

The background of the cover is a photograph of a person's hands holding a smartphone and a white mug of coffee on a wooden table. A laptop is partially visible in the background.

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A Solution to Access to Justice: Pro Bono Requirement for Admission to the Ohio Bar

BY MARK M. MIKHAIEL

“Each day, Ohioans require legal assistance to secure basic needs such as housing, education, employment, health care, and personal and family safety. Many persons of limited means are unable to afford such assistance, and legal aid programs must concentrate limited resources on those matters where the needs are most critical.” This is the introductory sentence of the Supreme Court of Ohio’s statement on Pro Bono Legal Services in September 2007 and is as relevant today as it was then.

“Access to justice” is a phrase often used within bar associations, legal aid societies, and nonprofit organizations to refer to an individual’s ability to obtain a remedy for a grievance, usually through a formal judicial process. Certainly, there are several obvious barriers to justice: some financial, geographic, logistical or linguistic, to name a few. As attorneys, we intrinsically accept that all Ohioans should have access to fair, transparent, effective, non-discriminatory and accountable legal services. But one of the major obstacles in accessing justice is the cost of legal services.

We have heard examples of the indigent single mother being wrongfully evicted by the slumlord, whose recourse is to contact and be helped by legal aid. But a different example, rarely discussed, is a small business owner who would like to advance a breach of contract allegation against a large company with vast resources. To the business owner, the likely costs of legal services will often intimidate and outweigh the value of the case.

How then can the small business owner prosecute the case? The obvious answer is that the small business owner retains an attorney on a contingency basis. However, let us assume she is not prosecuting the case, but defending a breach of contract allegation by the large company and its near-unlimited resources? Since an Ohio corporation or other business can only maintain litigation or appear in court through an attorney, the small business owner must retain an attorney. What if the small business owner does not have the resources to retain an attorney at \$175/hour? Failing to retain an attorney may result in many negative consequences with the court: the failure to answer the complaint (which only a lawyer can do) may result in the opposing party moving for default judgment; assuming default judgment does not occur, the failure to respond to discovery may result in significant sanctions, such as an order compelling the party to respond, and/or to pay attorneys’

fees. Further, without a lawyer to assist the business owner, she may be outmatched in any efforts to negotiate. Litigators often do not start negotiating at a reasonable place; rather they start at what many would consider unreasonably high or low dollars and work from there. For many business owners, this is impractical and immediately puts them in an inferior position to the well-represented side.

Is there a remedy to ensure that not only indigent individuals have access to adequate representation, but also individuals of modest means, like our business owner? Based on the model that the state of New York has adopted, I propose that Ohio consider mandating that, as a prerequisite to full admission to the bar, every applicant is to perform at least 50 hours of pro bono legal services within the first two years of legal practice. If all newly licensed lawyers were required to do this service, their employers would acknowledge their service, and the service would not be so onerous over a two year span as to add to personal debt. What a wonderful way for a new lawyer to gain client experience while helping with legal services for those lacking sufficient resources.

Many experienced lawyers engage in pro bono work on a weekly basis (when a client does not pay). Why would we handcuff a new law graduate saddled with significant debt? The benefits would outweigh the costs over the course of his/her career. Going back to the example of the small business owner and her battle against the large company, what is she to do? To the extent new Ohio law graduates can give 50 hours to assist, whether on a part-time or full-time basis, it can only be considered a plus.

My own experience is a great example. Back in 2015, about a year after I was admitted to the Ohio bar, I was asked by a church to assist it navigating the complex world of zoning appeals (at least complex to me, having never handled one). Basically, the church intended to expand and as part

of its expansion construct a mausoleum. As it relates to the mausoleum, the neighbors were up in arms about its construction. Despite the church following all necessary guidelines, the neighbors appealed the zoning approval to the Trumbull County Court of Common Pleas. Several months and dozens of pleadings later, the church prevailed and was permitted to construct the mausoleum. Putting aside the successful conclusion, but for this pro bono representation, it is unlikely I would have ever represented a client in a zoning dispute. This engagement expanded my professional skillset, exposed me to a different set of litigators in Northeast Ohio (i.e., civil attorneys from the Trumbull County Prosecutor's Office and municipal defense counsel) and, despite still being a "junior" lawyer, allowed me to independently make litigation decisions.

As is happening to many in legal aid organizations across the nation, Northeast Ohio's two main legal aid groups, The Legal Aid Society of Cleveland and Community Legal Aid, often face significant financial headwinds due to increased demand for their vital services, combined with

spotty federal and state funding. Coupling the underfunding are the strict eligibility guidelines put in place for these organizations, largely set by Legal Services Corporation, which historically has been the primary funding source. Simply put, not every person that seeks Legal Aid's or Community Legal Aid's assistance will end up being represented. To qualify, an individual must have income less than 125% of the federal poverty guidelines, meaning that an individual must earn less than \$15,000. The eligibility requirements remain despite Legal Services Corporation's 2017 Justice Gap Report finding that 71% of low-income households experience at least one civil legal problem in any given year, including problems with health care, housing conditions, disability access, veterans' benefits, and domestic violence. The need for legal services is there. It is a matter of somehow finding enough lawyers to fill the need.

To the extent there is opposition to having new graduates perform 50 hours of pro bono legal services, I would encourage law firms and government law offices, of all sizes, to encourage their lawyers to engage in this service. At many law firms throughout the

country, in order for associates to be eligible for the "maximum" year-end bonus, pro bono work is necessary. To the extent employers do not want to mandate pro bono services, they should consider alternative ways of incentivizing and motivating their employees to get engaged in the community.

¹ See <http://www.supremecourt.ohio.gov/AttySvcs/officeAttySvcs/proBono.pdf>

² <http://www.nycourts.gov/ctapps/520rules10.htm#B16>

³ <http://www.tribtoday.com/news/local-news/2016/10/judge-backs-monastery/>

⁴ <https://www.crawfordsville.com/legal/legal-aid-wages-another-fight-fend-big-budget-cuts>



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