

The Foundation in the '90s: pro bono and IOLTA

This year the Indiana Bar Foundation celebrates its 50th year of service to the attorneys and citizens of Indiana. Regular readers of this publication will have already enjoyed the articles portraying the history of the Foundation, from its inception as the charitable arm of the Indiana State Bar Association in 1950, through the present.

The June issue introduced us to W. H. (Bill) Parr, the Foundation's first president, and the practice of law in the '50s. In July we learned how the Indiana Continuing Legal Education Forum (ICLEF) was formed in the '60s through the joint efforts of the Foundation and Bar Association. We read with interest in August how the substantial scholarships awarded annually over the years by the Indiana Bar Foundation have touched not only the lives of the recipients as individuals, but also the practice of law in Indiana in a broader sense. The September issue noted the growth of the Fellows program in positioning the Foundation to acquire the Indiana Bar Center in the '80s, thus providing a permanent home for the Foundation, the Bar Association and ICLEF. That article further highlighted the Foundation's increased financial ability to underwrite law-related education activities by awarding grants for valuable publications like *Legal Stuff (You Should Know!)* and *Legal Reference for Older Hoosiers*.¹ The following is the final installment of this series. It salutes the partnerships created during the '90s to promote a more effective delivery of legal services to the public at large and celebrates the vision of the Foundation's organizers as we enter the next

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half century.
Upon admission to
the bar of Indiana, each
attorney affirms to

“never reject, from any consideration personal to myself, the cause of the defenseless or oppressed.”² To recognize extraordinary pro bono efforts by individual attorneys, law firms or bar associations, the ISBA initially established a Pro Bono Publico Award in 1984. The Bar Foundation formally assumed administration of this honor in 1990, and in each year since, at the ISBA fall meeting, the Foundation has acknowledged such activity in furtherance of its mission to promote a more effective delivery of legal services to the public. Past recipients of the Pro Bono Publico Award are varied and include a law school dean, Lauren Robel, for her work with victims of domestic violence in Bloomington; a sole practitioner in Fort Wayne, Joseph W. Shull, for his contributions in furthering the Volunteer Lawyer Program of the Legal Services Program of Maumee Valley; and the Lake County Bar Association, possibly the most active bar in the state in relation to pro bono activities.

During the 1990s, the provision of legal services to low-income clients became a topic of fervent debate and discourse around our state.³ The inability of a significant portion of our population to genuinely access justice in Indiana came to light with the publication of an eye-opening survey in early 1992. The survey revealed that traditional legal resources failed to meet more than 90 percent of the legal needs of poor people in Indiana.⁴ In response to the findings of the survey and the work of the State Bar's standing Pro Bono Committee, the ISBA House of Delegates in November of '92 adopted an aspirational goal. The goal for all attorneys, regardless of the nature of their practice or years in practice, was to either volunteer 50 hours per year of pro bono ser-

vice to poor persons or substitute a cash contribution to a recognized legal services provider.

The concept of providing legal services to eligible clients was the lesser issue in the pro bono controversy. Whatever the motivation, most attorneys recognized it as a duty of the profession and, in many small, unnoticed ways, tried to fulfill that responsibility.⁵ No, the crux of the controversy was how to pay for such services. The Foundation led the way by spotlighting a new, and seemingly simple, vehicle for generating funds – with an Interest on Lawyer Trust Accounts (IOLTA) program. Florida, in 1981, became the first state to implement a means of pooling nominal client sums held by lawyers in an interest-bearing trust account and then using the interest to fund civil legal services to low-income clients. As early as January 1983, after much study, James A. Holcomb, Merrillville, president of the Bar Foundation, called for the immediate development and implementation of such a program in Indiana.⁶ Legislative activity and advocacy by the organized bar failed to establish an IOLTA program in Indiana in the '80s.⁷ Ten years after Holcomb's call to action, Chief Justice of Indiana Randall T. Shepard used his annual address to the ISBA fall meeting to announce that Indiana would become the 50th state to adopt an IOLTA program.⁸

In order to implement an IOLTA plan in Indiana, in 1997 the Supreme Court simultaneously amended R.P.C. 1.15 and adopted R.P.C. 6.5. Rule 1.15 allows for the use of interest-bearing trust accounts for small client sums held by attorneys (who must opt-out of maintaining such an account), and Rule 6.5 creates the Voluntary Attorney Pro Bono Plan. Because of its position as a successful non-

profit entity in the legal community, the Supreme Court placed its confidence in the Indiana Bar Foundation to organize and administer the IOLTA plan.

As Indiana was moving toward realizing its vision of IOLTA, the United States Supreme Court was reviewing the operation of Texas' plan.⁹ Though this delayed the start of IOLTA in Indiana, many organizational functions had already been accomplished by the Foundation. Rachel McGeever was named as its new executive director to handle IOLTA and the Foundation's endeavors; forms for attorneys and banks were developed; software was obtained to facilitate banking procedures; and, importantly, public education about the upcoming implementation began. Thanks to the leadership of McGeever, by the time Indiana finally launched its program in September 1999, there were relatively few surprises as the first phase began with numerous law firms and financial institutions establishing IOLTA bank accounts. Almost uniformly, the banks in Indiana have waived any fee associated with these accounts, thus increasing the amount remitted to the Foundation.¹⁰

The second component of the Supreme Court's concept, the Voluntary Attorney Pro Bono Plan described in Rule 6.5, was also successfully under way. The purpose of the Pro Bono Plan is to promote equal access to justice for all Indiana residents, regardless of economic status, by creating and promoting opportunities for attorneys to provide pro bono civil legal services to persons of limited means. The structure of the Pro Bono Plan contemplates a 21-member Indiana Pro Bono Commission and pro bono committees in each of the 14 judicial districts. Again, the Foundation plays an integral role in the Voluntary Attorney Pro

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Bono Plan as it appoints 10 of the 21 members of the Commission and is charged with overall responsibility and authority for management of the plan.

Chair of the Commission, Judge L. Mark Bailey of the Indiana Court of Appeals, committed himself to taking an active leadership role in the development of the Pro Bono Plan. Judge Bailey arranged for seminars for Commission members and judges who chair the local district committees; recruited Kelly Kann Davidson to serve as the executive director of the Commission; and, generally, encouraged everyone involved by his example. Davidson became a knowledgeable contact and resource for Commission members and the local pro bono districts. She helped develop forms and budgets, and worked with state Webmasters to establish a page on the state's official site.¹¹

Presently, the district committee reports for 2000 and funding requests for 2001 have been submitted, screened, and will be formally considered during the Commission's October meeting. Its funding recommendations will thereafter be made to the Foundation, which makes the final decisions and disburses the available funds. The Foundation will award \$300,000 in the inaugural grants to the 14 districts in January 2001.¹² That sum should double in future years if the present level of attorney participation is maintained.

The confidence the Supreme Court has placed in the Indiana Bar Foundation in fulfilling its twin goals of promoting equal access to justice and creating opportunities for attorneys to provide pro bono civil legal services is a tribute to the skills and dedication of many Foundation members. Thus, the '90s represent both an affirmation of the Foundation's mission to promote a more effective delivery of legal services to the public at large and a transition to a modern means to achieve that mission in the next century. ♪

1. In support of its purpose of encouraging the continuing legal education of the practicing lawyer, the Foundation also awards an annual grant to underwrite the costs of publishing *Res Gestae*.
2. Oath of Attorneys, Indiana Rules for Admission to the Bar and the Discipline of Attorneys, Rule 22. See also, I.C. 33-21-1-3.
3. This was not a new debate, only a more open one. See, Smurl, "In the Public Interest: The Precedents and Standards of a Lawyer's Public Responsibility," 11 *Ind.L.Rev.* 797 (1978).
4. *Legal Needs Study of the Poor in Indiana*, United Way/Community Service Council of Central Indiana (February 1992), p. 73. The Bar Foundation provided support for this study.
5. Rule 6.1 of the Rules of Professional Conduct states, "A lawyer should render public interest legal service." The Comment notes this is a policy statement, rather than a disciplinary matter.
6. Holcomb, "IOLTA," *Res Gestae*, January 1983, at 326, 329.
7. In contrast, 49 states created IOLTA programs between 1981-1989. "IOLTA Quick Facts," *The Indiana Lawyer*, Sept. 30-Oct. 13, 1998, at 22.
8. Banguis, "Court makes Indiana last to adopt IOLTA program," *The Indiana Lawyer*, Nov. 3-Nov. 16, 1993, at 1.
9. *Phillips, et al. v. Washington Legal Foundation, et al.*, 524 U.S. 156, 118 S.Ct. 1925 (1998).
10. McGeever, "IOLTA: Indiana progress report," *Res Gestae*, March 2000, at 10.
11. Access Indiana Information Network, the State's Official Web site, see, <http://www.in.state.us/judiciary/probono/index.html>
12. \$300,000 represents this year's available funds after start-up costs are deducted.

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