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Peter Ashmore

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Pro Bono Service in the Current Financial Crisis[1]

Peter Ashmore

MR. ASHMORE: Thank you. Some of what you heard may not apply, although most of it does. I've been at CVLS for fifteen years, right after graduation so what I know best is pro bono and helping volunteers to do pro bono and that's what I'm here to talk to you about today.

I am with Chicago Volunteer Legal Services. Just to tell you a little bit about CVLS, it was founded in 1964 by a few attorneys who spent time in municipal court rooms witnessing time and after time pro se defendants really, maybe getting the short end of the stick. They got together, founded CVLS and here. forty-five years, later we still stand as the oldest provider of pro bono in the nation and probably the largest, with 2,500 volunteers currently.

We're privately funded which allows us to take some of the cases that other legal services in Chicago and Illinois cannot take. I'll tell you a little lit about that later. As my introductory comments pointed out, I maybe qualify as a Jack of All Trades. I do a little divorce, a little guardianship, and a little bankruptcy which qualifies me as the expert at CVLS. That's why I'm here to talk to you guys. And I know that there are some collection attorneys in the audience also, maybe this would be a good time.

Are there any students here today? Great. Any retired attorneys? I'm making no assumptions. Are there any retired attorneys here? And then I'm assuming that the rest of you are bankruptcy or consumer collection practitioners. Is that generally the case?

AUDIENCE: Commercial.

MR. ASHMORE: Fantastic. Thankfully I'm not here to speak to you about bankruptcy or consumer litigation or any of those areas of law because, like I said, I'm basically a Jack of All Trades. But what I can talk to you about and do know is doing pro bono and how CVLS in particular can help you do pro bono. And what I'm also not here to talk to you about is mandatory pro bono.

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1. This is an edited version of the transcript from the lunch lecture at the DEPAUL BUSINESS AND COMMERCIAL LAW JOURNAL SYMPOSIUM, Into the Sunset: Bankruptcy as Scriptwriter of the Dénouement of Financial Distress, *held on* April 16, 2009.

As we all know here in Illinois anyway, there's mandatory reporting of pro bono, but thankfully not mandatory pro bono. Anyone here from out of state? Great. Wow. So take this with a grain of salt, I'm dealing with working with an organization in Chicago, we represent people here in Chicago, but you should know that there are sister organizations in other states, other jurisdictions, ABAnet.org is a good place to start if you don't want to go to your local bar to view lists of legal services organizations in your own jurisdiction.

So that being said, bear with me. I'm going to talk to you a little bit about how CVLS works here in Chicago and Illinois and if you have questions or perhaps want to talk about how to get an organization like CVLS started in your own jurisdiction, I'm happy to talk to you. Our website is CVLS.org. My contact is information is there. Instead of handing out a bunch of paper, I thought that that would maybe be a better way to get my contact information to you, CVLS.org and I'll tell you that again later. And if I'm going too fast, throw a spit wad at me and I'll try to slow down.

First of all, I just wanted to tell you about the need for pro bono and I think this exists no matter what your jurisdiction is, but I wanted to relate to you the results of a recent legal needs study. It's a study of low income families in Illinois that was published four years ago which basically confirmed the findings of the 1989 study which indicated that 80 percent of the legal needs of Illinois' poor were unmet. The numbers are astonishing; almost 140,000 households and over 474,000 matters were heard by pro bono attorneys and legal aid attorneys on—in the areas of debt collection and consumer issues alone.

The study found that one full-time legal aid lawyer existed in Illinois for every 4,752 matters. Pro bono attorneys in those years that were studied handled in excess of 11,500 cases. So as you can see, pro bono attorneys are necessary for my organization's existence and necessary to deliver the legal services to poor not only in Illinois, but in other jurisdictions. We cannot rely solely on legal aid attorneys, staff attorneys that represent these individuals. Those are the 2003 numbers that I just mentioned. Every year since then the numbers have risen. This past year alone, CVLS—and keep in mind we're only one of many very fine legal services organizations—CVLS alone, with its 2,500 volunteers, helped 17,568 individuals which is a huge number, but it barely makes a dent in the overall need.

Abe asked me to kind of report the bankruptcy numbers for those of you that are interested and it is kind of what we all expected I would think, particularly after the changes in 2005. In 1998 going back a ways, we had at CVLS 319 bankruptcy cases. Through 2005

the average was about 240 and then we began to see a dip, in 2006, 118; 2007; ninety-four cases and this was due not only to I think debtors' view of the new bankruptcy laws and what it permitted and what it didn't permit, but also bankruptcy practitioners and their desire to do pro bono at the time. Since our all time low of ninety-four cases in 2007, we've seen an increase to 152 last year and this year alone, the first quarter this year we've got seventy-three. So this might be our highest in ten years, close to 300 it looks like. So there is an extraordinary need for pro bono and I'm going to talk to you a little bit about how you might get involved.

One thing is that we like to make things very easy for you as a pro bono attorney. We have two constituents at CVLS. We have our clientele, but we have our volunteers and without our volunteers we don't exist. There would be no way that our small staff of eight attorneys and five paralegals and other support staff could serve 17, 18,000 clients a year. So we always consider you as a priority. Obviously we have a duty to our client, but again, without you all, we don't exist. And therefore, CVLS and other legal services organizations that do pro bono go to extraordinary lengths to make sure that you get the type of work that you want. I'm not talking about a five-hour a week commitment. It's basically what you want to do, what you can do and that can change. We try to cater to the individual. We have clinics that volunteers go to. We've got an administrative office that volunteers come to. Your time commitment could be thirty minutes a month or it could be three hours a week. It's really up to you.

CVLS offers complete support to our volunteers. I'm sure that if you all took a case that was within your practice area, you wouldn't need supervision by a staff attorney or mentoring by another volunteer. At least I would hope that I wouldn't be the one that you would look to for supervision, but that's certainly possible. Likewise, if you're tired of the commercial law cases or the bankruptcy cases and you'd like to do something fun, like adoption, we can help you do an adoption. We will train you from the very beginning to the very end. We have training material. You would get one-on-one support from a staff attorney.

If there became a time in any case where a staff attorney couldn't help you, we would match you with one of the 2,500 volunteers who specialize in that area. We're lucky in that we have a large network of volunteers that are really the cream of the crop in Chicago. Like I said, we have an administrative office. We have office space. We have computers. We've got bankruptcy software. We have secretarial and reception services for you which would include me answering the

phone for you. We do have lots of training material that have been created by our volunteers and staff on most of the areas of law that we handle and I should say that that covers pretty much everything but criminal law, although we have seen ourselves in criminal cases. It's usually in a case that we're already involved in, maybe a domestic violence case where we're representing a spouse in a divorce, but administrative hearings, law division, chancery division, the gamut.

We also offer mentoring by volunteers. Like I said, if you get into a case or want to do a case that no one on staff has experience in from the get-go, we can pair you and kind of co-counsel with our more experienced volunteers. Most importantly, we offer professional liability insurance and this is something that I think sets us apart from others. Lloyds of London wrote us a nice policy and there are lots of conflict checks and things like that that we are certainly mandated to do, but for your CVLS case, you're covered by CVLS' liability insurance.

Our policies also differ a little bit from other legal aid organizations, maybe not all of them, but some. At CVLS we want to make sure that we can do something for the client. We're not going to represent—and this may be an overgeneralization because every case has exceptions, but we won't represent clients that are judgment proof without a defense. We won't file a bankruptcy for a person that has no income or property to protect. There are exceptions, like I said, and I'll get to some of those later, but we want to do something good for the client.

Lots of clients, as you may be aware of, come in and they need to or they want to get in front of a judge to tell their side of the story because it's the principle of the matter. Well, to us there needs to be something more than the principle. There needs to be some legal ability to sue or defend.

One other thing that sets CVLS apart from other legal services is that since we take no Federal funds from the Federal government, we can take cases where clients are working. We represent the working poor, in fact. We kind of try to fill the gap between those legal aid agencies that take only the very impoverished, those that earn less than 125 percent of the Federal poverty guidelines and those that can afford an attorney.

Again we're flexible. We try to remain flexible with our income guidelines, but let me just give you an idea of what these guidelines are. Many legal services organizations are limited, like I said to 125 percent of the Federal poverty guidelines. That means that if the client makes more, sorry, we can't help you. Go to CVLS. Maybe they can help you. For a household of four individuals, mom, dad, two

kids, the 125 percent guidelines would limit that household to $27,563 a year. A week that's $530 a week or $2200-$2,300 a month for a family of four. It's quite low, especially when you consider some of the types of cases that we see that involve really complex litigation. We do foreclosure cases. We do these bankruptcy cases. We even do bankruptcy adversary proceedings. So that's something that to keep in mind when I'm telling you these numbers.

The bankruptcy guidelines that we generally use at CVLS for a household of four are $44,100 for a family of four. So you can see maybe the difference. We can represent individuals in Chapter 7, usually Chapter 7—no asset Chapter 7s, where the family earns from all of their sources over $44,000. So we're able to by not taking that—those Federal funds, represent individuals who actually have income that we can protect by filing a bankruptcy and discharging debt.

And like I said, although we're flexible, we don't consider ourselves the public transportation, the CTA. We're not going to stop and let you on just because you're standing outside on the curb. There has to be something that we can do for you. We're lawyers. We're not social workers. Maybe I can give you the name of a social worker, but we need to be able to do some good for you.

Now, that brings us to you all. As you may have gathered by now, I have no real particular expertise in any area of law, although I do a lot of guardianship work and probate work. But you folks that are sitting here today have expertise that CVLS doesn't, particularly those on staff. We see so many family law cases and family law cases, particularly contested divorce cases, custody cases, are extremely difficult to place with volunteers. So that's what staff attorneys usually take or end up with. I hate to say end up with, but sometimes that's what it feels like.

Therefore, we would really like to tell you about how you can involve yourselves, again at your convenience and according to whatever time commitment you're able to make. One way is pretty obvious. You represent clients. You represent clients in a debt collection case. You represent clients in a Chapter 7 case. Usually when our volunteers get cases, they have been interviewed in person after a telephone screening. We know that they're income eligible for our services and with our knowledge of these matters, we think that there's maybe a defense. There's something meritorious about their cause.

When you get the case, you get a memo about the case that's written by the interviewer. You get all of the court pleadings and orders that have been copied from the case file and any supporting docu-

ments that we've copied. That packet is sent to you after you indicate that you're willing to at least look at it. And then you get to look at it. You get to interview the client yourself, see if there's a working relationship that can be formed and then tell us, yeah, I'll take the case. I'll represent this guy or no, I really don't want to. If you don't want to, we'll break the news, you don't have to. But we never tell a client you're going to meet with a "Bruce" today and he's going to be your attorney and he's going to represent you no matter what. We never tell a client that. It's always up to the individual attorney to decide for themselves yes, I want to take the case after having reviewed the matter and spoken to the client.

As I said before, and maybe repeatedly at this point, the attorney has to be able to do some good. For instance, in bankruptcies there's got to be something to protect, some asset or income. The exception to that we have found at CVLS is in cases where there's mental illness. We have represented a number of individuals with mental illness which has basically paralyzed them knowing that there's debt. And when I mean paralyzed, they can move around, they can blink their eyes, they can eat and everything, but they're not capable of being productive. They have lost their job perhaps; they've lost friends and family members. They've become hermits. They've become agoraphobic or their agoraphobia has been exacerbated or their mental illness has been exacerbated by their debt.

Our Executive Director represented a gentleman; I'll call him "Walter." He's elderly. He was slightly agoraphobic and certainly acrophobic and kind of a fancy gentleman. Interestingly enough, he was hired by Elizabeth Arden to open the men's store for Elizabeth Arden back in mid-century. He had debt, but he had no garnishable income. But the debt that he did have was creating such acute reactions to it and exacerbated his phobias that we decided to file bankruptcy.

In fact, during the bankruptcy our Executive Director consulted with her husband who just happens to be a bankruptcy practitioner who thought that it might be a good idea. Certainly it wasn't the bankruptcy that shouldn't be filed for any particular reason, and that bankruptcy practitioner, knowing that this gentleman was afraid of heights and there was no way we were going to get him into an elevator or up the stairwell to the 33rd floor to the 341 meeting, called the trustee. The trustee came down to the food court and they conducted the trustee meeting right there in the food court with his little tape recorder and Walter couldn't have been more delighted.

And in fact, he was then relieved of the pressure and we noticed that he would stop by the office and chat. And we're on the ninth

floor so he must have gotten better. So there's got to be some defense. There's got to be some merit, something to do. And in certain cases we'll look at the individual and not just what's on the paper.

Like I said before, I want all of you to know that we don't just do bankruptcies for bankruptcy attorneys, collections for collection attorneys. We can do any type of case that you want to. If you've always wanted to do a nasty divorce case, I got the number of somebody who would be very happy to hear from you. So that's one way.

And you know, Chapter 7s, I've done them. I'm obviously no expert, but they take an amount of time in front of a computer. They take a trip to the 341 hearing. They take some time gathering the information initially, which we do an okay job at, but there's a time commitment. There are certainly time commitments in litigation cases and in court hearings and maybe trials.

But another way that our volunteers get involved is doing intake review and giving advice to staff. There's a number of attorneys that I will call on when we've done that initial screening on the telephone, maybe the individual has come in for the interview and we've got the memo and the packet and then that case is going to be reviewed by me to say okay, I think this is a good one for a volunteer. Let's start calling people that want to take, you know, this collection type of case. But in my review and in our staff's review, we might see some red flags and us being generalists, general practitioners, Jack of All Trades as we are, we'll call on our experts, the volunteers that practice in the area to run the matter by them and get their take on it. And so that—in those scenarios you'd be sitting in your office and maybe be willing to accept a phone call from a staff attorney or a volunteer that has a matter that you are familiar with or have a particular expertise in. It can be invaluable to CVLS and other legal services organizations because like I said, generally we know a little bit about a lot. Our job, my job is basically to get cases to you all, to take cases and I'm able to help many more people by sending them out to you all than to be representing them all myself.

Next, a great way to get involved and you can do this from your bedroom, your bathroom, wherever, is just to call clients and give them advice. We have one gentleman that comes in when he's in town. He comes to our administrative office. During the winter he's out in Palm Desert, wherever he goes where it's nice and warm, but we take cases on the phone and when we believe that at least initially we need to give this person some advice, find out a little more and our intake specialist, who certainly doesn't have a law degree, isn't capable of really getting all the information out, we will give the matter to

Richard. Richard will have before him a sheet of paper with the general idea of what the client's problem is. We of course qualify them income-wise but then we will have a packet and Richard will come, pick up the packet, go back to his office and start calling these clients and say look I got this piece of paper. It looks like your mom died and she had a house and it's you and your brother and he'll talk people through their case and if he can help them dispose of whatever ails them by giving them advice on the phone, he'll do that. But he knows enough about these matters that he can recognize a case where representation's necessary. It's necessary to file a petition in probate or chancery and in that case, we'll bring them back in or we'll actually bring them in for a first interview because these folks have never been seen. It's just in phone conversations up till now and we'll get him to the right place.

But we have a new clinic that just started actually. I'm not really sure why we call it the Thunderdome Clinic, but it's the Thunderdome Clinic. And at this clinic some paralegals and lawyers come to CVLS, our administrative office downtown and we have lists of clients for them to call. We also have lists of questions to ask the client. So they're doing the initial screening. They provide an hour a month of their time at our place with a staff member supervising them if they get stuck, but they're talking to the individuals, typing the information into our database so that then we can take those clients to the next phase which is either an interview or a brief advice or referral elsewhere. Again, those folks give about an hour of their time each month. That's a great way for attorneys even to get involved.

I think that your knowledge about procedure, if it's not at a particular area of law, a substantive area of law, your knowledge of procedure would be helpful in many of these cases, just doing the initial intake and advice to clients.

Another great way to get involved and actually earn some CLE credits, CVLS is an accredited CLE provider and we have seminars every month about noon. You can see these on our website CVLS.org, but if you have a particular area of expertise or would like to share your expertise with other volunteers, you can come and speak to our volunteers. And you can earn I think six times the amount of time you spend speaking to them in CLE credits. If you're interested, call me, I'd love to talk to you.

Along those lines, and along the lines of training volunteers and staff, we also match volunteers with volunteers. As I mentioned earlier, maybe you don't need mentoring, but perhaps you can mentor others. We've got a lot of new attorneys and students that are anxious

to handle cases and it's important to put those folks in touch with those that know most about that particular area of law. I think we've got family law covered in-house, but consumer matters, debt collection matters, bankruptcy matters we're always looking for outside help.

And finally, for you attorneys, we've got a collection of attorney manuals. Some of them are up-to-date. A lot of them aren't or they basically work, but needs some attention, maybe just a little attention. Maybe some major overhaul. I know that we've got a bankruptcy manual that's a little out of date. We've got some collection defense manuals that are pretty general. I would invite any of you if you're interested or have time or the desire to look at those manuals and create for us some written materials that would help volunteers through cases to call me and maybe donate your time that way. Again this is probably something that you can do in bed or over the weekend, over a cup of coffee at the breakfast table.

So again, I wanted it to be evident to you all that pro bono doesn't have to be at our behest. It's what you all can provide or want to provide. And it's pretty individualized. And if you've got ideas that I haven't thrown out so far, I'm—we're always willing to hear those.

For the students, are you all students here in Illinois, in Chicago? Fantastic. So if you're a student, my gosh, this is a great opportunity. In fact, when I was a student at DePaul, I took a class that was taught by my Executive Director. Teaching that class they required us to either write a paper or interview a client and do a memo about what the client's problem was. Well, that's a no brainer, right. So I volunteered after I—after I took that class and did my interview, which lasted about two hours for a simple default divorce, I mean it was ridiculous. But you don't know how to do that if you've never done it before. Two hours later, I come out of the office, sweat pouring off of me and I go in and my Executive Director, then my professor said well, that's fine, but let's try to whittle that down to about 15 or 20 minutes. So I knew I had some work cut out for me.

We do at CVLS — and other legal services organizations have these opportunities too, but you can volunteer for CVLS. You can extern. In fact, when I was at DePaul, CVLS was one of those that I could spend time at CVLS and get credit for doing real work. I was—and no offense to anyone, but I was never a fan of moot court because it just didn't seem real enough to me after these experiences. But these are real experiences, real clients and real legal issues that you would be dealing with.

Besides learning the art of interviewing clients, there are also pleadings. If you're a 711 licensed student, then the opportunities are so much more, you can do really anything but a jury trial. In fact, as a 711 licensed student, I advised clients with the supervision of my supervising attorney, but I advised clients, I argued motions, probably did a bench trial or two. Fantastic opportunities. You should contact us and if not us, another legal services organization here in Chicago or your jurisdiction back home because you would be filling also a need that indigent folks have.

How many people already do pro bono? Great, congratulations. Thank you. Don't stop. And you know that pro bono isn't when your client doesn't pay. It's when you go into it knowing that it's pro bono, right. But if you're not doing pro bono and you want to, seek out folks that do this, that have hopefully an infrastructure set up like CVLS does. Again we're happy to talk to you if you're in another jurisdiction and would like to learn more about how we work, more about how our liability policy works or how we obtain that.

If you're in Chicago, call me. If you don't call me, call someone else. Again, there are a couple of websites that I can tell you about that you might be able to remember. There's CVLS.org, Chicago Volunteer Legal Services, CVLS.org. All my contact information is on there. There's also ABAnet.org. It's ABAnet.org and you can get to legal services and pro bono opportunities through that website by clicking through their menus and you'll see a map of the United States and you just click your state and you'll have a list by county I believe of opportunities for you back home. Finally, IllinoisProbono.org is a wonderful site. We have a statewide technology center that is devoted to pro bono and legal services and there are opportunities listed there for pro bono and occasionally there are just job opportunities there also.

I want to thank the Commercial Law League of America and the American College of Bankruptcy Lawyers and Abe particularly for inviting me here today to speak to you. I hope I've made some sense and if you've got questions, please feel free to contact me through our website, CVLS.org. I'm happy to talk to any of you. And I suppose if any of you have questions, if I can answer them, I will and if I won't, I won't.

AUDIENCE: Peter, how does the insurance coverage work if — are you saying that you have a policy that would cover us when we perform a service for a referred client or talk to someone on the telephone?

MR. ASHMORE: Absolutely. That is—absolutely. The question was "How does our policy work, what do we cover?" We cover you for your representation or giving advice to a client that is a CVLS matter. And for that policy to attach and be covered, we just need to have the client in our database and we have to have it linked to you as the representing attorney. And you are covered on each and every CVLS matter that you take on.

Well, like I said, CVLS.org. I'm Peter Ashmore. Thank you all for listening to me and we'll see you all I hope.