

Ethical Issues - Pro Bono Representation: Help the Profession Help Others

By Russell Jackman, Esq.

Pro Bono: Definition

ABA Model Rule 6.1 establishes professional responsibility to provide pro bono service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

Pro Bono: Definition

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Pro Bono: Definition

Examples of what does NOT qualify as pro bono:

- Providing free legal assistance to friends or relatives who are not indigent is not pro bono.
- Providing free legal assistance to charitable, community, governmental, or educational organizations in matters that are not designed to primarily address the needs of persons of limited means and where the organization's economic resources would not be significantly depleted were it to pay for standard legal fees is not pro bono.
- If a paying client becomes unable to pay for legal services, that "bad debt" does not count as pro bono as the attorney expected compensation at the outset of the representation.
- Services for pay, even if identified as affordable, and services provided on a sliding fee scale to persons of low and moderate income do not qualify as pro bono

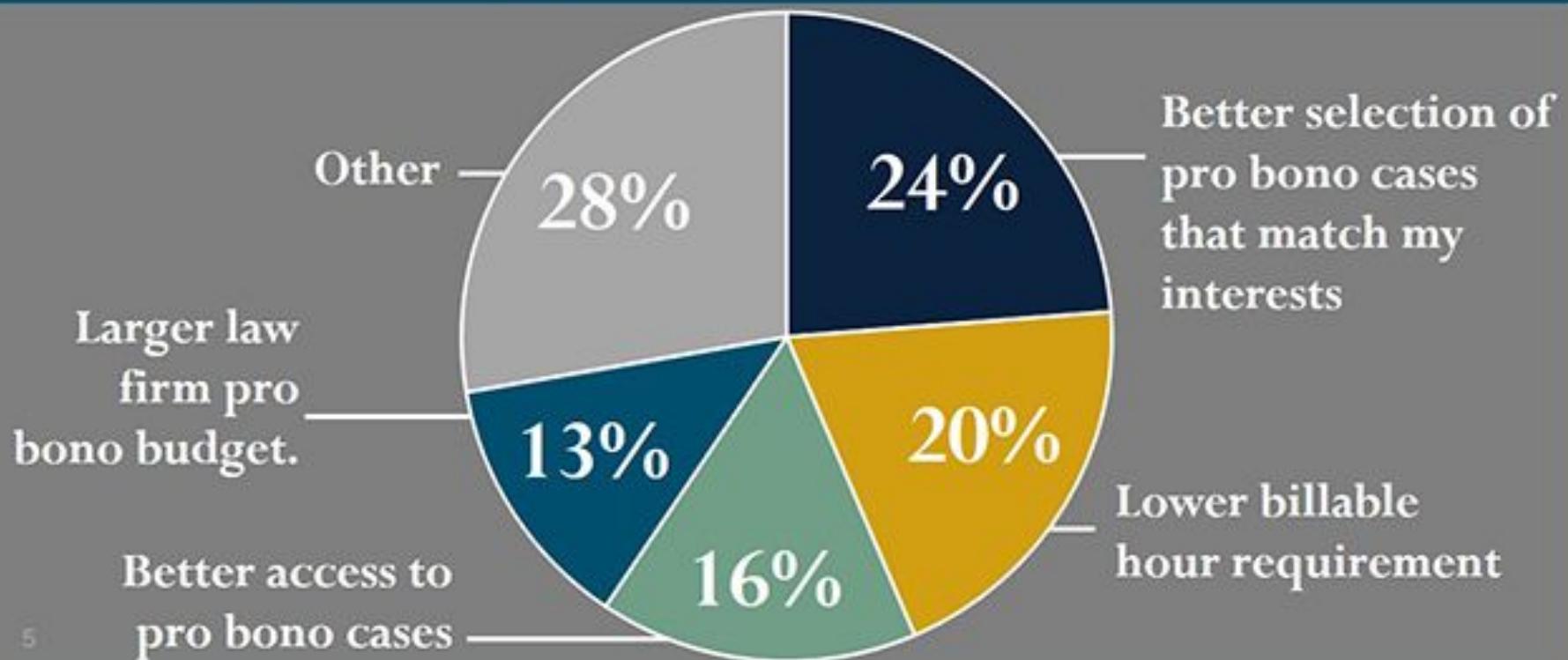
Pro Bono: Definition

a full range of activities, including

- individual and class representation
- the provision of legal advice
- legislative lobbying
- administrative rule making
- the provision of free training or mentoring to those who represent persons of limited means

Pro Bono: Definition

Factors that would enable more attorneys to provide pro bono legal services.



Pro Bono: Definition

Legal services can be rendered to individuals or to organizations such as

- homeless shelters
- battered women's centers
- food pantries that serve those of limited means.
- The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

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- homeless shelters
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- food pantries that serve those of limited means.
- The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.
- Services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as pro bono is allowed.

Pro Bono: Definition

- Lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate
- The system values lawyers engaging in activities that improve the law, the legal system or the legal profession.
 - Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, ***acting as a continuing legal education instructor***, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities considered to be of pro bono value.

Pro Bono: Definition

- There may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means.
- Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided

Florida Pro Bono

- In the early 1990s, the state Supreme Court ruled that Florida attorneys should aspire to perform 20 hours of pro bono work annually; in lieu of service, attorneys are asked to contribute at least \$350 to a legal aid program.
- Although the aspirational goal is not mandatory, Florida attorneys are required to report their pro bono hours and/or contributions.
- Since the court's ruling, the number of attorneys licensed in Florida has grown but the number of hours donated is fairly unchanged.
- Our legal community in Jacksonville always has been generous with their volunteer time and fundraising efforts. For that, we are extremely grateful to all of you who provide advice, brief services, representation, mentorship and financial contributions on behalf of our low-income residents.

The need for Pro Bono

- During this exceptional time in our history when many people have been negatively impacted by the COVID-19 pandemic and the related financial meltdown, people that may have been ineligible for services at the beginning of March now are facing unemployment, eviction, foreclosure or bankruptcy.
- Only lawyers have the skills and knowledge needed to secure access to justice through the legal system.

<https://www.jaxdailyrecord.com/article/pro-bono-service-is-more-important-during-covid-19>



The Need For Pro Bono

- For low-income people, whose unmet legal needs are well documented, volunteer attorneys who work with legal services programs have the ability to help bridge the gap.
- Legal services programs reach out to the low-income communities to let them know about help available. Social service agencies refer those in need to legal services offices. Most low-income residents will not contact a private attorney to ask for pro bono help; they will contact a legal services agency.
- According to the American Bar Association, at least 40% of low- and moderate-income households experience a legal problem each year, yet studies show that the collective civil legal aid effort meets only about 20% of the need.



CASES

Cindy Waterson, an attorney who specializes in special needs law, volunteers her time to take pro bono limited conservatorship cases, which are specific protective probate proceedings for individuals diagnosed with a developmental disability

With the help of her Spanish-speaking paralegal, Claudia Kennedy, Waterson takes on as many Spanish-speaking cases as she can because of the difficulty of placing such cases. The work involves meeting with families to determine their needs, drafting petitions and related pleadings required for a conservatorship in probate court and representing the client in court. We talked to Waterson about her volunteer work with PLC.

Why did you decide to volunteer on these cases?

My firm practices in the area of special needs law. This involves advocacy for individuals who are diagnosed with developmental disabilities (i.e., autism, mental retardation, cerebral palsy, epilepsy) and their families. My partner, Pat Huth and I, are contract attorneys for the regional centers having actually worked on staff for one of the Los Angeles Regional Centers. Because of our background, I feel compelled to accept as many limited conservatorships from PLC as we can, especially those cases that may involve unusual or difficult issues where the families would have difficulty navigating through probate court alone.

CASES

Do you find the work rewarding?

We are very blessed to work in the area of special needs. My partner and I, as well as our staff, are committed to assisting families. All of our families experience unique challenges surrounding their child's disability and they struggle every day to navigate the maze of systems and services necessary to ensure that their child lives a full life. It is very rewarding for me personally when I am able to lead them through this process.

Would you recommend other attorneys volunteering for PLC?

I feel strongly that all attorneys should offer pro bono services. When I first graduated from law school, the bar recommended that I offer at least 50 hours of pro bono service every year. I can't say that I meet that goal every year, but by volunteering for PLC and other pro bono agencies, I am able to work toward that goal. My personal goal is to maintain a minimum of 1 pro bono active case at all times. I urge all attorneys to volunteer their services. It is vitally important for our communities that we provide legal services to the underserved, but it is equally important to ourselves as professionals to "pay it forward."

What is your impression of the work PLC does to help the community?

PLC does an amazing job providing outreach and legal services to our community. I am always impressed by the quality of the intake documentation when I receive a new case. Orange County is very lucky to have this organization as an advocate.

If you are interested in taking a conservator case, see PLC's most recent case list or contact Senior Lead Attorney Leslie Lindgren.

CASES

- Ruby* was taken into the legal custody of the Louisiana Department of Children and Family Services due to dependency. Her mother's parental rights had been terminated previously, and her father was incarcerated on charges which he denied vehemently and which were later dropped. Because she had no legal caretaker, the state requested legal custody placed Ruby in the home of a relative.
- After her father's release from jail, the Project attorney representing Ruby successfully negotiated with the district attorney a continuance of the child-in-need-of-care adjudication to give the father time to restore utilities to his home, so that both Ruby and her father would not be burdened with the legal and social stigma of a child welfare case.

CASES

- Midland attorney recognized for providing pro bono legal services Victoria Ritter, vritter@mdn.net Published 5:00 am EDT, Wednesday, September 16, 2020 Midland attorney Angela Cole was recognized a second year in a row by the Access to Justice Committee of the State Bar of Michigan for her work to support access to justice efforts by providing pro bono legal services to low-income individuals and families.
- Cole's name was listed in the 2020 A Lawyer Helps Pro Bono Honor Roll, which was published by the State Bar of Michigan at <https://www.michbar.org/alawyerhelps/honorroll>, and recognizes individual attorneys, solo practitioners, law firms and corporations that provided 30, 50 or 100-plus hours of qualifying pro bono legal services in 2019.
- Angela provided a combination of 581 pro bono and low bono hours between her private practice and as an attorney through Affordable Legal Care, a non-profit law firm founded by Cole that serves people who do not qualify for free legal assistance through federal programs or court-appointed attorneys and who earn too little to afford to pay the full price of an attorney.

CASES

- Cole served 98 individuals or families and five organizations that serve low income individuals with 498 reduced hourly fee hours and 83 free hours during 2019. "I have such a grateful heart for our community, organizations, individuals and families who donated or referred clients to Affordable Legal Care," Cole said. "I could not have done this without each and every one of them or the board members for Affordable Legal Care. It was because of their support so many people and families had access to affordable legal services"
- Cole has well-rounded experience between the court system, private practice and the corporate world. She has spent more than 20 years in the legal field with most of it in a leadership or management role. She served as a corporate attorney with global responsibilities, private practice attorney, magistrate, attorney referee and judicial law clerk. She is known statewide as a child advocate and is active in the community as a volunteer with both nonprofit and civic organizations.

How to get involved

- No matter where you live or work, there is a pro bono program that will be of interest to you and that needs your help. Visit [The National Pro Bono Volunteer Opportunities Guide](#).
- Your state or local bar association has a pro bono committee or program that needs your assistance, and you can find more by clicking [here](#).
- There are [legal aid and legal services providers](#) in your community that have pro bono and other programs that will be of interest to you and enable you to serve the poor in your community.
- The American Bar Association supports a plethora of [pro bono programs](#).
- The American Bar Association's [Volunteer Legal Project](#) ("VLP") was created in 1986 to assist the ABA's lawyer staff in fulfilling their professional obligation to perform pro bono service. Over the years, lawyers have provided legal services to numerous indigent clients in matters involving bankruptcy, divorce, custody, adoptions, guardianships, public benefits, wills and other matters. If you are a lawyer employed by the ABA and wish to participate in this program, [email](#) Marissa LaVette.
- If you are a paralegal, or if you know a paralegal, who wants to volunteer to do pro bono, read [this information](#) about pro bono participation.

<https://www.americanbar.org/groups/center-pro-bono/resources/volunteer-opportunities/#:~:text=No%20matter%20where%20you%20live,find%20more%20by%20clicking%20here.>

How to get involved

- The [ABA's Immigrant Child Advocacy Network](#) (ICAN) connects pro bono attorneys with the tens of thousands of unaccompanied immigrant minor children in America who are scheduled for legal proceedings and have no right to appointed counsel or other adult representing the child's interests.
- Without legal help, these children are unsuccessful in pressing their rights in over 90% of cases; with the help of a lawyer, these children prevail most of the time

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How to get involved

- [The Military Pro Bono Project](#), unlike legal service programs that assist veterans, is uniquely focused on provision of pro bono services to *active-duty service members*, many of whom remain deployed to areas of conflict.
- Advocates interested in sharing resources and strategies are welcome to join a new [COVID-19 Legal Response listserv](#) available in the National Disaster Legal Aid Advocacy Center. The Center also has information on [COVID-19 legal response needs](#), resources and service delivery strategies identified in national calls of nonprofit legal aid, pro bono and other advocates.
- The [National Disaster Legal Aid Advocacy Center](#) welcomes all advocates and volunteers from nonprofit legal aid organizations, bar associations, pro bono counsel from law firms and corporations, law school students and faculty, and allied nonprofits working on disaster legal aid.

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How to get involved

- International Opportunities
- The [ABA Justice Defenders Program](#) pro bono legal assistance (remote legal work, in country litigation and strategic advice, trial observation missions) to human rights defenders and lawyers anywhere in the world who are subject to retaliation for their human rights advocacy and/or having problems undertaking human rights litigation.
- The [ABA-UNDP International Legal Resource Center](#) (ILRC) was created in 1999 to enhance access to legal expertise for technical assistance and other development projects. The ILRC 1) identifies legal specialists for short- and long-term assignments implemented under the purview of UNDP (United Nations Development Programme) worldwide; 2) conducts legal research and analysis on a wide variety of topics; 3) facilitates the review of domestic legislation vis-à-vis international standards and best practices; 4) serves as a repository for legal information; and 5) provides other services upon request. The ability of the ILRC to draw upon pro bono contributions from legal specialists helps reduce the overall cost of technical assistance projects.
- [Advocates for International Development](#) (A4ID) works with development organisations and developing countries to facilitate the provision of pro bono legal advice and assistance from leading lawyers, law firms and chambers in the areas of international trade, debt and development.
- The [Center for Justice & Accountability](#) (CJA) is an international human rights organization dedicated to ending torture and other severe human rights abuses around the world and advancing the rights of survivors to seek truth, justice and redress.
- [The Cyrus R. Vance Center for International Justice](#) works with NGOs, universities, bar associations and law firms to support access to justice.
- [Human Rights Internet \(HRI\)](#) is dedicated to the empowerment of human rights activists and organizations, and to the education of governmental and intergovernmental agencies and officials and other actors in the public and private sphere, on human rights issues and the role of civil society.
- The [International Bar Association Pro Bono](#) web site is intended to act as a communications tool for pro bono practitioners all over the world and to enhance pro bono matters internationally.
- [International Federation of Family Associations of Missing Persons from Armed Conflicts \(IFFAMPAC\)](#) is dedicated to helping families around the world whose family members have gone missing due to armed conflict.
- The [International Senior Lawyers Project](#) provides volunteer legal services by highly skilled and experienced attorneys to advance democracy and the rule of law, protect human rights and promote equitable economic development worldwide. Through the pro bono work of retired and active practitioners, ISLP helps governments and citizens develop and implement legal reforms, assists programs that advance the social and economic well-being of people in developing countries, and builds the capacity of local organizations and professionals to meet the needs of their communities.
- [LawWorks](#) is the operating name of the Solicitors Pro Bono Group (SPBG)(United Kingdom) a small, national charity whose aim is to enable and encourage lawyers to provide free legal help to individuals and community groups in need.
- [Lawyers Without Borders](#) Organization of volunteer lawyers committed to pro bono work for Rule of Law initiatives, Human Rights work and non-governmental organizations (NGOs). For more information, view an [interview](#) with Christina M. Storm, Founder and Director of Lawyers Without Borders, Inc. and Attorney Jerry Shestack, trial attorney and world leader in the international human rights movement on pro bono volunteer work in the international arena.
- The [Mental Disability Advocacy Center \(MDAC\)](#) Mental Disability Advocacy Center (MDAC) is an international non-governmental organization based in Budapest that promotes and protects the human rights of people with mental health problems and intellectual disabilities across central and eastern Europe and central Asia. MDAC works to improve the quality of life for people with mental disabilities through litigation, research and international advocacy. MDAC has participatory status at the Council of Europe and is a cooperating organization of the *International Helsinki Federation for Human Rights*
- [New Tactics in Human Rights](#) advances human rights internationally.
- The [National Pro Bono Centre](#) site is designed to develop a virtual community of those involved in pro bono work in the United Kingdom.
- The [PSJD](#), NALP's Public Service Law Network Worldwide, is a network of 150 law schools and more than 12,000 law-related public interest organizations in the US and around the world. Through its online database, PSJD provides a comprehensive clearinghouse of public interest organizations and opportunities for lawyers and law students. Users can perform customized searches of public interest opportunities around the world, ranging from short-term volunteer and paid internships to full-time jobs, fellowships and pro bono opportunities.
- The [Rule of Law Resource Center](#) is a community resource provided by LexisNexis as a pro bono initiative for attorneys working on Rule of Law or Human Rights issues.
- [Thomson Reuters Foundation TrustLaw](#) currently has a focus on good governance and fighting corruption. Through its [TrustLaw Connect](#) resource attorneys and law firms can find NGOs and other entities with international legal needs.

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Conclusions

- The need is always there for Pro Bono Help in so many areas
- All states suggest between 20-50 hours a year
- Many firms have pro bono budgets
- Solo/small firms can still make pro bono productive for them
- Helping the under or non represented makes a difference
- Helps improve the overall image of attorneys
- Makes you feel good!

Questions? Contact me!

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