

NH Pro Bono Referral Program

Year-End IOLTA Report for FY 2016-2017

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“Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists . . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status.” – Justice Lewis F. Powell, Jr., U.S. Supreme Court Justice (Ret.), during his tenure as president of the American Bar Association (August 1976)

Executive Summary

Justice Powell’s words ring true today as much as they did more than 40 years ago. Through the work of staff and the program’s network of volunteer attorneys, Pro Bono endeavors to give those without adequate resources the opportunity for a fair shake when it comes to the legal system. As a funding source covering core services and basic operating expenses, IOLTA is essential for Pro Bono to maintain and continue its key role in delivering legal services to low-income families and individuals throughout the Granite State. A few highlights of the Pro Bono 2016/17 services and activities funded in whole or part by IOLTA include:

- **Coordinating, supporting and overseeing almost 1500 cases placed with volunteer attorneys, with close to 3,500 adults and children benefitting.**
- **Providing more than 500 additional people with information and referral to other resources.**
- **Launching criminal annulment clinics staffed by volunteer attorneys, serving dozens of clients seeking to improve their lives, especially chances for more substantial employment.**
- **Conducting another productive celebration of national Pro Bono Month with more than a dozen events, including the Bruce Friedman Pro Bono Award reception and UNH Law faculty and staff referral marathon.**
- **Coordinating representation before the IRS for Jamaican H2-A farmworkers employed at southern New Hampshire apple orchards, whose pay was taxed at an erroneous rate due to incorrect return preparation resulting in refunds often as high as \$2,000.**
- **Developing and holding four volunteer attorney trainings, including one on consumer debt collection and another on litigation skills for attorneys participating in the Foreclosure Relief Project.**

- Receiving federal Victims of Crime Act funding to strengthen DOVE and launch a stalking project under the umbrella of DOVE.
- Institutionalizing our periodic payment clinic at the Plymouth District Court.
- Offering unbundled service options for victims of domestic violence and other clients, where full representation may not be an option due to limited resources.
- Actively participating in the Access to Justice Commission's subcommittee work.
- Holding several trainings/educational sessions for social service providers and client communities.
- Partnering with LARC and NHLA to improve online access to legal services, including expansion of intake questionnaires tailored to specific case types.
- And much more!

An Investment with Leveraging Power

For every dollar of IOLTA funding invested in the program, Pro Bono produces more than a three-fold return in donated services. That's more than \$2 million of free legal services (based on an average of \$200 per hour). Pro Bono's effectiveness flows from this leveraging power—the program's capacity to leverage the contributed legal services of the private bar to give the vulnerable and needy access to legal representation. The "Pro Bono advantage" lies with its volunteers, who provide the power, activated and engaged by Program staff, who marshal, support, and recognize attorneys, galvanizing this precious resource into lawyers for the poor. The staff is the link that connects families and individuals in need of legal services with volunteer attorneys who can help the economically and socially disadvantaged stabilize and improve their lives.

In addition to leveraging a significant amount of free legal services, Pro Bono also achieves outcomes for clients that carry direct monetary value. The efforts of volunteer attorneys frequently yield financial benefits for clients, ranging from child support and/or alimony to the discharge of debts. Reporting specific numbers is difficult due to reliance on volunteers for documentation who already give of their time. From an earlier economic impact study and information attorneys do provide, however, it is clear that these benefits add up to hundreds of thousands of dollars annually.

Pro Bono's Extended Client Services Surpass National Averages

To provide a full range of legal services for clients that encompasses full representation in addition to counsel and advice; and brief services, both the Legal Services Corporation (LSC) and the ABA call for legal services delivery systems. When it comes to extended services such as negotiations with or without litigation; litigation and

appellate work, Pro Bono is a key player in fulfilling this critical role in New Hampshire's legal services network. Nationally, the NHBA Pro Bono Referral Program is noted for the high level of extended legal services provided by its volunteers and the numbers back it up. Federal LSC statistics show that three-quarters of clients served through their funded programs, including staff programs, receive services limited to counsel and advice or a brief service. The nature of NH Pro Bono Referral Program's client services is exactly the opposite—three-quarters of NH Pro Bono Program clients represented by volunteer attorneys receive extended legal services.

During the past fiscal year, Pro Bono maintained a caseload of 1495 clients referred to attorneys, benefitting almost 3500 adults and children. These cases consisted of those referred in prior years but remaining open, in addition to new referrals during 2016/17. As Pro Bono takes in new cases and makes new attorney-client connections, it is always in the process of providing case support, from litigation reimbursement to coordination of interpreters and meeting requests for mentors. On top of this work, Pro Bono staff worked with another 515 applicants, providing intake services and referrals to other programs or services.

Making A Difference

Improved lives, reclaimed dignity, wrongs put right, rights established, economic stability secured and more—Pro Bono is often the catalyst for positive change in the lives of its clients. Below are stories from 2016/17 that illustrate the difference “the Pro Bono investment” makes for those in need of help and hope when none seemed possible. As an added measure, confidence in the justice system is often restored even if original goals are not always achieved.

Parenting/Child Support

Wanting a better life for herself and her children, Ms. C was working hard to get her life on track. She was in school to get retraining for a higher paying job that would provide greater financial stability for her family. Her personal situation, though, was making it difficult to move ahead and she needed the help of an attorney to navigate the legal system. Through Pro Bono, her volunteer attorney stepped in to deal with lack of support by the father of her children who was also digging in his heels about a parenting schedule that met the children's needs. Thanks to the efforts of her attorney representing her through a series of hearings, the client was able to secure a \$200 weekly child support order to help keep food on the table and a roof over herself and the children, allowing her to finish school. In addition, the attorney helped craft a regular parenting schedule allowing for greater safety and stability for the children, while assuring opportunities for the involvement of both parents. The client expressed

gratitude to the Pro Bono Program for the assistance and for her attorney who, in her words, “went over and above” in helping her achieve her goals.

Criminal Annulment

Talk about barriers to employment! In 2013, Ms. H., married with three children, was charged with two counts of simple assault. It was her first and only time getting in trouble with the law, and she had fulfilled all her sentencing requirements, paid a fine and moved on with her life – earning a GED and attending community college to become a medical assistant. As she neared the end of her course of study and was being considered for an externship, her teacher advised her of a forthcoming background check, stating that her criminal record would certainly be a barrier to employment in her chosen field. The family of five was barely getting by on her husband’s income, and her gainful employment was crucial to improving their situation as well as to fulfill her wish to give back to her community. Referred to the Program by LARC, Pro Bono accepted the case and quickly found a volunteer attorney to help with expunging her record. The process went smoothly, especially as Pro Bono was able to pay the fees required by the Department of Corrections to do a background check for the courts and the Department of Safety to actually expunge the record. After the case was closed, Ms. H. praised her volunteer attorney for being professional and clearly explaining all the steps in the process, adding she was “very thankful and grateful for the opportunity to work with him.” With all her goals achieved, the outlook for her family is bright, and Ms. H. expressed gratitude to the program, saying: “I cannot thank all of you enough for all the help I received.”

Consumer Debt Relief

Seeking relief from debt through bankruptcy can have a profound effect on the lives of those dealing with severe mental illness and their families who have likely struggled themselves to keep up with mounting debt. In applying for bankruptcy for her son, one mother wrote (herself a senior citizen): *Thank you for being available to review my son’s application... I would like to add a personal view... My son struggled for two decades before being diagnosed with schizophrenia... He has struggled in all areas as a result of this illness. The attempts he has made to rectify past and ongoing debt has been troublesome. I have helped with budgeting, payment plans, also making payments at different times myself. Over time, it has grown to an overwhelming burden and my son would like to be free of this burden and attempt to move forward responsibly.* Pro Bono was able to refer this client to a volunteer who assisted client in obtaining bankruptcy relief. In conclusion, the volunteer thanked us for the opportunity.

Insurance/Driver's License Revocation

A disabled man, Mr. B, was in between car insurance policies while searching for an affordable one once adding his teenager. Unfortunately, during the interim, his teen had an accident, totaling the family car. Despite the other driver admitting fault in causing the accident, Mr. B's insurance company pursued the client for approximately \$6,000 in damages and contacted the DMV to pull his license. Needing his license for medical appointments and basic transportation, Mr. B contacted Pro Bono looking for someone to help him negotiate an affordable monthly payment with the insurance company. Having recruited a cadre of attorneys to meet this need in recent years, Pro Bono was able to refer him to an attorney who was not only able to defend the client at the DMV hearing in which he was found not at fault for the accident, but also convinced the insurance company to drop their attempt to collect money from him.

Eviction Defense

A young mother with her small child faced eviction from her rented home in Hillsborough County after she obtained a restraining order against her abusive husband. The husband's employer was the only named tenant on the lease and had been paying the couple's rent until the husband was removed from the home pursuant to the restraining order. The mother was unable to make the payments on her own, and soon the landlord attempted to evict her. Fortunately, a Pro Bono volunteer stepped in and moved to intervene in the eviction action on our client's behalf. Thanks to his negotiations, mother and child were able to remain in their home long enough to find a new, affordable place to live.

Federal Income Taxes

A disabled man in Grafton County sold his home several years ago while he was in the hospital. The capital gains on the sale were well within the \$250,000 exclusion for federal tax purposes, but they were mistakenly reported to the IRS as if the property were a second home. Not realizing the problem, he filed no tax return for the year because he thought his taxable income was below the filing limit. A few years later, the IRS prepared a substitute tax return for him based on the incorrect information from the closing and assessed him a tax of several tens of thousands of dollars. He tried to straighten it out with the IRS, but couldn't manage it on his own. After five years of this, the total amount due had ballooned to over \$150,000, thanks to interest and penalties, and he contacted the Pro Bono Referral Program's Low-Income Taxpayer

Project. A volunteer tax attorney agreed to handle the case and soon filed a proper return for the client, along with documentation to show that the capital gains exclusion applied. Several months went by, but finally the IRS agreed. The capital gains tax was removed entirely, as well as every penny of penalties and interest, much to the client's relief.

Opening Doors to Legal Access

- **Direct Legal Services:** Pro Bono staff prepare cases and connect low-income people with volunteer attorneys for advice, preparation of documents, limited scope (unbundled) legal services, representation in court or before administrative bodies, and appellate advocacy. The Program concentrates on cases where legal intervention can make a measurable difference in the daily lives our clients, focusing on case types including debt collection, bankruptcy, divorce, parenting, domestic violence, eviction defense, foreclosure, elder law and more.
- **Innovative Services:** Pro Bono Program capitalizes on creating and implementing new methods to enhance and expand opportunities for low-income families and individuals to access legal services.
 - Expanding limited scope or unbundled services clinics for domestic violence victims in collaboration with NHLA and crisis centers;
 - (Despite some bumps) researching and taking steps to implement "online pro bono," a system the ABA is making available at no charge to Bar Associations to allow posting of legal questions by low-income clients for volunteer attorneys to answer on their own schedules. The Director is currently working with the a subcommittee of the Ethics Committee to assure the state has the appropriate unbundled rule protections to facilitate volunteer attorney participation.
 - Expanding services to address unmet needs such as annulments of criminal records to help overcome roadblocks to employment, military service, housing and secondary education.
 - Developing a program to address the need for victims of stalking to access representation, applying the successful DOVE Project model.
- **Legal Information/Other Resources:** Pro Bono tries to assure no one goes away empty-handed. Staff members point people in the right direction when full services are not possible. We post legal and project information on the web. Staff perform outreach and training about our services and special topics--tax, domestic violence and foreclosure--for audiences including social service agencies, AmeriCorps volunteers, housing counselors and other groups.

Improvements and Achievements

Annulment Project: Pro Bono's efforts in this area have really taken off, fueled in significant part with Bank of America funding, after an initial launch thanks to a Justice Grant. A criminal arrest or conviction record can stand in the way of someone ever getting on their feet financially or moving on with their lives. This project, too, shows our progress in growing the range of subject areas it handles as a win-win scenario—giving attorneys with “non-traditional” Pro Bono case expertise, especially criminal defense attorneys, the opportunity to help clients with weighty but unserved legal needs. Through this project Pro Bono is forging many new partnerships, including with the NAACP, with which we have coordinated two clinics, as well as Workplace Success at the NH Department of Health and Human Services.

Foreclosure Relief Project: After more than four years of making a difference for homeowners, this Project is starting to wind down given the reduction in mortgage foreclosures and advances in homeowners securing loan modifications earlier in the process. Thanks to Bank of America funds channeled through IOLTA, the Project is slated to continue through the next ten to 12 months. The Foreclosure Project is a multi-program initiative by NHLA, LARC and the NH Bar Association's legal services programs that provides a full-scale approach to assist homeowners facing foreclosure or its aftermath. Our Foreclosure Relief Project is a model for Pro Bono project structure and operations offering both volunteers and clients optimum support and services to maximize effectiveness. Attorneys have received comprehensive training and support—mentoring, research assistance, practice updates, a membership list serve, access to case decisions--thanks to the staffing design: two (now one) part-time experienced contract attorneys and a project coordinator. Clients have obtained basic legal information via clinics, referrals to appropriate sources of assistance, unbundled or full representation as the case demands, and financial case support. The collaboration extends to housing counselors, who assist with loan modifications with the Bar's Foreclosure Project hosting periodic meetings for all partners to maximize service coordination.

DOVE Project/Domestic Violence: A young mom with several children, including an infant, sought medical assistance at the hospital emergency room and received a connection to her local crisis center from there. She had experienced traumatic abuse at the hands of her husband that was escalating in severity, directed mainly to her but also the children. The father was regularly destroying meaningful items and toys to exert his control over the entire family. After a particularly brutal assault, mom sought medical assistance at the hospital emergency room and was connected with the local

crisis center advocate. Mom was fortunate to survive this culminating incident that included strangulation, punches to her face and body, and ultimately being thrown to the floor that left her emotionally and physically broken. The crisis center advocate was able to provide her with the strength and support to persevere. Mom, accompanied by her advocate, petitioned for a protective order and then was linked with a local DOVE attorney for representation at the final hearing. Mom's comments tell the rest of the story: "My lawyer listened and I could tell he cared. He was awesome in court! We got what we were aiming for and he put my abuser in his place. He even gave me some advice for my next steps in this process. Thank you!"

Plymouth Periodic Payment Clinic: Utilizing a model developed by NHLA for the Candia District Court, Pro Bono is coordinating a periodic payment clinic at the Plymouth District Court. Pro Bono has recruited attorneys to assist low-income consumers with their periodic payment hearings, setting up shop at the court to screen clients, who receive same day Pro Bono legal services on-site at the courthouse. The clinic is a work in progress to link needy clients with Pro Bono volunteers through a court-based delivery model.

Innovative Training/Recruitment of Volunteers: Searching for ways to strengthen and improve its attorney training both for recruitment and quality purposes features prominently in Pro Bono's efforts. Last year, the Foreclosure Relief Project put on a full day litigation seminar focused on all aspects of mortgage litigation from drafting demand packages and mediation to preparing a trial notebook, with the goal of broadening the knowledge and skills of attendee around foreclosure trial practice. In the afternoon, participants observed two mock jury evaluations. Using fictional fact patterns, attorneys presented closing arguments for the lender and the homeowner to six-person mock juries recruited for this purpose. Seminar participants then remotely watched the jury deliberate on the question of appropriate damages. Divorce Camp, an interactive training to prepare attorneys to handle Pro Bono family law cases, was on hiatus last year and is slated to return in the fall of 2017. Other FY 2017 training events included a debt collection seminar in addition to a special Low-Income Taxpayer training on collections.

Challenges and Opportunities

Funding: Pro Bono is tasked with raising its own budget every year, which has become increasingly difficult as grants become more issue-focused. "Regular" grant requirements also change and expand with each passing year, requiring additional staff time for reporting and documentation. Now, to add to the challenges, federal funding is targeted for cuts or outright elimination as with the federal Legal Services Corporation (LSC). As the year unfolds, Pro Bono and its partners will learn more about the fate of

various grant programs but remain reasonably optimistic about bi-partisan support for legal services funding. In the meantime, Pro Bono has had success in securing some new grants as noted in the executive summary.

Family Law: Pro Bono remains the only program within the legal services network that accepts domestic violence-related and non-domestic violence family cases for full representation. With Divorce Camp and other recruitment efforts, trainings and supports, Pro Bono tries its best to maintain a panel of attorneys to handle a significant number of family cases. The Program finds, though, that the level of client need and case contentiousness quickly depletes both staff time and attorney resources. While Pro Bono uses its creativity to tackle the edges of the issue, the problem is much larger than the Pro Bono Program alone will ever be able to solve. Simply stated: demand far outstrips resource—an ongoing issue for many, many years.

Case Management Software Transition: Although happy with the client side of its LegalServer case management system and the time-savings of e-transfer for cases, Pro Bono finds the system’s attorney portion less robust than needed. Management/administration of LegalServer, too, falls to the Pro Bono Coordinator, cutting into her time for client and attorney work—an ongoing challenge. To take greater advantage of the software’s capabilities, the Program is working with LARC and NHLA to pursue online intake. Building a “bridge” between LegalServer and the NHBA’s database has proved more difficult than anticipated and has carried over into the coming fiscal year. The goal is for the bridge to eliminate manual entry of changes in attorney demographic and Bar status information, saving staff time.

Pro Bono’s Core Legal Case Work

In 2016/17 Pro Bono persevered with its “bread and butter” efforts, relied on by the legal services network and hundreds upon hundreds of low-income families and individuals.

Eviction Defense: in partnership with LARC, the Pro Bono Program is the main source of representation for private tenants seeking to protect their rights/keep their housing. LARC screens the cases and identifies potential defenses, while Pro Bono focuses on those with legal merit/compelling facts. Pro Bono has streamlined the review process for these cases and maintains a high placement rate with volunteers. In most instances, the outcome is successful—either the eviction is averted or extra time granted to find new, often more appropriate housing.

Bankruptcy and Debt Collection: Helping consumers submerged in debt secure a fresh financial start has long been part of Pro Bono’s mission, with Chapter 7 bankruptcy a program priority. Pro Bono concentrates on helping current or previous homeowners,

where the home/mortgage debt is a major issue. Job loss and medical bills remain the major reasons people find themselves over their heads in debt. Pro Bono recently opened the door wider to include some non-property bankruptcies where other important considerations are at stake, including a vehicle or another life necessity. Pro Bono has also enlisted volunteers to represent clients in debt collection litigation where special case circumstances dictate, such as lien avoidance.

Seniors: The legal problems of seniors run the gamut from divorce to bankruptcy and debt collection. As the New Hampshire population ages, we expect to see an increase in legal needs for this population. Within the legal services system, Pro Bono has kept its role in coordinating basic estate planning assistance for seniors. Frequently, the context entails one spouse needing to plan for the failing competency of his/her partner. Our placement rate, if clients follow through with their referrals, is almost 100% for these legal services.

IRS Tax Disputes: Pro Bono is fortunate to have Attorney Barbara Heggie as Pro Bono's Low-income Taxpayer Project coordinator. The project has thrived under her leadership, with a continuum of client services, from information and outreach education to full representation by volunteer attorneys (with occasional direct service by Ms. Heggie). An increase in funding has allowed the addition of a part-time staff person, who assists both with casework and client education and outreach. Two years ago the LITP has expanded its efforts to include taxpayer education, with a particular concentration on those who do not speak English, thanks for increased IRS funding.

Domestic Violence: For 25 years DOVE Project volunteer lawyers have stepped up to represent victims of domestic violence. DOVE provides volunteers with extensive education on NH's domestic violence statutes and case laws, and offers comprehensive insight into the dynamics of domestic abuse and working with crisis center advocates to ensure a holistic response to help victims break free from their abusers. Under the umbrella of DOVE, victims of domestic abuse in volunteer-poor rural areas receive pro se assistance, while unbundled legal services provided by volunteers fill service gaps in more urban parts of the state. Thanks to a new grant, DOVE has now expanded its services to victims of stalking and is in the process of establishing systems and protocols necessary to implement this program in collaboration with crisis centers. A successful seminar was held in June to recruit and train volunteer attorneys to handle stalking cases, providing a resource previously unavailable to these victims. Planning is underway for DOVE's 25th anniversary with the NH Bar Foundation for the fall.

Family: At about half of Pro Bono's caseload, family law remains a key component of Pro Bono operations and its resource allocation, both of staff and volunteer attorney

time. Cases range from divorce and parenting rights and responsibilities to child support. The case related above is but one example of the importance of volunteer legal services when it comes to making a difference for clients in this area.

Work with Our Legal Services Partners

All through this report we discuss collaborative efforts with our legal services partners on cases and projects. This collaboration extends further to the efforts below:

NHLA/LARC Online Intake Work Group—Pro Bono staff remain an integral part of this group, joining discussions aimed at expanding online intake for specific areas of law beyond templates currently in use along with improvements to the flow of cases among the organizations.

LARC/Pro Bono Work Group—Staff from both organizations continue to hold meetings to address ways to improve work flow between the programs and to foster effective communication. These meetings help strengthen the partnership between the two organizations, including ongoing dialogue about systems and priorities which benefit our mutual clients.

Need for IOLTA

Pro Bono is deeply grateful to the Bar Foundation's IOLTA Grants Program and the important work it helps fund. IOLTA is Pro Bono's largest and most important funding source for basic operations. The organization's work of leveraging volunteer legal resources for the benefit of low-income families and individuals would not be possible without significant IOLTA support.