

SOUTH TEXAS LAW REVIEW

VOLUME 51

SPRING 2010

NUMBER 3

EXPANSION OF THE LAWYER'S ROLE TO PROBLEM
SOLVER: INCREASED OPPORTUNITIES FOR PRO
BONO WORK

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I. OVERVIEW OF THE EXPANSION OF THE LAWYER'S ROLE

A few decades ago, a lawyer was thought of as a person who zealously represented his or her client in that adversarial forum, the courthouse. Lawyers were warriors, going to battle as advocates for their clients.¹ For awhile, it appeared that the time where the lawyer's role encompassed "attorney and counselor-at-law" had passed. As the use of litigation increased, more emphasis was placed on competition and "Rambo lawyer tactics."² Lost, to some degree at least, in law

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1. Lela Love et al., *Teaching a New Paradigm: Must Knights Shed Their Swords and Armor to Enter Certain ADR Arenas?*, 1 CARDOZO J. CONFLICT RESOL. 3, 3 (1999), available at <http://cojcr.org/vol1no1/symposia01.html> ("[P]arties are called opponents and the process is one that takes on the characteristics of a battle. The sides frequently view themselves as warriors.... [T]here is still little expectation of cooperation and collaboration when engaged in the adversarial arena termed the legal system.").

2. See generally Allen K. Harris, *The Professionalism Crisis—The 'z' Words and Other Rambo Tactics: The Conference of Chief Justices' Solution*, 53 S.C. L. REV. 549 (2002) (discussing the questionable professionalism of these tactics).

schools as well as in practice, was the counseling or problem solving role that lawyers had embraced with the title "counselor-at-law."³

A shift, however, has occurred. For a variety of reasons, there has been a return to a more multi-faceted and, to a degree, less adversarial view of law practice. This perspective includes several components and is reflected in both theoretical and philosophical views of the lawyer's role,⁴ as well as the skill sets that are implemented in practice. Some of the changes relate to what lawyers do, such as serving as a neutral arbitrator or mediator. Lawyers are also adopting changes in approach and style of representation. In contrast to the adversarial win-lose negotiation, lawyers represent clients in interest based negotiations⁵ and mediations as well as collaborative processes.⁶ The expansion of the lawyer's work also includes a broader sense of satisfaction in the lawyer's professional life. This new practice paradigm, also known as comprehensive lawyering,⁷ encompasses a number of practice areas including therapeutic jurisprudence, preventive law, collaborative law, restorative justice, and mediation.⁸ Clients' needs are often paramount, as these areas focus on optimizing "human well-being . . . as opposed to maximizing individual legal rights."⁹

Legal educators have also been active in their efforts to educate lawyers regarding the potential greater breadth of their work.¹⁰ In some instances, these efforts are reflected in specific skills courses such as a negotiation or mediation course. Law schools provide

3. See Janeen Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351, 372-73 (1998); see also Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, 58 LAW & CONTEMP. PROBS. 5, 5 (1995).

4. For example, an ADR textbook explicitly notes that lawyers' work goes beyond the adversarial method. See generally MENKEL-MEADOW ET AL., *DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL* (2005).

5. See Andrea Küpfer Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143, 147-48 (2002).

6. See generally Gary L. Voegele et al., *Collaborative Law: A Useful Tool for the Family Law Practitioner to Promote Better Outcomes*, 33 WM. MITCHELL L. REV. 971 (2007) (describing the Collaborative Law process in detail, including ethical considerations).

7. See generally Susan Daicoff, *The Comprehensive Law Movement*, 19 TOURO L. REV. 825 (2004) (discussing the comprehensive law movement as a response to a style of law practice, which has lead so many attorneys to anxiety, addiction, stress, and general dissatisfaction with their profession).

8. *Id.* at 837-45.

9. *Id.* at 833.

10. See Family Law Education Reform Project, <http://flerproject.org/?q=node/1> (last visited Aug. 7, 2010); see also Daicoff, *supra* note 7, at 845.

opportunities for hands-on experience in mediation clinics where students act as neutrals.¹¹ Other courses allow for broader, policy oriented considerations such as in an Alternate Dispute Resolution (ADR) survey course or conflict theory seminars.¹² While varied, the considerable changes in the way lawyers practice law and the expansion of available dispute resolution processes have increased the services lawyers provide. As a consequence, there are now greater opportunities for lawyers to provide services to those in need so that everyone has access to justice, legal, and dispute resolution services.

Along with an expanding role, lawyers are also urged to be more socially responsible.¹³ Lawyers are often requested to provide more pro bono representation to those in need. Innovative lawyering practices provide an opportunity to expand a lawyer's practice, thereby increasing pro bono services. In other words, pro bono work can extend substantially beyond the lawyer as advocate in the adversarial system. This Article examines those changes in current lawyering practice and specifically highlights how these changes also provide additional opportunities that lawyers may wish to explore for the provision of pro bono services.

II. NONTRADITIONAL "LEGAL" WORK: HOW THE BREADTH OF PRACTICE AND SKILLS CREATE ADDITIONAL OPPORTUNITIES FOR REPRESENTATION

"If the only tool you have is a hammer, you tend to see every problem as a nail."¹⁴

This adage has often been used to highlight the importance of dispute resolution processes in addition to trial or litigation. While many people seek the services of lawyers, it is not always with the intent or desire to file a lawsuit. Many times individuals, as well as businesses and corporate entities, find themselves with a problem that they want solved. Although the filing of a lawsuit is one way to begin to address the matter, it is only one method and may not be the

11. Many law schools have students mediate small claims cases as part of mediation clinic courses. For a listing of courses, see American Bar Association, Section of Dispute Resolution's Directory of Dispute Resolution Courses, <http://adr.uoregon.edu/aba/>.

12. See *id.*

13. See Karen Tokarz, *Access to Justice: The Social Responsibility of Lawyers*, 19 WASH. U. J.L. & POL'Y 1, 2-3 (2005).

14. Abraham Maslow, Father of Modern Management, Maslow Quotes, http://www.abraham-maslow.com/m_motivation/Maslow_Quotes.asp (last visited Aug. 7, 2010) (this phrase may be used to describe the practice of law before the use of ADR).

optimal way.¹⁵ Even when a lawsuit is filed, a court is only one of the dispute resolution methods used. In fact, only a very small percentage of pending cases are resolved by courts.¹⁶ In many jurisdictions, statutes, court rules, and judges require the litigants to participate in mediation or other ADR processes in an attempt to resolve the matter before a trial or other hearing is scheduled.¹⁷ In other cases, arbitration clauses have been included in contracts, employment agreements, and other transactions, which require the parties to arbitrate the matter rather than accessing the courts. Also in collaborative law, a process used primarily in family law matters, parties and their lawyers agree to work together through a series of meetings, focusing on interest based negotiation to resolve all matters rather than going to court.¹⁸ These and other approaches to practice, such as cooperative law,¹⁹ have expanded the way in which lawyers assist their clients in solving problems and resolving disputes.

More traditional practice has also expanded. The practice of law has been defined as "the rendition of services for others that call for the professional judgment of a lawyer," which in turn requires the lawyer's "educated ability to relate the general body and philosophy of law to a specific legal problem of a client."²⁰ Although traditionally focused on a purely legal perspective, law practice has evolved to include considerations of a number of other aspects of a client's dispute. As a result, lawyers assist clients with a more general focus on problem solving.²¹ In fact, several law schools have initiated programs

15. See Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353 (1979), reprinted in MENKEL-MEADOW ET AL., *supra* note 4, at 21, 22 (considering eventualities that can occur if adjudication is an improper vehicle for dispute resolution).

16. See Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459, 459-60 (2004).

17. See *id.* at 514-15 (considering the methods by which a dispute might be "deflected" to ADR with the encouragement of the court).

18. See generally Voegele et al., *supra* note 7 (discussing the collaborative law process).

19. See generally John Lande & Gregg Herman, *Fitting the Forum to the Family Fuss, Choosing Mediation, Collaborative Law, or Cooperative Law for Negotiating Divorce Cases*, 42 FAM. CT. REV. 280 (2004).

20. MODEL CODE OF PROF'L RESPONSIBILITY EC 3-5 (1983), available at <http://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM>.

21. See Carrie J. Menkel-Meadow, *When Winning Isn't Everything: The Lawyer as Problem Solver*, 28 HOFSTRA L. REV. 905, 915 (2000); see also Phyllis E. Bernard, *The Lawyer's Mind: Why a Twenty-First Century Legal Practice Will Not Thrive Using Nineteenth Century Thinking (With Thanks to George Lakoff)*, 25 OHIO ST. J. ON DISP. RESOL. 165, 165-66 (2010).

embracing the idea of "lawyers as problem solvers."²²

In recognition of this broader view of what it means to be a lawyer, some rules and guidelines have included a more expansive view of the practice of law and the ways lawyers provide services to clients,²³ and this expansion now includes pro bono services. For example, the State Bar of Texas affirmatively recognizes the use of ADR as valid pro-bono work, acknowledging mediation services when "provided at no cost when at least one party is low-income."²⁴ When new roles for attorneys include additional services, such as collaborative law, mediation, and problem solving, the breadth of practice widens. Many of these roles also include the lawyer's ability, and perhaps sometimes obligation, to practice with other professionals. Doing so provides the client with a more comprehensive service, which is consistent with the attorney's role as advisor, counselor, and problem solver.²⁵

Yet, despite this expansion in practice, many of the rules and regulations that govern lawyers' work address exclusively the representation of clients within the adversarial system.²⁶ When lawyers

22. The Center for Creative Problem Solving at the California Western School of Law is one example. See Center for Creative Problem Solving, <http://www.proyectoacceso.com/CCPS/> (last visited Sept. 18, 2010); see also James Parsons, *It's Time to Reconsider How Lawyers are Trained*, HOUSTON CHRON., Mar. 25, 2010, at B9, available at <http://www.chron.com/disp/story.mpl/editorial/outlook/6928793.html> (discussing the Intellectual Entrepreneurship Consortium at the University of Texas at Austin).

23. The Texas Disciplinary Rules of Professional Conduct recognize the lawyer's role as "representative of clients" involving the roles of advisor of the client's rights, negotiator, intermediary between clients, and evaluator of the client's affairs. See Texas Disciplinary Rules of Professional Conduct, Preamble, ¶ 2 (2010), available at http://www.texasbar.com/AM/Template.cfm?Section=Grievance_Info_and_Ethics_Helpline&Template=/CM/ContentDisplay.cfm&ContentFileID=96.

24. STATE BAR OF TEXAS, PRO BONO POLICY 1, <http://www.texasbar.com/Content/NavigationMenu/LawyersGivingBack/ProBonoEfforts/ProBonoPoliciesandFAQs/State-Bar-of-Texas-Pro-Bono-Policy-FAQ2009.pdf> [hereinafter PRO BONO POLICY]; see also 2 NEW YORK STATE UNIFIED COURT SYSTEM'S PRO BONO CONVOCATIONS, THE FUTURE OF PRO BONO IN NEW YORK 12 (2004), www.nycourts.gov/reports/probono/proBono_Vol2_report.pdf [hereinafter NEW YORK REPORT] (discussing discrete task representation).

25. See Boston Law Collaborative, LLC, <http://www.bostonlawcollaborative.com> (last visited Aug. 7, 2010). The Boston Law Collaborative is a multidisciplinary law practice, which includes a financial advisor, clinical psychologist, guardian *ad litem*, and consultant on family and children's issues.

26. See generally Christopher M. Fairman, *Ethics and Collaborative Lawyering: Why Put Old Hats on New Heads?*, 18 OHIO ST. J. ON DISP. RESOL. 505 (2003); see also Kimberlee K. Kovach, *New Wine Requires New Wineskins: Transforming Lawyer Ethics for Effective Representation in a Non-Adversarial Approach to Problem Solving: Mediation*, 28 FORDHAM URB. L.J. 935, 935-36 (2001); RESTATEMENT (THIRD) OF THE LAW

consider pro bono work, it is often with only this paradigm in mind. Yet, as noted, over the last twenty years the parameters of legal work have expanded considerably, allowing attorneys to engage in a less adversarial practice while still representing their clients' best interests. Conceptions of pro bono legal services should follow the same trend.

III. EXAMINATION OF PRO BONO WORK

While difficult to define, some attempts have been made to establish a general definition that would assist in establishing clear policies and guidelines for pro bono work. In its study of pro bono activity within the United States, the American Bar Association (ABA) noted that "[c]ommon to all definitions is the recognition that representation of low-income people in civil cases is an essential element" of pro bono work.²⁷ The State Bar of Texas defines pro bono work as the provision of legal services for free or for a substantially reduced fee either to the poor or to charitable institutions.²⁸ The ABA Model Rules of Professional Conduct adopt a similar rule suggesting that these services are public interest legal services.²⁹

GOVERNING LAWYERS § 1 cmt. b & g (2000).

27. STANDING COMM. ON PRO BONO AND PUB. SERV., ABA, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 6 (2005) [hereinafter ABA PRO BONO REPORT].

28. PRO BONO POLICY, *supra* note 24, at 1. Pro Bono work is defined as:

- (a) The direct provision of legal services to the poor without an expectation of compensation, or at a substantially reduced fee, whether civil or criminal;
- (b) Services without a fee, or at a substantially reduced fee, related to simplifying the legal process for, or increasing the availability and quality of, legal services to poor persons;
- (c) Legal services without a fee, or at a substantially reduced fee, rendered to charitable, public interest organizations with respect to matters or projects designed predominantly to address the needs of poor persons;
- (d) Legislative, administrative or systems advocacy services without a fee, or at a substantially reduced fee, provided on behalf of poor persons; or
- (e) Unsolicited, involuntary, appointed representation of indigents in criminal and civil matters.

Id.

29. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2009).

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 to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

We are all aware that the need for legal services is enormous. The State Bar of Texas considers that "75[%] of the legal needs of the poor are not being met."³⁰ In Massachusetts, this number was 85% in 1996 and in 2008 it still reached 80%.³¹ In New York, the unmet needs reached 86% in 1990.³² These numbers show the insufficiency of the efforts to satisfy the need for pro bono legal services. The ABA study found that most attorneys feel that pro bono work "is something that an attorney should do."³³ Matching needed services with attorneys whose practices are like focused, however, has been a daunting task.

The most common areas for pro bono work, as found by the ABA, included family, business/corporate, consumer, estates/probate, elder, housing/eviction, criminal, civil rights, and public benefits.³⁴ These findings, however, contrast with the ABA's findings of impediments to pro bono work. While lack of experience is cited by many lawyers as an impediment to pro bono work, the ABA study found that lack of time was also a major factor.³⁵ This included discouragement by employers.³⁶ Other reasons noted for not performing pro bono work were a lack experience, resources, and malpractice insurance coverage.³⁷ Attorneys, especially those recently licensed, find themselves struggling to balance their regular work, their pro bono work, and their life, and often do not perform or do

(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.

Id.

30. PRO BONO POLICY, *supra* note 24, at 1.

31. Karen F. Green & Mary B. Strother, *Justice For All*, 42 B.B.J. 17, 17 (1998); see also Anthony Doniger, *Renewing Our Pro Bono Vows*, 52 B.B.J. 2, 2 (2008) (explaining that studies of unmet legal needs in Massachusetts estimate that the figure is closer to 80%).

32. See NEW YORK REPORT, *supra* note 24, at 3 n.9.

33. ABA PRO BONO REPORT, *supra* note 27, at 20.

34. *Id.* at 15.

35. See *id.* at 5, 18.

36. See *id.*

37. See *id.* at 18.

not report their pro bono hours.³⁸

Assuming that the time constraint is a major impediment, one option may be to reduce the time commitment. In exploring additional ways through which lawyers can provide meaningful representation, the use of alternative processes such as mediation should be given primary consideration. People in need of legal services will not always be better served by going to court. In fact, many problems or disputes are exasperated rather than resolved when formal legal proceedings are initiated.³⁹ Quite often, lawyers as well as clients find that using negotiation, mediation, or other means to effectuate a resolution before filing a claim is much more efficient, thereby saving time and cost. Clients' disputes are readily resolved, innovative solutions are explored, and often relationships are preserved. In other words, effective and successful representation need not be in a court room.

Many lawyers already view a number of nontraditional activities as pro bono work, including work done for bar associations, mediation programs,⁴⁰ and public education.⁴¹ Although these services have been recognized by some bar associations and practicing attorneys, with the existing need for these services, an expansion in the use of these less adversarial processes is imperative.⁴²

IV. INCREASED OPPORTUNITIES AND OBLIGATIONS

Pro bono work as a no-cost service requires not only the attorney's willingness to help others in need, but also personal qualities and individual abilities to handle the often different problems that a pro bono case brings. For these reasons, lawyers should be encouraged by their employers to use additional skills and knowledge in the context of pro bono services.⁴³ While it is likely that

38. See generally NEW YORK REPORT, *supra* note 24 (explaining the lack of reporting and the possible means to solve this problem).

39. See Michael Palmer, *The Magic of Mediation*, 22 VT. B.J. & L. DIG. 18, 18 (1996) (discussing the benefits of mediation versus litigation).

40. Scott L. Cummings & Deborah L. Rhode, *Public Interest Litigation: Insights from Theory and Practice*, 36 FORDHAM URB. L.J. 603, 640 (2009).

41. Maureen E. Laflin, *Dreamers and Visionaries: The History of ADR in Idaho*, 46 IDAHO L. REV. 177, 196 (2009) (discussing the Attorney General's pro bono mediation program in Idaho).

42. See PRO BONO POLICY, *supra* note 24, at 1

43. Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations among Lawyers*, 41 L. & SOC'Y R. 113, 138 (2007), available at http://sociology.buffalo.edu/contrib/faculty_staff/faculty/documents/grandfieldProBono.pdf

in some jurisdictions a lawyer representing a client in a pro bono matter will go to mediation, participate in private negotiations, or settlement conferences, the bulk of the pro bono attorney's work currently remains in the context of adversarial representation. Thus, a shift in paradigm is needed to allow attorneys to engage in pro bono activities while stepping outside their traditional roles, allowing for more contemporary ways to handle disputes. Moreover, such an approach, as discussed, will also decrease the time in resolving many matters.

A. *Increased Opportunities*

Often when clients seek legal representation they are angry, frustrated, and their emotions are high. The ability to look at a number of options and analyze future consequences is limited; too often as lawyers we assume clients want to pursue formal legal action. Yet, if other options were considered at the initiation of representation, formal legal action could be avoided, or at least truncated. The attorney's considerations and discussions with her client should not only focus on the current situation, but also consider the long-term ramifications of particular resolutions.⁴⁴ In this context, particularly important factors to consider include: the relationships between the client and the other party, the nature of the dispute, the amount in controversy, the power relationship between the parties, and the client's specific objectives.⁴⁵ The client's interests should be the paramount guide in selecting a particular method of dispute resolution. Using ADR processes can solve the problem before a lawsuit is filed; in doing so, the lawyer would have successfully assisted her client. As others have noted, these more expedient approaches provide clients with early resolution of matters and help clients in preventing the destruction or loss of value of the very thing the parties are fighting for, like the depletion of a decedent's estate.⁴⁶ Assisting clients in pursuit ADR processes provides a new practice area for pro bono work.

Expanding their role even further, attorneys can serve in the role of third-party neutral. Attorneys are "particularly well suited" to

44. See Carrie Menkel-Meadow, *Practicing "In the Interest of Justice" In the Twenty-First Century: Pursuing Peace and Justice*, 70 *FORDHAM L. REV.* 1761, 1768-70 (2002).

45. See Stanley Yorsz, *A Mediator's Style Can Make a Difference in the Result of Your Mediation*, <http://www.buchananingersoll.com/news.php?NewsID=1272> (last visited Aug. 7, 2010).

46. See Menkel-Meadow, *supra* note 44, at 1768-70.

serve as neutrals on a pro bono basis, as they have "process consciousness."⁴⁷ Many attorneys have now added work as a neutral to their practice. As the use of mediation and arbitration increases in pro bono matters, a parallel need will arise for mediators and arbitrators to also serve in a pro bono capacity.

B. *Increased Obligations*

As approaches to lawyering have broadened, an increase in professional obligations has arisen. For example, the Model Standards of Conduct for Mediators, often referred to as the National Code, contain an explicit provision establishing a duty or obligation on mediators to provide pro bono services.⁴⁸ This provision specifically states that:

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

....

2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.⁴⁹

The Model Standards have been adopted by the three national ADR organizations: the American Bar Association Section of Dispute Resolution, the American Arbitration Association, and the Association for Conflict Resolution.⁵⁰ In Texas, the Ethical Guidelines for Mediators, approved by the Texas Supreme Court in 2005, specifically state in guideline 3 that, "[i]n appropriate cases . . . mediation services [should be provided] at a reduced fee or without compensation."⁵¹ Also, the Texas Mediator Credentialing Association's Code of Ethics, which closely follows the Texas ethical guidelines, encourages the mediator to provide reduced fee or no cost services in appropriate cases.⁵² Other sister state guidelines have

47. *Id.* at 1773.

48. See ABA ET AL., MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard IX (2005), available at <http://www.abanet.org/dispute/news/ModelStandardsOfConductForMediatorsfinal05.pdf>.

49. *Id.*

50. *Id.*

51. ETHICAL GUIDELINES FOR MEDIATORS 1 (The Supreme Court of Texas 2005), available at <http://www.supreme.courts.state.tx.us/MiscDocket/05/05910700.pdf> (guidelines originally approved by the ADR Section of the State Bar of Texas in April 1994).

52. Texas Mediator Credentialing Association: Standards of Practice and Code of Ethics, <http://www.txmca.org/ethics.htm> (last visited Aug. 7, 2010).

followed the same principles.⁵³

Although the codes of ethics for arbitrators do not specifically include provisions obligating them to provide pro bono services, in many instances arbitrators do so. For example, in some cases where the amount in controversy is limited, arbitrators may serve at a reduced rate of compensation.⁵⁴ In other cases, nonprofit entities have established programs that offer such reduced fee arbitrations.⁵⁵ For example, the Better Business Bureau has a program that provides arbitration services for a reduced rate of \$100.00.⁵⁶ Courts have also established arbitration programs through which lawyers serve as advisory arbitrators on a pro bono basis.⁵⁷

Thus, as advocates or as neutrals, attorneys have an obligation and an opportunity to provide services on a pro bono basis through the use of ADR processes. With advocates and neutrals working together to resolve problems and disputes in efficient, cost-effective ways, additional representation and assistance can be provided to those in need.

V. SUGGESTIONS TO INCREASE PRO BONO SERVICES

While there has been recognition of the expanded view of lawyering, this has not always directly translated to the ways lawyers provide pro bono services to individuals. More education is needed so that lawyers recognize that dispute resolution processes not only can assist in resolving matters in a speedy way, but can also alleviate some of the other concerns lawyers have expressed about pro bono work. ADR processes also often incorporate protections such as

53. See California Dispute Resolution Council, Standards of Practice for California Mediators, <http://www.mediate.com/articles/cdrconstds.cfm> (last visited Aug. 7, 2010); ALTERNATIVE DISPUTE RESOLUTION RULES 33 (The Georgia Supreme Court 1993) (amended 1995), available at <http://www.godr.org/files/CURRENT%20ADR%20RULES%20COMPLETE%201-19-2010.pdf>.

54. UNITED STATES ARBITRATION AND MEDIATION MIDWEST, INC., CONSOLIDATED ARBITRATION RULES R. 9(g) (2008), available at <http://www.usam-midwest.com/images/ArbRules.pdf>.

55. See generally Better Business Bureau AUTO LINE Program, <http://www.bbb.org/us/auto-line-lemon-law/> (last visited Aug. 7, 2010).

56. See Better Business Bureau Arbitration Training, <http://cencal.bbb.org/arbitration-training/> (last visited Aug. 7, 2010).

57. See Federal Judicial Center, http://www.fjc.gov/public/home.nsf/autoframe?openform&url_l=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/pages/769 (last visited Aug. 7, 2010); see also Charlotte E. Thomas, *The Pro Bono Solution*, THE LEGAL INTELLIGENCER BLOG, Mar. 20, 2009, <http://thelegalintelligencer.typepad.com/tli/pro-bono/>.

confidentiality and immunity, which allow practitioners to reduce the risk of representation. Moreover, the clients are active participants in mediation and arbitration, which in most cases results in increased satisfaction with both the process and the outcome. An even greater consequence is increased public awareness. When lawyers provide representation and resolve disputes through ADR, clients then learn about the multitude of approaches to problem solving and dispute resolution that exist.

So, what specifically can be done to increase the comprehensiveness in the provision of pro bono services? A few ideas come to mind. We must start by educating more attorneys in ADR processes,⁵⁸ so they realize that more than adversarial representation is possible in pro bono cases. This should begin in law school, as pro bono is discussed and programs implemented, dispute resolution should be a component. Another option is to open programs to lawyers, such as mediation clinics where law students provide mediation services. Working with community mediation service providers is another option. Newly trained lawyer-mediators could serve as mediators in these programs. Ideally, attorneys will be more amenable to representing their pro bono clients in such programs. A similar process structure could be established for arbitration services.

Other possibilities directly involve the lawyer's role as counselor, particularly in cases where lawyers can assist clients without actual representation. By increasing lawyers' education in negotiation, lawyers in turn, can better educate clients; for example, an attorney may find that some individuals merely need advice or coaching in negotiating the matter themselves. In these cases, the attorney could essentially shadow or coach the client and guide him to finding a resolution without devoting an overwhelming amount of time to resolve the case.

In addition to individual attorneys and law schools, law firms can implement policies to give consequence to ADR processes in pro bono activities. This will allow those firms to involve their attorneys in a comprehensive set of procedures that will increase their ability to provide pro bono services while improving their prelitigation, dispute resolution, and problem solving skills. Perhaps more importantly, such an approach would allow attorneys willing to do pro bono work to handle more cases in the same amount of time they devote to pro bono work now.

ADR processes such as negotiation, mediation, collaborative law,

58. See Parsons, *supra* note 22, at B9.

and arbitration, provide an efficient way to handle pro bono cases. With the almost overwhelming need for pro bono services and clients affected by the economic crisis, increasing options to provide pro bono services will benefit clients as well as attorneys. Clients will be able to have problems and disputes resolved, often in ways that not only save time and money, but also preserve relationships. Either as neutral or advocate, an attorney involved in a pro bono case would find that these processes have a significant success rate and save all the parties involved a significant amount of time and money. By taking additional pro bono cases, lawyers benefit from expanding their lawyering activities and skills, entering into areas of practice less explored, with the potential of new market possibilities. And, while doing this, they fulfill their duty to serve the public interest.

SOUTH TEXAS COLLEGE OF LAW, founded in 1923 by leading members of the Houston bench and bar, is a private, non-profit, independent institution located in the heart of Houston's financial and legal district. With an enrollment of more than 1,200 students, South Texas is one of the largest private law schools in the nation.

While the earliest classes were held in the downtown Houston YMCA building, the College today claims one of the most modern facilities of any law school in the country. In addition, South Texas College of Law is the permanent home to the Courts of Appeals for the First and Fourteenth Judicial Districts of Texas.

Just as the reputation of the College has grown, so too, has the school's flagship legal publication—the *South Texas Law Review*. Founded as the *South Texas Law Journal* in 1954 by its first Editor in Chief, the late Judge Clair Getty, Jr., the publication was renamed the *South Texas Law Review* in 1985. Today, the *Review* is published four times each year and is circulated to over 2000 law firms, libraries, and individuals across the country.

Committed to publishing work of jurisprudential import, the *South Texas Law Review* has featured articles by Chief Justice William H. Rehnquist, United States Supreme Court; Justice Clarence Thomas, United States Supreme Court; former Chief Judge John R. Brown, United States Court of Appeals for the Fifth Circuit; Judge Robert H. Bork, United States Court of Appeals for the District of Columbia Circuit; and Professor Arthur R. Miller, Harvard Law School.

