REPORT OF THE MINNESOTA STATE BAR ASSOCIATION
TASK FORCE ON BUSINESS LAW PRO BONO

Table of Contents

<table>
<thead>
<tr>
<th>Recommendations</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td>Nonprofit Legal Needs</td>
<td>7</td>
</tr>
<tr>
<td>Microenterprise Legal Needs</td>
<td>10</td>
</tr>
<tr>
<td>Lawyer Availability</td>
<td>13</td>
</tr>
<tr>
<td>Proposed Business Law Pro Bono Program</td>
<td>17</td>
</tr>
<tr>
<td>Appendices</td>
<td>23</td>
</tr>
</tbody>
</table>

1. MSBA Business Law Pro Bono Task Force
2. Minnesota Rule of Professional Conduct 6.1
3. Minnesota Law Firm Pro Bono Challenge and Member Firms
4. Nonprofit Survey Results
5. Minnesota Microenterprise and Small Business Development Organizations
6. Minnesota Nonprofit Allies
7. Selected Background Reading
8. Useful Links

**Recommendations**

The MSBA Business Law Pro Bono Task Force recommends that the Minnesota State Bar Association (MSBA):

1. Accept and approve this report and authorize the officers to proceed with the formation of a business law pro bono program of the type described in this report.

2. Authorize its President to continue the Task Force or appoint a new task force to guide the formation of this business law pro bono program.
3. Provide $10,000 initial “seed” money and in-kind assistance from the MSBA Pro Bono Development Director to facilitate the early operations of this pro bono program.

4. Authorize its President, in consultation with the members of the Task Force, to appoint the original board members of the business law pro bono program after consultation with community organizations that work with nonprofits and microenterprises and to authorize the MSBA to nominate subsequent attorney board members for election by the new program’s board.

**Executive Summary**

Minnesota lawyers have long recognized their professional responsibility to provide pro bono legal services to those in our communities who can’t afford to pay for them. That responsibility is embodied in Rule 6.1 of the Minnesota Rules of Professional Conduct. To facilitate the provision of pro bono legal services, programs have been developed to match lawyers and clients who need such services. On the local, state and national levels, various organizations associated with the delivery of pro bono services have supported the expansion of pro bono work. A more recent focus for this support is the provision of pro bono legal services by business lawyers to nonprofit corporations and very small businesses called microenterprises.

To examine what could be done to enhance the delivery of pro bono legal services to nonprofits and microenterprises in Minnesota, in late 2002, a Task Force was selected from a broad cross-section of community organizations and the legal profession. See Appendix 1. The Task Force set out to examine the needs of nonprofits and microenterprises for pro bono legal services, the availability of lawyers to meet such needs, and the nature of a program that would facilitate meeting such needs because the Task Force would like to increase lawyer participation.

The Task Force determined that both nonprofits and microenterprises have unmet needs for legal services. Some of these needs are particular to the nature of nonprofits and microenterprises, but many are similar to the needs of fee-paying business clients. The nature of these needs change as these entities develop and mature, but they often continue to be unmet when the means for paying for them are not available. Evidence presented to the Task Force confirmed that if more lawyers were available to provide pro bono legal services, nonprofits and microenterprises would utilize those services. While delivery of such pro bono services could be done independently, at least initially, a more promising approach would be through or in conjunction with organizations which provide other non-legal services such as management assistance.

As a general matter, pro bono services are being provided by many Minnesota lawyers through existing programs or on a case-by-case basis. In some of Minnesota’s larger law firms, there are well-developed programs to enlist their lawyers in pro bono work. For other lawyers, including those who work for corporations as in-house counsel, there are programs affiliated with the bar or community organizations through which lawyers can find opportunities to do pro bono legal work. There are also law school clinical programs and Minnesota Justice Foundation projects through which law students perform pro bono work. However, for the most part, the available programs are oriented to individual clients who need assistance with litigation-based disputes. That type of pro bono work often discourages business lawyers who may not possess the necessary litigation skills. To the extent there are already organizations which provide business lawyers with opportunities to work with nonprofits and microenterprises, the
opportunities are tailored to the particular mission of the organizations and its clients, or the organizations are affiliated with large firms whose lawyers assist those organizations in their efforts.

In light of the identified needs of nonprofits and microenterprises for pro bono legal services, and the interest of business lawyers to meet those needs, the Task Force determined that a pro bono program should be formed to be the intermediary to match volunteer business lawyers with eligible clients who are not being served by existing programs. The program would be governed by a board including both lawyers and representatives of community organizations that work with nonprofits and microenterprises.

This program would be designed to collaborate with existing efforts by community organizations, and not to compete with or duplicate the efforts of such organizations. The program would provide services similar to those provided by other pro bono legal services programs, including screening and intake of clients, matching lawyers with clients, tracking matters and providing training. It is anticipated that such efforts would be made with minimal staff by contracting with others who already engage in such work. The program would also coordinate with existing community organizations and others in the provision of pro bono legal services and other services so that clients and their needs are treated holistically, to the extent possible. It is anticipated that the program would establish eligibility criteria to satisfy the principles of Rule 6.1 of the Rules of Professional Conduct, to avoid competition with or duplication of the efforts of existing providers of legal services, and to meet objectives for geographic coverage throughout Minnesota.

**Introduction**

A. The Role of Individual Lawyers

Members of the MSBA have a laudable record of contributing pro bono services to those in our communities who are unable to pay for the legal services they need. Minnesota lawyers recognize that they play a special role in society, holding a unique license to address legal matters of concern to all, including the poor among us. A society committed to equal justice under the law must strive to make the legal process accessible, regardless of the inability of some to pay for such access. Lawyers are also obligated to use their unique skills to assist community organizations and to assist in improvement of their communities. Lawyers engaged in pro bono work are a key element in fulfilling these commitments.

Many lawyers who perform pro bono work say there is great personal satisfaction in helping those who can’t afford to pay for the legal services they need. Pro bono clients are among the most appreciative they encounter. And there is often the added reward of assisting people with some of their most basic human needs – decent housing, domestic peace and child protection, fair treatment in employment and consumer transactions, and the like. Lawyers who provide pro bono services can make a difference in clients’ lives in ways they may not find in working for clients who can afford to pay them.

Against the backdrop of an established tradition of pro bono work, Rule 6.1 of the Minnesota Rules of Professional Conduct was adopted by the Minnesota Supreme Court in 1985, replacing a comparable provision of the Minnesota Code of Professional Responsibility. With leadership from the MSBA, Rule 6.1 was amended by the Court in 1995 to include an
aspirational goal of 50 hours of pro bono service per lawyer per year. See Appendix 2. Under Rule 6.1(a) all lawyers in Minnesota are expected to provide a “substantial majority" of these hours, without fee or expectation of fee, to persons of limited means and organizations which serve them. Under Rule 6.1(b), they may also provide “additional services:"

- to individuals, groups or organizations seeking to secure or protect civil rights
- to charitable, religious, civic, community, governmental and educational organizations in furtherance of their objectives where payment of legal fees would “significantly deplete” their economic resources “or would otherwise be inappropriate”
- to persons of limited means at a substantially reduced fee
- to the improvement of the law, the legal system or the legal profession

Finally, under Rule 6.1, lawyers are encouraged to provide financial support to organizations that provide legal services to persons of limited means.

B. Pro Bono Programs

As noted above, public service is a defining element of the legal profession. Individual lawyers have provided public service, or pro bono service, throughout history and continue to do so. However, during the last century and especially in the last half of the last century, the nature of legal practice has changed. Most lawyers are no longer engaged in the general practice of law in small communities but instead are in urban areas, in specialized practice, in larger law firms, government law offices or corporate law staffs. They are more remote from the individuals and the organizations that need their services, especially from those who need their services but cannot afford to pay for them. In addition, most lawyers do not have the specialized knowledge or the litigation skills to provide those services easily.

For these reasons, the concept of a “pro bono program” has developed. The earliest well-defined pro bono programs date back to the 1960’s. Hennepin County’s Volunteer Lawyer Network (VLN), formerly called Legal Advice Clinics, was one of the first two or three in the country.

A pro bono program provides the services necessary to link the client with the volunteer. A well developed pro bono program has a governing board and professional staff. It recruits and trains the volunteers. It locates and screens the clients. It matches a volunteer lawyer and a client in need of particular services. It takes responsibility for the quality of the services. Perhaps 1,000 of these programs are tracked and assisted by the American Bar Association (ABA). Standards for the operation of pro bono programs were developed and promulgated by the ABA in 1996. There is even an association of pro bono professionals. As described below, pro bono programs directed primarily at matching nonprofit organizations or very small businesses (called “microenterprises,” described in more detail below) as clients with business lawyers using their business law skills have started to emerge.
C. Recent Efforts to Encourage Pro Bono Service

There have been significant organizational efforts by bar associations and other groups to develop, improve and assist pro bono programs. The MSBA’s Legal Assistance to the Disadvantaged Committee (LAD) encourages pro bono participation and supports and coordinates efforts to serve the legal needs of the disadvantaged throughout Minnesota. The MSBA publishes a comprehensive Directory of Pro Bono Opportunities for Attorneys including information on over 100 programs throughout the state in over 20 subject areas through which Minnesota lawyers and law students can donate legal services. The Directory has both topical and geographical listings. The MSBA also hosts the www.ProJusticeMN.org/civillaw (formerly Pro Bono Net) website, and facilitates the Law Firm Pro Bono Roundtable which links pro bono lawyers in large law firms with projects throughout the state that cannot be placed directly by local pro bono programs.

In Hennepin County, VLN was established in 1966 to recruit and match Hennepin County volunteer lawyers primarily with individual low-income pro bono clients. VLN also manages some statewide programs including one with the MSBA’s Bankruptcy Section and another with the Federal District Court. Arrowhead Lawyers Care Volunteer Attorney Program in Duluth (VAP Duluth) was founded in 1981 to serve Northeastern Minnesota. It primarily matches volunteer lawyers with individual low-income pro bono clients, but it also matches volunteer lawyers with some nonprofits and microenterprise clients. VAP Duluth also runs a mediation project. Local legal aid offices throughout Minnesota provide pro bono opportunities to lawyers who volunteer to help their clients. Numerous more specialized programs, like the Management Assistance Program for Nonprofits (MAP), provide additional opportunities. The Minnesota Justice Foundation (MJF) involves students at all four Minnesota law schools in providing thousands of pro bono hours each year through the Law School Public Service Program and all the law schools have clinical programs as well.

On the national level, extensive efforts to encourage and coordinate pro bono work have been occurring. The ABA’s Standing Committee on Pro Bono and Public Service and the Center for Pro Bono are the ABA’s centers of activity generally for the development and promotion of pro bono policies and initiatives. The ABA Section of Business Law Pro Bono Committee specifically seeks to encourage the delivery of pro bono services by business lawyers and to assist with the development of local/state business law pro bono programs. The Committee sponsors A Business Commitment, the ABC Project. The ABC Project has a double mission: to provide business lawyers with opportunities to make pro bono contributions by volunteering their special skills and to provide legal expertise to community-based groups that cannot afford to hire a lawyer.

The ABA, in conjunction with the Pro Bono Institute at Georgetown University Law Center, established the Law Firm Pro Bono Challenge in 1993 (Challenge). This program is directed nationwide, and more recently overseas, to firms of over 100 attorneys. Challenge firms agree to provide pro bono hours amounting to either 3% of billable hours or 60 hours per lawyer per year, or the more ambitious goal of either 5% of billable hours or 100 hours per lawyer per year. The Challenge has spurred the development of pro bono programs in large law firms among its participants, including those firms which already had pro bono programs. Minnesota has one of the highest levels of participation by its larger firms. See Appendix 3 for a list of the Minnesota Challenge firms.
In 2000, the American Corporate Counsel Association (ACCA) and the Pro Bono Institute at Georgetown University Law Center established CorporateProBono.org to coordinate pro bono opportunities for lawyers employed by corporate legal departments. It has developed a website, www.cpbo.org, from which information about pro bono programs and opportunities targeted at corporate lawyers can be obtained. The ACCA Minnesota chapter is seeking to coordinate pro bono efforts among Minnesota corporate legal departments and with lawyers in law firms.

D. Focusing on Business Law Pro Bono Services

To a considerable degree, pro bono work historically has been directed at assisting individuals with their particular legal needs, for example, housing evictions, Orders for Protection, and appeals of benefit denials. Responding to these needs often is litigation-oriented, including appearances in court or administrative proceedings. As a result, the lawyers called upon and willing to provide pro bono services in these matters have generally been litigators. While some business lawyers may have honed enough litigation-oriented skills to represent pro bono clients in such matters, many other business lawyers have seen the litigation orientation as a barrier to engaging in pro bono work.

For some time, and especially in recent years, some business lawyers in Minnesota have successfully found opportunities to use their special knowledge and skills as business lawyers to assist pro bono clients in business matters, rather than becoming temporary litigators in order to represent pro bono clients in litigation matters. While these efforts can take different forms, business law pro bono services have often focused on assistance to nonprofit organizations and microenterprises. Microenterprise is used here to describe small businesses, often located in economically distressed areas, which have little ability to pay for needed legal services, at least in the short term. Generally the microentrepreneur herself is low-income. Nonprofits and microenterprises have needs for business law services which are often similar to the needs of other clients of business lawyers, for example, formation of the entity, entity governance issues, employment issues, and real estate leases. However, as described more fully below, most lawyers who would be willing to provide those services are not able to find the appropriate opportunities and need the assistance of an intermediary.

Around the country, there is an increasing number of local and state-based business law pro bono programs. Some, like Lawyers Alliance for New York and Public Counsel in Los Angeles, have been around for decades. Others, like Texas C-Bar and Philadelphia LawWorks, are much more recent. All are nonprofit intermediary organizations that match community-based nonprofits and microenterprise businesses with private attorneys to assist the nonprofits or microenterprise businesses with their transactional/business law legal needs. Some of these organizations are independent; others are affiliated with local volunteer attorney programs or legal aid offices. Power of Attorney (POA) in New York came into existence about four years ago to expand transactional or business law pro bono to nonprofits through grant making, technical assistance and advocacy. POA also coordinates communication for a national network of business law pro bono programs and hosts semi-annual meetings that include substantive law training, networking and peer-support. POA Executive Director Allen Bromberger met with the Task Force in December, 2002, to share his experiences.

POA Deputy Director Shari Dunn spoke at William Mitchell in May, 2003. She said "All over the country attorneys are helping fledgling nonprofits with issues such as incorporation
and established nonprofits with both internal management and personnel issues and external action issues such as building houses, starting microenterprise and dealing with changing federal regulations. Lawyers say that they love this type of work because they don’t have to do things they are not competent to do but rather use their existing skills. Nonprofits are becoming more and more sophisticated as they take on more responsibility for various social services. Also given the current economic climate, intermediaries around the country are seeing an increase in nonprofits asking for help with mergers, corporate restructuring, employment and layoffs issues.”

The MSBA Task Force on Business Law Pro Bono was formed in October, 2002, to address whether to establish a special program in Minnesota to meet the pro bono legal needs of nonprofits and microenterprises. Task Force members were consciously drawn from a spectrum of organizations which could contribute to a concerted study of this issue – legal service providers and coordinators of pro bono services, large law firms to solo practitioners, all of Minnesota’s law schools, management and general service providers to nonprofit organizations and microenterprises, neighborhood development organizations, and the MSBA itself. Many Task Force members have expertise in the worlds of nonprofits and microenterprise or are involved in the management of existing pro bono programs. See Appendix 1 for a list of Task Force members. Monthly meetings began in November, 2002, and continued each month, or more often, through July, 2003. A number of subcommittees met separately and reported back to the entire Task Force.

The Task Force structured its work to address three general questions. First, do nonprofits and microenterprises in Minnesota need pro bono legal services and, if so, what kinds of services? Second, are business lawyers in Minnesota available to assist nonprofits and microenterprises on a pro bono basis and interested in doing so? Finally, if the first two inquiries are answered in the affirmative, what structures or mechanisms currently exist to match lawyers with these needs and what additional structures or mechanisms should be established to facilitate the delivery of pro bono services by business lawyers in Minnesota to nonprofits and microenterprises in need of them?

**Nonprofit Legal Needs**

A. **Assessing the Needs of Nonprofits for Pro Bono Legal Services**

To assess whether or not Minnesota’s nonprofit organizations need pro bono business law services, the Task Force sponsored and the Minnesota Council of Nonprofits (MCN) conducted an online survey which received 166 responses from nonprofits. Also, representatives from several organizations that provide management and technical assistance to nonprofit organizations shared thoughts about the issues at Task Force meetings. The Task Force learned that nonprofits do feel a need to receive pro bono business law advice and assistance and that not all of that need is being met by the current providers of management and technical assistance and pro bono legal services.

B. **General Perceptions of the Need**

According to the survey, while many nonprofits have attorneys as board members, nonprofits often do not have access to pro bono legal advice and assistance. Fifty percent of the survey participants have at least one attorney on their organization’s board of directors; fifty
percent had none. Organizations with larger boards and organizations with larger budgets are more likely to have at least one attorney serving as a board member. Many nonprofits select attorneys to serve as board members specifically because of the legal expertise they bring to the position. This is highlighted by the comment of a survey participant who noted “It is challenging for nonprofits with small budgets to keep current with the many legal demands and requirements. For example, most of us simply can't afford staff to keep current with the complexities of human resources. We rely on board members to share their expertise, but this is not always possible.”

Because nonprofits face ongoing pressure from board members, donors, and the public to put as many dollars as possible toward their programs, they often do not allocate part of their budgets to anticipate some management expenses, such as attorneys fees. Nearly 60% of the organizations participating in the survey do not have a budget line item for expenses related to legal advice and assistance. Of those that do, the majority (76%) allocate 1% or less of their annual operating budget toward legal services. It is anticipated that this trend will continue as nonprofits face continuing financial pressure as a result of the current economic downturn.

The comments of survey participants reflect these pressures:

- “Minnesota nonprofits are being asked to provide more services with fewer resources and to dedicate our resources to programs, not administrative expenses. At the same time, they have a responsibility to protect their organizations and programs from unnecessary risk.”

- “Even as a large nonprofit, we do not have the resources to retain an attorney or even to regularly consult one regarding issues we face. This is not an area that funders are interested in funding.”

- “With the economy as it is, we, like so many others, will not be able to afford the costs if legal consultation is needed.”

- “We presented one concern to an attorney recently and it became very expensive, especially considering the fact that we did not have a specific budget item to cover this cost. Funds for other activities and services had to be diverted.”

- “Organizations the size of ours have the same legal concerns and responsibilities as larger nonprofits but quite often, when we are trying to apply as much of our revenue to programs and services as possible, we simply can't justify the cost of paying an attorney. Pro bono services that we could tap into when needed would be terrific.”

The Task Force divided the nonprofits’ needs into two parts - established nonprofits and start-up organizations – to analyze more effectively the specific needs of the nonprofit sector for pro bono business law advice and assistance.

C. Needs of Established Nonprofits

For established nonprofit organizations, the legal issues about which they would seek assistance upon fall into two categories: ongoing concerns and emerging issues.
Ongoing concerns touch upon several areas of the law similar to all small business clients and corporations: human resources, including employment and benefits; contracts relating to leases, buying buildings, and signing state and county contracts; constitutive documents (articles and bylaws); mergers and dissolutions; and occasionally, intellectual property (particularly copyright and trademark). The greatest legal risks for a nonprofit organization are in the area of employment law, since the most common reason nonprofits are sued relates to employment matters. Other concerns are specific to the unique legal environment of the nonprofit organization: special state and federal reporting requirements, lobbying expenditures limits, regulations directed at mitigating conflicts of interest and monitoring executive compensation (particularly regarding excess benefits), and tax-related issues around unrelated business income. Unrelated business income issues in particular are increasing as groups look at social entrepreneurship and other areas of earned income as sources of revenue.

Established nonprofits often struggle with emerging legal issues. They do not have the time and financial resources to determine how a new law affects their organizations or the best way to comply. Recently for example, nonprofits have been trying to figure out how to comply with the Minnesota Personal Protection Act of 2003 and the federally-mandated privacy rules as a result of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. In addition, corporate governance has been a concern for nonprofit organizations as Attorneys General in several states are looking into applying or extending to nonprofits the regulations resulting from the Sarbanes-Oxley Act of 2002.

D. Needs of Start-up Nonprofits

Start-up organizations have their own set of concerns. Basic advice may be needed as to eligibility for exempt status or whether and how to proceed with formation. The process for legally establishing a nonprofit organization is heavily regulated at both the state and federal level. Groups aspiring to establish a nonprofit organization need to understand governance, have a business plan, and understand what they need to do operationally to qualify for tax-exempt status. Such groups with simple funding streams, a straight-forward mission, and a handful of committed incorporators and founding board members may be able to weave their way through the start-up process by relying on the services, classes, and guidebooks available from several of the organizations providing nonprofit management and technical assistance. However, these groups and certainly more complex entities inevitably would benefit from the assistance of an attorney during their start-up phase as well as a place to turn for broader management advice.

E. Existing Use of Pro Bono Legal Services and the Need for More Help

While many nonprofits receive pro bono legal advice or services at some point during their existence, few tapped into this resource last year. In 2002, 68% of the survey participants received fewer than 10 hours of pro bono legal assistance.

For Twin Cities area nonprofit organizations, some pro bono resources are available through MAP. MAP provides legal and many other services to nonprofits (including marketing, technology, accounting, board development, and strategic planning). MAP’s legal services coordinator (who is an attorney) serves the legal needs of nonprofits by coordinating a Legal Hotline and staffing an attorney matching service. MAP averages 250 law-related projects a year. Occasionally MAP is able to help nonprofits outside the metro area.
Participants in the Task Force’s survey of nonprofits saw a need for the proposed pro bono business law program. When asked about four proposed activities (full legal representation, one-hour in-person consultations, training to avoid legal problems, and telephone consultations), survey participants indicated all such services would be valuable and telephone consultations would be the most useful.

The comments of many survey participants illustrated that their legal needs go unmet and that additional resources would be welcome:

- “There is tremendous need for easy access to pro bono legal services. I certainly hope this … leads to the provision of this service!”

- “Having access to affordable legal services would be a very cost effective prevention program for nonprofits. The cost and risks of undoing poor business transactions or acting in good faith are very high. Having legal advice to guide organizations through murky waters would save nonprofits time and money!”

- “I am aware that some states have programs that develop rosters of attorneys willing to provide pro bono legal services for nonprofits. Outside of MAP for Nonprofits, and some services available through Springboard for the Arts, I'm not aware of anything (like this) in Minnesota. This would be a wonderful and greatly needed service, particularly in view of nonprofits' shrinking budgets.”

A cautionary note: The Task Force learned that lawyers who advise nonprofits, particularly on tax-exempt issues, must be well-trained. When advice is given without adequate expertise, a nonprofit may have serious problems later. Law students seeking to advise nonprofits must also be better prepared on nonprofit as well as for-profit business law.

**Microenterprise Legal Needs**

A. Assessing the Need

As was done with respect to nonprofits, representatives from several organizations that work with small business development and provide management and technical assistance services to microenterprises shared information at Task Force meetings about the issues facing microenterprises. The Task Force learned that microenterprises need to receive pro bono business law assistance and that only a small part of that need is met.

The majority of information gathered by the Task Force on microenterprise legal needs was based on presentations and discussion at the January 7, 2003, meeting and from written submissions by members. In addition to the Task Force members with expertise in microenterprise needs, others were specifically invited to the January meeting to provide input. They included Val Vargas, CEO of the Hispanic Chamber of Commerce of Minnesota; George Jacobson, Consulting Services Director at Metropolitan Economic Development Association (MEDA); and Chongneng Thao, Executive Director of the Minnesota Hmong Chamber of Commerce.

B. The Microenterprise Experience
Task Force member Charles Schaffer, Director of the Minnesota Small Business Assistance Office, identified the need and value of training and education to small businesses generally. Few of these businesses receive the legal services they need. Presumably, this is largely because of small budgets for this purpose but is also because these small businesses often do not understand the need for those services and thus go without, jeopardizing their chances for success. Only about 10% of respondents to a survey by the Office in 2000 used low or no cost legal services.

The Task Force learned that there are an estimated 3,000 Hispanic businesses in Minnesota. Within the Hispanic Chamber of Commerce there are at least 80 members with smaller businesses, tight budgets and limited access or no access to pro bono or reduced-fee legal assistance. The Hmong Chamber of Commerce has grown by 50 percent in the last year. There are more than 500 Hmong-named businesses (St. Paul Pioneer Press) with a growing population of 70-80,000 people. There were no statistics presented about the African immigrant community generally, but Task Force member Tom Lovett offered information on the significant Somali population in Minnesota. Many Somalis are well-educated, but difficulties with English language skills and minimal knowledge of American business practices are barriers to starting a business, as are cultural differences. For example, Islam is the primary religion of this community and Islamic law forbids the practice of investing or saving money to earn interest. In addition, many Somali women lack technical or job skills due to cultural prohibitions.

The Task Force identified several areas of need. The areas brought up most frequently were: formation, including choice of appropriate entity, (i.e., partnership, corporation, limited liability company (LLC) or sole proprietorship); liability, including general business insurance concerns; legal aspects of financing; governmental regulation of business; and all phases of human resources issues and compliance. Bankruptcy was also mentioned as an occasional need. It was also noted that whenever there is going to be more than one person with active ownership in the business, there should be a conflict resolution plan. While not a legal necessity, creating a conflict resolution plan forces “partners” to figure out and put on paper how they will work together and most critically, how they will make decisions when they don’t agree.

Additional needs identified as necessary to make direct legal assistance effective include pre-screening and completed business plans before bringing in a lawyer; educational materials written in English, Spanish, Somali, and other common languages explaining things such as types of entities (corporations, LLCs, partnerships, sole proprietorships), payment of federal and state taxes, tax withholding requirements and procedures, employee relationships and workplace rules, relations between landlords and tenants, and related matters. Both consulting assistance and access to education and training are important. Educational programs need to cover what legal services can do to help, why they are important, and how they save headaches and money. The Task Force also noted that consistent relationships with service providers and linkage to trustworthy and related resources such as accounting, business planning, marketing and technology are important. The consensus was that legal assistance, volunteer or paid, is more effective if integrated and/or at least coordinated with other business services.

C. Effectively Delivering Pro Bono Legal Services to Microenterprises

A number of organizations with community development missions have been formed for the purpose of assisting microenterprise business development in specific populations or geographic areas particularly in need of economic development. Some of these organizations,
which exist throughout Minnesota, are listed in Appendix 5. Of these, MEDA, Neighborhood Development Center, Women Venture, and Northeast Entrepreneur Fund, were represented on the Task Force. Other organizations providing management assistance services to microenterprises include a newly created on-line training program by the Hispanic Chamber, the Minnesota Small Business Assistance Office, The Milestone Group, Turnaround Management Association, and Accountability Minnesota. There are probably many others. Also, some websites used by small businesses have been used by microenterprises, including bizpathways.org, a service provided by Minnesota Rural Partners and amme-mn.org, the website for Alliance for Minnesota Microenterprise, the statewide microenterprise association.

A few of these organizations have begun to facilitate the delivery of pro bono legal services to microenterprises. In some cases, they have developed limited arrangements for pro bono services by local attorneys in greater Minnesota and with larger law firms in the Twin Cities. These organizations would no doubt benefit from a coordinated business law pro bono program to increase the pool of volunteers available to them. The Task Force believes that other microenterprise support organizations, who are not generally aware of the possibility of pro bono services, would also benefit if those services were made available. All of these organizations could help with education about and marketing of additional pro bono legal services.

The consensus of the Task Force was that, at least initially, pro bono legal services should be provided to eligible microenterprise clients recommended by community organizations, such as those described above, who are already providing broader management assistance services. This is, in part, because the potential number of small business clients that need these services and would benefit from them is so enormous that some way to limit the pool of potential clients is needed. It is also because the businesses with the best chance to succeed and to make good use of such services are those who are receiving other help with business plans and other assistance. Clients referred by these gatekeepers will have been screened and will be most appropriate for the volunteers.

Lawyer Availability

A. The Supply of Pro Bono Business Lawyers

The Task Force determined that there are a number of sources of volunteer lawyers within Minnesota that would be available to provide additional pro bono business/transactional legal services. In addition, there are a number of pro bono programs in place that currently provide or coordinate the delivery of business pro bono legal services as part of their efforts. The Task Force sought to determine what lawyers in Minnesota are already doing in business law pro bono work, and what additional resources are available.

There are approximately 24,000 lawyers licensed to practice law (although a number live and practice elsewhere, are not currently engaged in the practice of law or are retired) in Minnesota. Of these, approximately 15,400 in Minnesota are members of the MSBA. The supply could be broadly subdivided into several groups, overlapping in part:

- Law Firms
  - Large Twin Cities law firms
  - Smaller law firms and sole practitioners
• Corporate Counsel
• Law Schools
• Nonprofits, Community Organizations and Governmental Resources

B. Large Twin Cities Law Firms

Eleven Twin Cities law firms, with a total of approximately 1,580 attorneys in Minnesota, are currently participating in the law firm Challenge. (See Appendix 3 and http://www.probonoinst.org/challenge/). As described above, these firms have undertaken to commit 3% or 5% of their billable hours to pro bono legal services each year. As with Rule 6.1 of the Minnesota Rules of Professional Conduct, the Challenge requires that a majority of the pro bono time credited to the pro bono goal is directed toward low-income clients or organizations serving them. In the past, the majority of this work has been done in providing litigation-oriented legal services to low-income clients.

Providing pro bono legal services requires coordination and record-keeping. Generally, the larger law firms have assigned a person who acts as full time or part time pro bono coordinator. In several firms the coordinator is a paralegal or other non-lawyer. In others, the coordinator is a designated lawyer and/or pro bono committee. The coordinator assists the law firm in identifying opportunities, coordinating requests for pro bono assistance and identifying lawyers within the firm to provide the necessary services. The existence of a pro bono coordinator can also expand the pool of lawyers available to provide services within and beyond the law firm. For example, attorneys of some of these larger law firms who have moved to smaller law firms or corporate entities often continue to work with their former firms’ pro bono coordinators to perform pro bono services.

After discussion, the Task Force determined that if larger law firms had the help of a coordinating intermediary they would be able to provide additional business pro bono legal services in virtually all areas in which nonprofits and microenterprises expressed needs for pro bono services. Larger law firms that are not part of the Challenge and do not have well-established pro bono programs with in-house pro bono administrators especially would benefit from the help of such an intermediary.

C. Smaller Law Firms and Sole Practitioners

Lawyers in many smaller firms throughout Minnesota have very active pro bono practices. For these law firms and sole practitioners, while actual pro bono work is very rewarding, the administrative aspects are difficult and not as appealing. Many lawyers in small firms and solo practitioners work with local volunteer attorney programs that request their involvement. The lawyers tend to depend on administrative support, including malpractice insurance coverage, from those programs. These programs are largely run by local legal aid offices or are independent pro bono programs but in most cases do not refer transactional or business-related matters. Where clients are not coming through any existing formal organization, there is no statistical information about what pro bono work is being done, but there was a strong belief among the Task Force members that if an intermediary were formed to handle the administrative part of providing pro bono services (screening clients for example), substantial number of new volunteers could be recruited.
Getting additional willing lawyers in smaller firms or solo practitioners involved in a significant way will depend on referrals to them by an intermediary who is knowledgeable about the potential clients and the interested lawyers. Otherwise, participation will continue to be hit and miss with referrals coming largely through informal contacts in the community. It would also help lawyers in such firms to have coordination with tax advisers and other professionals. Such team efforts would, of course, be beneficial for both paying and pro bono clients.

D. Corporate Counsel

Of course, many lawyers in Minnesota practice separate from firms in for-profit businesses with separate legal departments as well as in businesses without separate legal departments. Corporate counsel participation would grow if pro bono were more institutionalized. Lack of malpractice insurance in many of the current business law-related programs provided by some community organizations significantly limits corporate counsel pro bono participation. Greater public recognition of what firms and other corporate counsel offices are doing might encourage more participation and build more peer group pressure.

A high percentage of the 300 Minnesota ACCA chapter members are in small (1-5 attorney) legal departments. Some large corporations have pro bono programs where there is a supportive General Counsel or CEO, and these entities tend to have significant participation. For example, volunteers from the 3M legal department have worked closely with Southern Minnesota Regional Legal Services (SMRLS) for at least 20 years handling cases for low-income individuals; SMRLS provides training and mentoring to 3M volunteers.

The Minnesota ACCA chapter has made initial efforts to coordinate pro bono legal services by its members. The Minnesota ACCA chapter is eager to do more to institutionalize pro bono within corporate law departments. Business-related opportunities are appealing since many corporate counsel lawyers are generalists. Employment issues, contract work including leases and intellectual property are part of their daily work and skills. Experiences in other parts of the country demonstrate that they would be eager volunteers. The Minnesota ACCA chapter could serve as a matchmaker by identifying those willing to do pro bono and matching them to a newly formed pro bono program with provider organizations and/or large firms in partnership-type pro bono programs.

E. Law Schools

Law students are an important part of the picture. Minnesota's four law schools have approximate enrollments as follows: William Mitchell College of Law, 1,015; University of Minnesota Law School, 700; Hamline University Law School, 550; and University of St. Thomas Law School, 225. Each of the four law schools runs one or more clinical programs. Part of the clinical role is to provide students with the experience of practicing law, including pro bono work as part of that experience. Clinical programs containing a pro bono element help to create a culture in which the responsibility to perform pro bono services is recognized and new lawyers will come to practice with a pro bono expectation. A small part of current Minnesota clinical offerings are business law-related, including the Multi-Profession Business Law Clinic at the University of Minnesota and the Tax Planning and Business Law Clinic at William Mitchell. These are very popular with students, an indication that additional opportunities for business law pro bono work would be welcomed.
The Minnesota Justice Foundation helps to coordinate pro bono opportunities with Minnesota’s law schools. In 2001-2002, 90 Minnesota organizations hosted law student volunteers. Students filled 642 volunteer opportunities at those agencies. These volunteers gave over 12,170 hours to 6,636 clients. Services consisted of the following categories: brief advice, particular projects, ongoing representation and education. The services can be broken out further, approximately as follows (note that one placement may offer multiple types of services): 45% brief advice, 45% particular project, 32% ongoing representation, 18% education. The Task Force believes that if more business-related opportunities were offered, more students, who are currently not doing pro bono, would volunteer.

F. Nonprofits, Community Organizations and Governmental Resources

The descriptions below cover a number of organizations which coordinate or are considering the delivery of pro bono legal services to their clients or constituents. This list is by no means exhaustive.

- Volunteer Lawyers Network

VLN generally matches volunteers with individual client needs. VLN does client screening and lawyer recruitment and matching. VLN has done limited matching of lawyers with nonprofits serving the low-income community. While VLN’s focus is on Hennepin County, it does manage some statewide programs, for example in collaboration with the MSBA Bankruptcy Section and the Federal District Court. VLN has indicated a willingness to consider helping with recruitment and matching for a new business law pro bono effort if additional resources were available to support these efforts.

- Turnaround Management Association (TMA)

TMA works in the turnaround industry, particularly with corporations undergoing stress. TMA has recently formed a pro bono project and is eager to work collaboratively with volunteer attorneys.

- Minnesota Council of Nonprofits

MCN has over 1,300 member nonprofits, receives hundreds of phone calls seeking legal advice, distributes written materials and is preparing a Legal Handbook for Nonprofits and uses a multimedia presentation for quarterly workshops on “How to Start a Successful Nonprofit.” MCN has indicated an interest in expanding its publication and training activities to help meet needs as additional pro bono services are made available. MCN might also be interested in evaluating ongoing needs and how they are being met.

- Legal Aid Society of Minneapolis

The Legal Aid Society of Minneapolis has a staff attorney who specializes in tax matters and often refers individuals with tax problems to Accountability Minnesota which provides tax preparation and accounting assistance to
individuals and small businesses with limited means by leveraging volunteer resources.

- **Management Assistance Program for Nonprofits**

  MAP works on legal matters with about 250 organizations each year. Startup and personnel are the biggest areas in which legal help is sought. Issues relating to charter schools and intellectual property are growing as areas of inquiry from MAP’s clients. At least half of MAP’s cases need immediate intervention, 25% are related to startups and 25% relate to preventive action. MAP provides clients with phone hotline and face-to-face services primarily in the Twin Cities. Some organizations in greater Minnesota use MAP’s hotline. MAP works primarily with volunteers from larger law firms that make some financial contribution as MAP partners and occasionally works with other volunteers. MAP has indicated a willingness to consider expanding services for a new business law pro bono effort if additional resources were available to support these efforts.

- **Metropolitan Economic Development Association, Women Venture, Neighborhood Development Corporation, Northeast Entrepreneur Fund and other similar microenterprise and small business development groups**

  These organizations currently utilize volunteer attorneys for their clients as part of a holistic set of services needed by microentrepreneurs. In the metro area the programs generally have arrangements with particular law firms (for example, Briggs and Morgan works with Women Venture) or individual lawyers who are personally known to program staff. In northeastern Minnesota the Northeast Entrepreneur Fund works with the Volunteer Attorney Program in Duluth. All such organizations have indicated that they could use additional volunteer attorneys to serve microenterprises with whom they work.

- **Minnesota Small Business Assistance Office**

  The Minnesota Small Business Assistance Office, a part of the Minnesota Department of Trade and Economic Development, serves as a point of first and continuing contact for individuals and firms with questions about the start-up, operation or expansion of a small businesses in Minnesota. The Office provides business related publications and technical assistance free-of-charge.

**Proposed Business Law Pro Bono Program**

A. **Structure**

To facilitate the increased provision of business law pro bono services, the Task Force determined that a pro bono program should be formed to be the intermediary to match volunteer lawyers with eligible clients who are not being served by existing programs. As described below, this should be done in a way to minimize duplication and overlap with existing services. For purposes of this report, this new program is called the Minnesota Business Law Volunteer Assistance Program ("BLV"), but a different name might be selected later when the program is established.
The mission would be to facilitate the increased provision of business law pro bono services by attorneys and other professionals to eligible nonprofit and microenterprise clients and to assist Minnesota microenterprise and nonprofit support programs and organizations. Depending on the determination of the governing or advisory board, it would need to be a 501(c)(3) organization or affiliated with an existing 501(c)(3) so that it can seek contributions that are tax deductible to donors. If affiliated with an existing organization, the program will need an identity and board separate from the larger organization, and it will need to be able to seek donations that are tax deductible to donors.

To answer concerns of possible funders, this would not be a "new program" duplicating existing services or drawing resources from existing programs. It would be, in large part, a coordinating entity for existing community programs in the nonprofit and microenterprise arenas to obtain and distribute pro bono legal services in greater quantities with greater efficiency. The actual recruiting and management of volunteers and tracking of cases would be done efficiently through contracting with an existing pro bono program. The goal is to recruit many more attorneys and other volunteer professionals and to make their services available principally through community organizations and programs that already work with the clients, including those organizations and programs which would be actively involved in the management of BLV. In other words, BLV is more of a new collaboration than a new initiative.

It is not the intention that BLV supplant any existing pro bono programs or community organizations or relationships. At least initially, all clients would come through identified community organizations ("Collaborators") which already work with their own clients. It is recognized that many of those Collaborators also work with clients that will not meet pro bono eligibility guidelines. BLV will provide assistance only for those clients who meet eligibility criteria described below. The Collaborators will, of course, continue to work with their clients who are not eligible for BLV pro bono legal services in the same way they now work with those clients, including using the pro bono legal services of willing lawyers and law firms. As stressed below, the eligibility standards developed by BLV are not intended to define what constitutes pro bono work.

Preferably, BLV would have little staff of its own but would instead contract for the majority of the described functions. The most likely contracting entity for recruiting and managing volunteer attorneys would be VLN, which is a separate, well-established pro bono program with professional staff. VLN has provided its services primarily in Hennepin County but has some statewide programs. VLN has not previously contracted to provide the services BLV would require, but it is otherwise the type of pro bono program that could provide volunteer recruitment and management services under the auspices of BLV. VLN has expressed, informally, a willingness to explore such an arrangement, but no detailed discussions have occurred.

The governing or advisory board of BLV will have approximately 20 members initially. This number may be reduced at a later time at the discretion of the governing or advisory board. Various stakeholders would be entitled to designate members. Half of the members would come from the Collaborators' side and half from the volunteer lawyer side; the original board would be appointed by the MSBA after consultation with community organizations which work with nonprofits and microenterprises. Thereafter, the board would be self-perpetuating with respect to the non-attorney members and with the MSBA nominating the attorney board members.
BLV would contract for, preferably, one full time professional pro bono coordinator (probably with the title of Executive Director). Ideally, that person would be knowledgeable about other pro bono programs, about the attorney/professional community, and about the nonprofit and microenterprise community. This coordinator would need to have administrative skills and be able to fundrais. The budget for such a program might be about $100,000/year including the contractual relationships described above, the Executive Director and the administrative support for the Executive Director.

Possible funding would come from the MSBA ($10,000 in seed money and also in-kind contributions), the MSBA Business Law Section and possibly other sections, grants to the Collaborators which would include some funding for a legal services component, grants from foundations interested in community development, and from the clients themselves through partial fees.

BLV would have two primary roles: a pro bono intermediary role, that is recruiting volunteers and matching volunteers with clients, and a coordination role.

In the intermediary role, BLV would oversee the recruitment and training of volunteers. It would screen clients, to the extent not already screened by Collaborators. It would also determine financial eligibility guidelines (based on Rule 6.1 guidelines), and determine community development goal guidelines (also based on Rule 6.1 guidelines). It would match volunteers with eligible microenterprise clients recommended by approved gatekeepers (Microenterprise Collaborators -- See Appendix 5 for possible initial list). It would match volunteers with eligible nonprofit clients recommended by approved gatekeepers (Nonprofit Collaborators -- See Appendix 6 for possible initial list). It would also provide community legal education programs for eligible clients and would help to educate the target client audiences as to whom to call.

In the coordination role, BLV would facilitate cooperation and coordination among Collaborators and assist the Collaborators generally with pro bono legal and other professional services in ways that help those Collaborators to achieve their respective missions. It would also receive calls from potential clients and Collaborators and direct callers to appropriate Collaborators and others. It would convene meetings of Collaborators related to pro bono issues and develop materials and forms for volunteers, clients and Collaborators.

While providing these services, BLV would encourage these clients where appropriate to retain counsel on a fee-paying basis with private counsel and other professionals. BLV might also consider developing partial fee representation programs with private counsel. It is expected that BLV would develop “market” allocation arrangements with MAP and others already providing pro bono services so as to enhance MAP and other existing providers.

The Task Force is also aware that many lawyers and law firms now provide some legal services on a free basis or on a reduced fee basis as part of their client development or marketing with the expectation that they will develop long term relationships with many of these clients and be able to provide more legal services as these clients grow in the size and sophistication. It would be a goal of BLV not to displace or interfere with these natural client relationships. Instead, BLV would provide services to those who are not likely to be served in that way. Clients once served by BLV may later be ready for lawyers who will provide those services on a partial fee or full fee basis.
The Task Force also heard testimony about the delivery of legal services to some minority communities, often by lawyers of those same communities. It would be a goal of BLV not to supplant those services either. One idea generated during Task Force meetings was, where appropriate, to pair a lawyer from the minority community who charges fees to clients with a larger law firm or corporate law office which would provide some additional services on a pro bono basis of the types not within the expertise of the minority community lawyer. The pro bono lawyer would in effect also be serving as a mentor to the community lawyer as to such matters.

B. Client Eligibility Standards

Pro bono services would be provided only to eligible clients. Services would be limited to clients who would not be able to pay for legal services and would not otherwise receive legal services. These financial eligibility standards would be developed by the governing board of BLV and would be reviewed and revised from time to time. For example, with respect to a microenterprise, a standard might be that the business would only be an eligible client if the individual owners would themselves be eligible for pro bono legal services using a criterion of 187.5% of poverty guidelines. In addition, these guidelines might be based on enterprise revenue and available revenue or other financial criteria. With respect to a nonprofit, financial eligibility might be based on the size of its budget or the portion of its funding which is available for general administrative purposes.

The governing board of BLV would establish eligibility standards based on other criteria, such as mission. Here the governing board would be guided by Rule 6.1 of the Minnesota Rules of Professional Conduct. For example, Rule 6.1(a) establishes a preference for organizations that serve persons of limited means.

Eligibility standards would also take into consideration the availability of other services in the community. An overall goal of BLV would be to support and strengthen other programs which are available in the community. For example, MAP currently provides a variety of management and professional services, including pro bono legal services, to nonprofits. MAP charges an administrative fee based on a sliding scale for its services. It is anticipated that eligibility standards for BLV would be set so that nonprofits currently served by MAP would continue to be served by MAP. For example, the initial criteria for BLV might be that “eligible clients” would not include startups and would be limited to nonprofits with a budget under a specific dollar level or those whose services were primarily for the benefit of persons of limited means.

Finally, the establishment of restrictive eligibility guidelines for BLV is not meant to provide a standard for “what is pro bono” that will apply to any other program. In all circumstances, individual lawyers, law firms and corporate legal staffs are free to set their own standards, and lawyers will be encouraged to volunteer their services broadly based on their own interpretation of client needs and their own interests in assisting such clients. Other community organizations, such as MAP, which already facilitate pro bono services, will continue to provide services as they have in the past and will be encouraged to expand their programs. These programs will continue to set their own eligibility standards based on their needs and those of their clients, and the willingness of volunteers to provide services to those clients.

One of the goals of BLV would be to help guide microenterprise clients particularly toward financial self-sufficiency. It is anticipated that there will be educational programs to help
teach both nonprofit and microenterprise clients the value of legal services and how to retain and efficiently use legal services. In these ways, one effect of this program, over the long run, will be to develop some self-sufficient clients who become ineligible for BLV and will hire lawyers on a fee-paying basis in the future.

The Task Force also anticipates that other guidelines would be developed to help BLV establish priorities as to the types of clients to be served and the types of services to be provided. At least initially, legal services would only be provided to microentrepreneurs through established microenterprise assistance programs described elsewhere in this report. These clients would have the benefit of educational programs, business mentors and other services provided through these other programs. The pro bono services would thus be provided to clients most likely to actually succeed in the future and make a positive difference in their communities. Also, services might be provided only to nonprofits or microenterprises serving certain segments of the community including, particularly, nonprofits that serve the needs of low-income clients.

The Task Force raised, but did not directly address an ancillary issue, which is the role that private and family legal issues play in provision of business law services. Especially in emerging immigrant populations, these issues (immigration, naturalization, divorce, domestic abuse, housing, taxes, etc.) arise when a business client is looking for legal advice. These issues also come up when nonprofits ask for help with personal legal matters affecting their clients. The Task Force was clear that most of these legal issues would not be addressed by BLV nor would they be referred to lawyers directly through BLV. The Task Force does not see the need for integrating legal assistance with resources for supporting both business and family or personal issues. And some issues like immigration come up both as a business concern (employees) and as a personal concern. The consensus was that non-business law legal matters would need to be referred to the existing core civil legal services providers including pro bono programs and bar-sponsored attorney referral services.

C. Services of Other Professions

While this report is addressed to the MSBA and primarily concerns the provision of legal services, members of other professions served on the Task Force. As noted earlier, the Minnesota Chapter of the Turnaround Management Association, a professional group consisting of business turnaround professionals, bankers, accountants, lawyers and others, has recently formed a pro bono program through which the professional skills of its members are being made available to eligible clients of the types described in this report. Accountability Minnesota makes the skills of tax and accounting professionals available to low-income clients for tax preparation, education and other tax-related matters. The goal is to equip individuals and entrepreneurs with the tools to manage their financial records and enable them to make sound personal and business decisions.

It is clear that a “holistic” approach of providing a variety of needed professional services will best serve the clients. The Task Force recommends that BLV develop strategies to facilitate the provision of these other professional services where appropriate.

D. Initial Funding and Staffing
The Task Force discussions touched upon but did not thoroughly address the possible sources of funding for BLV. It is understood that the program cannot be directly supported by the general revenues of the MSBA.

In the long term, the Task Force anticipates that revenues would come from a variety of sources including but not limited to contributions from (a) the sources of volunteers such as law firms and corporations with legal staff; (b) the organizations whose programs benefit from the increased availability of volunteers; and (c) community organizations that receive grants from governmental organizations and foundations may be able to include in their grant applications request for funds for legal services through the business law pro bono programs. Finally, it is anticipated that clients who receive services may be charged a modest fee (perhaps $50-$100 at the start) to partially pay for the administrative costs. As noted above, it is important to establish client eligibility standards so that BLV is not in competition with existing providers.

In the short term, the Task Force believes that if $10-$15,000 can be raised immediately, the funds could be used to retain a fund raising consultant and, perhaps, to begin to provide services to eligible clients on a limited basis so that BLV can begin to develop its working procedures.

Throughout this process, the Task Force has received the very able assistance of Nancy Kleeman, the MSBA Access to Justice Director and other MSBA staff assistance. The Task Force requests that in the transition period of the next year it continue to receive some assistance from the 2003-04 part-time Pro Bono Development Director to help develop this new program. In addition, the Task Force requests that the MSBA provide $10,000 of the seed money.

Respectfully submitted,

James L. Baillie, Co-Chair  
L. Joseph Genereux, Co-Chair
APPENDIX 1

MSBA Business Law Pro Bono Task Force

James L. Baillie, Frederikson & Byron, Co-Chair
L. Joseph Genereux, Dorsey & Whitney, Co-Chair

Mary Alton, Multi-Profession Business Law Clinic, University of Minnesota Law School
Kate Barr, Community Loan Technologies
Jodie Boderman, Faegre & Benson
Eve R. Borenstein, Tax Exempt Law Office of Eve R. Borenstein
Karen Canon, Volunteer Lawyers Network
Bonnie Esposito, AccountAbility Minnesota
Sharon H. Fischlowitz, Minnesota Justice Foundation
Roy S. Ginsburg, Merrill Corporation
Philip M. Goldman, Fredrikson & Byron
Candee Goodman, Lindquist & Vennum
Yvonne Cheung Ho, MEDA
Dana Linn Hofmann-Geye, Minnesota Credit Union Network
Charles E. Jones, Meagher & Geer
Daniel S. Kleinberger, William Mitchell College of Law
Richard G. Lareau, Oppenheimer Wolff & Donnelly
Thomas G. Lovett IV, Lindquist & Vennum
Mary Mathews, Northeast Entrepreneur Fund
Ann Mays, WomenVenture
Shaun P. C. McElhatton, Leonard Street and Deinard
Neil M. Meyer, Meyer & Njus
Cynthia Moyer, Volunteer Lawyers Network
Iric Nathanson, Minneapolis Consortium of Community Developers
Mara O’Neill, Neighborhood Development Center, Inc.
Charles S. Ravine, MAP For Nonprofits
Sondra Reis, Minnesota Council of Nonprofits
Galen Robinson, Mid-Minnesota Legal Assistance
Denise D. Roy, William Mitchell College of Law
Charles Schaffer, Minnesota Small Business Assistance Office
Mary Frances Skala, Fryberger Buchanan Smith & Frederick
Carol B. Swanson, Hamline University School of Law
Sandra Turner, Turnaround Management Association
Pam Wandzel, Fredrikson & Byron
Dale E. White, Small Business Consultant
Patricia Wilder, Center For Nonprofit Management
Andrew Willaert Jr., Gislason & Hunter

Staff: Nancy Kleeman, MSBA Access to Justice Director
       Janny Grice, MSBA Online Legal Services Manager
APPENDIX 2

Minnesota Rules of Professional Conduct

RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
   (1) persons of limited means or
   (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:
   (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect the civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;
   (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
   (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment - 1985

The ABA House of Delegates has formally acknowledged “the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services” without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through disciplinary process.

The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not
enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

Comment - 1995

Every practicing lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. All practicing lawyers should aspire to provide a minimum of 50 hours of pro bono services annually. It is recognized that in some years a lawyer may render greater or fewer than 50 hours but during the course of a legal career, each lawyer should aspire to render on average of 50 hours of service per year. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually be furnished to the disadvantaged without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means and otherwise contributing legal talents. The variety of these activities should facilitate participation by government attorneys, even when restrictions exist on their engaging in the outside practice of law.

Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless cannot afford counsel, legal services can be rendered to individuals or to organizations such as homeless shelters, battered women’s centers and food pantries that serve those of limited means. The term “governmental organizations” includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remain unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory, or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono attorney to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.
Paragraph (b)(2) covers instances in which attorneys agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible. The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.
APPENDIX 3

Minnesota Law Firm Pro Bono Challenge and Member Firms

Briggs & Morgan, P.A.
Dorsey & Whitney LLP
Faegre & Benson LLP
Fredrikson & Byron, P.A.
Gray, Plant, Mooty, Mooty & Bennett, P.A.
Leonard, Street and Deinard, Professional Association
Lindquist & Venum P.L.L.P.
Oppenheimer Wolff & Donnelly LLP
Rider, Bennett, Egan & Arundel, LLP
Robins, Kaplan, Miller & Ciresi L.L.P.
Winthrop & Weinstine, a Professional Association
APPENDIX 4

NONPROFITS LEGAL NEEDS SURVEY: SUMMARY OF RESPONSES

On February 3, 2003, about 850 Minnesota nonprofit organizations were invited via email to participate in an online survey to assess their sector’s need for pro bono legal services and advice. A total of 166 executive directors completed the survey. Their responses are summarized below.

To gather additional information about the individual responding organizations, they were asked about the size, location, and activity area of their organizations. These responses are summarized in the following three charts.
Nonprofit boards

Exactly half of the survey participants (50%) have at least one attorney on their organization’s board of directors. The total number of attorneys varies from one attorney to more than 20 attorneys. However, most organizations have just one or two attorneys on their board.

For organizations with an attorney on their board of directors, how many attorneys are on the board?

Whether or not an organization has an attorney on its board varies by several factors including the size of its board and its budget size. Organizations with larger boards and/or larger budgets are more likely to have an attorney as one or more of those members. Thus, smaller organizations may be more in need of pro bono legal advice because they are not receiving from their board members.

Do you have at least one attorney on your organization’s board of directors?

<table>
<thead>
<tr>
<th>Board Size</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 5 members</td>
<td>20%</td>
<td>80%</td>
</tr>
<tr>
<td>5 to 8 members</td>
<td>31%</td>
<td>69%</td>
</tr>
<tr>
<td>Number of Members</td>
<td>Budget Size</td>
<td>Yes</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------</td>
<td>-----</td>
</tr>
<tr>
<td>9 to 15 members</td>
<td>$0 to $99,999</td>
<td>49%</td>
</tr>
<tr>
<td>15 to 21 members</td>
<td>$100,000 to $199,999</td>
<td>55%</td>
</tr>
<tr>
<td>More than 21 members</td>
<td>$200,000 to $499,999</td>
<td>75%</td>
</tr>
</tbody>
</table>

**A. Budget for legal advice and assistance**

Just over 40% of the organizations in this survey had a budget line item for expenses related to legal advice and assistance.

For those that do have a legal advice and services line item, the budget allocated to legal advice and services varied and ranged from 0.001% of the organization's total annual operating budget to 50%. The majority of the respondents with a legal advice and services line item (49 of 67 organizations) allocated 1% or less of their annual operating budget toward legal advice and services.

**B. Previous use of pro bono services**

Most of the responding organizations (76%) had received pro bono assistance previously. In 2002, the numbers of hours provided to their organizations varied but the most common response was that they had received no pro bono assistance in the past year.

*How many hours of pro bono legal counsel were provided to your organization last year (in 2002)?*
C. Interest in proposed pro bono services

Participants were provided with a list of four proposed services (full legal representation, one-hour in-person consultations, training to avoid legal problems, and telephone consultations). They were asked to indicate which types of services their organization would use. “Telephone consultations” was the most frequent response with 89% of the respondents indicating their organizations would use that type of service. The responses to this question are summarized in the following chart.
Respondents provided many additional types of services that would be helpful to receive. These include:

- Document review and revision: bylaws
- Policy development and review: employee handbooks
- Contract review: vendors
- Assistance for clients on legal issues they are facing: immigration issues
- Written legal opinions
- Assistance with issues surrounding mergers
- Training and ongoing updates on changes in the law: employment law
- Training on nonprofit-specific rules and regulations for attorney board members
- Email site for frequently encountered issues and steps to take for resolution.
- Lobbying and legislative research, litigation support, legal research
- Information and related-forms: in an easy to use, searchable database.

D. Participant comments about their need for and interest in this service

Many of the participants added comments which spoke to their need for and interest in pro bono legal services. In addition, several added feedback about their past experience with pro bono services and with attorneys who have served on their board of directors.

These comments are appended below and grouped by common themes.

1. Interest in and need for service

   Ability to get brief consultation with an attorney knowledgeable about our nonprofit business would be very helpful to most nonprofits.

   Too many times we ignore an issue or are reluctant to confront it because of the cost of legal representation.
There is no doubt whatsoever that nonprofit organizations need legal advice on a large variety of matters. We are very grateful to have been blessed with persons who have the knowledge and the dedication to help us with these over the years.

Knowing when a problem is legal in character is a big deal. Attorneys, I’ve found, are more than happy to help you sort through management issues. A big service by MCN would be to help organizations know when to call, when not to call. Kind of like Kenny Rogers...

I believe any program that works to offer free pro bono legal advice is worthwhile. If the program existed, more organizations would use the service.

I believe that pro bono legal services can be very important to nonprofit organizations; sometimes we aren’t even sure if an issue needs legal counsel. Some pro bono time would help make that determination.

As a small non-profit, we would not use pro-bono services a great deal, but having them available would be very beneficial to us.

Would love to have access to legal services if and when we need them. It is something we don’t think about much, but could be caught off-guard.

It would be great to be able to call an attorney to double check that we are following proper procedure sometimes; or just to answer a question.

I think pro bono legal services would be a great asset to many of us. If for no other reason, it would provide validation that we are doing the right things (or not). I also think that it would be nice to have someone to refer others to regarding conservatorship, guardianship and especially how to handle trusts for people with developmental disabilities.

Yes, pro bono legal assistance would be helpful to make it affordable.

Even as a large nonprofit, we do not have the resources to retain an attorney or even to regularly consult one regarding issues we face. This is not an area that funders are interested in funding.

With the economy as it is, we, like so many others, will not be able to afford the costs if legal consultation is needed.

The need is probably great; I am sure there are many more volunteer-oriented organizations like ours, operating on a shoestring. Working with volunteers throughout the community, there are ample opportunities for conflict or potential problems.

Pro bono assistance is invaluable to non-profits, which have tight budgets and few resources to put toward the cost of legal advice and legal representation. Yet, that advice and representation are vitally needed to help keep non-profits healthy.

There are two kinds of legal services for which it is good to have legal counsel. One is the non-urgent reviewing kind and the other is the very urgent immediate kind. The latter may not come up often but when it does it is immediate and very necessary to have good legal services close by that you can call on. For the non-urgent kind it would be great to have low cost or free legal advice to look at organization documents or contracts. If the nonprofit owns property, there is another set of legal challenges.

In the next year we may need access to an attorney to revise personnel policies, by-laws and possibly articles of incorporation.

Thanks for asking. This is a great need.

Thank you for doing this survey. We work with many emerging nonprofits and this issue is a key need for them, and for us. Our organization was formed with the help of wonderful pro bono legal services, and when the organization needed to change parts of its mission and service structure we also had the benefit of pro bono legal attention. It was invaluable. I think more workshops on various topics would be quite helpful and welcome to all the nonprofits with which we work.

We applaud your efforts to gather information in this regard. When I started working in the field of crime victim services fourteen years ago, on many levels, things seemed a bit easier. As we have grown as an agency we have new and different staff needs (as well as staff expectations) -- the type of employee we get is different. We also have purchased a building and have taken other steps that create areas where legal counsel may be necessary. We’d love to work with you in this regard.

desperately needed!

I think this would be a great service. Many nonprofits do not have the money to hire attorneys. Also, what legal know-how an agency needs might not reside in one attorney.
There is tremendous need for easy access to pro bono legal services. I certainly hope this survey leads to the provision of this service!

Great idea! There is a definite need. We presented on concern to an attorney recently and it became very expensive, especially considering the fact that we did not have a specific budget item to cover this cost. Funds for other activities/services had to be diverted.

It would be very helpful to us if there were an attorney we could call when we have a question.

While we have two local attorneys we call on for legal advice, the availability of pro bono legal assistance specific to nonprofits would be great.

Organizations the size of ours have the same legal concerns, responsibilities as larger non profits but quite often, when we are trying to apply as much of our revenue to programs and services, simply can't justify the cost of paying an attorney - pro bono services that we could tap into when needed would be terrific.

We have had the services (pro bono) of a member's spouse who is a lawyer. That may not always be an option so I would welcome the availability of this service.

Having access to affordable legal services would be a very cost effective prevention program for nonprofits. The cost/risks of undoing poor business transactions or acting in good faith are very high. Having legal advice to guide organizations through murky waters would save nonprofits time and money!

We think it would be wonderful to connect with an attorney through you, especially if it could be pro-bono. Thank you for your efforts!

Minnesota nonprofits are being asked to provide more services with fewer resources and to dedicate our resources to programs, not administrative expenses. At the same time, they have a responsibility to protect their organizations and programs from unnecessary risk.

The biggest issue faced by small to medium sized nonprofits is when someone (i.e. a former employee) files a suit such as wrongful termination or discrimination or violation of an implied contract and the agency is forced to defend itself. This type of action can cost tens of thousands of dollars. Agencies cannot budget for this and it is very difficult to get this level of commitment on a pro bono basis.

I am aware that some states have programs that develop rosters of attorneys willing to provide pro bono legal services for nonprofits. Outside of MAP for Nonprofits, and some service available through Springboard for the Arts, I'm not aware of anything in Minnesota. This would be a wonderful and greatly needed service, particularly in view of nonprofits' shrinking budgets.

It has been extremely important to us that we have received pro bono legal assistance. There is no way that we could have paid for the services we received without putting the organization in serious financial difficulty.

If legal services were available, we would certainly use them. We avoid many environmental issues because we don't know how to respond to them. While advocacy isn't a major part of our organization, knowing what our (legal) options are with respect to issues that impact our resources would be quite valuable. It could, in fact, open a new program area for us. There are several proposed projects in our area that could have devastating environmental consequences - we don't have the capacity at this point to challenge them legally.

This is a huge need for our agency. It is one of the few areas that I feel are lurking out there that we don't have any way to address. I worry partly because when you need legal assistance it is often in a crisis, making it the worst time to start educating yourself about the process. My perception is that paid services are out of our realm of affordability, yet pro bono is hard to navigate, and the one time we were able to use it is was a very slow process.

Pro-bono legal services are critical to the nonprofit sector, particularly legal advocacy support, but also assistance with state and federal reporting requirements.

It is challenging for nonprofits with small budgets to keep current with the many legal demands and requirements. For example, most of us simply can't afford staff to keep current with the complexities of human resources. We rely on board members to share many of their expertise, but this sometimes is not always possible.

The spirit of cooperation between nonprofits and other organizations or agencies is being severely impeded by funding cuts in every sector. The need for legal advice and a lack of funds to seek them out leaves many small nonprofits in limbo.
There is a real need for access to attorney services especially in areas of client/data privacy, court proceedings - rules and responsibilities, family law issues. Having someone to talk to about these issues is really important. The cost, however, is a real issue for smaller organizations like mine.

It is important to obtain legal counsel that has knowledge of your profession and your organization. Legal counsel that has access to attorneys that deal with specific issues: estates/wills; employment law; copyright; civil; etc. is most beneficial. A firm that has representation in these areas is ideal.

A. Past experience with pro bono services or attorney board members

In our search for additional board members last fall, we encountered the opportunity to obtain legal counsel. The attorney explained that he could do more for us (and his firm) if he was not a voting member of the board, but worked as legal counsel instead (pro bono). He is helping with contracts, by-laws and all kinds of issues. It was a great solution!

We have not had any need for legal services - but it is foolish to think that we would never need help. With our small budget, pro bono services would be essential. Our current board member who is an attorney will end his term this year, and is not eligible for another term. Finding another attorney to serve on the board could be very difficult.

We are fortunate to have a local attorney (not our Board member) who we consider our corporate attorney. He very seldom charges us for services and I am able to call him when I need to do so. For a written opinion he will charge, but very reasonably. If we lose his services, then we would definitely need more pro bono service.

It's a great idea for orgs who don't have an attorney on board. Our attorney is a new board member in the last 10 months. Before that time, we didn't have an attorney on the board.

Access to reliable pro bono services is critical, even if we turn to paid services for major needs. Our one experience with pro bono services was mixed. The lawyer, whom I located through a personal network, provided some excellent training for our board. But when I called on her to seek follow-up assistance, she never returned my calls. I just heard last week from another organization with a similar experience. Attorneys must be expected to show the courtesy of returning calls, even if they are pro bono or unavailable for further work.

In our experience, finding lawyers willing to do pro bono work is quite easy. We've had several offers, but fortunately we have been supported by Dorsey & Whitney. My feeling is that nonprofits probably just need to ask for the help. Many attorneys are seeking opportunities to help their communities in this way.

We have appreciated the support of the Dorsey Firm's pro-bono programming for years.

We don't use our attorney Board member for specific legal consultations but he has advised us when we should seek legal advice. I think it's very important that an agency have a personal, ongoing relationship with an attorney, so that the attorney knows the agency. Otherwise, you have to "start from scratch" each time an issue comes up.

We have been fortunate to have a 14-year relationship with Dorsey & Whitney providing pro bono employment law consultation and assistance. Two attorneys have worked with us during that time and were indispensable in responding to problems years ago and in helping us avoid problems.

If we did not have an attorney on the board that could provide us with he services listed above, we would have difficulty covering the costs of our legal needs.

My organization connected with our pro bono attorneys through a referral from another attorney we know. It basically came down to who we knew and our ability to be resourceful and assertive. For those organizations with out the "know-how" or personal contacts a service that is widely publicized and available to all would be a valuable resource.

We recently changed insurance brokers and have access to attorneys without additional charge to ask basic questions regarding workforce / labor law issues. This does not replace our legal counsel, however, we definitely benefit from this service - our HR staff asks questions that we might otherwise hesitate on if we were paying additional fees for every minute used. While we do not have an attorney on our board now, we have had for the greater part of the organization's life. The attorney that was on our board continues to do considerable pro bono work for us. When our needs are outside his area of practice, he refers us to someone else in the firm and often writes that person's bill down - (obviously he is a senior partner in the firm). We have a long established relationship (i.e., 16 years) with a labor attorney who I always consult in the event of termination of employment and other workforce matters - he has defended us on a couple of occasions. He also does the legal review of our personnel policies, so he knows how we practice. While his hourly rate is now pretty high, we save considerable time and expense because he knows us well - knows our business practices and policies - we would be spending more if we had to bring an attorney up to speed each time we needed counsel. The mutual trust we have is extremely helpful. Balance in all things, though. Some attorneys will use "pull-marketing" techniques to convince you that you need a legal service that perhaps you don't - I find the scare tactics of some firms to be offensive. I think having an attorney on the
board is good practice. In budgeting, we include legal fees with other professional fees - this gives us some flexibility in the event that we have unexpected legal fees - so the budget answer above is somewhat misleading - in 2002, for example, we had higher legal costs than usual because we had to initiate litigation.

B. Types of legal issues respondents are facing

Employment law seems to be a constant thorn in our side. It is particularly acute in the entry-level positions (work ethic versus job needs).

On a housing development project, non-profit developers are usually in need of legal advice for real estate matters, NIMBY/civil rights matters (usually related to siting); zoning issues, etc. Our organization often has lawyers on retainer which we "loan" to projects for up to 10 hours of work and then if the partnership is needed ongoing, the lawyer is paid by the developer/organization so that their costs can be reimbursed when the project is funded.

My organizations primary client is a child along with a large number of volunteers who provide services to that child(ren). Our primary concern for 2004 centers around doing background checks on our volunteers. Including who to contract with, how extensive should the checks be, and how will we fund the cost of doing the checks. My concern is also, once I start doing the checks what is my (organizations) liability should we miss something in the process and a child is hurt.

Our main issues tend to around employment law. It is difficult to pay legal costs and pro bono assistance is hard to find when it may end up in litigation. D and O insurance covers large cases but cannot be over used or the companies will drop your coverage. Real estate purchases have been the other major legal expense. We have been able to obtain a discount because of our nonprofit status.

E. Suggestions

Some of this could be addressed in training opportunities, especially for small nonprofits.

As a larger non-profit we have consultative relationships with different attorneys for different issue areas plus having attorneys on the Board. For smaller agencies I would think that HR consultation would be used the most and service liability/malpractice training is always useful.

Employment law and contract law are the two areas that I see needing vastly more attention among the non-profits.

A trusting relationship with the attorney is essential. The individual attorney should have a strong connection based on his or her own interest in the organization's mission; sometimes that makes the difference in really thinking through the advice and in the organization's confidence in the advice given.

I feel the best person to represent an organization's legal issues, other than training, is an attorney who is familiar with and has had experience working with the organization. This would mean attorney living and working in the area of the organization.

The survey you are offering is a good way to judge the needs of nonprofits. If certain areas of concern are identified by nonprofits frequently it would beneficial to have training to avoid those problems. If there were also a list of attorneys for outstate Minnesota that could be accessed that would be helpful. It would be beneficial to know if those attorneys are familiar with nonprofits.

Additional information

We get advice from a contracted HR service, which helps greatly with employee issues and HR processes. This is instead of legal advice because we do not have on going support.

We receive all of our legal services pro bono from a myriad of sources.

I'm not sure our law firm has gotten the appropriate amount of recognition from the community or us for the help they have provided us.

I strongly suggest that you talk with MAP before you folks start tripping over each other. We paid a one-time fee of 350 dollars and MAP secured for us an attorney who probably can bill that for an hour. He recommended to us how to negotiate with our landlord, read and edited successive lease drafts (very lengthy and complex). I imagine this attorney from
Oppenheimer put in 20 or more hours, was always available for our calls and helped us get a lease on terms extraordinarily favorable to us. It was worth every penny to get the quality of service and representation we received.

For serious issues, I would feel more comfortable using a paid attorney to insure I have the person's full attention and commitment.
APPENDIX 5

Minnesota Microenterprise Development Organizations

American Institute of Small Business, Minneapolis
Anoka County Economic Development Partnership, Coon Rapids
Arrowhead Community Economic Assistance Corporation, Mountain Iron
Central Minnesota Initiative Fund, Little Falls
City of Kenyon
Community Action of Minneapolis
Lincoln County Enterprise Development Corporation, Ivanhoe
Lyon County Enterprise Development Corporation, Marshall
Metropolitan Economic Development Association (MEDA), Minneapolis
Microenterprise Grant Program, St. Paul
Microenterprise Opportunities & Resources, Mountain Iron
Midwest Minnesota CDC, Detroit Lakes
Minneapolis Consortium of Community Developers
Minnesota Women’s Business Center, A Division of the People Connection, Inc., Fosston
Neighborhood Development Center (NDC), St. Paul
Northeast Entrepreneur Fund, Virginia
North Star Community Development Corporation, Duluth
Northwest Minnesota Foundation, Bemidji
Phillip’s Community Development Corporation, Minneapolis
Project Soar of Northeastern Minnesota, Duluth
Rural Enterprise Loan Grantee Program, Little Falls
Seward Redesign, Inc., Minneapolis
Southeastern Minnesota Microenterprise Fund, Minneapolis
Southern Minnesota Initiative Foundation, Owatonna
Southeastern Minnesota Development Corporation, Rushford
Southwest Minnesota Foundation, Hutchinson
Southwest Regional Development Commission, Slayton
Tri-County Community Action Programs, Little Falls
West Bank Community Development Corporation, Minneapolis
Whittier Community Development Corporation, Minneapolis
WomenVenture, St. Paul
Works in Progress, Sauk Rapids
APPENDIX 6

Nonprofit Allies

Charities Review Council of Minnesota
Wilder Center for Communities
The Otto Bremer Foundation
Community Loan Technologies
Headwaters Fund
Twin Cities Local Initiative Support Corporation
MAP for Nonprofits
Minnesota Council on Foundations
Minnesota Council of Nonprofits
Springboard for the Arts
Office of the Attorney General, Charities Division
Center for Nonprofit Management, St. Thomas University
The Saint Paul Foundation
APPENDIX 7

Selected Background Reading on Business Law Pro Bono

Fulfilling the Promise of Business Law Pro Bono

Business Law Today September/October 2002
http://www.abanet.org/buslaw/blt/2002-09-10/

The ABC Manual: Starting and Operating a Business Law Pro Bono Project
http://www.abanet.org/buslaw/probono/abc.pdf
APPENDIX 8

Some Useful Business Law Pro Bono Links

A Business Commitment (ABA Business Law Section)  http://www.abanet.org/buslaw/probono/home.html

Community Loan Technologies  http://www.communityloantech.org/

CorporateProBono.org  http://www.cpbo.org/

Minneapolis Consortium of Community Developers  http://www.cando.org/

Management Assistance Project for Nonprofits  http://www.mapfornonprofits.org/

Minnesota CDC Associations  http://www.ncced.org/associations/Minnesota.html

Minnesota Council of Nonprofits  http://www.mncn.org

Minnesota Justice Foundation  http://www.mnjustice.org

Minnesota Small Business Assistance Office  http://www.dted.state.mn.us

Minnesota Secretary of State Business Services  http://www.sos.state.mn.us/business/index.html

Multi-Proffession Business Law Clinic at University of Minnesota Law School  http://www.law.umn.edu

Northeast Entrepreneur Fund  http://www.neefund.org/


ProJusticeMN  http://www.projusticemn.org

St Thomas University Center for Nonprofit Management  http://www.gsb.stthomas.edu/nonprofit/

Tax Planning Clinic (serving nonprofits) and Business Law Clinic at William Mitchell College of Law  http://www.wmitchell.edu

Turnaround Management Association  http://www.turnaround.org/


Women Venture  http://www.womenventure.org/