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PROJECT CHALLENGE: PRO BONO OPPORTUNITY IN PRIVATE CORPORATE PRACTICE

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I. KIRKPATRICK & LOCKHART

Kirkpatrick & Lockhart is a firm of approximately 350 attorneys with offices in Pittsburgh, Washington, D.C., Boston, Miami, Harrisburg, Pennsylvania, and New York City. The Pittsburgh office is the oldest and largest of the firm's six offices and reflects, generally, the broad diversity of the firm's practice, including the principal practice areas of corporate transactions, securities, tax, real estate, trusts and estates, labor relations, intellectual property, health care, environmental, toxic tort, insurance coverage, and general litigation.

While this article focuses specifically on certain pro bono efforts undertaken in the Pittsburgh office, each of the other offices have at-

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torneys actively and creatively involved in pro bono activities. The Washington, D.C. office, for instance, has challenged the District of Columbia food stamp application system on behalf of a class of food stamp applicants; provided representation to veterans before the Veterans Court of Appeals; and has for several years represented an inmate on death row. In the Harrisburg office, pro bono activities include such diverse matters as representing a national family planning organization; counseling and representing a national membership-based conservation organization; and serving on the board of directors of a local river rescue and emergency response organization.

Attorneys in the New York office participate in a mentoring program for high school students in which the attorneys provide guidance in planning the students' education, assist in addressing day-to-day problems facing the students, and introduce students to a corporate working environment. The Miami office pro bono services include providing legal advice to one of the largest homeless shelters for women and children in Dade County, and providing counsel to persons appointed as guardians *ad litem* for children who are the subject of an action to terminate parental rights. Attorneys in the Boston office represent a housing project for disabled persons, a non-profit organization which provides services to homeless veterans, and an organization which provides services to homeless children among their pro bono activities.

Attorneys associated with Kirkpatrick & Lockhart in the Pittsburgh office have had a long tradition of donating their legal skills and services to the community. "Pro bono" has never been narrowly defined within the firm; consequently, opportunities for pro bono service have been abundant and as varied as the personalities of the lawyers committing their time, energy, and enthusiasm. Attorneys have, for example, served as members of the board of directors of the Women's Center and Shelter in Pittsburgh (which offers a safe haven to victims of domestic abuse); served as members of the board of directors of Neighborhood Legal Services Association (NLSA); represented low-income and indigent clients on behalf of the Legal Aid Society; helped to coordinate the formation of a downtown day care center; served as members of local hospital boards, school boards, and the boards or committees of numerous cultural and civic organizations; organized

efforts within the professional community to raise funds for numerous charitable causes; acted as legal counsel in criminal appeals; actively assisted and fostered educational programs of various bar associations and other professional organizations; and worked with local financing institutions to formulate minority/low income loan programs. While such activities may not always require the direct provision of legal advice, there is no doubt that attorneys bring their legal perspective and judgment to any role they undertake. Both the organization and the community are enriched by the underlying legal training and analysis that an attorney brings to any situation in which he or she may be acting in a volunteer capacity.

The approach to pro bono service by attorneys in the firm has been highly individualistic and, in many ways, quite private. One of the attorneys in the Pittsburgh office has been responsible for a number of successful fundraisers to benefit the pro bono activities of the Allegheny County Bar Association (ACBA) and NLSA. Another attorney in the Pittsburgh office has, with the assistance of a dozen other lawyers and support staff, represented an inmate on death row for the last several years. One of his colleagues, on the other hand, provides pro bono representation to victims of violent crimes. Yet another attorney has been actively involved for years with both the Legal Aid Society and NLSA, and has been instrumental in fundraising efforts for both of these organizations as well as in coordinating the firm's efforts to assist both organizations in providing representation to many persons who otherwise would not have had counsel in civil matters. Several attorneys provide ongoing pro bono advice and counsel to a broad range of non-profit community organizations which require representation on a spectrum of issues, including questions of corporate governance, employee relations, insurance coverage, litigation strategy and analysis. None of this, of course, is unique to Kirkpatrick & Lockhart.¹ The firm's general experience does, however, illustrate the myriad opportunities for pro bono service in the setting of a private corporate practice.

1. See, e.g., *Pro Bono Survey*, AMERICAN LAWYER, July-Aug. 1993, at 34 (discussing the pro bono programs of numerous large law firms).

Although Kirkpatrick & Lockhart has regarded pro bono service as both enriching the community and invigorating the firm's practice, there has also been general agreement among members of the firm that the philanthropic views and impulses of no one attorney, or group of attorneys, should monopolize the efforts of the firm's attorneys or set an agenda for the firm as a whole. Accordingly, there has been no structured program established within the firm specifically for overseeing the provision of pro bono services. One recent exception in the Pittsburgh office, however, has been the collaborative effort of more than twenty attorneys, as well as numerous legal assistants, secretaries, and support staff, to establish a program providing pro bono representation to victims of domestic violence. In the experience of the firm, the program is perhaps most notable for providing a vehicle by which attorneys from any practice area of the Pittsburgh office can undertake representation of such clients.

II. STATUTORY PROTECTION FOR VICTIMS OF DOMESTIC VIOLENCE

The firm's collaborative effort to provide legal services to individuals seeking protection from physical abuse, or threatened abuse, arising from domestic violence is predicated upon the statutory relief available under Pennsylvania law. The Protection From Abuse Act² was passed by the Pennsylvania legislature in 1990 with the primary purpose of protecting persons (in most instances women and children) from physical abuse by family members and domestic partners.

Prior to passage of the Act, victims of abuse had to rely first upon the willingness of the police to arrest the abusive spouse, parent, relative or friend, and second upon the criminal justice system for protection. Many times, however, the police refused to become involved in domestic "disputes." Further, in those instances when arrests were made, six to ten months might typically elapse before the defendant would stand trial. During those months, the alleged abuser was frequently unconfined and the victim often in danger of retaliation and other further abuse. Without immediate, effective recourse to the courts, and facing an ongoing threat to their safety while pursuing the

2. 23 PA. CONS. STAT. ANN. §§ 6101-6117 (1990).

charge and awaiting trial, many domestic violence victims elected to drop their charges rather than risk antagonizing the defendant by proceeding to trial.

Passage of the Protection from Abuse Act, however, provided a simplified, initially “non-criminalized,” mechanism through which victims of domestic violence could seek redress in the courts and obtain immediate protection from the abuser. Under the Act, a victim petitions the Family Court Division of the appropriate Common Pleas Court for an order restraining the alleged abuser from abusing, harassing, or stalking the victim and excluding the alleged abuser from the victim’s home, school, and/or place of employment. The petition is presented to the court *ex parte* and often by victims acting *pro se*. Immediately upon presentation of the petition the court may, and in the overwhelming majority of cases does, issue a temporary order which: (1) provides the requested relief for a period of ten days, and (2) schedules a hearing within that period to consider whether a final order (i.e., an order that would be effective for up to twelve months) is warranted.

The temporary order is served upon the alleged abuser by the police. In most cases the parties then negotiate a consent order which will be entered by the court as its final order. If the parties are unable to agree upon the terms of a consent order, they proceed to a hearing.

Once a final order is entered, the abuser is subject to prosecution for indirect criminal contempt should he or she violate those portions of the order which protect the victim from further abuse or restrain the abuser from contact with the victim. Specifically, the Act provides for a \$1,000 fine and imprisonment for up to six months if the abuser is found to have violated those portions of the final order.³

3. 23 PA. CONS. STAT. ANN. §§ 6114(b) (1990).

III. PROJECT CHALLENGE

The ACBA has for many years actively assisted NLSA⁴ in securing legal representation for indigent persons in a variety of matters. The ACBA established the Legal Aid Society of Pittsburgh which, in turn, provides a Child Advocacy Unit and also maintains a roster of attorneys in Allegheny County who have volunteered to provide legal services to persons meeting the low-income guidelines, but who are unable to obtain representation from NLSA due to funding restrictions, staff limitations, or conflicts of interest. Most recently, the ACBA established a program known as "Project Challenge."

Through Project Challenge, the ACBA recruits volunteer attorneys and coordinates pro bono activities of various sponsoring agencies, including the ACBA's Indigent Divorce Project, the Legal Project for the Deaf and Hearing Impaired, YWCA's Legal Resources for Women, ACBA's Young Lawyers Section Homeless Project, Legal Aid Society's Child Advocacy Referral Project, Pittsburgh Aids Task Force Legal Committee, United Mental Health Legal Services, Inc., and Neighborhood Legal Services. The ACBA also provides malpractice insurance coverage for matters undertaken by attorneys providing their services through Project Challenge.

NLSA's first referrals under Project Challenge were protection from abuse cases. It has since expanded the range of referrals to include cases involving child support, custody, unemployment compensation, Chapter 7 bankruptcy, Chapter 13 bankruptcy, landlord/tenant law, litigation defense, and cases in which NLSA has a conflict of interest. NLSA attorneys provide necessary training to volunteer attorneys in

4. In 1966, NLSA was chartered in Allegheny County for the purpose of making legal services available to those residents of the County (which includes the City of Pittsburgh) who could not otherwise afford them. Since that time, NLSA has expanded its service area to include neighboring Beaver, Lawrence, and Butler Counties. Although funded initially by Congress under the Economic Opportunity Act Amendments of 1966, 42 U.S.C. § 2701 (1966), and subsequently by the Legal Services Corporation Act of 1974, 42 U.S.C. § 2996 (1988), NLSA has watched its funding decline over the past several years. At the same time, however, the demand for legal representation among NLSA's service population has increased.

the procedural and substantive law applicable to each practice area and, with the help of the ACBA, have assembled teams of volunteer attorneys experienced in each area to act as "reference sources" for issues that might arise during a given representation. According to NLSA's Pro Bono Coordinator, NLSA made 947 referrals through Project Challenge in 1992 and 1364 referrals in 1993.

IV. KIRKPATRICK & LOCKHART'S PARTICIPATION IN PROJECT CHALLENGE

In approximately 1992, representatives of Project Challenge approached Kirkpatrick & Lockhart, as well as several other firms in Pittsburgh, seeking attorneys who would volunteer to represent victims of domestic violence for the specific purpose of obtaining final protection from abuse orders. Issues relating to divorce, custody, or future violations of the final order would be handled either by NLSA attorneys or volunteer attorneys in the county whose practices focused on such issues.

Several attorneys in the firm had previously provided pro bono services to individuals requiring protection from abuse orders and had an ongoing personal commitment to provide representation to victims of domestic violence. Those attorneys recognized immediately that Project Challenge presented a unique opportunity for interested lawyers in the firm to provide critically needed legal services for low-income and indigent clients, while at the same time offering valuable litigation/negotiation experience to more junior attorneys in the firm who were not often "lead chair" on other matters. There was a steady client flow already in place through NLSA; the services requested from volunteer attorneys would be relatively discrete in nature and duration; training was readily available through NLSA; and services would be provided directly to individuals with whom attorneys would develop a face-to-face client relationship. There would be nothing "academic" or "institutional" about the experience; it would be direct client contact with an immediate need to be met, tactical decisions to be made and, potentially, a case to be tried. A concerted approach by interested attorneys in the firm could assure NLSA, and its clients, a significant level of assistance over a series of months each year. Therefore, a

program was organized within the firm to recruit, train, coordinate, and supervise volunteer attorneys, paralegals, and support staff. As a group, these individuals would assume responsibility for half of all NLSA's weekly hearings on protection from abuse petitions over a period of approximately four months a year.

The first step in establishing the firm's program was to survey and identify those attorneys, paralegals, and support staff willing to participate in Project Challenge. Several lawyers expressed initial interest in participating in the program; however, they were reluctant to practice in an area in which they had little or no experience. That reluctance was, understandably, only intensified by the fact that a client's physical safety would be at stake in each representation. Any attorney undertaking to represent victims in securing final protection from abuse orders wanted to be confident that he or she understood the intricacies of the applicable law, the procedures of the Family Court Division, and the range of remedies available to the client.

To meet the attorneys' concerns, the firm worked with NLSA to conduct a training seminar that addressed: (1) the substantive basis for and issues arising from the Protection From Abuse Act; (2) procedural mechanisms for obtaining the necessary order; (3) enforcement of any order obtained; and (4) the interpersonal dynamics of advising and counseling victims of domestic violence. The seminar also briefly addressed various community resources available to victims who might require safe shelter; advice on custody, support, and/or divorce issues; counseling for perpetrators of the domestic violence; and supervised visitation services for children who would be at risk if left to the unsupervised care of an abusive parent. In addition, NLSA also prepared and distributed booklets containing sample pleading forms and numerous reference materials. The seminar was opened to any other attorney in Allegheny County who was also interested in participating in Project Challenge through the ACBA.

After the NLSA seminar, the firm conducted its own in-house training session in which experienced litigators outlined the structure and operation of the Family Court Division, provided a critique of the judicial demeanor and philosophy of the various judges who would be charged with hearing protection from abuse proceedings, and discussed

the tactics and dynamics of negotiating a settlement of the proceedings by way of a consent order. For ease of quick reference and, if necessary, uniform and immediate modification to reflect revisions in the applicable law, the model pleadings provided by NLSA were loaded into the firm's computers and were then available at each attorney's individual terminal. The firm also designed and loaded onto its computers several other documents including a "Question and Answer" sheet dealing with those procedural and substantive questions most commonly raised by attorneys in the firm; a model engagement letter advising clients of the scope of the firm's representation; a sample letter to be sent to the local police department charged with enforcing the final order; a model authorization to obtain the victim's medical records; and a guide to the practicalities of negotiating with jailed perpetrators.

In order to assure continuity in the program, four senior attorneys agreed to act as program supervisors and oversee training for Kirkpatrick & Lockhart attorneys participating in the program, to coordinate coverage for each of the weeks during which the firm was committed to Project Challenge, to update model pleadings and other protection from abuse documents in the computer "library," to review and circulate to all participating attorneys newly issued opinions dealing with protection from abuse matters or ancillary issues of general concern, to assume responsibility on a week by week basis for supervising the case load of each participating attorney, and, where necessary, to assist in trying any cases requiring a hearing.

The program was designed to make it possible for an attorney to volunteer to assist victims of domestic violence even if that attorney had not had any prior experience in the area of protection from abuse or had not had substantial courtroom or trial exposure. As a result, a broad cross-section of attorneys in the firm participated in the program, including attorneys who practice primarily in areas of intellectual property, bankruptcy, environmental, corporate, and securities law. Further, summer associates were also able to participate in the program, if they so chose, gaining some insight into the opportunities for pro bono service in a private corporate practice setting.

Each participating attorney was paired with a legal assistant and agreed to handle one week's worth of the cases referred by NLSA (generally eight to ten cases). The cases involved only victims who had already secured temporary orders, were usually received as a group, and were all scheduled to be heard on the same day during the following week. Each team, then, had approximately five or six days to contact and interview each client, assemble evidence necessary should a hearing be required, and begin to explore the possibility of negotiating a consent order. Supervising attorneys would generally meet with the team to review the status of each case approximately two or three days prior to the scheduled hearing date.

For the most part, the firm's cases were resolved without the need for a hearing. In a majority of instances, the parties ultimately agreed upon a consent order. Often perpetrators would not appear and a final order would be entered on default. In some instances, victims would decide not to pursue the action. Only occasionally did the parties proceed to an evidentiary hearing. In those cases, the supervising attorneys were "on call" and ready to provide assistance at the hearing if the participating team attorney either lacked sufficient trial experience or ordinarily practiced in areas other than litigation.

Throughout the months of the firm's participation, there were occasional debriefing sessions in which attorneys who had recently completed their representations would share their experiences, strategies, and impressions with the other attorneys and legal assistants participating in the program. Often such sessions resulted in suggestions for modifying the model pleadings or streamlining the administration of the cases.

V. CONCLUSION

Over the last two years, approximately thirty Kirkpatrick & Lockhart attorneys have represented more than 200 victims of domestic violence through their coordinated participation in Project Challenge. In January of each year, the level of interest among all attorneys in the firm is surveyed again to determine whether there is sufficient continued interest to assume the responsibility of carrying half of NLSA's protection from abuse case load for several months during that year. In

addition, the training sessions are repeated each year for attorneys who have not previously participated in the program or for those attorneys who wish to update their prior training. To date, the level of enthusiasm and interest among the attorneys has remained high enough to allow the firm to continue its participation role during 1994.

