

VOLUNTARY PRO BONO LEGAL SERVICES

By

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The Minnesota State Bar Association, at its June 1995 session, resolved to petition the Supreme Court to adopt Model Rule 6.1 of the American Bar Association's Model Rules of Professional Conduct.^{[Ftn 1](#)} This represents a refinement of the longstanding recognition by lawyers that legal services should be provided on a voluntary basis to those who need them but cannot afford them.

The roots of voluntary pro bono services go deep. In the early nineteenth century David Hoffman framed a code of professional ethics for lawyers commonly referred to as *Hoffman's Fifty Resolutions*.^{[Ftn 2](#)} Resolution 18 expressed a pro bono obligation:

[T]hose 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.

Hoffman intended his code to be adopted by his students on admission to the bar. He framed the code in "the manner of resolutions, rather than of didactic rules, hoping they may thereby prove more impressive and be more likely to be remembered."^{[Ftn 3](#)}

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 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.

The fact that lawyers have long recognized 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.

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.

Poverty in this country, far from being a thing of the past, has created a greater need for legal services to the disadvantaged than individual lawyers giving of their time could meet. Since the mid-'60s, government funding of Legal Services Offices has helped to address the need. Ethical Consideration 2-25 recognized the problem, and encouraged support for such measures:

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 effort to meet this need for legal services.

Rule 6.1, as it reads today, was adopted in Minnesota in 1985 with the Rules of Professional Conduct ("Rules").^{[Ftn 4](#)} It carried forward the obligation to provide pro bono services yet maintains the voluntary nature of the obligation. The Rules are partly obligatory and disciplinary, and partly descriptive of a lawyer's professional role. Rule 6.1 falls into the latter category, and is not intended to be enforced through disciplinary means. The difficulties in enforcement, the inherent constitutional questions, and the practical difficulties that would be encountered in a universal mandatory pro bono obligation make it clear that a voluntary system is best. Importantly, the personal satisfaction derived from helping someone in need is enhanced when the motivation flows from a personal recognition of a moral obligation as opposed to a simple desire to avoid disciplinary sanction. And, as Hoffman realized, voluntary resolutions may prove more impressive, and more likely remembered.

The proposed ABA Model Rule 6.1 and its comment differ from the current Rule 6.1 in several respects:

1. The Model Rule quantifies the average amount of pro bono work to be performed annually, setting a goal of 50 hours per year;
2. 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;
3. The comment to the Model Rule specifies that lawyers may satisfy the pro bono responsibility collectively by aggregating a firm's pro bono activities;
4. The comment to the Model Rule, in addition to encouraging all lawyers to support legal services programs financially, recognizes that it may not always be feasible to meet the 50-hour goal. Accordingly, it provides that, at such times, a lawyer may discharge his or her 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.

The adoption of ABA Model Rule 6.1 will constitute a logical next step in the profession's expression of the moral duty to volunteer legal services. It gives more than just a general statement that pro bono work is good. The proposed Model Rule provides a goal for which to strive, outlines suggestions for how that goal may be attained, and continues to emphasize that while the obligation is personal to every attorney, the fulfillment of that obligation remains voluntary.

NOTES

1 See *Minnesota State Bar Association, "Reports and Recommendations to the June 23 General Assembly, Report of the Legal Assistance to the Disadvantaged Committee," 1995 Convention Supplement to 52 Bench & Bar of Minnesota 5 (May/June 1995) at 3.*

2 *Archer, Ethical Obligations of the Lawyer, 1910 at 317, "Hoffman's Fifty Resolutions In Regard to Professional Deportment," Reprinted from American Law School Review, December, 1908.*

3 *Id.*

4 *Rule 6.1, MRPC, provides: "A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."*