The Rules and Pro Bono

Lawyers have a virtual monopoly on access to the legal system. Because of this, the profession has long been understood to bear a corresponding obligation to help the disadvantaged in need of legal services. The fact that lawyers recognize the need to volunteer their efforts—and have consistently acknowledged this obligation as arising from the license to practice law—is an important part of what distinguishes the practice of law as a profession.

**PRO BONO EXPECTATIONS**

The roots of voluntary pro bono go deep. In the early 19th century David Hoffman framed a code of professional ethics for lawyers commonly referred to as Hoffman's 50 Rules. Resolution 18 expressed a pro bono obligation:

To my clients I will be faithful; and in their causes zealous and industrious. Those who can afford to compensate me must do so; but I shall never close my ear or heart because my client's means are low. Those who have none, and who have just cause, are of all others the best entitled to sue or be defended; and they shall receive a due portion of my services, cheerfully given.

The American Bar Association weighed in on the issue of pro bono work in 1908 when it adopted its Code of Ethics, Canons 12 carried forward the idea that lawyers ought to provide legal services to those who cannot afford them, providing in part:

A client's ability to pay cannot justify a change in the value of the service, though his poverty may require a less charge, or even none at all. ... In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

In the November 1938 edition of American Lawyer, then-ABA president John C. Benson announced:

The call will soon go out for volunteers who will be willing to render legal services for a non-compensatory fee in order that it may be said of this community that whoever has a just case will have that cause adequately reviewed and handled even though he may not be able to pay his attorney more than a fraction of the value of the service. ... When the call comes, let us have a response which will make each of us proud to say that our association is doing a work which has gone far in educating the public to understand the lawyer's appreciation of his professional and social obligations.

The Code of Professional Responsibility, adopted by the ABA in 1969 and in Minnesota in 1970, addressed pro bono services in the nondiscrimination section. Ethical Considerations, significantly expanding on the philosophy underlying the pro bono obligation. Ethical Consideration 2-25, recognizing the changing times, increased pressures on lawyers to produce billable hours, still encouraged service to the disadvantaged. It provided in part:

The basic responsibility for providing legal aid is not for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the pro bono movement is excused. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees must continue to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Every lawyer, therefore, support all proper efforts to meet this need for legal services.

Current Rule 6.1, Minnesota Rules of Professional Conduct, recognizes the responsibility of all lawyers to render pro bono services. The rule establishes an aspirational goal of 50 hours of pro bono per year, sets forth a definition of what kinds of service may be rendered in fulfilling the aspirational goal, and encourages financial contributions to organizations providing legal services to persons of limited means. The Comment to this rule emphasizes the voluntary nature of its obligations, providing that "the responsibility set forth in this rule is not intended to be enforced through disciplinary process."

The preamble to the MRPC provides that lawyers, as members of the legal profession, have a special responsibility for the quality of justice. It provides:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and provide an influence to ensure equal access to our system of justice for those who are disadvantaged and to social barriers cannot afford or secure adequate legal counsel.

The Supreme Court's Professional Aspirations, adopted in 2001, also urge lawyers to render free pro bono services without impediment. Rule 6.5, MRPC, has eased slightly the imputation of conflicts of interest so as to permit lawyers to render short-term limited legal services to pro bono clients without fear that so doing will inadvertantly disqualify the lawyer's partners or associates from a representation adverse to the pro bono client.

Accountable

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