

Building a Coalition for Changing Pro Bono Policy

by Sharon E. Goldsmith

Change sometimes appears to happen abruptly, yet it is most often the culmination of a slow, methodical process. In Maryland, years of strategic campaigning anteceded the state's new pro bono policy initiative. Maryland is now well into its second year of required reporting of pro bono activity by its lawyers. In addition to the reporting requirement, the Maryland Court of Appeals—the state's highest court—adopted revisions to Rule 6.1 and new rules requiring the establishment of a local pro bono committee in each county and the creation of a statewide Standing Committee on Pro Bono Legal Service. These changes underscore a newly energized commitment to ensure equal access to justice.

This article will focus on how Maryland built this "coalition for change" and succeeded in producing a result that looked all but impossible a decade ago.

Judicial involvement

It was clear at the outset that to succeed in truly revitalizing pro bono policy, the judiciary needed to be engaged in a cohesive and prominent fashion. On that basis, the Pro Bono Resource Center of Maryland suggested that the Court of Appeals appoint a high level commission to investigate the state of pro bono and what measures could be enacted to enhance the delivery system. Chief Judge Robert M. Bell, a leader with extraordinary vision and commitment and a proven advocate for legal services, created the Judicial Commission on Pro Bono and appointed an appellate judge, Deborah S. Eyler, to serve as its chair.

The Commission met for a year and a half, ultimately issuing a report with a series of specific recommendations. A number of them were controversial, particularly those proposing changes to the court rules. For instance, the revisions to Rule 6.1 finally clarified that pro bono is primarily about legal services to the poor. It included an "aspirational" goal of 50 hours of legal service a year with a "substantial portion" of those hours dedicated to those of limited means, civil rights work, or helping a non-profit that could not otherwise afford counsel. The balance of the 50 hours could still be spent on improving the law or legal profession while preserving the option of making a financial contribution in lieu of service.

Bar support

Recognizing the potential for dissent and the importance of bar support, proponents actively solicited the counsel and endorsement of the bar leadership. For close to a year, the chair and several members of the Judicial Commission made presentations to local bar associations, sought endorsements from bar committees and sections, and lobbied members of the state bar association's board of governors. The personal appeals significantly contributed to expanding the coalition. When the timing was appropriate, the commission sought the formal endorsement of the board of governors and it voted to adopt all of the commission's recommendations.

The endorsement by the state bar leadership marked the launch of a full-fledged campaign. Since the recommendations included changes to court rules, the court's Rules Committee needed to review and approve them. Thus, after extensive education, numerous meetings, and the solicitation of public comments, the Rules Committee ultimately submitted three alternative versions of Rule 6.1 for the Court's consideration. The court then held a public hearing on the issues and received additional testimony and comments from various segments of the bar. In February of 2002, the Court of Appeals adopted the proposed rules with several modifications.

More outreach to the bar

The most significant modifications to the rules included the exclusion of judges from local pro bono committee membership (although judges could be consultants to the committees) and the elimination of a specific dollar figure as a proposed "buyout" for pro bono service in Rule 6.1. The compromises were viewed as necessary to ensure that some meaningful version of the rules would, in fact, be adopted.

Ironically, after the passage of the new rules, it became even more imperative to educate the bar about the meaning of the rules and their likely impact on local bars and individual lawyers.

In the fall of 2002, Chief Judge Bell addressed the local and specialty bar associations at a state bar-sponsored conference to inform them about the new rules and alleviate some of their concerns. That forum also showcased a video, "In the Eyes of the Law," produced by the Pro Bono Resource Center of Maryland. The video featured lawyers and clients sharing stories about how pro bono service changed their lives and the many benefits experienced by all parties involved in pro bono work. The video has since been credited with helping assuage the resentment some felt due to the imposition of the pro bono rules and especially, the reporting requirement, and to understand its underlying purpose and value. A number of lawyers commented on how vital it was to focus the message on what pro bono really means to the community.

Despite its initial opposition, the implementation of a pro bono reporting process continues to generate greater awareness of a lawyer's professional responsibility to render pro bono service and enhance participation in pro bono activities by members of the bar. The first year of reporting attracted considerable press and hundreds of inquiries from lawyers about their reporting responsibility and what qualified as pro bono service under the amended Rule 6.1. The heightened interest provided the court with an opportunity to educate lawyers. The court sent several notices to all licensed lawyers with information on how to volunteer and report appropriately. Individual inquiries were handled by the Pro Bono Resource Center on behalf of the Administrative Office of the Courts and a 24-hour/seven-day-a-week message center was established to provide ongoing information for those with questions. The court also designed a new section on its Web site dedicated to pro bono with frequently asked questions and reporting forms to file online.

Now at the end of its second year, most of the concerns about the reporting process have dissipated, consistent with a 98 percent compliance rate and substantially fewer inquiries about reporting pro bono hours. Additionally, lawyers and law firms are taking the responsibility more seriously and trying to determine how they can best fit pro bono into their practice.

Still, defining pro bono is what is helping to change the mindset of the bar. Most of the questions received in the first year of reporting related to what qualified as pro bono service and how people could become more involved. Defining pro bono, was therefore, also critical to the reporting process as lawyers were stopping to take stock in what they were doing and wanted clear guidelines as to what counted as their pro bono hours.

Comprehensive effort

The developments that have occurred over the last few years illustrate a true shift in the Maryland legal culture. While pro bono reporting is important and has yielded helpful data, it is but one component of the whole pro bono initiative. The commission's rationale for proposing such a comprehensive and multi-faceted approach was to ensure that the changes to the rules would have a permanent impact on the pro bono delivery system statewide.

Preliminary indications are that these policy initiatives are working. Pro bono programs report that the bar is more receptive to requests for help and legal services contributions have increased. In fact, lawyers handled 500 more pro bono cases through programs funded by the Maryland Legal Services Corporation in 2003 than they had in 2002 before the new rules. Firms are designing new tracking systems for their pro bono work and developing specific pro bono policies where none existed previously. On a local level, pro bono committees are bringing members of the bar, legal services community and court personnel together to discuss the most critical legal needs in their counties and develop a specific plan of action. Furthermore, lawyers in Maryland are now clearly aware of their professional responsibility to engage in pro bono legal service.

It has been an invigorating time for pro bono in Maryland thanks to the vision, steadfast leadership and commitment from the bar and bench. Despite all the indications of a successful endeavor, a true evaluation of the new initiative can only occur after several years of reporting data and implementation of local and statewide pro bono action plans. In the meantime, it is incumbent upon pro bono supporters to capitalize on this unique opportunity of pro bono awareness and support and pursue the institutionalization of strong pro bono policies and practices.

In sum, the fundamental lesson learned was: don't accept the status quo—reach for your ideal. Remind people why they chose this profession and reintroduce them to the privilege of helping those without access to the justice system. Change is not easy. But with the right leadership, vision and persistence, it can happen.

Top ten ways to build a coalition for changing pro bono policy

1. Get strong leadership from the bench and the bar
2. Develop a clear strategy and vision—know where you are, where you are going, and how you plan to get there
3. Focus on the appropriate timing for success as part of your overall strategy
4. Keep the bar, bench and legal services community engaged in the process and aware of your progress
5. Be persistent
6. Be patient
7. Explain why it is necessary to make the changes you are advocating and maintain focus on the final goal and the people whose lives will be affected
8. Be willing to stand your ground when it is right
9. Be willing to compromise when it is necessary
10. Be able to demonstrate how it is in the interest of the bar to make the change

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