

# Memorandum

**To:** Harrisonburg-Rockingham Bar Association

**From:** Ad Hoc Bar Committee<sup>1</sup> Studying the Implementation of the Chief Justice's Proposal for Local Pilot Project of *Virginia Lawyers Helping Families*

**Date:** November 28, 2004

**Re:** Implementation of the Chief Justice's Proposal for Local Pilot Project of *Virginia Lawyers Helping Families*

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## **Background.**

In the spring of 2003 Virginia Supreme Court Chief Justice Leroy Hassell announced his vision of instituting a statewide *pro bono* program addressing the unmet legal needs of low-income child custody litigants. He appointed a commission comprised of justices and lawyers from across the Commonwealth to design such a program. The Chief Justice's Pro Bono Initiative Commission produced a final report in the summer of 2004, a copy of which is attached. The Commission proposes a new statewide *pro bono* program, *Virginia Lawyers Helping Families*.

To initiate the new program, the Commission has proposed the creation of two pilot projects, one in Richmond, the other in Harrisonburg, to test the program's design and viability. The Harrisonburg site was selected by the Chief Justice and the Commission's chair, John Oakey, because of the Harrisonburg-Rockingham Bar Association (HRBA)'s reputation for its longstanding commitment to *pro bono* work on behalf of low-income residents of the area.

Following the issuance of the Commission's report, the Chief Justice appointed a Steering Committee to oversee the implementation of *Virginia Lawyers Helping Families*. The committee is chaired by John Oakey, and includes, *inter alia*, Franklin Blatt and John Whitfield from the local bar.

John Oakey then met with the HRBA's Family Law Section and the four *pro bono*

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<sup>1</sup> The committee is comprised of Steve Weaver, David Penrod, David Earman, Glenn Hodge, Frank Blatt, Dana Cornett, and John Whitfield.

team leaders on August 3, 2004 to explain and discuss the proposal. A number of concerns were voiced, including the impression that this proposal was being designed in Richmond and handed down without sufficient input from the local level, and concerns as to how the program might adversely affect our existing *pro bono* referral program.

On September 7<sup>th</sup>, the *pro bono* team leaders, *viz.*, Steve Weaver, David Penrod, David Earman, and Glenn Hodge, met with Frank Blatt, Family Law Section Chair Dana Cornett, Blue Ridge Legal Services (BRLS) executive director John Whitfield, and BRLS referral coordinator Janet Ikenberry to review the proposal further. We discussed how it might be integrated into the HRBA's existing *pro bono* referral program that has been in place since 1982.

Chief Justice Hassell attended our September 8<sup>th</sup> bar meeting as our invited guest speaker. In his remarks, he described his vision for the *Virginia Lawyers Helping Families* program and urged the bar to assist in the implementation of a pilot project as envisioned in the Commission's report, making such changes in the proposed design as might be necessary to improve its effectiveness.

Immediately following the Chief Justice's remarks, Mr. Whitfield briefly reported on the September 7<sup>th</sup> meeting of team leaders and others. It was agreed that this *ad hoc* committee would proceed to develop and present a set of recommendations as to how to implement the proposed *Virginia Lawyers Helping Families* pilot project and integrate it into our existing *pro bono* referral system at an upcoming bar meeting for its endorsement.

### **The Committee's Recommendations.**

We recommend that the proposal for a pilot project as outlined in the Pro Bono Initiative Commission's report be endorsed and implemented by the HRBA, with the following revisions and additions. For the sake of brevity, we do not set out the details of the original Commission's proposal in this document. Rather, the report of the Commission is attached for your reference, and page references are included where deemed helpful.

Our revisions and additions are as follows:

1. Regarding the case acceptance criteria outlined in the Commission's report (see pp. 9-10 of the Report), we recommend:
  - a. Using an financial eligibility threshold that is more stringent than the one envisioned in the report, *viz.*, requiring that household income be below

100% of the federal poverty guidelines rather than the 125% of the federal poverty guidelines proposed in the report;

- b. Retaining the requirement that the opposing party be represented by counsel or that the client be a recent victim of domestic violence;
  - c. Adding an explicit requirement that the client's position have sufficient merit to justify a referral; and
  - d. Adding the requirement that each potential client of the program be willing to attempt mediation or pursue a collaborative divorce process as a prerequisite to representation. This requirement would be met if the client is willing but the adverse party declines to attempt mediation. This requirement will be waived for victims of domestic violence.
2. Dana Cornett will serve as the program coordinator for the first year.
  3. There would be 4 program mentors, experienced family law practitioners who would review the screening performed by BRLS staff to confirm that the proposed child custody referral is appropriate, and who would be available for the attorney volunteers to consult with as they handle the cases. Each HRBA *pro bono* team would have a designated mentor, and Dana Cornett would serve as a backup mentor. Frank Blatt and Tom Howell have each volunteered to serve in this capacity, leaving two additional slots to fill. In the Commission's report, these are referred to as "Screening Attorneys" (see pp.7-8 of the Report) and as the attorneys who assist with the "help lines". In our recommendations, these two functions are combined in the "program mentor" attorneys.
  4. Contrary to what is proposed in the Commission's program design (see page 13 of the Report), the Virginia State Bar would not play a role in the referral process. Instead, BRLS and the existing *pro bono* team leader structure would handle the referral process.
  5. Being a component of BRLS' *pro bono* referral program, services donated through the program would continue to qualify for state income tax credits under the Neighborhood Assistance Program (a 45% state income tax credit for donated services based on hourly rate with a cap of \$125 per hour; to qualify, the attorney must have donated at least \$889 in services annually).
  6. Attorneys would have the right to terminate representation if the client makes unreasonable demands or unreasonably refuses to follow the attorney's advice regarding settlement. (Naturally, this would be subject to the Court's willingness to grant leave to withdraw.) Likewise, attorneys would not be required to

represent the client on appeal or in subsequent litigation following the adjudication of custody. (They could choose to do so, but they would not be expected to do so.) These limitations will be explicitly set forth in the form representation agreement.

7. We will need 20 volunteers for the program, ideally 5 from each of the existing *pro bono* teams. (Based on historical data, BRLS estimates that there will be about 20 referrals in Harrisonburg and Rockingham County meeting the criteria each year, barring drastic shifts in demographics.) These volunteers will not necessarily be experienced family law practitioners. Instead, the program design envisions using non-family lawyers but providing them with training (see page 8 of the Report), printed resource materials (see page 16 of the Report), and ready access to family law mentors to enable them to provide competent legal representation. The volunteers for the program will be expected to handle no more than one custody referral each year, and they will not be expected to handle any other types of *pro bono* referrals during the year.
8. The program will be instituted as soon as sufficient mentors and volunteers are recruited, and the training and resource materials are made available.