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The New York Pro Bono Scholars Program – Practical Legal Experience Assisting the Indigent that is Rewarded with Accelerated Bar Admission

Cover Page Footnote

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THE NEW YORK PRO BONO SCHOLARS
PROGRAM — PRACTICAL LEGAL
EXPERIENCE ASSISTING THE INDIGENT
THAT IS REWARDED WITH
ACCELERATED BAR ADMISSION

HON. VICTORIA A. GRAFFEO*

I.

UNREPRESENTED LITIGANTS IN NEW YORK COURTS

Under the visionary leadership of Chief Judge Jonathan Lippman, New York has been in the forefront of developing innovative approaches to enhance the availability of civil legal services for persons unable to afford legal representation. The problem of unrepresented litigants is especially acute in New York, where more than two million litigants a year appear in state courts without counsel, many with significant legal problems involving the basic necessities of life.¹ This access to justice “crisis” has been exacerbated by a spectrum of societal problems as a result of unemployment, natural disasters, the mortgage foreclosure epidemic, a shortage of affordable housing and other economic factors. The increasing number of pro se litigants places heavy pressure on an already overburdened state court system that in 2012 had over four million new case filings in the courts of original jurisdiction.²

The statistics on new court filings clearly reflect the growth in caseloads. In the Family Courts alone, there are approximately 698,000 annual filings, which represents a 90 percent increase in filings from thirty years ago.³ But numbers do not tell the full story of the human anguish suffered by persons left to navigate the justice system without adequate knowledge of proper procedures or the law. Despite the best efforts of dedicated legal services providers in New York, there remains a dire need for additional resources if the democratic ideal of equal justice for all is to be met.

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¹ The Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York, at 1 (Nov. 2012), http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf.

² New York State Unified Court System Budget, Fiscal Year 2014-2015, at 17 (Nov. 2013), <http://www.nycourts.gov/admin/financialops/py-Budgets.shtml>.

³ *Id.* at iv.

II. PRO BONO INITIATIVES AIMED AT EASING THE CRISIS IN CIVIL LEGAL SERVICES

In advocating for more resources to tackle these needs, New York's Chief Judge, the Hon. Jonathan Lippman, spearheaded a multi-faceted approach covering a broad range of new sources of assistance to deal with the upsurge in pro se litigants. Unquestionably, adequate funding for legal services providers is essential. In the 2014-2015 budget for the New York court system, Judge Lippman was successful in securing an additional \$15 million in state funding to be used for grants to legal services organizations supplying civil legal services to litigants confronting such matters as eviction, domestic violence, consumer debt problems and other critical issues.⁴

Although increased funding relieves some of the strain, more was necessary as the demand for civil legal assistance far outstripped the available resources. In the quest to tap new sources for the provision of pro bono services beyond that offered by institutional providers and the New York bar, in 2013, Chief Judge Lippman announced that all prospective applicants for admission to the New York bar after January 1, 2015 will be required to perform 50 hours of pro bono work. This requirement reflects several objectives: it provides additional assistance to legal services providers and fosters the growth of clinical offerings in law schools; exposes law students to the needs of the indigent and creates greater appreciation of the problems faced by low-income individuals and families; recognizes that a core value of the profession is to help those in need; and encourages new members of the profession to continue pro bono service once admitted to the bar.⁵

But law students were not the only group of untapped potential legal assistance — Chief Judge Lippman also promoted volunteer service by in-house counsel employed in New York. To achieve this goal, the New York Court of Appeals promulgated a new rule allowing in-house counsel not admitted to practice in New York to undertake pro bono legal representation, provided that such attorneys are properly registered with the court system as in-house counsel.⁶ As a result of

⁴ *Id.*

⁵ Advisory Committee on New York State Pro Bono Bar Admission Requirements, Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments, at 1-2 (Sept. 2012), <http://www.nycourts.gov/attorneys/probono/ProBonoBarAdmissionReport.pdf>.

⁶ Advisory Committee on Pro Bono Service by In-House Counsel in New York State, Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments, at 4-13 (Sept. 2013), <http://www.nycourts.gov/attorneys/in-house-counsel/IHC-ProBonoReport.pdf>.

this effort, hundreds, if not thousands, of experienced corporate attorneys will possibly be available to extend legal assistance to the indigent and nonprofit organizations.

Moving beyond prospective and current members of the legal profession, Chief Judge Lippman further envisioned that there could be a role for non-lawyers to perform in meeting the needs of pro se litigants. The end result was the establishment of court-sponsored incubator projects that will train non-lawyer “navigators” for the purpose of disseminating useful information and supporting pro se litigants in housing courts and other civil courts.⁷ Although not engaged in the provision of legal services, these navigators will stand ready to assist pro se litigants in explaining the proper procedures to follow and what to expect in court, along with offering emotional support. Easing the fears of pro se litigants and informing them about the progress of proceedings will allow the courts to operate more efficiently.

III.

THE OBJECTIVES OF THE PRO BONO SCHOLARS PROGRAM

In his State of the Judiciary Address in February 2014, Chief Judge Lippman introduced another novel initiative for law students interested in pro bono service — the option to participate as Pro Bono Scholars. This program is designed to revitalize the final semester of legal study and offer practical skills training to students, while gaining experience providing much-needed assistance to pro bono litigants. The Pro Bono Scholars Program is intended to expand the use of law students working with legal services providers, law firms, corporations and law school-sponsored clinics engaged in pro bono representation of the poor. It was conceived, in part, in response to the growing demand for reform in legal education, yet the program preserves the traditional model of a three-year course of study leading to a law degree. In recognition of the call from the New York bar for more professional skills training as a component of legal education for new entrants to the profession, the program requires that students work under appropriate supervision on pro bono matters involving identifiable clients. Successful completion of the program grants participants accelerated bar admission to enhance their credentials and improve their opportunities for employment.⁸ Of course, participation in the Pro Bono Scholars Program satisfies the

⁷ *The State of the Judiciary 2014, Vision and Action in Our Modern Courts*, at 7-8 (Feb. 2014), <http://www.nycourts.gov/whatsnew/pdf/2014-SOJ.pdf>.

⁸ *Id.* at 3-6.

mandatory 50-hour pro bono bar admission rule since this program far exceeds that time requirement.

With the enthusiastic cooperation and assistance of the deans of the 15 law schools that operate in New York State, the Pro Bono Scholars Program will commence in January 2015 as a volunteer option that allows participants to spend the final semester of their legal education performing full-time pro bono services for the poor. In return, the participants will be permitted to take the New York bar examination in February of their final semester, thereby benefiting from admission to the New York bar much earlier than law school graduates who take the July bar exam.

Respecting the autonomy of law schools, the issues of student tuition assistance or financial aid are not addressed by the Pro Bono Scholars Program guidelines — those are matters left to each law school. In addition, each American Bar Association-approved law school, whether situated in New York or elsewhere in the United States, is given the flexibility to develop its own guidelines for student eligibility, including deciding the extent to which academic standing will be a factor in the selection of participants. To bolster the success of the program, Chief Judge Lippman encourages law schools to inquire into the types of placements that applicants are hoping to secure so that the nature of a placement and the student's interests are compatible. A law school will also review an applicant's transcript to assess whether that prospective participant has taken sufficient courses to be adequately prepared for the New York bar exam, along with assuring that the course of study complies with the law school's graduation requirements, the American Bar Association's Standards and the New York Court of Appeals Rules for the Admission of Attorneys and Counselors at Law.⁹ To avoid any delay in admission, it is suggested that applicants pass the Multistate Professional Responsibility Examination that is given three times a year (in March, August and November) prior to beginning a Pro Bono Scholars' placement. In addition to these requirements, placement sponsors may request specialized courses of study based on the nature of the pro bono work expected to be performed. For example, if a placement is offered with

⁹ There are various rules that apply to the granting of a law degree through the Standards established by the American Bar Association (ABA) for the accreditation of American law schools and by the New York Court of Appeals (see section 520.3 of the Rules of the New York Court of Appeals). For instance, applicants for admission to the New York bar must have completed two credits in a professional responsibility course, they must have earned at least 83 credits at an ABA-approved law school, 64 of which must be in classroom instruction. There can be no more than 30 credits acquired from clinical education, field placements or externships.

the litigation department of a law firm, it would not be unreasonable for the sponsoring firm to request that participants have taken law school courses in subjects such as evidence, constitutional law or civil procedure. In hopes of appealing to the wide range of student interests, the court system is undertaking a major effort to assist law schools in identifying a broad variety of externships that will provide students with meaningful experiences and leave students with a favorable impression regarding the professional obligation of attorneys to help those less fortunate. It is hoped that many of the Pro Bono Scholars will find their pro bono experience so valuable and rewarding that they will continue to pursue pro bono service opportunities as practicing attorneys.

Most of New York's law schools are further adapting one or more of their clinical offerings to meet the Pro Bono Scholars Program requirements. It is generally recognized that the instruction and supervision provided to students through law school clinics represents the gold standard of practical skills training. The use of law school-sponsored clinics is an integral feature of the Pro Bono Scholars Program and these clinics provide much needed legal assistance to indigent populations with specific needs.

IV.

THE STRUCTURE OF THE PRO BONO SCHOLARS PROGRAM

Some alteration of the usual Spring semester schedule is necessary to accommodate the Pro Bono Scholars Program in light of the need for students to prepare for the February bar exam. It is anticipated that participants will finish the Autumn semester of their final year of legal study in the usual fashion. After completing that semester's course assignments and examinations in December, Pro Bono Scholars will begin preparing for the New York bar examination in whatever manner they see fit — including studying with a commercial bar exam preparation course. The exam is administered annually the last Tuesday and Wednesday in February. Immediately after the bar exam, students will begin their 12-week externship placements with legal services providers, law firms, corporations or public entities, or through law school-sponsored clinical experiences. In 2015, the bar exam will be administered on February 24th and 25th and the Pro Bono Scholars will begin their externships or law school clinical commitments on March 2nd.

All placements must be jointly approved by the participant's law school and the court system. The partnership between the legal education community, the court system and externship sponsors ensures

the fair allocation of placements for all participating law schools. Through the involvement of an executive director employed by the Office of Court Administration, it is anticipated that the court system will maintain information regarding the nature of pro bono services being offered and the types of clients being served, while receiving constructive feedback from the participants and their law school supervisors.

A qualifying placement must provide a Pro Bono Scholar with full-time, appropriately supervised, pro bono activities. There is no specified income or asset requirement for clients established by the program — that determination is made by the guidelines used by the placement sponsors or law school clinics. All work through an approved law school clinic or externship placement must be devoted to pro bono matters — no clients can be charged legal fees. A participant cannot spend a portion of the work week on pro bono cases and the remainder of time on other matters for which the sponsor is charging fees. Each student must have a placement or clinic supervisor who will be responsible for ensuring that appropriate tasks are assigned to the participant and that all work qualifies under the parameters of the Pro Bono Scholars Program. The average work week is expected to be 45 hours in order to comply with American Bar Association Standards related to the receipt of academic credit.

Upon satisfactory completion of the externship or clinical assignment, a Pro Bono Scholar will be awarded at least 12 academic credits by the law school. Since the externship or clinical placement is an element of legal education, all Pro Bono Scholars must further participate in an academic/classroom component that entitles them to receive academic credit. Each law school will determine and design the appropriate academic component. To facilitate the role of the law school, in addition to a placement or clinical supervisor, each participant will be assigned a law school faculty supervisor who will monitor the student's progress and specify the nature of the classroom/seminar requirements of the program. Hence, a student benefits from the involvement of two supervisors — one from the faculty and one overseeing the pro bono work performed for the placement sponsor. After the 12-week placement or clinical assignment concludes, both supervisors will be affirming that the student has fulfilled all program requirements by executing the student's Pro Bono Scholar Form Affidavit, which will be subsequently filed with the student's application for bar admission.

All participants who take the February bar exam will be advised of the bar exam results in May. Assuming that the Pro Bono Scholar passes the bar exam, completes the 12-week program and fulfills all

other requirements for graduation, the student will qualify for early New York bar admission in June. This is quite advantageous for Pro Bono Scholars since they will be admitted to the practice of law about six months earlier than other law school graduates taking the bar exam in July.

V.

WHAT QUALIFIES AS PRO BONO WORK?

As previously noted, qualifying pro bono work must be full-time — generally, at least 45 hours per week — and be supervised by an attorney admitted to practice in the jurisdiction where the work is to be performed. There must be an identifiable client or clients and such persons are to be financially unable to pay for legal representation. Working for a not-for-profit legal services provider will qualify so long as the organization primarily serves the legal needs of an indigent clientele and the work to be performed is for such clients. Although limited in scope, work for a governmental entity may qualify if the services are for the benefit of identifiable individuals who cannot afford to hire attorneys or whose unmet legal needs prevent their access to justice. The objective of a placement should be to extend ample opportunities for the student to have client contact, undertake legal research and support tasks and be involved with the legal services performed by the supervising attorney. In other words, to maximize the benefits of learning in the field. All qualifying work must be law-related in order to expose students to real-life legal problems and gain experience through skills training.

Examples of qualifying placements may include: engaging in an externship with a legal services provider, such as Legal Aid, to assist attorneys representing low-income tenants in Housing Court or persons involved in fair hearings requesting social services benefits; working with a law firm on major class action litigation representing the interests of indigent plaintiffs; assisting the Office of a Public Defender, a Conflict Defender or other criminal defense organization representing persons who do not pay legal fees; working with Counsel's Office at a corporation on a pro bono project helping persons involved in mortgage foreclosure litigation who cannot afford to hire lawyers; or participating in a court system project that assists indigent individuals who would otherwise not be able to retain counsel.

Likewise, qualifying law school clinical assignments must also be law-related and offer full-time work in areas dealing with the indigent, such as assisting persons with housing, access to health care or educational services. Further examples are working in a clinic that repre-

sents the victims of domestic violence or elder abuse, indigent immigrants, the mentally ill or disabled, persons incarcerated seeking to assert civil liberties or other rights, or other groups who cannot access legal representation.

It is hoped that Pro Bono Scholars will be given work beyond research assignments since a fundamental precept of the program is to provide a student with consistent exposure over the course of three months to actual legal activities by attorneys on behalf of their clients. Some projects may allow students to engage in court appearances if the particular externship or clinic has been granted a Student Practice Order issued by the appropriate Appellate Division of the State Supreme Court authorizing student representation in certain tribunals.

VI.

ADMINISTRATION OF THE PROGRAM

Initially, Chief Judge Lippman appointed two groups to develop the design and implementation needs of the Pro Bono Scholars Program. To ensure compliance with American Bar Association accreditation standards and the New York Court of Appeals' rules regarding the academic and externship requirements of the program, an Advisory Committee (chaired by Senior Associate Judge of the New York Court of Appeals, the Hon. Victoria A. Graffeo) was appointed, composed of the deans and administrators of all New York law schools and representatives from their clinical programs. Consistent with the goals of Chief Judge Lippman, the Committee determined the parameters of the Pro Bono Scholars Program, including to what extent there needed to be adjustments to the academic calendar, the timing of student selection and the role of the law school in deciding the factors to consider in student eligibility, the externship and academic hours needed for the awarding of credit and the types of pro bono assignments that qualify. The Committee produced a Program Guide announcing the creation of the Pro Bono Scholars Program, which sets forth the purpose and requirements of the initiatives, and provided the publication to all American Bar Association-accredited law schools throughout the United States.¹⁰ At the same time, Chief Judge Lippman delegated responsibility for identifying and assigning eligible pro bono placements to a Task Force (chaired by New York's Chief Administrative Judge, the Hon. A. Gail Prudenti), which

¹⁰ *Pro Bono Scholars Program: A Legal Education Initiative, Program Guide (2014)*, <http://www.nycourts.gov/attorneys/probonoscholars/ProBono-Scholars-Program-Guide-2014.pdf>.

included representatives from legal services providers, law firms, corporations and bar associations. This cooperative effort spanning the diverse legal community of New York has resulted in the development of many beneficial externship and clinical opportunities for law students to make a significant contribution to the legal needs of indigent New Yorkers.

To facilitate the future coordination and the exchange of information regarding program requirements and to expand and maintain the inventory of qualifying placements, the position of Executive Director of the Pro Bono Scholars Program was created and Patricia Bucklin, Esq. has been appointed to serve as the first administrator. A website is available for inquiries: probonoscholars@nycourts.gov.

Chief Judge Lippman's exciting initiative should revitalize legal education, imbue law students with a greater appreciation of their professional responsibilities and provide additional resources to respond to the needs of society. All of which will better prepare future generations for our noble profession.