



VOLUNTEER LAWYERS FOR APPALACHIAN KENTUCKY



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May 1, 2007 to August 31, 2007

**PRO BONO CASES
ACCEPTED BY PRIVATE BAR
May 1, 2007 to August 31, 2007
(as reported)**

BANNER: Tony Boyd 1; **BEATTYVILLE:** Thomas Hollon 1; **BEREA:** Kendall Duerson 2; **BURKESVILLE:** Stephen Poindexter 2; **HARLAN:** Mark Ford 1; **HAZARD:** Heidi Hopfensperger 10; C. Darlene Johnson 5; Frank Medaris Jr. 5; Lori Reynolds 3; **HINDMAN:** Dinah Hall 2; Jerry Wicker 2; **HYDEN:** Edmond Collett 1; **JACKSON:** Melissa Howard 2; Tammy Howard 8; Michael Stidham 3; **LANCASTER:** James Sanders 1; **MONTICELLO:** Gordon Germain 1; **PIKEVILLE:** Kathryn Burke 2; Stephen Hogg 4; Vicki Ridgway 3; Tammy Skeens 1; **PRESTONSBURG:** John Rosenberg 1; Larry York 7; **RICHMOND:** Wesley Browne 1; Whitney Dunlap III 2; John Lackey 1; Melinda Murphy 3; Suleiman Oko-ogua 7; **SOMERSET:** Jill Haste 1; D. Bruce Orwin 4; Glenn Shackelford 1; Dan Thompson 2; **STANFORD:** Robert Baker 1; Cabell Francis II; **STANTON:** John Cox Jr 1; **WHITLEY CITY:** Tim Lavender 1; **WINCHESTER:** Dodd Dixon 3; Roy Fugitt 3; Michael Rowady 1.

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Perry County Attorney Frank C. Medaris, Jr., was recognized by Judge William Engle for his participation in the Volunteer Lawyers for Appalachian Kentucky Pro Bono program Friday in the circuit courtroom.

Medaris, who's pro bono work primarily consists of divorce cases, was recognized for donating 112 hours of legal services to the financially disadvantaged over the past 12 months.

"It was very nice, but I don't do it for the rewards," Medaris said. He said that he wanted to be a lawyer since the eighth grade and doing pro bono work is part of being a lawyer.

According to Medaris, pro bono work is necessary to assist those who can't afford legal services and to give something back to the community.

The Kentucky Bar Association asks each attorney to donate 50 hours each year, but Medaris' 112 hours were more than twice that of any other attorney.

"I wouldn't have been able to do all that I do with out my wife and legal assistant Carol who helps with a lot of the pro bono work," Medaris said. Perry Circuit Judge, Bill Engle said, "Donating legal services is very important." He

also encouraged each lawyer in the courtroom to find time to donate services for free or at a reduced cost and he praised those present who had done so.

A division of Appalachian Research and Defense Fund of Kentucky, commonly known as Appalred, VLAK provides legal services to the financially disadvantaged in 37 eastern Kentucky counties through private attorneys who are willing to donate their time.

Story By: Tonya Amburgey Staff Reporter. Reprinted with the permission of the *Hazard Herald*.

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IT JUST MAY BE ENOUGH

By Hon. Jacqueline S. Duncan, Director, Kentucky Volunteer Lawyer Program

A farmer was riding in his wagon pulled by an old blind mule. He came upon a man whose truck was stuck in the ditch. The man asked the farmer if he might be able to help pull his truck from the ditch. The farmer said, "I can sure try but all I have is Buck, this old blind mule." They hooked the wagon to the truck and the farmer shouted "get up Buck, get up Besse, get up John and get up Ginny." Slowly, but surely, the old mule Buck began to pull the truck from the ditch. The man was grateful and thanked the farmer but said, "I have to ask. You only have one mule. Why did you shout those other names?" The farmer replied, "Old Buck doesn't believe he can do much on his own, but you know he's blind, so if I shout those other names and he believes others are working with him, he can pull a mountain."

Sometimes just doing our part with the belief that others are working with us brings amazing results. As the director of Kentucky Volunteer Lawyer Program (KyVLP), I'm asking you to do your part in donating your legal services to make a difference in the lives of those who can not afford legal representation.

In the July 2007 *Bench & Bar*, our new KBA president, Jane Winkler Dyche, wrote about "Charting Our Course" and her task to engage in strategic planning for the KBA. She first reminded us of the bar's mission and purpose as charged under SCR 3.025 which generally states to uphold the rules and principles of the legal profession, maintain high standards of our profession, educate members and promote efficiency and improvement in justice. With these laudable goals in mind, she asked lawyers evaluate our current status: "Let's look at who we are, what we are about, what we need to do, and how we can do it." She next stated that she "understand[s] being part of a group that is looked at as 'different' from others," and committed to be "sensitive to the concerns of those who may be looked at as 'different' by others," in charting the plan for the future of the KBA.

The comments from KBA President Dyche provide a formidable guide for any KBA affiliated program and a strong challenge to each KBA member. As director of this relatively new KyVLP, I took her comments to heart and used this framework to examine this organization in its formative years as we chart our course to do our part.

First, the KyVLP is the statewide pro bono development project initiated by the KBA Board of Governors and approved by the Kentucky Supreme Court to increase and strengthen pro bono participation by private lawyers in civil legal aid cases and, ultimately, improve access to the civil side of the judicial system for low-income Kentuckians. Being created by and primarily funded by the KBA speaks highly of the importance it places on pro bono and the need for us to greatly improve providing legal services to those who can not afford it.

The KyVLP must do its part to support the KBA's mission and purpose. SCR 3.025, in part, charges the KBA "to bear a substantial and continuing responsibility for promoting the efficiency and improvement of the judicial system." The KyVLP shares this responsibility for its targeted population – lawyers and low-income Kentuckians.

To be a part of fulfilling a mission and purpose, KBA President Dyche also asked us to examine who we are, what we are about, what we need to do and how we can do it. This presented itself as a more in-depth analysis of the KyVLP.

The essence of KyVLP rests on our professional and ethical obligations. We have a professional obligation "to do the right thing". After all, we have a monopoly on our profession and are the only ones professionally educated and trained to access the courts. Our ethical obligation was promulgated in SCR 3.130(6.1) which encourages lawyers to donate 50 hours of legal service per calendar year to persons of limited means or to financially contribute to legal organizations that provide legal services to those of limited means. Persons of limited means are those persons who are unable to pay and would otherwise qualify for civil legal aid services.

At this point, I could cite a litany of statistics on low-income, Appalachian citizens and their legal needs. You know your region's economic status and consequential legal needs. We'll summarily state that the number of low-income persons in eastern Kentucky who have a need for donated legal services is great. And so is the need for lawyers to donate their legal services.

The KyVLP seeks to advance our professional and ethical obligations by asking lawyers to act on their knowledge and meet these legal needs. The KyVLP's "Change the World in 50 Hours" campaign brings these needs to the forefront and encourages lawyers to donate 50 hours of legal services as intended by SCR 3.130(6.1). In addition, the campaign will suggest ways to get involved, and emphasize that only you can volunteer legal representation.

The KyVLP also will have a website available this fall that will allow you to sign up to volunteer online. You will receive regular notices of persons who need your help and the type of help needed in your designated geographical and practice areas. You can "click" to take a case with minimal further communications. The website's FAQs page will answer such questions as why you should work through a legal services pro bono program; why community volunteerism, however commendable, is not pro bono as intended by the rule; and what malpractice insurance will cover you.

To further support your efforts, we plan to offer free CLE, desk reference materials and mentors for those who participate in the KyVLP whether its for those who regularly practice in those areas or those who have chosen to participate in a particular area simply for their pro bono work. If you do not practice in an area of law generally needed by low-income persons, then pick an area for your pro bono work and let us know how we can help you.

While the KyVLP and its programs may be in place, our success in fulfilling our role as part of the KBA depends greatly on your willingness to participate. You are a member of a select and distinct profession. You have invested and sacrificed time, money, work and, very likely, tears to be part of this profession. Unless we, as lawyers, are willing to donate our legal services, low-income Kentuckians have no access to the courts. Occasionally, pro se litigants may attempt the process but judges and lawyers are quickly frustrated in such proceedings. Individuals may have legitimate claims which may not seem worth pursuing to you or me, but are of major importance to them. Statutory defenses go unasserted without a lawyer and, consequently, cases are lost simply because of the lack of representation. Access to the courts should never be denied because a person can not afford to pay a lawyer. Each lawyer needs to do his or her own examination of their individual role in the profession, the KBA and the KyVLP.

Finally, KBA President Dyché wrote about having to overcome "being a part of a group that is looked at as 'different' from others" and her commitment to be sensitive to those needs who may be looked at as different in charting our course. Being looked at as different carries a resounding, negative tone for low-income persons and sometimes eastern Kentuckians. Working for low-income clients or through pro bono programs may be viewed negatively by some as well.

The KyVLP challenges you to overcome how you are perceived as different. Different can be good. Based on the information from legal services providers in eastern Kentucky, the vast majority of lawyers do not volunteer for pro bono programs. You may be perceived as different if you volunteer. You can also be different as a regional bar if you have a disproportionately large participation of volunteer lawyers who donate their legal services and commit to serving the legal needs of those who could not otherwise afford legal representation.

KBA President Dyché concluded her remarks borrowing from Woody Allen who said that "90% of life is showing up, but what you do with the other 10% makes showing up worthwhile." SCR 3.130(1.6) asks lawyers for fifty (50) hours of donated legal services. This is far less than 10% of your annual work hours, but could make you feel 100% worthwhile. Now its time for you to turn a blind eye to

others, and do your part. It just may be enough.

Hon. Jacqueline S. Duncan is a 1987 graduate of the University of Kentucky School of Law and practiced with Jackson Kelly PLLC from 1987-2004.

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NEW VLAK WEBSITE VLAKOFKY.ORG

Within the next several weeks, Volunteer Lawyers For Appalachian Kentucky will have it's own web site. It is our hope that the website will assist attorney's in reviewing and selecting pro bono cases. The website will have an "attorneys only" page which will be accessed by use of a username and password. The page will have a summary of cases in the attorney's county of service. If the attorney would like to take a listed case, the attorney can "click" a button for more information. VLAK staff will reply with more specific information so that the attorney may determine whether or not there is a conflict. If no conflict, the attorney can reply "will accept" and VLAK staff will assign the case to the attorney. In time, it is our hope that all aspects of the case will be transmitted by email, including status and closing cards.

The website will also contain sample forms for each county in the 37 county service area. Our objective is to offer the forms in a format so that the user enters the required data only one time. The program will distribute the required data throughout the forms and create a "file-ready" document. This format is made possible by the collaboration with A2J Author (developed by Chicago-Kent College of Law's Center for Access to Justice and Technology), the Automated Documents Online ("ADO") Server for Nonprofit Legal Services, and the HotDocs software offered by LexisNexis.

Family Law related cases continues to be the greatest percentage of requests for assistance. Accordingly, the initial forms module will be devoted to family law, both initial filing and post-decree issues. In time, we hope to expand the forms modules to include landlord-tenant, consumer-collections, adult name change, and other poverty law areas.

Our website will also include a "Helpful Links" button which will direct the user to other resources. Although the web site isn't complete, you can still visit it and get limited information right now. It should be completed within the next few months. Until then you can visit us on the web at vlakofky.org.

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ABA MODIFIED LAW SCHOOL ACCREDITATION STANDARD TO ENCOURAGE LAW STUDENTS TO PERFORM LAW-RELATED SERVICES THROUGH LEGAL SERVICE ORGANIZATIONS

The ABA House of Delegates has adopted New Interpretation 302-10 of the Law School Pro Bono Accreditation Standard 302(b)(2). As many of you already know, Standard 302(b)(2) of the ABA Standards for the Approval of Law Schools requires all ABA approved law schools to offer

"substantial opportunities for . . . student participation in pro bono activities."

New Interpretation of 302-10 provides, in part, that "pro bono opportunities should at a minimum involve the rendering of meaningful law-related service to persons of limited means or to organizations that serve such persons; however, volunteer programs that involve meaningful services that are not law-related also may be included within the law school's overall program." In addition, the Interpretation acknowledges that while most existing law school pro bono programs include only activities for which students do not receive academic credit, it maintains that the Standard does not preclude the inclusion of credit-granting activities within a law school's overall program of pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

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FROM THE DIRECTOR'S DESK By Will Snyder

Kentucky is now joining the growing number of states that have recognized that pro se representation must be addressed, and not ignored, by creating the "Kentucky Online Self Help Assistant," or KOSHA.

KOSHA is the result from the collaborative between the Louisville Legal Aide Society, the Louisville County Bar Association, and the Jefferson County Family Courts (Chief Judge Stephen George). The Assistant guides an eligible client through the steps of petitioning for an uncontested divorce where there are no children, nor significant property. By answering a series of questions one time, the Assistant creates ready to file pleadings in Jefferson County Family Court. The project directors plan to expand the use of the Assistant to include cases with children, and post decree issues.

Because all other counties are experiencing the same surge in pro se representation, the project managers are also planning to offer KOSHA to other counties. Chief Justice Lambert recently created a statewide committee headed by Appeals Court Judge Michelle Keller, to review and consider the pro se phenomena.

In order to extend KOSHA across the state, two issues must be resolved: first, the use of mandatory forms, and second, universal rules of procedure. Mandatory forms and universal rules may require a coordinated effort by the Supreme Court and the Legislature, which means that state wide availability of the Assistant may be months, if not years, away.

To bridge this possible gap, the project directors are considering tailoring the Assistant to the forms and procedures required in each participating county. Obviously the process would be cumbersome and not desirable, but this "patch" between the current situation and the optimum state wide program, would provide needed assistance to our residents and to the judicial system.

Many of the problems experienced by the courts could be avoided if *both* parties are represented by an attorney. Unfortunately, pro bono participation is at an all-time low. In the 37 counties serviced by Volunteer Lawyers For Appalachian Kentucky, only 61 attorneys are currently accepting cases. Hon. Jackie Duncan, Director of the Kentucky Volunteer Lawyer Program, has embarked upon an optimistic plan to increase pro bono

participation. Many of her ideas have been implemented, such as the KyVLP website, but unfortunately, the results of her efforts have been slow to increase attorney participation.