

AMERICAN BAR ASSOCIATION

**COMMISSION ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION
STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
SENIOR LAWYERS DIVISION
LAW STUDENT DIVISION
GENERAL PRACTICE, SOLO AND SMALL FIRM DIVISION
COMMISSION ON DOMESTIC VIOLENCE**

REPORT TO THE HOUSE OF DELEGATES**RECOMMENDATION**

1 **RESOLVED**, That the American Bar Association urges all federal, state, local, and
2 territorial courts to develop programs, in collaboration with state, local and territorial bar
3 associations and pro bono programs and legal services offices, to encourage, facilitate and
4 recognize pro bono representation of indigent parties in civil cases.

5 **FURTHER RESOLVED**, That the American Bar Association urges courts to provide
6 opportunities for their lawyer employees to participate in pro bono and public service
7 activities consistent with applicable federal, state, local and territorial laws and regulations and
8 applicable rules of professional conduct.

REPORT

Introduction

This report urges courts to develop programs, in collaboration with bar associations and legal services offices, to encourage, facilitate and recognize pro bono representation of indigent parties in civil cases. It further urges courts to provide opportunities for their lawyer employees to participate in pro bono and public service activities, consistent with applicable rules.

These recommendations, together with those contained in reports 121A and 121B, were prompted by what the Legal Services Corporation has identified as a “major gap between the legal needs of low-income people and the legal help that they receive.”¹ Forty-three million Americans currently qualify for civil legal assistance provided by LSC-funded programs. Yet legal services lawyers can provide assistance to fewer than one in five poor Americans and to fewer than half of those clients who find their way to a legal services office.

In August 2005, ABA President Michael S. Greco responded to the unmet need for legal services by calling for a Renaissance of Idealism in the Legal Profession—a “recommitment to the noblest principles that define the profession: providing legal representation to assist the poor, disadvantaged and underprivileged; and performing public service that enhances the common good.” He appointed a commission² to develop approaches for advancing these goals among lawyers in every segment of the profession.

At the 2006 Midyear Meeting, the House of Delegates adopted a policy presented by the Commission which urged all lawyers to engage in community service activities.³ This report and the two reports (121A and 121C) that accompany it seek to build on that policy.

¹ *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, Legal Services Corporation (September 2005)

² The Commission includes lawyers drawn from diverse practice settings, including the managing partner of one of the nation’s largest law firms and the former managing partner of another; solo and small firm lawyers; the general counsel of a major corporation; government and military lawyers; a lawyer for a nonprofit organization; a law school dean; and a sitting federal judge.

³ That policy reads as follows:

RESOLVED, That the American Bar Association urges all lawyers to contribute to the public good through community service in addition to exercising their professional responsibility to deliver pro bono service, in accordance with Model Rules of Professional Conduct Rule 6.1, where applicable.

FURTHER RESOLVED, That the American Bar Association urges legal providers and other entities that employ lawyers to adopt policies and practices that afford lawyers the time and opportunity to engage in community service, and urges law schools and state, local and territorial bar associations to take all appropriate steps to facilitate and encourage lawyers to undertake such service.

The Importance of Judicial Leadership

Given their pivotal role in the administration of justice and the respect they command within the bar, judges are uniquely situated to influence lawyers, including those who practice before them, to provide pro bono representation to indigent parties in civil cases. By helping to ensure access to counsel, judges can also help reduce the backlogs and delays created by large numbers of pro se litigants, enhancing both the reputation and the effectiveness of their courts.

Although members of the judiciary are unable to represent clients themselves, they can demonstrate their commitment to pro bono in a number of important ways. The ABA Model Code of Judicial Conduct permits judges to engage in activities related to promotion of pro bono services by lawyers.⁴ Judges are free to support local pro bono programs by writing general letters to local bar members, encouraging them to join the pro bono panel. Judges may appear at pro bono recognition events and present recognition awards to recipients. These and other activities are permitted under most judicial ethical rules and are of great assistance to pro bono programs.

Members of the judiciary have played a leadership role in promoting and supporting pro bono at every level of government. The Conference of Chief Justices has encouraged judges to do so in its adoption of a resolution calling on the chiefs of the highest courts in each state to lead efforts to expand pro bono.⁵ The Maryland Judicial Commission, established by the Chief Judge, issued a [report](#) in 2000 that includes findings and recommendations regarding the role of the judiciary in supporting pro bono.⁶

[Florida](#), Nevada, Maryland and [Indiana](#) involve judges in a "hands-on" manner in promoting pro bono. In these states, court rules establish a system in which pro bono efforts are organized into districts with local judges responsible for each district's efforts. The involvement of judges at the local level in these states has been influential in helping to increase local bar support for pro bono and the recruitment of additional pro bono lawyers.

Judges can encourage and facilitate pro bono representation in many simple and practical ways. For example, they can assign pro bono counsel a specific time for appearances to reduce their waiting time. In some courts, pro bono cases are placed first on the docket. Such accommodations for those who devote their time to serving indigent litigants (and spare the court the additional time that would be required if such litigants were to proceed pro se) should be encouraged.

⁴ www.abanet.org/cpr/mcjc/mcjc_home.html

⁵ See [Resolution VII \("Encouraging Pro Bono Service in Civil Matters"\)](#) (adopted 1997); [Resolution 23 \("Leadership to Promote Equal Justice"\)](#) (adopted 2001). <http://ccj.ncsc.dni.us/>

⁶ <http://www.courts.state.md.us/probono.pdf> (March 2000)

Judges can also reward pro bono by providing public recognition to those who accept these cases. Such recognition can take many forms, from a simple statement to litigants about the invaluable contribution of pro bono counsel to the parties and the court system to formal award ceremonies and presentations. Judges can also appear at bar association events to present awards and recognize pro bono lawyers for their contributions to the administration of justice.

Some courts have found other innovative ways to encourage, facilitate, and recognize pro bono representation of indigent parties in civil cases. For example, The [U.S. District Court for the Northern District of California](#) posts cases in need of pro bono attorneys on its website.⁷ The United States District Court for the Northern District of Illinois has initiated an ambitious program, in cooperation with the bar, which requires lawyers who practice before the court to be available to accept an appointment to represent an indigent party in a civil case. The court reimburses the attorney for reasonable expenses and provides all necessary research and consulting assistance. The court holds an annual award ceremony recognizing the 200-300 lawyers who have accepted appointments each year. The result of the program is that “every indigent civil litigant in the Northern District of Illinois receives prompt assignment and effective representation of appointed counsel.”⁸

Finally, courts can set an example for the bar by encouraging their own lawyer-employees to do pro bono work. These lawyers are subject to the rules of professional responsibility where they are admitted to practice, and they should have the opportunity to engage in pro bono and public service work. Lawyers who are court employees engage in a wide range of pro bono work, including estate planning, benefit counseling, landlord-tenant disputes, and debtor-creditor issues. Naturally, such matters should be carefully screened to ensure that the lawyer’s pro bono work does not create conflicts of interest.

Conclusion

By encouraging and enabling the attorneys within their jurisdiction, the lawyers who practice before them, and their own lawyer-employees to perform pro bono work, the courts can help set the tone for the legal profession and enrich the communities they serve.

Respectfully submitted,

⁷ www.cand.uscourts.gov/

⁸ See US District Court for the Northern District Of Illinois, Local Rules LR83.11. Trial Bar. See also Letter from Hon. Marvin E. Aspen, United States District Court for the Northern District of Illinois, to Mark D. Agrast, Chair, Commission on the Renaissance of Idealism in the Legal Profession, August 11, 2005 (on file with the Commission).

Mark D, Agrast, Chair
Commission on the Renaissance of Idealism in the Legal Profession

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