

REPRESENTATIVE ASSEMBLY PROPOSAL
Proposed Michigan Rule of Professional Conduct (MRPC) 6.1
Voluntary Pro Bono Publico Service
February 5, 2010

RESOLUTION - Revision of MRPC 6.1 and Representative Assembly's Voluntary Pro Bono Standard

Issue

Should the State Bar of Michigan adopt the following resolution to amend and restate Rule 6.1 of the Michigan Rules of Professional Conduct and eliminate the Representative Assembly Voluntary Pro Bono Standard?

RESOLVED that the State Bar of Michigan proposes to 1) amend the Michigan Rules of Professional Conduct by amending and restating Rule 6.1 and 2) eliminate the separate Representative Assembly Voluntary Pro Bono Standard by combining it with an amended and restated MRPC Rule 6.1 to read as follows:

Voluntary Pro Bono Standard

~~All active members of the State Bar of Michigan should participate in the direct delivery of *Pro Bono* legal services to the poor by annually:~~

- ~~1. Providing representation without charge to a minimum of three low income individuals; or~~
- ~~2. Providing a minimum of thirty hours of representation or services, without charge, to low income individuals or organizations;¹ or~~
- ~~3. Providing a minimum of thirty hours of professional services at no fee or at a reduced fee to persons of limited means or to public service or charitable groups or organizations; or~~
- ~~4. Contributing a minimum of \$300 to not for profit programs² organized for the purpose of delivering civil legal services to low income individuals or organizations.³~~

~~¹In recognition of the fact that some individuals may not be able to provide direct client representation, the time obligation may be fulfilled by active involvement in activities such as serving on a local Pro Bono committee or the board of directors of a legal aid or legal services program, training other lawyers through a structured program, engaging in community legal education programs or advising nonprofit, low income, or public interest organizations or groups.~~

~~²A list of eligible programs will be published by the committee on Pro Bono Involvement and made available annually through the State Bar of Michigan.~~

~~³An attorney's obligation may be fulfilled by a combination of activities such as direct representation of an individual in one case and a contribution of \$200.~~

RULE 6.1
VOLUNTARY PRO BONO PUBLICO SERVICE

~~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. A lawyer may also discharge this responsibility 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.~~

COMMENT:

~~The ABA House of Delegates has formally acknowledged “the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services” without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This rule expresses that policy, but is not intended to be enforced through the disciplinary process.~~

~~———— The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well to do.~~

~~———— 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 or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.~~

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 30 hours or 3 cases of *pro bono* legal services per year, and/or to make a financial contribution to a legal services agency that provides free legal services to the poor or to traditionally underrepresented groups each year. The recommended minimum contribution level is \$300 per attorney per year for all attorneys and \$500 per year for those lawyers whose income allows a higher contribution. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 30 hours (or 3 cases) 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 that are designed primarily to address the needs of persons of limited means; and

(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 to providing pro bono services, a lawyer should voluntarily contribute financial support to organizations that provide free legal services to persons of limited means.

Comment

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and governmental offices or agencies that provide direct services to persons of limited means.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which 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 are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of 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 that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, 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 a minimum of \$300 per lawyer, per year or \$500 for those lawyers whose income so allows. While law practice economies vary throughout Michigan, nonetheless, there are a considerable number of lawyers in large law firms or other successful practices for whom an annual contribution greater than \$300 is warranted. A donation can be made to the Access to Justice Fund administered by the Michigan State Bar Foundation. In addition, it is acceptable for firms to satisfy the pro bono responsibility collectively, as by a firm's aggregate donations or pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Where possible every lawyer should financially support such programs in addition to providing direct pro bono services whenever such service is feasible. The Access to Justice (ATJ) Fund raises funds for the provision of legal services to the poor in all areas of the state. The ATJ Fund also supports the work of a number of statewide, regional, and local legal services programs. This Rule recognizes a financial donation to the ATJ Fund as one method of satisfying a lawyer's pro bono responsibilities. The State Bar of Michigan and the Michigan State Bar Foundation will annually publish a list of programs eligible to receive attorney financial pro bono donations.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Synopsis

The proposed resolution supports amendment and restatement of Michigan Rule of Professional Conduct 6.1 and the elimination of the Voluntary Pro Bono Standard to accomplish the following:

1. Combine the two State Bar statements of pro bono policy into one comprehensive statement;
2. Expand the definition of pro bono while making it clear that the majority of pro bono effort must be directed to civil legal services for the poor;
3. Clarify that contributions to the Access to Justice Fund and pro bono services provided through the Access to Justice Fund eligible programs will fulfill pro bono obligations;
4. Encourage those lawyers who are financially able to do so to make a pro bono contribution of more than \$300 each year; and
5. Maintain the voluntary nature of the rule.

The amendments primarily take the specifics already contained in the Voluntary Pro Bono Standard (adopted in 1990) and move them into the rule. The amendments reflect positions already taken by the Representative Assembly and transmitted to the Michigan Supreme Court for action. Action on those items did not occur due to the lengthy delay in the Court's administrative process, and in January of 2009, the Court closed the file. In addition, the proposal clarifies that a financial donation

to the Access to Justice Fund administered by the Michigan State Bar Foundation is one method of satisfying a lawyer's pro bono responsibility.

This proposal is submitted by both the State Bar of Michigan Committee on Justice Initiatives and its Pro Bono Initiative (PBI). It was approved by 12 of 15 members of the PBI through an electronic vote that closed on January 22, 2010. No PBI members opposed it. It was also approved by 10 of 12 members of the Committee on Justice Initiatives through an electronic vote that closed on January 27, 2010. No CJI members opposed it.

Background

The Representative Assembly adopted a Voluntary Pro Bono Standard on April 28, 1990. The Standard recommends that Michigan lawyers provide civil legal services to three clients, provide 30 hours of service or contribute \$300 to programs providing civil legal services to the poor. The Voluntary Standard stood apart from the very general statement of MRPC 6.1 which is shown in strike through above.

The Representative Assembly reviewed two proposals for change to 6.1 and the Voluntary Pro Bono Standard as part of its 2003 work to revise the ethics rules. It proposed changes combining the two statements into one ethical rule, expanded the definition of pro bono to include "charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means" and to include "participation in activities for improving the law, the legal system or the legal profession." Although it adopted most of the positions set forth by the Standing Committee on Justice Initiatives (CJI) and its Pro Bono Initiative, some of the key provisions regarding the Access to Justice Fund and the list of eligible ATJ programs that were supported by RA discussion were not transmitted to the Court or published in its proposed rules. Because of that, in February of 2005 the CJI sent a letter to the Court asking that those provisions be considered when reviewing revisions to the rule. Finally, in a separate action prompted by a letter to the Court from corporate counsel leaders stating that the contribution amount should be \$500 for those lawyers who could afford it, the Representative Assembly proposed to increase the contribution amount to \$300 "or more" in April of 2006.

On January 22, 2009, the Michigan Supreme Court closed ADM File No. 2003-62 that included MRPC 6.1. Because of the strong statewide support for change to the pro bono rules in Michigan, the Committee on Justice Initiatives and its Pro Bono Initiative bring forth this proposal that combines the three previously proposed changes into one integrated document.

Opposition

None known.

Prior Action by Representative Assembly

April 28, 1990	Adoption of Voluntary Pro Bono Standard
November 14, 2003	Adoption of proposed revised MRPC 6.1
April 29, 2006	Adoption of proposed increase of pro bono contribution amount

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on March 27, 2010

Should the State Bar of Michigan adopt the above resolution?

(a) Yes
or

(b) No