgs/campaigns/local governmnt
7 Sports organizations
8 Scouts
9 Food bank/pantry
10 Service clubs (Junior League/women's /men's clubs)
11 Habitat for Hnumanity
12 Neighborhood association (homeowners)
13 Organizations that support animals (zoo/Humane Society)
14 Pro Bono programs
15 Bar Association
16 Mediation
17 Legal Aid Clinics
18 Charitable organizations (gen)
19 Non progit organization (gen)
20 Community activities (gen)
21 Other (specify)_____
_____

6B. **(If yes)** How many hours do you spend a year on your volunteer activities?

Hours _____

7. In the past twelve months have you personally provided any legal services without expectation of a fee?

01( ) Yes 02( ) No—Skip to Q9

7A. (If yes) Who did you provide these services for? **(Do Not Read)**

Q7A Unaided Yes		Q8 Aided Yes	7A/8A Approximate # Hrs A Year
☐	A. A Civic organization in my community (i.e. children's sports org., garden club, arts org.)	☐	_____
☐	B. A relative or Acquaintance in need of Legal Advice	☐	_____
☐	C. A low Income Individual or Group	☐	_____
☐	D. A Charitable Non-Profit (Designed to primarily serve Log-Income persons; religious, civic, community, governmental, or educational)	☐	_____
☐	E. An individual, group or organization seeking to Protect Civil Rights or Liberties	☐	_____
☐	F. A Non-Profit Organization of Limited Resources (when payment would significantly deplete its economic resources)	☐	_____
☐	G. A current or former Client on a matter Unrelated to his/her billable case	☐	_____
☐	H. Other (Specify/Unaided only) _____		

7B. **(For each mentioned in Q7A)**

On average about how many hours a year did you spend on activities for (insert name)? **(Record above)**

8. (For any item **not mentioned** in Q7A).....(Read and Rotate)
Did you personally provide any legal advice without expectation of a fee for... (Read and Record Above)

8A. (For each mentioned in Q8) On average about how many hours a year do you spend on (insert name)? (Record above)

9. In the past 12 months have you: **(Read and Rotate)**

	Yes	No	Q10 Approximate # Hrs / Year
A. Served on a Bar Committee or a Bar Leadership position	01( )	02( )	_____
B. Instructed or Administered a CLE Seminar	01( )	02( )	_____
C. Served as a Volunteer Judge	01( )	02( )	_____
D. Helped any attorney with alcohol or drug related problems	01( )	02( )	_____
E. Done any Mentoring	01( )	02( )	_____
F. Done volunteer work on behalf of the Bar Association such as: Worked at a food pantry, Habitat for Humanity, Red Cross, United Way	01( )	02( )	_____
G. Done any Law related education as an instructor, coach, judge, or other volunteer	01( )	02( )	_____
H. Assisted the Bar Foundation in development, grants management	01( )	02( )	_____

10. **(For each "Yes"...ask)**

On average, about how many hours a year do you spend on *(insert name/record above)*

11. Why do you participate in pro bono activities?

1 It's the right thing to do
2 Give back to the community/help others that need it
3 It is needed/necessary for society
4 Duty/responsibility/obligation
5 Counters negative attitudes toward lawyers
6 Firm encourages it/makes us do it
7 No need in my field
8 Networking/visibility
9 Do it for family/friends
10 Haven't done any
11 Believe in cause
12 Feels good/like it/satisfying
13 Important work
14 Don't know
15 Other *(specify)*_____

12. Why don't some attorneys participate in pro bono activities?

1 No time/too busy
2 Pressure to be profitable/need to make money
3 Skill set may not apply
4 Not aware of need/no access/no opportunity
5 Malpractice issues
6 Selfish/greedy/lazy
7 Do state/government work
8 Conflict of interest
9 Not encouraged/required by firm
10 Don't know
11 Other *(specify)*_____

13. Other attorneys we've talked to have described their rationale for volunteer and pro bono participation. We'd like your thoughts. For each of the following, please tell me whether you strongly agree, somewhat agree, neither agree nor disagree, somewhat disagree or strongly disagree with each. ***(Rotate)***

	Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree	DK/ NA
A. I share a sense of professional obligation to share our legal talents with those who would not otherwise have access to the legal system. Do you	01( )	02( )	03( )	04( )	05( )	06( )
B. Many lawyers suggest pro bono projects that they'd like to get involved in. Do you	01( )	02( )	03( )	04( )	05( )	06( )
C. We must perform pro bono legal work for people who are in need of legal assistance but cannot afford it. Do you	01( )	02( )	03( )	04( )	05( )	06( )
D. Our community outreach involves serving on community boards and supporting local charity and civic projects. Do you	01( )	02( )	03( )	04( )	05( )	06( )
E. While our leadership does not make pro bono work mandatory, it is encouraged. Do you	01( )	02( )	03( )	04( )	05( )	06( )

	Strongly Agree	Somewhat Agree	Neither Agree Nor Disagree	Somewhat Disagree	Strongly Disagree	DK/ NA
F. Pro bono work is a fundamental part of my firm or office culture. Do you	01( )	02( )	03( )	04( )	05( )	06( )
G. I don't have to spend a lot of time on administrative paperwork so I can interact with pro bono clients. Do you	01( )	02( )	03( )	04( )	05( )	06( )
H. Pro bono work can be a great training for young lawyers. Do you	01( )	02( )	03( )	04( )	05( )	06( )
I. Pro bono work is often-times personally satisfying. Do you	01( )	02( )	03( )	04( )	05( )	06( )
J. From a business development standpoint, you never know whom you are going to meet while working at a homeless shelter or a soup kitchen. Do you	01( )	02( )	03( )	04( )	05( )	06( )
K. Pro bono program staff support improves my willingness to participate in pro bono work. Do you	01( )	02( )	03( )	04( )	05( )	06( )
L. Support from management improves willingness to get involved in pro bono work. Do you	01( )	02( )	03( )	04( )	05( )	06( )

14. Was your household income in 2004, above or below $75,000?

01( ) Above 02( ) Below 03( ) Refused

(If above) Is your income from $75,000 up to $150,000 or is it over $150,000

01( ) $75,000 up to $150,000
02( ) $150,000 and over
03( ) Refused

Thank you. That's all the questions I have.

Stanford H. Odesky & Associates

COUNTY

01( ) Adams
02( ) Allen
03( ) Ashland
04( ) Ashtabula
05( ) Athens
06( ) Auglaize
07( ) Belmont
08( ) Brown
09( ) Butler
10( ) Carroll
11( ) Champaign
12( ) Clark
13( ) Clermont
14( ) Clinton
15( ) Columbiana
16( ) Coshocton
17( ) Crawford
18( ) Cuyahoga (large metro area)
19( ) Darke
20( ) Defiance
21( ) Delaware
22( ) Erie
23( ) Fairfield
24( ) Fayette
25( ) Franklin (large metro area)
26( ) Fulton
27( ) Gallia
28( ) Geauga
29( ) Greene
30( ) Guernsey
31( ) Hamilton (large metro area)
32( ) Hancock
33( ) Hardin
34( ) Harrison
35( ) Henry
36( ) Highland
37( ) Hocking
38( ) Holmes
39( ) Huron
40( ) Jackson
41( ) Jefferson
42( ) Know
43( ) Lake
44( ) Lawrence
45( ) Licking
46( ) Logan
47( ) Lorain
48( ) Lucas (urban)
49( ) Madison
50( ) Mahoning (urban)
51( ) Marion
52( ) Medina
53( ) Meigs
54( ) Mercer
55( ) Miami
56( ) Monroe
57( ) Montgomery (urban)
58( ) Morgan
59( ) Morrow
60( ) Muskingum
61( ) Noble
62( ) Ottawa
63( ) Paulding
64( ) Perry
65( ) Pickaway
66( ) Pike
67( ) Portage
68( ) Preble
69( ) Putnam
70( ) Richland
71( ) Ross
72( ) Sandusky
73( ) Scioto
74( ) Seneca
75( ) Shelby
76( ) Stark (urban)
77( ) Summit (urban)
78( ) Trumbull
79( ) Tuscarawas
80( ) Union
81( ) Van Wert
82( ) Vinton
83( ) Warren
84( ) Washington
85( ) Wayne
86( ) Williams
87( ) Wood
88( ) Wyandot

STATISTICAL ERROR

Sampling Error

Sampling error (also referred to as STANDARD ERROR) is a measure of variability of a sample result from the true results for a population. It is always stated in terms of a plus or minus percentage figure surrounding the research result. Furthermore, the size of the error factor is influenced inversely by the size of the sample. The large the sample, the smaller the sampling error factor.

Let's examine the effect of sample size on sampling error. The results from a brand awareness study indicate that 45% of our sample has heard of Brand XYZ. If our results are based on 100 respondents, the sampling error (at the 95% Confidence Level) would be –9.7%. Thus, in the real world we would expect somewhere between 35.3% and 54.7% of the population to be aware of this brand.

As we increase our sample size, we narrow this predicted awareness range. Based on 500 respondents, the sample error viewed would below – 4.45%. Thus, for the entire population we would expect the awareness level to fall within the 40.55% to 49.45% range.

On the following page is sampling error change for the 95% Confidence Level. In order to find the error factor for a result, you will require two pieces of information:

1) The percentage results obtained in your research.
2) The sample size.

Once you have these two ingredients, consult the chart on the next page.

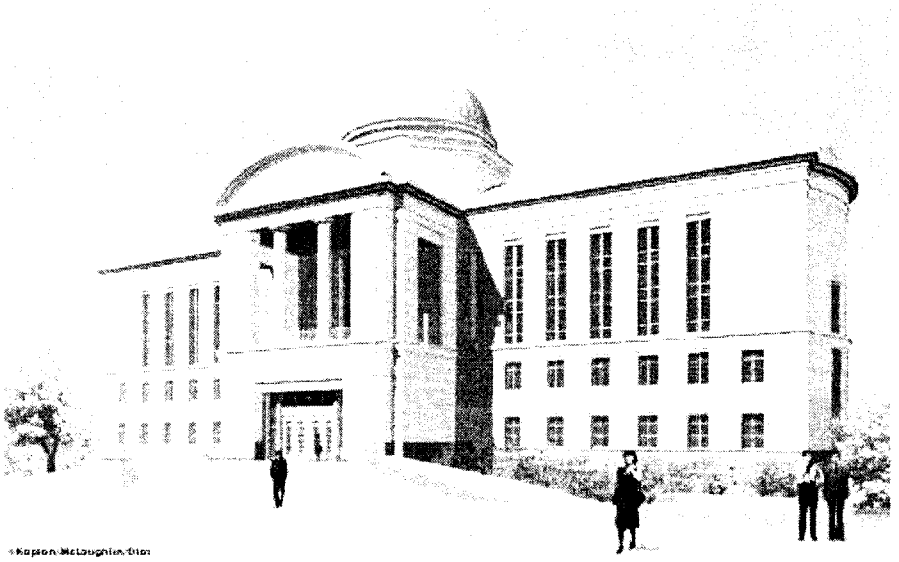
1) Locate the percentage at the top of the page which is closest to your result. For numbers near the middle of the range (45%, for example), it is best to use the higher reference percentage on the chart. This will give you a more conservative estimate of Sampling Error.

2) Find the Sampling Error factor by lining up the sample size line with the percentage result column.

CHART OF SAMPLING ERRORS
(At 95% Confidence)

	The Percentage result you obtained...				
Sample Size	50%	40% or 60%	30% or 70%	20% or 80%	10% or 90%
100	+/-9.8	+/- 9.6	+/- 9.0	+/- 7.8	+/- 5.9
200	+/- 7.1	+/- 7.0	+/- 6.5	+/- 5.7	+/- 4.3
300	+/- 5.7	+/- 5.5	+/- 5.2	+/- 4.5	+/- 3.4

Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Iowa's Courts



The Iowa Judicial Branch Building in Des Moines. Scheduled to be completed in 2002.

Prepared by the
Iowa Judicial Branch
Customer Service Advisory Committee

Approved by the Iowa Supreme Court

July 2000

Guidelines & Instructions for Clerks Who Assist Pro Se Litigants in Iowa's Courts

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INTRODUCTION

Throughout the U.S. an increasing number of litigants are bringing their legal problems before the courts without the assistance of lawyers (i.e., *pro se*). Court users who are not attorneys often ask court clerks for information or advice that requires at least some legal expertise. Court staff know the maxim that they may not give legal advice, but in many situations it is difficult to discern what constitutes "legal advice". Due to fear of stepping over the line and providing legal advice, some clerks might be overly cautious in providing assistance and information. In these situations, some court users might leave the courts unnecessarily frustrated and may lose confidence in the court system. This training and reference manual is intended to help clerks determine the appropriate way to respond to most questions from *pro se* litigants, thereby providing the best service possible within the limits of their responsibilities.

This manual contains two general sections: 1) *Guidelines for Clerks Who Assist Pro Se Litigants*, and 2) *Suggested Responses to FAQs from Pro Se Litigants*. The *Guidelines* section provides both general policy principles and specific directions for staff for determining when and how to respond to requests for assistance or information. Subsection C.2 of the *Guidelines* may be of particular interest to clerks' office staff. It provides 15 specific examples of "legal advice" that court staff should avoid. The comments following some of the guidelines clarify their meaning or discuss exceptions. Together, the *Guidelines* and comments should provide a substantial degree of clarity for court and clerks' office staff regarding the appropriate level of assistance to provide *pro se* litigants.

Section 2 of the manual, *Suggested Responses to FAQs from Pro Se Litigants* (hereafter, *FAQs*), provides a long list of frequently asked questions from *pro se* litigants and appropriate responses for clerks. Clerks' staff should become very familiar with the *Guidelines* and *FAQs* as soon as possible. Clerks might even refer *pro se* litigants to the reference manual, which could be placed at the counter where *pro se* litigants are likely to appear to ask questions.

Naturally, this manual cannot anticipate all the possible questions that *pro se* litigants might ask clerks. When new questions raise concerns about giving legal advice, clerks' staff should refer to the general principles set forth in the *Guidelines*. If they do not have time to look at the *Guidelines*, or if they refer to the *Guidelines* but still are not clear about how to respond to the question, they should consult with their supervisor. If a supervisor is not available, or if the question clearly calls for legal advice, the clerk should explain to the *pro se* litigant that clerks are not allowed to provide legal advice. Remember, litigation can be a mine field for those who do not know what they are doing. Most litigants truly would benefit from consulting with legal counsel. So – when in doubt – suggest that the *pro se* litigant consult an attorney. But **do not recommend specific attorneys.** You may refer parties to the **Statewide Lawyer Referral Service (800-532-1108)**. Also see the list of phone numbers on the last page of this document.

There are other sources of information that might be helpful to *pro se* litigants. The Iowa State Bar Association provides several pamphlets in a variety of areas of the law. They include the following topics:

Auto Accidents	Joint Tenancy
Client Protection Fund and Judicial and Attorney Ethics	Jury Handbook
Complaints of Misconduct or Ethical Violations by Iowa Lawyers	Lawyers Fees
Consumer Guide to Iowa Law	Mental Health Commitment Procedures and Individuals Rights in Iowa
Do You Need A Will?	So now you are a Conservator or Guardian
Estate Planning	Sound Steps in Purchasing a Home
Executor's Handbook	The Legal Profession
How to be a Good Witness!	The Rights of Young People
How to Use Small Claims Court	The Role of the Legal Assistant in Iowa
Iowa's New Court System	Court in Motion Day Pamphlet

They are written in easy to understand language and would be very helpful to *pro se* litigants. You can find the pamphlets on the Iowa State Bar Association web site (www.iowabar.org); go to the site and click "Public Information Pamphlets". The pamphlets page is on the web at:

www.iowabar.org/pamphlet.nsf

Or people can call the Iowa State Bar Association at: (515-243-3179).

The **Legal Services Corporation of Iowa (800-532-1503)** also provides a helpful guide on landlord/tenant cases. Your office should try to maintain a current version of this handbook, and the ISBA's handbook on "How to Use Small Claims Court" at the clerk's counter.

Finally, some of the responses to the *FAQs* include references to chapters of the Iowa Code or rules of procedure. These may be offered to the litigant. You should also consider having the most recent version of the Iowa Code available for public use, to make it easier for people to follow up on these references. If the most recent version is not available, clerks should caution *pro se* litigants that the Iowa Code section may have been amended by subsequent legislation. Clerks should caution each *pro se* litigant that besides the Iowa Code sections cited in this manual, ***there may be other code sections – or case law (supreme court or court of appeals decisions) -- that apply*** in a particular case. **Parties should not rely solely on the information provided by the clerk's office**. In most cases, litigants should consult an attorney.

Guidelines for Clerks Who Assist *Pro Se* Litigants

A. The primary goal of court and clerks' staff is to provide high quality service to court users. Court staff strives to provide accurate information and assistance in a prompt and courteous manner. However, in many or most situations involving *pro se* litigants (or represented litigants who come to the clerk's office without their attorneys), the best customer service might be to advise the litigant to seek the assistance of an attorney.

B. Absolute duty of impartiality. Court staff must treat all litigants fairly and equally. Court staff must not provide assistance for the purpose of giving one party an advantage over another, nor give assistance to one party that they would not give to an opponent.

C. Prohibition against giving legal advice. Court staff shall not provide legal advice. (*See Guideline* C.2 for examples of legal advice.)

1. If a court user asks for legal advice, court staff should advise the person to seek the assistance of an attorney.
2. Court staff should not apply the law to the facts of a given case, nor give directions regarding how a litigant *should* respond or behave in any aspect of the legal process. For example, court or clerks staff **should not**:[1]
    a. Recommend whether to file a petition or other pleading.
    b. Recommend phrasing or specific content for pleadings.[2]
    c. Fill in a form for the *pro se* litigant.
    (**Exception**: If a litigant has a physical disability or is illiterate and therefore unable to fill in a form, and the litigant explains the disability to a clerk's staff member and requests appropriate assistance, then the staff member may fill in the form. However, the clerk's staff member must write down the *exact words* provided by the litigant, and another staff member must witness the action.)
    d. Recommend specific people against whom to file petitions or other pleadings.
    e. Recommend specific types of claims or arguments to assert in pleadings or at trial.
    f. Recommend what types or amount of damages to seek or the specific litigants from whom to seek damages.
    g. Recommend specific questions to ask witnesses or other litigants.
    h. Recommend specific techniques for presenting evidence in pleadings or at trial.[3]

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[1] COMMENT on C2: This list provides examples of prohibited types of assistance. It is not comprehensive. In general, clerks must avoid advising litigants that they *should* include specific content in what they write or say or that they *should* take a particular course of action.

[2] COMMENT on C2b: Clerks may inform litigants that some *general content* may be required in a pleading (*e.g.*, identification of the other parties involved in the accident; a description of the facts surrounding the accident). But clerks may not tell a litigant whom to identify or which particular facts might be relevant in the pleading.

[3] COMMENT on C.2.h.: Clerks should provide, or identify the place where someone can obtain, pamphlets or

i. Recommend which objections to raise to an opponent's pleadings or motions at trial or when and specifically how to raise them.
j. Recommend when or whether a litigant should request (or oppose) a continuance.
k. Recommend when or whether a litigant should settle a dispute.
l. Recommend whether a litigant should appeal a judge's decision.
m. Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.
n. Perform legal research.[4]
o. Predict the outcome of a particular case, strategy, or action.

3. If you are uncertain whether the advice or information constitutes "legal advice" -- seek the assistance of a supervisor. If a supervisor is not available, inform the litigant that you are not able to provide the information and that the litigant should seek help from an attorney.

D. Authorized information and assistance. When a *pro se* court user seeks help -- excluding legal advice -- court or clerks' staff should respond to questions to the best of her or his ability. Court and clerks' staff are authorized to:

1. Provide public information contained in:
   a. dockets or calendars,
   b. case files,
   c. indexes, and
   d. other reports.
2. Recite common, routinely employed:[5]
   a. court rules,
   b. court procedures, and
   c. administrative practices.
3. Show or tell the *pro se* litigant where to find pertinent statutes or rules of procedure.
4. Identify forms that might meet the needs of the *pro se* litigant, and provide forms that the supreme court has mandated for the guidance of *pro se* court users.[6]

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other documents that address this issue and that have been prepared for general distribution to the public (*e.g., How to Use Small Claims Court,* prepared by the Iowa State Bar Association).

[4] COMMENT on C.2.n.: Clerks may refer litigants to sections of the Iowa court rules or Iowa Code for rules or statutes that govern matters of routine administration, practice, or procedure; and they may give definitions of common, well-defined legal terms used in those Code sections. However, clerks may not *interpret* the meaning of statutes or rules.

[5] COMMENT on D.2: Reciting a common rule is permissible, but court staff should not attempt to apply the rule to the facts in the litigant's case. Sometimes, after a clerk recites a rule (*e.g.*, "After a judge enters a judgment in your small claims case, you have 20 days to file an appeal."), a *pro se* litigant will ask whether or how the rule would apply, or if the rule might be applied differently, given the facts in his or her case. This calls for an *interpretation* of the law or rule of procedure. *Court and clerk's office staff must avoid offering interpretations of laws or rules.*

[6] COMMENT on D.4.: When a clerk is reasonably certain about which form is most appropriate for use by a given litigant, the clerk should identify the appropriate form. However, clerks should avoid telling litigants that they *should* or *must* use a particular form. The appropriate approach in most situations is to tell the litigant: a) a particular form probably will meet the individual's needs; b) clerks *cannot guarantee* that this is the correct

5. Answer questions about how to complete forms (*e.g.*, where to write in particular types of information), but **not** questions about how the litigant *should* phrase his or her responses on the forms.
6. Define terms commonly used in court processes.
7. Provide phone numbers for lawyer referral services. (See appendix of this manual.)

E. Prohibition against revealing the outcome of a case before the information is officially released to the litigants or public. Court or clerks' staff shall not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record, or until the judge directs disclosure of the matter.

F. *Ex parte* communications.

1. If a litigant or attorney submits an *ex parte* **written** communication for a judge (*e.g.*, to grant a continuance; to stop or limit a garnishment), court staff **must** deliver it to a judge who should decide what action, if any, is appropriate.
2. If a party makes a **verbal** request that a judge take some type of **action** in a case, the clerk should tell the litigant to **put the request in writing** and:
   a. address the request to the court;
   b. include the case number (if any) on the document;
   c. write the date on the document;
   d. sign the written document;
   e. print the person's name under the signature;
   f. write the person's address and telephone number on the document;
   g. deliver the written request to the clerk's office; and
   h. serve a copy of the document on opposing litigant or litigant's attorney (in a manner consistent with Iowa Rule of Civil Procedure 106.

3. If a party or attorney contacts a district court clerk by telephone with a verbal request for judicial **action** and there is **insufficient time to deliver a written request** to the clerk's office (i.e., an **emergency situation**), the clerk **shall** communicate the request to a judge in accordance with rules established by the chief or presiding judge(s) for handling such communications. The clerk, however, should tell the caller that the clerk cannot guarantee that the judge will grant the request.

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form; and c) the litigant should read the form very closely or consult an attorney to determine the appropriateness of the form for the litigant's purposes.

Suggested Responses to FAQs from *Pro Se* Litigants

I. General Questions

A. ASSISTANCE FROM CLERKS

I have asked you several questions and you won't answer them. Why aren't you more helpful???

The clerk should **politely** advise that, first, many questions require the clerk to explain or interpret the law or how the law would apply in the litigant's case. This constitutes legal advice, and **the law prohibits clerks from providing legal advice to litigants**. Second, if a litigant misunderstands a statement by a clerk, or a clerk gives an incorrect answer to a question -- and the litigant loses his or her case as a consequence -- the litigant might blame the clerk. For these reasons, clerks must refrain from answering many questions that people ask and refer people to competent legal counsel.

B. ATTORNEYS (RECOMMENDING ONE)

What attorney should I call to handle my case? Who would be good?

Clerks are not allowed to recommend specific attorneys or law firms. Parties should contact the Iowa State Bar Association's attorney referral service. Call toll free: **1- 800-532-1108** [This is a free service.] Parties could also check the yellow pages in the phone book or ask their friends for a recommendation.

C. COMMUNICATION WITH JUDGES

Can I talk to a judge?

Clerks must be cautious about allowing people to talk to a judge because judges must avoid ***ex parte*** contacts with litigants. [For guidance on this issue, *see Guideline* F.] The clerk should ask for the person's **name** and **why** she or he needs to talk to the judge.

If the issue is **unrelated to any case before the court**, the clerk should refer the question to the judge, if available.

If the issue involves an **emergency scheduling matter** (e.g., request for a continuance due to car problems on the morning of a hearing), the clerk should write down the request and contact the judge. Tell the person that the judge will decide whether the scheduling request will be granted. (If the issue is just a scheduling matter, some judges might talk to the person.)

If the issue involves a **non-emergency request for a continuance**, most judges require the request to be submitted in writing. (This might vary by county or district.) But the clerk should refer the

question to the judge, if available.

If the person wants to talk to a judge about **issues under litigation**, the judge usually cannot allow such communication unless all parties involved in the case are present (i.e., at a hearing). If the person wants to give the judge information pertinent to a case or wants the judge to take some *action* related to a case, the person must: 1) put the request *in writing;* 2) file it in the clerk's office; and 3) provide copies to the other parties in the case. *(See* Iowa Rule of Civil Procedure 106; *see also Guideline* F.2).

D. JUDICIAL DECISIONS

What will the judge say?

Clerks may not speculate on what a judge might say or do.

E. LEGAL RESEARCH

Where can I find information on Iowa's laws and rules?

[➡ NOTE: **Court clerks cannot do legal research for litigants**.]

Iowa's statutes (laws passed by the state legislature) are in the Code of Iowa (also known as the Iowa Code). The Iowa Court Rules contain the procedures that litigants must follow in Iowa's courts. Your city or county library and most district court clerks' offices should have copies of these volumes. The Iowa Code can be searched on the Internet at: **www2.legis.state.ia.us/Code.html**

Most of Iowa's eight judicial districts also have Local Rules that govern certain aspects of the court process. (For information on Local Rules you can check the Iowa Judicial Branch web site at: www.judicial.state.ia.us/rules/local/). Further, in some circumstances a litigant might have to examine decisions by the Iowa Supreme Court or Iowa Court of Appeals to see how these courts have interpreted the laws and rules. A person might have to go to a law school library to find up-to-date research materials on appellate court decisions. Ask a librarian for assistance with these materials. (Recent decisions by the Iowa Supreme Court and Court of Appeals are available on the Iowa Judicial Branch web site at: **www.judicial.state.ia.us/decisions**.)

It can be difficult to know and understand all the laws and procedures that might apply in a particular case. If a person is uncertain about the laws or procedures involved in the case, the person should consult an attorney.

F. SCHEDULING & COURT APPEARANCES

1. Do I have to be in court today?

The clerk may review whatever notice the party has to determine whether the party must appear in court and where the hearing (if any) will be held.

2. Can I reschedule (continue) my hearing to a later date?

Only the judge can continue a hearing. If the party files a written request with the clerk and provides a copy of the request to the other parties (or the prosecuting attorney in a criminal case), the judge will consider the request.

3. My car won't start, so I can't get to the hearing today. Can you tell the judge?

The answer to this answer depends on local custom. Some clerk's offices will convey a message regarding case scheduling to a judge, but others prefer that the party speak directly to the judge.

G. SEALED RECORDS

Can I see my sealed file? (e.g., adopted person seeking information)

Clerks are not authorized to provide sealed records to the public. The person should submit a written and signed request to the judge who has authority to make a determination regarding: whether a sealed record exists on the matter at issue; and whether the requesting party has a right to view information in the sealed file. The written request should include the following:

1) sufficient information so the judge can determine whether such a record exists (e.g., nature of the case; case number; names of parties; dates of possible case filings, judgments or events; date of birth [if the case involves an adoption]);

2) the reason(s) supporting the requestor's right to view the sealed record; and

3) the requestor's name, address, and phone number.

II. Civil (Non-Domestic) Cases

A. FILING A PETITION

1. How long do I have to file my petition?

Iowa Code chapter 614 addresses this question, but other Code chapters could apply depending on the type of case and facts involved. The party should consult an attorney

2. How do I serve my petition on the opposing party?

The clerk may point out the various means of service that are set out in Iowa Rules of Civil Procedure 56.1 through 64. The inquirer should consult an attorney to determine the proper means of service for the party's particular case.

3. $80.00 seems like a high filing fee? Why is it so steep?

Filing fees are set by the legislature, not by the court or clerk's office.

4. In what county [or state] do I file my case? (How do I know where venue lies?)

The answer to this question depends on the type of case that is being filed, where litigants live, and where events took place. Sorting out the impact of these factors would constitute legal advice. The clerk should advise the party to consult an attorney.

B. ANSWERING A PETITION

1. How do I file an answer?

A litigant's answer should be in writing (preferably typed) and filed with the clerk within 20 days after the petition was served on the party. (For information on calculating deadlines, *see* Iowa Code section 4.1(34).) The litigant **must** provide a copy to the opposing party. The clerk may point out the various means of service set forth in Iowa Rule of Civil Procedure 106. The answer includes a response to each specific allegation or paragraph in the petition or pleading to which the defendant is responding. (*See* Iowa Rule of Civil Procedure 72.) Since the answer should also incorporate any affirmative defenses the clerk should suggest that the party consult with an attorney.

2. A petition was filed on me 20 days ago, now here I am to make my appearance.

A **written answer** must be filed in the clerk's office within 20 days after the petition was served on

the party. (See response in B.1 above.) The answer also must be served on the other parties in the case. (Iowa Rule of Civil Procedure 106 describes alternatives for service.) A defendant may file an answer after the 20 day time period, but the clerk cannot guarantee what effect the answer will have in the case.

3. A petition was filed on me more than 20 days ago. Can I still file an answer?

The clerk can accept an answer at any time, even if it is late. But the clerk cannot speculate about the legal consequences of filing the answer late. If the plaintiff has already filed an application for default judgment or has obtained a default judgment, the defendant should definitely consult an attorney for options.

C. BANKRUPTCY

If I file bankruptcy will my debts go away?

The clerk should not speculate about how bankruptcy laws would apply in a particular case, which would be a clear example of providing legal advice. In addition, bankruptcy is a complicated area of the law. Strongly recommend that the party consult an attorney.

D. COLLECTION / ENFORCEMENT OF JUDGMENTS (Liens, etc.)

1. How do I file a mechanic's lien?

The clerk may provide the appropriate forms, if available, and basic instructions for filing, but due to potential complications concerning questions of law and notice, the clerk should advise the party to consult with an attorney.

2. Are there any liens on my property?

Clerks do not provide this service. People are free to search the records themselves in the Recorder's Office or have a title company or an attorney conduct a search for them.

3. What is a debtor's exam?

This is a process available to someone who has obtained a judgment against another party and has **attempted an execution** on the judgment, but the judgment debtor still has not paid the debt. In this situation the judgment creditor can file a request for a debtor's exam. Both parties will have to appear in court where the judgment creditor may question the judgment debtor under oath regarding the amount and location of the judgment debtor's assets (e.g., bank accounts, real property). *See* Iowa Code chapter 630.

4. How long do I have to file for a mechanic's lien?

In most cases a contractor/subcontractor who is owed money for products or services must file for a mechanic's lien within 90 days after the last of the materials was furnished or the last of the labor was performed. *See* Iowa Code section 572.9.

5. How long do I have to file an action to enforce a mechanic's lien?

An action to enforce a mechanic's lien may be brought within two years from the expiration of the 90 days for filing a claim for the mechanic's lien and not afterwards. *See* Iowa Code sections 572.27 and 572.9. Since the determination of the 90-day filing period may involve **complicated** legal issues, the party should consult an attorney as to the application of these code sections to the particular circumstances of the party's case.

E. EVICTION: RECOVERY OF PERSONAL PROPERTY

How do I get my stuff out of my house?

This assumes that the party has been removed from the home by court order. Advise the party to make an application in writing to the judge to pick up personal property with a copy provided to the opposing party. The judge will set a hearing to determine what property the party may remove, when the removal will take place, and under what conditions.

F. NAME CHANGE

How do I change my name? [Not part of divorce case.]

Follow the instructions in Iowa Code chapter 674 and pay the filing fee.

G. REAL ESTATE ISSUES

1. Can you provide me with a legal description of my property?

This information is not available in the clerk's office. The person should go to the County Auditor or Assessor or the Recorder of Deeds.

2. Is an address good enough? [RE: Legal description of real property]

An address is insufficient when a legal description of property is *required.*

3. How do I get someone's name off my property?

This could be accomplished by a petition to **quiet title**. Like most lawsuits it could become legally complicated. Advise the party to seek the assistance of an attorney.

III. DOMESTIC ABUSE

A. PROCESS

How do I get a restraining order against someone?

First, determine the type of restraining order sought by the person.

Domestic abuse: If the inquirer is seeking relief from domestic abuse, the clerk provides the forms, assistance with filing, and presenting the materials to the judge for consideration.

Other restraining orders: For other types of restraining orders the clerk should suggest the party consult with an attorney. The party might also seek assistance from a local domestic abuse assistance center.

B. APPOINTMENT OF ATTORNEY

1. Will the County Attorney represent me?

The County Attorney usually represents the state in **criminal** cases. For more information, the litigant should consult with the County Attorney.

2. Can you appoint an attorney for me?

Only a judge can appoint an attorney, and a judge may appoint an attorney only in certain cases. In most civil and domestic cases there is no provision for the appointment of counsel, but the clerk may refer the party to the Legal Aid Society or the Legal Services Corp., which often assists civil litigants who cannot afford to hire an attorney.

➡ **NOTE:** See the list of at the end of this manual for the nearest **domestic abuse victim assistance program** and for the nearest office of the **Legal Aid Society** and the **Legal Services Corp.**)

IV. Domestic: Dissolutions, Modifications, and Support

A. FILING & MODIFICATION ISSUES

1. How do I file a divorce without an attorney?

The statutes pertaining to dissolution of marriage are found in Chapter 598 of the Iowa Code. Anyone who plans to file for divorce without assistance from an attorney should review that chapter. The person must file a written "petition for dissolution of marriage" at the clerk's office and pay the **filing fee**. A copy of the petition together with an original notice must be served on the opposing party. The opposing party then has a reasonable time (usually **20 days**) to file an answer. If the issue is contested the case will eventually be set for trial before a judge. Also advise the party about any **special procedures** that he or she should expect as part of the divorce process in your district (e.g., mediation). However, a divorce is often complicated and the clerk should encourage the party to seek advice and assistance from competent legal counsel and that legal services might be available for those who cannot afford to hire a private attorney.

2. Can I have forms to file a divorce?

There are places where people may obtain a "do-it-yourself divorce kit," but clerks' offices in Iowa do not provide these kits to litigants. Clerks may point out that Iowa Code sections 598.5 and 598.6 identifies what information is required in a Petition for Dissolution of Marriage. Some clerks' offices identify divorce files that have had a final decree entered available and suggest that a *pro se* litigant examine some of them to find an existing pleading to use as a guide. (Divorce cases have not had a final decree entered are not open to the public.) Clerks should not suggest specific pleadings or specific ways to phrase a pleading.

3. How do I modify my divorce decree.

The person must file a written "petition to modify decree of dissolution of marriage" at the clerk's office and pay the filing fee. A copy of the petition together with an original notice must be served on the opposing party. The opposing party then has a reasonable time (usually **20 days**) to file an answer. If the issue is contested the case will eventually be set for trial before a judge. Modifications are often complicated. Encourage the party to seek advice and assistance from competent legal counsel and that legal services might be available for those who cannot afford an attorney.

4. How do I file for legal separation?

Legal separation is filed in the same manner as a petition for dissolution of marriage. (*See* Iowa Code section 598.28.) Advise the party to seek assistance from competent legal counsel and that legal services might be available for those who cannot afford to hire an attorney.

5 How do I file for an annulment?

An annulment is filed in the same manner as a petition for dissolution of marriage. (*See* Iowa Code section 598.28.) The litigant must provide an updated address and telephone number, and also provide the name, address, and telephone number of the litigant's employer. (*See* Iowa Code section 598.22B.) Advise the party to seek advice and assistance from competent legal counsel and that legal services are available for those that cannot afford to hire an attorney.

B. ANSWER

When are my 20 days up (for filing an answer)?

Generally the 20 day period to file an answer commences from the date of service (the date the defendant receives a copy of the petition), but this could vary according to circumstances of the case. (For information on calculating deadlines, *see* Iowa Code section 4.1(34).) The party should seek advice from competent legal counsel as to the party's particular situation.

C. CHILD SUPPORT

1. How do I get my ex-spouse to pay child support?

The answer to this party's question depends on whether the ex-spouse was previously ordered to pay child support. Also, the inquiry requires the clerk to give legal advice, which the clerk may not provide. The party should seek assistance from competent legal counsel or contact the Child Support Recovery Unit of the Department of Human Services.

2. My ex-spouse won't let me see the kids. Do I still have to pay child support?

Yes, the person must continue to make support payments. Denial of visitation is a separate issue from child support. Advise the party to follow the directions of the divorce decree and seek advice and assistance from competent legal counsel regarding the visitation issue.

3. How do I get the court records to show I've satisfied my child support obligation?

The party receiving the child support payments is responsible for filing a document confirming your "satisfaction of judgment" in the Clerk's office when the judgment is paid in full. A judge might have to approve the "satisfaction of the judgment." Follow section 624.37 of the Iowa Code. Advise the party to seek advice and assistance from competent legal counsel if there is difficulty in acquiring a satisfaction to a fully paid judgment.

4. How far behind am I on my child support?

The clerk may provide the party with a copy of the child support payment record, but the clerk should not attempt to calculate the support arrearage. You may also refer the party to the Child Support Recovery Unit for further clarification.

5. I am moving to a different county. Do I still send my child support payment to the clerk's office in this county? Or do I send it to the clerk's office in my new county?

Iowa Code section 252B.14(3) requires child support payments to be made to the clerk's office in the **county where the child support order was filed**. The party should review the divorce decree or most recent support order, which should indicate where the support order is filed. (**Note**: In this example, the **inquirer** is currently sending payments to this clerk's office, so it is assumed that the support order does **not** involve the Child Support Recovery Unit. If the CSRU is involved or there is an income withholding order in the case, payments must be made to the Collection Services Center. *See* Iowa Code sections 252B.14(2) and 252B.14(4))

6. How do I get my child support payments reduced?

This depends on the circumstances. If the support was set in a dissolution decree, a petition to modify the decree is necessary. If the support was set pursuant to Iowa Code chapter 252A, then the party will have to deal with the Child Support Recovery Unit. In either instance pleadings must be filed and the issues could be legally complicated. Offering further advice on this question requires the clerk to provide legal advice, which the clerk may not do. Encourage the party to seek advice and assistance from competent legal counsel.

7. Can I pay my child support directly to my ex-spouse?

A person may **not** pay child support directly to an ex-spouse. Section 252B.14 of the Iowa Code provides rules on payment of child support. Child support payments **must** be made **to the clerk of court** where the support order is entered or, if income withholding or the Child Support Recovery Unit is involved, to the Collection Services Center. For further information, instruct the party to follow the directions of the divorce decree or to seek advice from competent legal counsel.

8. My child has graduated from high school. Do I still have to pay child support?

The law provides that unless otherwise emancipated, child support continues for a child until 18 years of age even if the child has graduated from high school before age 18. (*See* Iowa Code section 598.1(9).) A supporting parent might also be required to pay a post-secondary education subsidy through age 22 if ordered to do so by the court. Advise the party to **read the divorce decree** or seek advice from competent legal counsel for any special circumstance concerning his/her case.

9. Can I get my ex-spouse's wages garnished for not paying child support?

It depends upon the circumstances of the case. Does the ex-spouse have a court-ordered child support obligation that is in arrears? If the answer to this question is "Yes," then the person might be able to obtain garnishment of the ex-spouse's wages. However, the clerk should explain that garnishing wages can be a complicated process, and that further assistance from the clerk could be interpreted as providing legal advice -- which the clerk may not do. The party should seek assistance from a private attorney, from Legal Aid or Legal Services offices (if he or she cannot afford an attorney), or from the Child Support Recovery Unit.

D. CUSTODY & VISITATION

Where do I go for custody battles?

Assuming that the party wants to litigate a custody issue, the clerk should advise that all pleadings must be filed in the clerk's office. Encourage the party to consult an attorney.

E. DISMISSALS

I filed a petition for a divorce, but I changed my mind. How do I dismiss my divorce case?

The answer to the question depends on whether the spouse has filed an answer or other responsive pleading. If no answer or other responsive pleading has been filed, the petitioner may simply file a dismissal. If an answer or other responsive pleading has been filed, the spouse must join in the motion to dismiss the case. Advise the party to seek assistance from an attorney.

F. DIVORCE DECREE IN ANOTHER STATE

I got a divorce decree in another state. How do I transfer it to Iowa?

This question typically arises when a person wants to enforce a child or spousal support obligation in Iowa that was ordered in another state. This can be complicated. The party should seek assistance from a private attorney or see the Child Support Recovery Unit.

G. DIVORCE DECREE: WHEN IS IT FINAL?

1. Am I divorced?

Refer the party to the court file and divorce decree if available. If the party still has questions, advise the person to seek advice from competent legal counsel.

2. Can I get remarried tomorrow?

Parties with a valid, recorded divorce decree may remarry. Refer the party to the County Recorder to obtain a new marriage license, if appropriate.

H. MOTION TO QUASH

I want to file a motion to quash. How do I do it?

The answer depends on what the party desires to quash, but usually an injunction or an order for mandatory income withholding has been filed against the person. The clerk may advise the party to put the motion to quash in writing, serve a copy of the motion on the other party (*see FAQs* section II.A.2), and file it with the clerk's office. The matter will be set for hearing. If forms for the motion are available in the clerks office, the clerk should offer the forms to the moving party. But the clerk **cannot** assist the party in the wording of the motion nor tell the party who should receive a copy of the motion.

I. NAME CHANGE (as part of a dissolution of marriage)

I want to take my maiden name back. How do I do that?

This is accomplished most often through a divorce decree or annulment. (*See* Iowa Code section 598.37.) The clerk may advise the party to discuss this with the party's attorney. If the person is unrepresented, advise the party that she or he must file a written motion for change of name at the clerk's office, and deliver a copy of the motion to the opposing party. The request will then be considered by the judge.

Note: For information on name changes other than those arising from a dissolution of marriage, *see FAQs* section II.F.1 above.

J. PATERNITY

1. How do I establish / disestablish paternity?

Iowa Code chapters 252F and 600B discuss these issues. Reviewing those statutes might be beneficial. Establishing or disestablishing paternity is a very important matter and can be very complicated. Encourage the party to seek assistance from competent legal counsel. The clerk might also suggest that the party contact Child Support Recovery Unit for further information.

2. How do I get a blood test?

In a case to establish paternity a party may request the judge to order blood testing. (*See* Iowa Code section 600B.41.) The request should be in writing in the form of a motion, filed with the clerk, with

copies provided to opposing parties. The judge will then consider the request.

K. RESTRAINING ORDERS

I want a restraining order. Will you do this for me?

If this is a request for a **domestic abuse** protection order under Iowa Code chapter 236, the clerk shall offer forms and some assistance with filing and presenting the petition to a judge. For **other types** of restraining orders advise the party to seek assistance from competent legal counsel and that legal services might be available for those who cannot afford an attorney.

V. Criminal and Traffic Cases

A. APPEALS

How do I file a notice of appeal?

In simple misdemeanor cases, a party may give notice orally to the magistrate at the time judgment is rendered that the party appeals or by delivering to the magistrate not later than ten days thereafter a written notice of appeal. (*See* Iowa Rule of Criminal Procedure 54(1); *see also* Iowa Rule of Appellate Procedure 5 for deadline for filing notice of appeal.) In indictable cases a party files written notice with the clerk of court where the judgment was entered; the notice must be signed personally or by the party's attorney. It shall specify the party taking the appeal and the judgment appealed from. The appellant shall serve a copy of the notice on the prosecutor and file proof of service with the clerk. Promptly after filing the notice of appeal with the clerk of the trial court, appellant shall mail or deliver to the Clerk of the Supreme Court and to the Attorney General an information copy. (*See* Iowa Rules of Appellate Procedure 6 and 101.)

B. ATTORNEYS

1. How do I get an attorney?

Parties have the right to hire their own attorney. If financially unable to do so, a party may apply for a court-appointed attorney, and the clerk should provide the appropriate forms. The judge will then consider the request and, based on criteria established by the state legislature, determine whether the party is eligible for court-appointed counsel.

2. Why do I have to reimburse the state for court-appointed attorney fees?

The legislature passed a law that requires the courts to order such reimbursement.

3. Why can't I have a court-appointed attorney?

The state legislature established the financial criteria for determining when a person qualifies for a court-appointed attorney in criminal cases. (*See* Iowa Code section 815.9.) A judge makes the decision on whether a defendant qualifies for a court-appointed attorney based on the defendant's financial resources. Clerks do not play a role in determining who gets a court-appointed attorney.

C. BOND

1. How do I get a friend out of jail (out on bond)?

If bond has been set, advise the party how that bond may be posted.

2. When will I get my bond money back?

Bonds are only released upon order by a judge or dismissal of the charges. Furthermore, the bond is returned only to the party posting it, and the bond is subject to the clerk's set-off toward any amount owed by that party to the clerk.

D. CHARGES & CHARGING ISSUES

1. What have I been charged with?

The clerk may show the defendant the file assuming it is not confidential or sealed. If the defendant has further questions, the clerk should suggest that the party consult with an attorney or with the prosecutor's office.

2. It wasn't my car so why did I get a ticket for no insurance?

Clerks are not authorized to speak for law enforcement officers or to speculate as to why an officer did or did not issue a ticket. Encourage the party to seek advice from competent legal counsel or ask the prosecuting attorney.

E. COMPLAINTS (REGARDING POLICE OFFICERS)

How do I file a complaint about a police officer?

The clerk may refer the party to the police department or to the prosecutor's office.

F. COURT COSTS

1. Why are my court costs so high?

Court costs are established by the legislature; the clerk's duty is merely to assess and collect those costs.

2. Why do I have to pay court costs when I didn't go to court?

Court costs are established by the legislature and they are fees for the filing and processing of the case rather than a fee for personal appearances.

3. What is the 30% surcharge for?

Section 911.1 of the Iowa Code provides that the surcharge: "...shall be used for the maintenance and improvement of criminal justice programs, law enforcement efforts, victim compensation, crime prevention, and the improvement of the professional training of personnel, and the planning and support services of the criminal justice system."

G. DEPARTMENT OF TRANSPORTATION

1. What is the DOT telephone number?

General information: (515) 237-3053
License reinstatement: (800) 532-1121

2. Will you call the DOT and tell them that I paid my ticket?

Due to the large volume of traffic tickets, clerks do not make individual calls for this purpose. If the ticket has been paid, the clerk should provide the party with written receipt that can be presented to the DOT as proof of payment. Tell the person the phone number to call or DOT location where he or she can go to take care of this matter.

H. FINES

1. How do I get my fines taken directly out of my check?

The clerk may refer the party to a voluntary wage withholding form if available and assist the party with completing the form.

2. I want to pay a fine, but I don't know what it is for.

The clerk may assist the party in reviewing her or his case record to determine if a fine has been imposed, the reason for the fine, and the amount.

3. When do I have to pay my fine?

Fines are usually due at sentencing unless additional time to pay is granted by the court.

4. Why won't you take my check?

Checks are not acceptable for cash bonds. However, most clerk's offices will accept checks as payment for fines and costs unless the party has had check problems in the past.

5. I paid this ticket a while ago. Why don't you show it paid?

If the party can produce some proof of payment, the clerk will investigate why credit does not appear on the docket.

6. Will you give me an extension to pay my fine?

Only a judge may grant an extension. The defendant should file a request in writing with the clerk who will then give the request to the judge for consideration.

7. What do the police do with all the money I pay?

Fine payments do not go to officers or law enforcement agencies directly, but are paid to the general fund of the State of Iowa or to the general funds of the cities or counties of the jurisdiction.

I. GUILTY PLEA

How do I plead guilty?

Some clerks' offices provide forms for guilty pleas in simple misdemeanors. For more serious offenses suggest the party consult competent legal counsel or speak to the prosecutor.

J. LICENSE SUSPENSION

Why is my license suspended when I paid my ticket?

It is likely that either the DOT has not recorded the payment and lifted the suspension, or the party's license is suspended for other reasons. Advise the party to contact the DOT and be prepared to provide proof of payment of the ticket.

K. NOTICES

1. How can I get a second notice when I didn't get a first notice?

The court views the traffic citation or the order of judgment as the first notice and the reminder as the second notice. (Note: this question pertains to Central Collections Unit notices mailed by clerks. A committee is reviewing the optimum number of notices as well as the wording on the notices to eliminate this confusion.)

2. I have received several notices regarding my unpaid fines. Each indicates a different date to pay. When is my fine really due?

Under Iowa law, fines and fees (if any) are due at sentencing unless a court order indicates otherwise. The Court, upon a showing of good cause, may issue an order granting additional time to pay. Before adding a late payment surcharge or other penalty authorized by the Iowa legislature (see next question), the clerk of court or other state agency will send a notice to a person who has not paid a fine. Some notices are mandated by law. Others are sent as a courtesy. In either situation, each notice may establish a new deadline date to pay the fine. If the person pays the fine before the new deadline, the new sanction will not be imposed.

➡ **NOTE: Read the notices carefully. If a person has already received multiple notices the person's driver's license might be suspended.**

3. What will happen if I don't pay my fine by the due date?

The Iowa legislature has established sanctions and several collection methods to induce parties to pay amounts due. These methods include, but are not limited to:

- **suspending the person's drivers license;**
- adding a 10 percent surcharge to the balance due the Central Collections Unit;
- deducting the unpaid fine and costs from income tax refunds; or
- garnishing the person's wages.

L. RECORDS & WARRANTS

1. Why won't you do a record check for me?

The clerk's office is required to keep the records open and accurate. Due to staffing and liability considerations, however, the clerk does not conduct record searches.

2. This isn't supposed to be on my record. Why is it showing up?

The clerk should first determine if the matter was recorded properly and, if so, advise the party to seek advice and assistance from competent legal counsel.

3. Is there a warrant out for my arrest?

The party should check with local law enforcement; clerks are not authorized to provide this information.

M. RESTRAINING ORDERS

How do I lift a no contact order?

Since this involves rescinding a court order the clerk should advise the party to file a written request with the clerk and provide a copy to the county attorney. A judge will then consider the request. If there are forms available for this purpose, the clerk should provide the appropriate form to the party.

N. SENTENCES: OUTCOMES & OPTIONS

1. What will be my sentence?

The judge imposes the sentences and it would be inappropriate for the clerk to speculate.

2. Am I going to jail?

Sentencing depends on a variety of factors and it would be inappropriate for the clerk to speculate on what the judge might do.

3. Where can I go for traffic class?

The party should check with the prosecutor's office.

4. How do I get unsupervised probation?

Because this is such an important issue, the clerk should emphasize that the best option would be to consult with competent legal counsel. However, if the defendant is not going to contact an attorney, the clerk may suggest that the defendant could contact the county prosecutor to discuss the issue, or the defendant could make the request to the judge at sentencing. But the clerk may not tell the defendant which option the party *should* choose.

VI. Probate

1. Can I file my own guardianship and conservatorship?

It is possible to file your own guardianship and conservatorship, but due to legal complexities and potential liability the party should be advised to first consult an attorney.

2. As a guardian (or conservator), do I have to file an annual report?

It is assumed that this question pertains to reporting requirements for guardians and conservators. The requirements are found at sections 633.669 and 663.670 of the Iowa Code. Guardians and conservators must file annual reports unless the court otherwise orders.

➡ **NOTE:** For more information on handling **guardianships** and **conservatorships,** *see*: ***Guardianship and Conservatorship Handbook,*** by the Young Lawyers Division of the Iowa State Bar Association. (To obtain a copy call: (515) 243-3179)

3. Do you have my will?

The clerk may tell the party whether his or her will is being stored in the clerk's office.

4. How do I file a claim in probate?

Iowa Code sections 633.410 through 633.449 regulate the filing of claims in probate cases. The clerk should offer any forms that might be available for that purpose. Some clerks' offices also offer basic information on the steps required in filing a claim. (Check with your clerk of court.) However, there are many questions which require legal analysis, such as statute of limitations, separate actions in lieu of claims in probate, secured and unsecured claims, contingent claims, classification of debts and charges, order of payment, and procedure when disallowed. The clerk should advise the party to seek advice and assistance from an attorney.

5. Do I have to open an estate for a dead relative?

This question requires a legal opinion, which the clerk may not offer. An estate is not required for every deceased person, but it may be necessary to transfer property, pay just claims, and obtain tax clearances. The clerk should advise the party to seek assistance from competent legal counsel.

6. Can I have the form to file a claim in probate court?

The Iowa Rules of Civil Procedure do not provide forms for probate cases.

VII. Small Claims

➡ **NOTE:** The **Legal Services Corporation of Iowa (800-532-1503)** provides a helpful guide on **landlord/tenant cases**. In addition, the Iowa State Bar Association's handbook -- "How to Use Small Claims Court" – is very helpful. It should be available at the clerk's counter. Otherwise, call the ISBA in Des Moines at: **(515-243-3179)**.

A. FILING A SMALL CLAIM CASE

1. How do I file a small claim?

The clerk may provide any pamphlets that are available (e.g., from the Young Lawyers Division of the state bar association) as well as forms for filing small claims. You may also point out where information should be placed on the forms. You should **not** offer recommendations as to the phraseology of the information that goes on the form, whom the party should sue, or whether a small claim should be filed.

2. Whom do I file against?

This question requires the clerk to offer legal advice, which a clerk may not provide. Advise the plaintiff to consult with competent legal counsel.

3. Do I have a case against this guy?

This question requires a clerk to interpret how the law will apply in a particular litigant's case, which would constitute legal advice. Clerks cannot provide legal advice. The party should ask an attorney on this question.

4. I live in Iowa and the defendant lives in ANOTHER STATE. Where do I file?

The answer to this question depends on the particular circumstances of the case. The clerk should advise the plaintiff to consult with competent legal counsel.

5. I live in this county and the person I want to sue lives in ANOTHER COUNTY in Iowa. Where do I file?

The answer to this question depends on the particular circumstances of the case. The clerk should advise the plaintiff to consult with competent legal counsel.

6. What kind of notice do I have to give?

The type of notice may vary with the circumstances, such as the type of claim the party wishes to file and whether the defendant lives in Iowa. The clerk may point out the various types of service available pursuant to section 631.4 of the Iowa Code. For further information on this issue, the party should consult with an attorney.

7. Once I file my claim, how long before I go to court?

This is an administrative question, which may be answered by the clerk. Once a petition is filed it must be served upon the opposing party who is then given a reasonable time to respond, usually 20 days from date of service. If an answer is filed denying the claim the magistrate clerk will set the case for hearing according to the magistrate's (or district associate judge's) schedule and notice will be mailed to all parties. In some counties, unless waived by court order, *mediation* is required prior to setting the case for hearing. In those counties the clerk should inform the party about that requirement and that notice for the mediation will be sent to all parties the same as the notice for the hearing.

8. My case was dismissed a year ago. Can I refile?

The answer depends upon how the case was dismissed (i.e., with or without prejudice) and whether the statute of limitations has expired, which can be a complicated issue. The party should seek advice from competent legal counsel.

9. Will you mail me thirty small claims forms?

Most clerks' offices will not do this. Clerks will mail one copy free of charge. The recipient is allowed to make copies from the original.

B. ANSWERING A SMALL CLAIM PETITION

1. I received a small claim notice in the mail. What do I do now?

The defendant should follow the instructions on the notice and perhaps seek advice from an attorney. The clerk cannot tell the defendant whether to admit or deny the claim or how to respond to the notice; this would be legal advice, which clerks cannot provide.

2. How do I file a counterclaim?

The clerk may provide the appropriate forms and indicate where the information should be placed on the form, but cannot suggest phraseology or whether a counterclaim should be filed.

C. BANKRUPTCY & ITS IMPACT

I filed a debt collection case against a person. After that, the person filed for bankruptcy. How will the bankruptcy case affect my case against that person?

The answer to this question can be complicated. It requires legal advice, which clerks cannot provide. From a procedural standpoint the clerk may advise that the filing of bankruptcy generally suspends ("stays") the state court proceedings. The party should seek advice from competent legal counsel as to how the bankruptcy might affect the plaintiff's claim.

D. COLLECTING ON A JUDGMENT

1. How long is my judgment good for?

The statute of limitations for small claims judgments for execution purposes is twenty years, and liens on those judgments exist for ten years. (*See* Iowa Code sections 614.1(6), 626.2 and 631.12.)

2. Once a judgment is obtained, how long before I get my money?

This question requires *caution* by the clerk. A judgment gives the judgment creditor a **lien** against the defendant, but the judgment and lien do not guarantee voluntary payment. The judgment creditor may pursue collection through various legal forms of **execution**, but these can be complicated. The party should seek advice from an attorney.

3. How do I obtain garnishment?

The clerk may provide appropriate forms that are available for this process and point out where information should be placed on the forms, but the clerk should not give any advice as to how the garnishment should be pursued.

4. How many garnishments can be on a person at one time?

Only one **execution** shall be in existence at the same time. (*See* Iowa Code section 626.3.) The party should consult an attorney for options.

5. How do I find out where the defendant works?

This information could be obtained through a **debtor examination** after a judgment has been obtained and the judgment creditor has unsuccessfully attempted an execution on that judgment. (*See FAQs* I.C.3 above.) There are certain legal requirements that must be met before you get to that point so the clerk should advise the judgment creditor to seek advice and assistance from competent legal counsel.

6. I tried an execution, but it didn't work. What do I do now?

The clerk cannot tell the person what he or she should do in this circumstance. One option, however, is a **debtor examination**. (See previous question.)

7. How do I stop a garnishment?

The clerk may provide the defendant with appropriate forms for requesting a hearing, if such forms are available. Otherwise, the clerk should advise the defendant that a motion to contest the garnishment, needs to be filed with the clerk's office with notice to the garnishing party. A hearing will then be scheduled before a judge.

8. Why can't the judge just put the defendant in jail?

The clerk may advise that jail is not a legal remedy available in civil proceedings. The plaintiff may wish to consult competent legal counsel to explore other available options.

9. Can the defendant make installment payments on the judgment?

The judgment entry **may** provide for installment payments, or the defendant may petition the court for installment payments. (*See* Iowa Code section 631.12.) The judgment creditor may also accept partial payments even if they are not explicitly authorized in the judgment, but the defendant should seek advice from an attorney as to whether the judgment creditor who has accepted partial payments will be prevented from seeking accelerated collection of the judgment through other legal means.

10. The other party paid me just the judgment and not court costs. How do I collect the court costs?

If the judgment required the defendant to pay court costs, the judgment lien does not have to be released until those costs are paid. The plaintiff may pursue payment through **execution** and the clerk should provide forms for doing so, if available.

E. INTEREST CALCULATION

How do I figure interest?

[➡ Note: Strongly recommend to your judges that they must include the interest rate in the judgment.]

Few clerk's offices calculate the interest due for litigants. The clerk may at least provide to the party the appropriate information to calculate the interest if not provided in the judgment entry. The clerk may also provide a calculator at the front counter and **instructions on how to calculate interest**. The following are some simple steps for calculating interest. Not every case allows for a simple answer, however. The amount of interest due could be influenced by whether the litigant has already received partial payment of the judgment or interest. Nevertheless, the following steps should be helpful to many *pro se* litigants:

A Basic Method for Calculating Interest on a Judgment

Step 1: Multiply $ _____[J]_____ X _____[I]_____% = [A]
judgment amount interest rate annual amount of interest due

Step 2: Divide [A] by 365 = [D] the daily interest amount

Step 3: Multiply the daily interest amount [D] times the number of days since the initiated file date to determine the amount of interest owed.

Example: Judgment of $2000; interest rate of 6% per year; 280 days since the date the small claims petition was filed.

1. $2000 X .06 = $120 annual interest
2. $120/365 = $.329 per day
3. $.329 X 280 days = $92.05 interest owed

F. LANDLORD & TENANT CASES: FORCIBLE ENTRY AND DETAINER (F.E.D.)

1. Does a three day "notice to quit" include weekends and holidays?

Yes.

2. Other questions about Forcible Entry and Detainer (FED) cases....

This can be a very complicated area of the law, so the party should consult an attorney on almost all other questions. However, the **Legal Services Corporation of Iowa** has a very informative guide book on legal issues related to FEDs. [Call toll-free: **1-800-532-1503**] Clerks' offices should obtain a copy and make it available as a reference book at the counter. Legal Aid might also provide free or low cost legal services for low-income residents who cannot afford an attorney.

G. MINORS AS PARTIES IN A SMALL CLAIM CASE

1. I'm 15 years old and I haven't been paid for work I've done. How do I sue to get my money?

A minor may sue a defendant, but the minor must have a parent or guardian complete and sign a small claim petition.

2. Can I sue a minor?

Yes -- a minor may be sued, but no judgment may be taken against a minor unless the minor is defended by a *guardian ad litem*. (*See* Iowa Rule of Civil Procedure 13.) Suing a minor involves numerous legal issues, so the party should seek the advice and assistance of competent legal counsel.

H. SATISFYING & RELEASING THE JUDGMENT

1. I paid my judgment in full and the plaintiff has not released it. How do I get the judgment released?

There is a procedure for this contingency found in Iowa Code section 624.37, but the party should seek advice from competent legal counsel on this issue.

2. I paid my judgment so why don't you satisfy it?

The judgment creditor (the person who was owed the money) is responsible for satisfying the judgment, not the clerk. (*See* Iowa Code section 624.37.)

I. TIME LIMIT FOR FILING A SMALL CLAIM

What is the time limit to file a small claim? [Statute of limitations question]

Iowa Code chapter 614 addresses this question, but other Code chapters could apply depending on the type of claim and the facts involved in the case. The party should consult with an attorney.

Helpful Phone Numbers for People Who Need Legal Assistance or Information

Department of Transportation (Iowa) -- for information regarding drivers licenses	General information: (515) 237-3053 License reinstatement: (800) 532-1121
Lawyer Referral Service (Iowa / Statewide)	**Toll free: (800) 532-1108**

FREE or LOW COST Legal Assistance for Civil or Domestic Actions

	Local Phone #	Toll Free Phone #
Legal Services Corporation of Iowa (Des Moines)	**(515) 243 2151**	**(800) 532-1503**
Cedar Rapids Regional Office	(319) 364-6108	(800) 322-0419
Iowa City Regional Office	(319) 351-6570	(800) 272-0008
Waterloo Regional Office	(319) 235-7008	(800) 772-0039
North Central Region: Mason City	(515) 423-4651	(800) 392-0021
Northeast Region: Dubuque	(319) 588-4653	(800) 942-4619
Northwest Region: Sioux City	(712) 277-8686	(800) 352-0017
South Central Region: Des Moines	(515) 280-3636	(800) 772-0039
Southeast Region: Ottumwa	(515) 683-3166	(800) 452-0007
Southwest Region: Council Bluffs	(712) 328-3982	(800) 432-9229
HELP Legal Aid – Scott County (Davenport)	(319) 322-6216	(800) 627-1596
Legal Aid Society – Polk County (Des Moines)	(515) 243-1193	
Legal Aid Society – Muscatine County (Muscatine)	(319) 263-8663	
Legal Aid Society – Story County (Ames)	(515) 382-2471	
Drake Law Clinic – Des Moines	(515) 271-3851	
Volunteer Lawyers Project (Des Moines)	(515) 243-3904	

Acknowledgements

The Iowa Supreme Court wishes to express its appreciation to all the members of the judicial branch's Customer Service Advisory Committee for producing this excellent resource and training manual. Special recognition goes to those who served on the *pro se* litigants subcommittee members who devoted substantial time and effort on this project, including District Judge Kurt Wilke, District Associate Judge Doug Staskal, District Court Clerks Clay Gavin and Berkeley Greenwood, and John Goerdt, State Court Planner. The Supreme Court would also like to thank attorneys at the Iowa State Bar Association, the Polk County Legal Aid Society, and the Iowa Attorney General's office for their review of this document.

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The Supreme Court of Ohio

MEMORANDUM

TO: Task Force on Pro Se and Indigent Litigants

FROM: Jo Ellen Cline JEC

DATE: November 30, 2005

RE: Materials distributed at November 29 meeting

Enclosed please find the materials distributed at the Task Force meeting held on November 29, 2005.

The next meeting is scheduled to be held on **Thursday, December 15, 2005 beginning at 9:30 a.m**. This meeting will be for the full Task Force. I will send further details and information closer to the meeting date.

If you have any questions, please contact me.

Enclosures

VOLUNTEER / PRO BONO / BAR ASSOCIATION PARTICIPATION

	Total %	Suburban/Rural Areas %	Large Metropolitan Areas %	Urban Areas %
Volunteer/Pro Bono/Bar Association	47.6	53.3	44.9	49.0
Volunteer and Bar Association	14.1	12.9	15.9	9.5
Pro Bono and Volunteer	10.9	13.8	9.0	13.0
Volunteer only	7.5	4.3	9.0	6.0
Pro Bono and Bar Association	5.4	6.2	4.6	7.5
Pro Bono only	5.4	4.3	5.9	4.5
Bar Association only	3.4	2.9	3.1	5.0
No participation	5.8	1.4	7.5	5.5

VOLUNTEER / PRO BONO / BAR ASSOCIATION PARTICIPATION

	Total %	Corp %	Govt %	> 50 Member Firm %	11 – 50 Member Firm %	4 – 11 Member Firm %	2 - 3 Person Firm %	Sole Practitioner %
Volunteer/Pro Bono/Bar Association	47.6	33.9	24.9	60.1	59.8	50.9	60.6	48.0
Volunteer and Bar Association	14.1	16.9	26.0	20.7	8.4	10.4	3.1	6.3
Pro Bono and Volunteer	10.9	3.4	4.0	5.5	9.3	12.1	12.6	18.6
Volunteer only	7.5	2.3	12.7	4.5	7.5	5.2	3.1	4.9
Pro Bono and Bar Association	5.4	6.8	2.3	3.0	9.3	9.5	7.9	4.4
Pro Bono only	5.4	3.4	7.5	1.5	0.9	7.8	6.3	8.8
Bar Association only	3.4	8.5	7.5		2.0	3.4	3.1	2.0
No participation	5.8	6.8	15.0	4.5	3.7	0.8	3.1	6.3

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