

CONFERENCE OF CHIEF JUSTICES

Resolution VII Encouraging Pro Bono Services in Civil Matters

WHEREAS, lawyers has professional responsibility to provide legal services to those who cannot afford them; and

WHEREAS, the demand for civil legal services by those who cannot afford them is growing dramatically; and

WHEREAS, the already substantial gap between these legal needs and the resources available to meet them is growing so rapidly that it has reached crisis proportions; and

WHEREAS, this lack of legal representation impedes access to justice, a subject in which the judiciary has a special responsibility and interest; and

NOW, THEREFORE, BE IT RESOLVED that the members of the Conference of Chief Justices should promote broader access for people unable to afford legal services and should encourage the legal profession to increase pro bono efforts. In furtherance of these goals, the individual members of the conference in their respective states should consider:

1. Establishing a statewide committee of judges, bar leaders, legal services providers and community leaders to plan and implement methods of increasing the delivery of civil legal services; and
2. Encouraging judges to:
 - recruit lawyers to do pro bono work;
 - participate in events to recognize lawyers who do pro bono work;
 - consider special procedural or scheduling accommodations for lawyers who are volunteering their services; and
 - act in an advisory capacity to pro bono programs.

Proposed by the Professionalism and Lawyer Competence Committee of the Conference of Chief Justices in Indianapolis, Indiana, at the Twentieth Midyear Meeting, on February 6, 1997, and adopted in February by the Conference of Chief Justices.

**Excerpt from
MAKING PRO BONO A PRIORITY:
A BAR LEADER'S HANDBOOK
ABA Center for Pro Bono**

BEFORE YOU GET STARTED . . .

Bar leaders should consider some basic issues before undertaking a major pro bono initiative.

Self-Assessment

Before launching a major pro bono initiative, bar leaders should assess the current status of the pro bono effort in their legal community. This "pro bono checkup" evaluates various factors affecting the level of pro bono participation in the bar, including the extent and scope of existing organized pro bono activity, level of financial support for existing programs, and mechanisms already in place within the bar association that promote pro bono activity (e.g. resolutions promoting pro bono, pro bono committees, and awards ceremonies that recognize outstanding pro bono efforts by attorneys).

Another aspect of self-assessment involves an analysis of both the unmet legal needs of persons of limited means, and the legal resources that are available to meet those needs. Bar leaders should work with local legal services providers, the judiciary, social services providers, and client groups to determine the greatest areas of unmet legal needs. The very process of initiating a dialogue and discussing the extent of the need and how it should be addressed is likely to generate support for pro bono programs. This assessment and dialogue will lay the groundwork for priority-setting and recruiting volunteer attorneys to render legal services where they are needed most. While pro bono services should be based on client need, they must be balanced against the expertise and willingness of the private bar to handle certain types of legal matters.

Finally, bar associations must identify and address the obstacles to the development of an effective pro bono delivery system. Obstacles may include antagonistic attitudes toward organized pro bono activity, as well as logistical challenges, such as geographic distances between clients and attorneys. Rural areas present particular obstacles to the development of pro bono delivery systems. Loosely organized bar associations in rural areas often meet infrequently, limiting opportunities for bar leaders to recruit pro bono attorneys. In addition, geographic distances may hinder the ability and willingness of attorneys to render pro bono services to clients in rural areas.

Minimizing Opposition to Maximize Opportunity

An important step in building support for pro bono in the bar is minimizing opposition. Bar leaders must assess the extent to which groups and individuals oppose organized pro bono legal services. Some attorneys erroneously fear that organized pro bono activity is likely to lead to mandatory pro bono service; others believe that it is unnecessary to institutionalize pro bono because attorneys already are doing it in their own practices. Bar leaders

should solicit input from attorneys and address their interests and concerns. Pro bono initiatives will be more successful if they have widespread attorney support.

Building Support for Pro Bono in the Bar

Once bar leaders have engaged in self-assessment and addressed opposition, they must build support for pro bono in the bar. Education is the first step. Bar leaders must inform bar members of the overwhelming need for legal services to persons of limited means. The results of national, statewide and local legal needs studies should be made available to the bar. Many attorneys are unaware of the inadequacies of the current delivery system in meeting the needs of persons of limited means. Judges can be very helpful. As courtrooms become increasingly flooded with unrepresented litigants, judges are highly motivated to call upon the private bar to assist in finding solutions to the problem of unequal access to legal representation.

Building a base of support for pro bono begins by identifying where support already exists. In many states and local communities, the bar foundation, federally-funded legal services organizations, and other not-for-profit legal services providers already are engaged in the delivery of legal services to persons of limited means. Each of these groups should be brought into the bar association's planning initiative as early as possible. A coordinated approach helps to avoid unnecessary duplication of efforts and competition for volunteers and funding.

Further, the bar association should include a cross-section of the legal community in its efforts to develop support for pro bono activities. In addition to the groups listed above, judges, bar leaders from major practice sections and minority and specialty bar associations, representatives from large and small law firms, solo practitioners, directors of legal services programs, representatives of social services organizations that serve persons of limited means, and representatives of client groups should be included in the planning effort.

Commitment of the Bar

Finally, the bar association must make a commitment to enhance pro bono activities, and it must be willing to make that commitment part of the overall structure of the bar. This commitment should be reflected in pro bono service by bar leadership, the structuring of bar committees, staffing decisions, and long-range planning.

The complete handbook and other materials are available at www.abaprobono.net

Rules to Promote Pro Bono Service

ABA Model Rule 6.1

- Since 1993, ABA Model Rule 6.1 has quantified the average amount of pro bono work to be performed annually, setting a goal of 50 hours per year.
- The Model Rule emphasizes the provision of free legal services directly to persons of limited means or to organizations designed primarily to address the needs of persons of limited means.
- The commentary to the Model Rule states that the intent of the lawyer to render free legal services is essential for the work performed to fall within the definition of pro bono work.
- The commentary provides that when it is not feasible for a lawyer to provide pro bono services, the lawyer may discharge pro bono responsibility by providing financial support to organizations which provide free legal services to persons of limited means in an amount reasonably equivalent to the value of the time that would otherwise have been donated.
- In 2002 the ABA revised Model Rule 6.1 to add a sentence at the beginning giving greater prominence to the proposition that every lawyer has a professional responsibility to provide legal services to persons unable to pay. A new comment was also added calling upon law firms to act reasonably to enable all lawyers in a firm to provide the pro bono services called for by the rule.

State pro bono service goals

- Many states have amended their pro bono service rules to track the ABA model rule. Currently, 28 states quantify the minimum amount of pro bono service that a lawyer should provide annually.
- Several states also quantify the annual contribution a lawyer should make in lieu of providing pro bono services, either as a dollar amount or a percentage of income.

Pro bono reporting

- Florida, Illinois, Maryland, Mississippi, and Nevada have mandatory pro bono reporting rules.
- Currently 13 states have voluntary pro bono reporting, generally in conjunction with payment of annual dues.
- Several other states are considering either voluntary or mandatory reporting.

Other rules

- Colorado, Delaware, Montana, New York, Tennessee, Washington and Wyoming have implemented rules that permit attorneys who take pro bono cases to earn credit toward mandatory continuing education requirements.
- A number of states have limited practice or emeritus rules permitting retired and inactive lawyers to engage in pro bono activities, usually under the auspices of an approved legal services program. Some states reduce or waive mandatory dues and/or continuing legal education requirements.
- Several states provide temporary waiver of state licensing requirements for out-of-state lawyers to perform pro bono work under the auspices of a recognized pro bono program; Alternative models include Louisiana and Mississippi (limited to disaster relief) and California (not limited to disaster).
- Rules providing for limited representation or “unbundled” legal services are effective in promoting pro bono service; see information about state rules in these materials under “court access and self-represented litigants.”
- Colorado has recently amended the comment to its Rule 6.1 to include a model recommended pro bono policy for attorneys and law firms.

For details and charts showing state rules, see www.abaprobono.org.

Building a Coalition for Changing Pro Bono Policy

by Sharon E. Goldsmith

Change sometimes appears to happen abruptly, yet it is most often the culmination of a slow, methodical process. In Maryland, years of strategic campaigning anteceded the state's new pro bono policy initiative. Maryland is now well into its second year of required reporting of pro bono activity by its lawyers. In addition to the reporting requirement, the Maryland Court of Appeals—the state's highest court—adopted revisions to Rule 6.1 and new rules requiring the establishment of a local pro bono committee in each county and the creation of a statewide Standing Committee on Pro Bono Legal Service. These changes underscore a newly energized commitment to ensure equal access to justice.

This article will focus on how Maryland built this "coalition for change" and succeeded in producing a result that looked all but impossible a decade ago.

Judicial involvement

It was clear at the outset that to succeed in truly revitalizing pro bono policy, the judiciary needed to be engaged in a cohesive and prominent fashion. On that basis, the Pro Bono Resource Center of Maryland suggested that the Court of Appeals appoint a high level commission to investigate the state of pro bono and what measures could be enacted to enhance the delivery system. Chief Judge Robert M. Bell, a leader with extraordinary vision and commitment and a proven advocate for legal services, created the Judicial Commission on Pro Bono and appointed an appellate judge, Deborah S. Eyster, to serve as its chair.

The Commission met for a year and a half, ultimately issuing a report with a series of specific recommendations. A number of them were controversial, particularly those proposing changes to the court rules. For instance, the revisions to Rule 6.1 finally clarified that pro bono is primarily about legal services to the poor. It included an "aspirational" goal of 50 hours of legal service a year with a "substantial portion" of those hours dedicated to those of limited means, civil rights work, or helping a non-profit that could not otherwise afford counsel. The balance of the 50 hours could still be spent on improving the law or legal profession while preserving the option of making a financial contribution in lieu of service.

Bar support

Recognizing the potential for dissent and the importance of bar support, proponents actively solicited the counsel and endorsement of the bar leadership. For close to a year, the chair and several members of the Judicial Commission made presentations to local bar associations, sought endorsements from bar committees and sections, and lobbied members of the state bar association's board of governors. The personal appeals significantly contributed to expanding the coalition. When the timing was appropriate, the commission sought the formal endorsement of the board of governors and it voted to adopt all of the commission's recommendations.

The endorsement by the state bar leadership marked the launch of a full-fledged campaign. Since the recommendations included changes to court rules, the court's Rules Committee needed to review and approve them. Thus, after extensive education, numerous meetings, and the solicitation of public comments, the Rules Committee ultimately submitted three alternative versions of Rule 6.1 for the Court's consideration. The court then held a public hearing on the issues and received additional testimony and comments from various segments of the bar. In February of 2002, the Court of Appeals adopted the proposed rules with several modifications.

More outreach to the bar

The most significant modifications to the rules included the exclusion of judges from local pro bono committee membership (although judges could be consultants to the committees) and the elimination of a specific dollar figure as a proposed “buyout” for pro bono service in Rule 6.1. The compromises were viewed as necessary to ensure that some meaningful version of the rules would, in fact, be adopted.

Ironically, after the passage of the new rules, it became even more imperative to educate the bar about the meaning of the rules and their likely impact on local bars and individual lawyers.

In the fall of 2002, Chief Judge Bell addressed the local and specialty bar associations at a state bar-sponsored conference to inform them about the new rules and alleviate some of their concerns. That forum also showcased a video, “In the Eyes of the Law,” produced by the Pro Bono Resource Center of Maryland. The video featured lawyers and clients sharing stories about how pro bono service changed their lives and the many benefits experienced by all parties involved in pro bono work. The video has since been credited with helping assuage the resentment some felt due to the imposition of the pro bono rules and especially, the reporting requirement, and to understand its underlying purpose and value. A number of lawyers commented on how vital it was to focus the message on what pro bono really means to the community.

Despite its initial opposition, the implementation of a pro bono reporting process continues to generate greater awareness of a lawyer’s professional responsibility to render pro bono service and enhance participation in pro bono activities by members of the bar. The first year of reporting attracted considerable press and hundreds of inquiries from lawyers about their reporting responsibility and what qualified as pro bono service under the amended Rule 6.1. The heightened interest provided the court with an opportunity to educate lawyers. The court sent several notices to all licensed lawyers with information on how to volunteer and report appropriately. Individual inquiries were handled by the Pro Bono Resource Center on behalf of the Administrative Office of the Courts and a 24-hour/seven-day-a-week message center was established to provide ongoing information for those with questions. The court also designed a new section on its Web site dedicated to pro bono with frequently asked questions and reporting forms to file online.

Now at the end of its second year, most of the concerns about the reporting process have dissipated, consistent with a 98 percent compliance rate and substantially fewer inquiries about reporting pro bono hours. Additionally, lawyers and law firms are taking the responsibility more seriously and trying to determine how they can best fit pro bono into their practice.

Still, defining pro bono is what is helping to change the mindset of the bar. Most of the questions received in the first year of reporting related to what qualified as pro bono service and how people could become more involved. Defining pro bono, was therefore, also critical to the reporting process as lawyers were stopping to take stock in what they were doing and wanted clear guidelines as to what counted as their pro bono hours.

Comprehensive effort

The developments that have occurred over the last few years illustrate a true shift in the Maryland legal culture. While pro bono reporting is important and has yielded helpful data, it is but one component of the whole pro bono initiative. The commission’s rationale for proposing such a comprehensive and multi-faceted approach was to ensure that the changes to the rules would have a permanent impact on the pro bono delivery system statewide.

Preliminary indications are that these policy initiatives are working. Pro bono programs report that the bar is more receptive to requests for help and legal services contributions have increased. In fact, lawyers handled 500 more pro bono cases through programs funded by the Maryland Legal Services Corporation in 2003 than they had in 2002 before the new rules. Firms are designing new tracking systems for their pro bono work and developing specific pro bono policies where none existed previously. On a local level, pro bono committees are bringing members of the bar, legal services community and court personnel together to discuss the most critical legal needs in their counties and develop a specific plan of action. Furthermore, lawyers in Maryland are now clearly aware of their professional responsibility to engage in pro bono legal service.

It has been an invigorating time for pro bono in Maryland thanks to the vision, steadfast leadership and commitment from the bar and bench. Despite all the indications of a successful endeavor, a true evaluation of the new initiative can only occur after several years of reporting data and implementation of local and statewide pro bono action plans. In the meantime, it is incumbent upon pro bono supporters to capitalize on this unique opportunity of pro bono awareness and support and pursue the institutionalization of strong pro bono policies and practices.

In sum, the fundamental lesson learned was: don't accept the status quo—reach for your ideal. Remind people why they chose this profession and reintroduce them to the privilege of helping those without access to the justice system. Change is not easy. But with the right leadership, vision and persistence, it can happen.

Top ten ways to build a coalition for changing pro bono policy

1. Get strong leadership from the bench and the bar
2. Develop a clear strategy and vision—know where you are, where you are going, and how you plan to get there
3. Focus on the appropriate timing for success as part of your overall strategy
4. Keep the bar, bench and legal services community engaged in the process and aware of your progress
5. Be persistent
6. Be patient
7. Explain why it is necessary to make the changes you are advocating and maintain focus on the final goal and the people whose lives will be affected
8. Be willing to stand your ground when it is right
9. Be willing to compromise when it is necessary
10. Be able to demonstrate how it is in the interest of the bar to make the change

Sharon E. Goldsmith is executive director of the Pro Bono Resource Center of Maryland.

Judicial Involvement in Promoting Pro Bono Materials Available On-Line from the ABA Center for Pro Bono

At www.ATJsupport.org, on the "Documents and Resources" page, scroll down to Pro Bono Resources and click on the link to "Judicial Involvement in Pro Bono."

Materials include:

- Articles from past issues of *Dialogue* magazine, including "[Expanding Pro Bono: The Judiciary's Power to Open Doors](#)" and "A Rule to Show Cause On the Courts: How the Judiciary Can Help Pro Bono" [Part I](#) and [Part II](#).
- Examples of:
 - [Court-Based Pro Bono Policies](#)
 - [Court-Based Pro Bono Program Descriptions](#)
 - [Court-Based Pro Bono Program Manuals](#)
 - [Initiatives for Judicial Involvement](#)
 - [Judges' Speeches & Articles](#)
 - [Recruitment of Attorneys by Judges](#)
 - [Surveys](#)
- Conference of Chief Justices [Resolution VII "Encouraging Pro Bono Service in Civil Matters"](#) (1997) and [Resolution 23 "Leadership to Promote Equal Justice"](#) (2001), both also included in hard copy in these materials.
- ABA House of Delegates approved [policy promoting judicial support and promotion of pro bono](#).
- Information about local, judicially-based pro bono committees.

Or go directly to www.abaprobono.org.

Emeritus Attorneys Pro Bono Participation Programs

Holly Robinson, Associate Staff Director,

ABA Commission on Law and Aging

(202) 662-8694

robinsoh@staff.abanet.org

Introduction

The first states to enact emeritus attorney practice rules twenty years ago - Florida, California, and Arizona - all adopted a similarly-titled set of rules: "Emeritus Attorneys Pro Bono Participation Program." For example, Rule 12-1.1 of the Rules Regulating the Florida Bar provides:

"Purpose. Individuals admitted to the practice of law in Florida have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, the following rules establishing the emeritus attorneys pro bono participation program are adopted."

James Branham, staff attorney for the Hawai'i Supreme Court, noted in response to our December 2006 survey regarding emeritus pro bono rule programs:

"Hawai'i's rule did not establish a 'program.' Hawai'i's rule authorizes any 'qualified legal services provider' to utilize the services of a pro bono publicus attorney."

This distinction is significant. Our survey findings suggest that adoption of emeritus attorney pro bono practice rules without the establishment of an emeritus attorney pro bono participation program is not an effective means of meeting the unmet civil legal needs of persons unable to pay for those services or providing a meaningful volunteer experience for emeritus attorneys.

Implementation of Emeritus Pro Bono Practice Rules

In August 2006, the American Bar Association House of Delegates adopted a resolution encouraging states and territorial bar associations and other attorney licensing entities to adopt practice rules that establish guidelines to allow pro bono legal services by qualified retired or otherwise inactive lawyers under the auspices of qualified legal services or other non-profit programs.

The ABA Commission on Law and Aging has long promoted the adoption of state bar rules permitting retired attorneys to provide pro bono legal services through recognized legal services organizations. As part of our efforts to provide technical assistance to states considering adoption of or strengthening pro bono practice rules, we surveyed those jurisdictions with pro bono practice rules to learn about their experience in implementing the rules.

We asked four questions in our survey: (1) What year did your state enact rules permitting retired or otherwise inactive lawyers to participate in organized pro bono programs? (2) Who is the person in your state responsible for overseeing the Emeritus Pro Bono Rule Program? (3) How many lawyers provided pro bono legal services under your state's emeritus pro bono rules during 2006? and (4) What advice or guidance would your state give to a state considering adoption of emeritus pro bono rules?

The Commission received a 100 percent response rate to the survey and the follow-up emails that we sent. The responses can be found in the document titled *Emeritus Pro Bono Attorney Program Survey Results*. Additional research will be conducted to clarify the responses to question 3, which varied depending on how a state drafted its emeritus pro bono practice rules.

The purpose of enacting emeritus pro bono practice rules and establishing an emeritus attorney pro bono participation program is to encourage and facilitate retired or otherwise non-practicing lawyers, who otherwise may choose inactive status or resign from membership in the bar, to volunteer to provide pro bono legal services to low-income individuals.

To recruit and retain retired and non-practicing attorneys to volunteer to provide pro bono services and utilize their legal skills, training, and experience to expand access to legal services, our survey findings suggest consideration of the following:

- (a) Adopt rules that make it attractive for an attorney who is considering going inactive to change the attorney's status to emeritus pro bono instead.
 - If the cost differential between staying active and going emeritus inactive is not great, lawyers are going to be less motivated to do so and will retain their active status. If the license fees are comparable, lawyers generally will retain their active status.
 - Include the words "pro bono" in the classification you develop, to maintain the focus on pro bono work.
- (b) Adopt rules that create a system for tracking and monitoring the enrollment of emeritus pro bono attorneys and developing an emeritus attorney program.
 - Establish an annual registration requirement that includes the name of the organization that the lawyer will be volunteering for. This makes it easy to know how many attorneys have registered in this status and who they are volunteering for and stay in touch with both the attorneys and the programs.
 - Don't give responsibilities to entities that aren't likely to carry them out. For example, don't require an emeritus pro bono attorney to submit documentation to the Supreme Court if the Supreme Court isn't set up to do anything with it.
- (c) Adopt rules that are easy to administer.

- Determine whether there is a compelling reason to create a length of practice requirement such as practicing 3 out of 7 years or 8 out of 10 years.
 - Requiring an attorney to work for an approved legal services program is good practice because it resolves a number of issues for the attorney, including malpractice insurance. However, be sure that identifying the program for the purpose of obtaining emeritus pro bono status is not administratively onerous.
- (d) Adopts rules that state explicitly whether emeritus pro bono attorneys will be directly supervised by attorneys in a legal services program.
- Our survey results suggest that states make assumptions that because the attorney is working for a legal services program, the attorney will be directly supervised. Explicitly state in your rules that the emeritus attorney will be directly supervised by an attorney in the legal services program if direct supervision will be required.
- (e) Clarify the larger policy issues before your state starts drafting rules.
- Identify your target audience of potential volunteers – is it retiring attorneys only or would your state like to give non-practicing attorneys who have chosen other career paths the opportunity to provide pro bono legal services.
 - Identify the demographics of your target audience – are there a significant number of retired attorneys living in your state that were licensed to practice law by another state and that you would like to target as potential volunteers.
 - Identify whether your state will approach the rule change as an exception to the unauthorized practice of law provisions (District of Columbia Bar), an exception to the payment of client protection fund assessment (Maryland), an exception to retirement from active practice (New York), or the creation of a new classification of membership (The remaining states)
- (f) Establish a statewide program that offers attorneys a meaningful opportunity to volunteer their valuable skills to legal services providers, thereby increasing the availability of legal assistance to low-income clients.
- A rule by itself is insufficient to educate retiring and non-practicing attorneys about the option and encourage lawyers to volunteer.
 - The State Bars of California, Oregon, and Washington have successfully, innovatively and inexpensively created emeritus attorney programs. For example, the Washington State Bar requires all new emeritus attorneys to attend an orientation program and reimburses the attorneys for their travel expenses. The number of emeritus attorneys volunteering to provide pro bono services reflects this commitment.

Summary

One respondent, Debra Cohen Maryanov, Pro Bono Developer for the Oregon State Bar, summarized it well in her survey response:

“Pro bono emeritus rules are a good way to tap into the invaluable experience and time that retired lawyers have to offer. The legal services programs in Oregon that have worked with Active Emeritus attorneys give positive feedback about their experiences. *States considering adoption of the pro bono emeritus rules should plan to support the program through outreach to qualifying attorneys and legal services programs that provides contact information and encourages pro bono services* (emphasis added).”