

ETHICAL ISSUES IN PRO BONO WORK

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Under Minnesota State Bar Association President Jim Baillie's direction, the MSBA is making a concerted effort to renew and reinvigorate the bar's commitment to providing pro bono legal services to the indigent. It seems appropriate then to review the provisions of the Minnesota Rules of Professional Conduct (MRPC) that are most often encountered while providing pro bono services.

Aspirational rule

Rule 6.1 of the MRPC sets forth the basic obligation of all lawyers to aspire to provide at least 50 hours of pro bono legal services each year. The rule encourages lawyers to provide a majority of the legal services rendered without a fee or expectation of a fee to persons of limited means or to charitable, religious, civic, community, governmental or educational organizations that are designed primarily to address the needs of persons of limited means.

The rule also brings within the ambit of the pro bono services contemplated:

- the delivery of legal services at no or a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights;
- the delivery of legal services to persons of limited means at a substantially reduced fee; and
- participation in activities for improving the law, the legal system or the legal profession.

Finally, the rule encourages financial contributions to organizations that provide legal services to persons of limited means.

While Rule 6.1 is not to be enforced through the disciplinary process, all lawyers ought to consider it a personal, moral obligation. As noted in the Preamble to the MRPC: "A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. . . . As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. . . . 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, and should therefore devote professional time and civic influence in their behalf."

Limited representation

It will not be uncommon when undertaking a pro bono representation to find that the client has legal problems extending beyond the scope of the matter on which you have agreed to work. You are not required, simply by virtue of having undertaken a pro bono representation in a particular matter, to represent the client in the resolution of all of his or her legal problems.

Additionally, it may well be that you wish to limit your representation in a particular matter to dealing with

a single, discreet issue within the case.

Rule 1.2(b) of the MRPC permits a lawyer to limit the objectives of representation if the client consents after consultation. The consultation required by the rule should include a clear statement to the client setting forth what you will be doing, what you will not be doing and what will remain to be done in the action once you have completed providing the services you intend to render.

There are some instances in which the limitation of the scope of the representation is impermissible. For instance, you may not so severely limit the services to be provided that it results in providing incompetent representation to the client.

Resolving conflicts

Often lawyers providing pro bono services will meet with a client to provide only short-term limited legal services with no expectation that there will be a continuing representation. Typically, these services are provided in a clinic setting, away from the lawyer's office, making it difficult for the lawyer to check for conflicts of interest. There can be no doubt that a lawyer who meets with a person for the purpose of providing legal advice creates an attorney-client relationship. See *Togstad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980).

What if, unknown to the lawyer, the client being advised is the opposing party in a matter being handled by a partner or associate?

There is currently pending before the Minnesota Supreme Court a petition for amendment of the MRPC. Amongst the proposed changes is the addition of new Rule 6.5. The proposed rule addresses the conflict of interest issues arising out of advice-only pro bono representations. The proposed rule provides that a lawyer who, under the auspices of a program offering pro bono legal services, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

- is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
- is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

The rule goes on to state that “[e]xcept as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.”

Thus, you may not provide short-term limited legal services to a client if you know that you or another lawyer in your firm represents or has represented a party adverse to that client in the same or a substantially related matter.

If you do provide short-term limited legal services to a client, other lawyers in your firm would not be prohibited from undertaking the representation of a party adverse to that client in the same matter. You, however, would be prohibited from undertaking such representation.

Moreover, any information gained during the course of the brief advice given must be held confidential in

any event and may not be used in any subsequent representation adverse to the client. See MRPC, rules 1.6 and 1.9.

To avoid disqualification of the firm, it would be wise to formally screen the lawyer who provided the short-term limited legal services from participation in the representation by others in the firm of parties adverse to the client who received the short-term limited legal services.

The need for pro bono services is greater than ever. Please help however you are able.