

Pro bono: It's good and it's good for you!

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

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 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 Resolutions. 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 causes, are of all others the best entitled to sue or be defended; and they shall receive a due portion of my services, cheerfully given."

Of note is the fact that, although a good attitude is always important, current Rule 6.1 does not require that you be cheerful while rendering pro bono services.

ABA weighs in

The American Bar Association weighed in on the issue of pro bono work in 1908 when it adopted its Canons of Ethics. Canon 12 carried forward with the idea that lawyers ought to provide legal services to those who cannot afford them (with special emphasis on the widows and orphans of lawyers), providing, in part: "A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration. . . . 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 *Hennepin Lawyer*, then-HCBA 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 cause 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."

Ethical considerations

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

"The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. 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 continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. . . . Every lawyer should support all proper efforts to meet this need for legal services."

Rule 6.1 was adopted in Minnesota in 1985 with the Rules of Professional Conduct. It carried forward the obligation to provide pro bono services and maintained the voluntary nature of the obligation.

In 1995 the rule was amended to more fully set forth the specific nature of the pro bono obligation, providing a goal to strive for, suggestions for how that goal may be attained, and emphasizing that the obligation remains voluntary.

Presently there are thousands of Minnesota attorneys providing an untold number of hours of pro bono services either on their own or through such organizations as Volunteer Lawyers Network, Judicare, Southern Minnesota Regional Legal Services, Volunteer Attorney Program of Duluth, Legal Assistance of Washington County, Legal Assistance of Dakota County, Legal Assistance of Olmsted County and many other organizations. All of these attorneys are carrying forward a proud tradition of service to the profession and the community. The bar owes its thanks to all of you and those who went before you.

Pro bono--try it, you'll like it.