

MICHIGAN'S Pro Bono Practice

By Robert Fair Gillett and Candace Crowley

FAST FACTS

- The importance of ABA Model Rule 6.1 is its emphasis on the professional responsibility of lawyers to provide legal services to the poor.
- The State Bar's Pro Bono Initiative provides useful guidance on how to implement Rule 6.1 and the Voluntary Standard.
- "It has been my experience that people overestimate the amount of aid offered by various legal aid organizations and as a consequence do not fully appreciate the importance of lawyers providing legal services to the poor." —Dennis W. Archer

Background on Michigan Rule of Professional Conduct 6.1—The Pro Bono Rule

The ABA Model Rule

The significance of ABA Model Rule 6.1 is its emphasis on the professional responsibility of lawyers to provide legal services to the poor. The American Bar Association first published the Canons of Professional Ethics in 1908—and those canons recognized that a "client's poverty" might justify representation and that "widows and orphans without ample means should receive special and kindly consideration."¹ A lawyer's responsibility to provide pro bono legal services to those of limited means has been recognized in every subsequent reiteration of the rule.

Over time, the rule has clarified the definition of pro bono legal service so lawyers know what is expected of them. Model Rule 6.1 tells lawyers how to put their pro bono responsibility into action. Both legal services and financial support of legal aid programs have been part of the rule for many years.

Twenty-six states have adopted the current ABA Model Rule 6.1, a similar interpretation of the rule, or the 1993 version, which is substantially similar to the current rule.² Each successive ABA model rule has provided more detail in terms of what constitutes "pro bono service" because law firms, law schools, and individual lawyers have asked for greater guidance. The ABA model rule

reflects a consensus that detailed guidance regarding the ethics rule should be contained in the ethics rule and its comments.

The Michigan Voluntary Rule

Michigan adopted MRPC 6.1 on October 1, 1988, based on the 1982 ABA model rule. In April 1990, the Representative Assembly adopted the Voluntary Standard for Pro Bono Participation to provide specific guidance to Michigan lawyers concerning how to fulfill their responsibility to provide pro bono publico service.

The Michigan Voluntary Standard begins with the statement that "all active members of the State Bar of Michigan should participate in the direct delivery of pro bono legal services to the poor..." The rule describes four specific types of services and, in each instance, the client's poverty is explicitly mentioned. The State Bar's Pro Bono Initiative (PBI) provides useful guidance on how to implement Rule 6.1 and the Voluntary Standard. Specifically, the PBI informally interprets questions about the Voluntary Standard. Each interpretation emphasizes that pro bono service means legal services to the poor and financial contributions to the legal aid organizations that provide this service.³

Two problems have arisen under the Voluntary Standard. First, neither the Representative Assembly's actions nor the PBI's interpretations are truly authoritative readings of an ethics rule. Second, many lawyers are neither aware of nor acting in compliance





with the Voluntary Standard. This was the conclusion of the SBM's recent study of pro bono activities titled "...and justice for all," A Report on Pro Bono in Michigan: 2007.⁴ This study indicated that 30 percent of lawyers who responded to the survey were not aware of the Voluntary Standard. The study also showed that many lawyers misreported their pro bono work, e.g., counted activities that did not comply with the Voluntary Standard. A shocking 42 percent of respondents counted paying clients who had failed to pay their fees as pro bono service.

The Proposed Michigan Pro Bono Rule

In April 2010, the Representative Assembly adopted a proposed rule that made three significant changes: (1) it combined Rule 6.1 and the Voluntary Standard, (2) it updated the language to reflect Michigan history and practice, and (3) it suggested an increase in the annual financial contribution from \$300 to \$500 for those who can afford it. That rule was forwarded to the Michigan Supreme Court for publication and comment. The Supreme Court added an alternative to the rule that retained the current language of Rule 6.1, made no reference to the Voluntary Standard, and restated the voluntary nature of the rule. At the time of this writing, the court has not finalized action on the proposed amendment, and Michigan lawyers continue to look for guidance from the 1988 MRPC 6.1 and the freestanding 1990 Voluntary Standard.

Pro Bono Practice in Michigan

The need for changes in the language of the rule can be seen in the many letters submitted to the Michigan Supreme Court in support of Alternative B, the Representative Assembly version of the proposed Michigan Pro Bono Rule—MRPC 6.1. The following excerpts from those letters emphasize the importance of pro bono in Michigan.

There is a Great Unmet Need for Civil Legal Services for the Poor

"Studies estimate that between 50 and 80 percent of low-income persons facing a civil legal matter have no access to counsel—even when facing critical legal events such as the loss of custody of their children. See 'Documenting the Justice Gap in America,' September 2009."

—Michael Chielens and Ann Routt,
Co-Chairs, Legal Services Association of Michigan

"One need not look very far to recognize that it is the poor who face the greatest barriers in finding adequate representation. Targeting pro bono efforts to those most in need does not politicize pro bono work so much as focus our palliative efforts accurately on the wound we wish to heal.... While one can name numerous groups that an individual lawyer may find admirable and thus may *want* to represent, it is impoverished individuals and shoestring-budget nonprofit organizations that *need* representation."

—Rick A. Haberman, Dickinson Wright PLLC

Legal Aid Programs Alone Cannot Meet the Legal Needs of the Poor

"It has been my experience that people overestimate the amount of aid offered by various legal aid organizations and as a consequence do not fully appreciate the importance of lawyers providing legal services to the poor."

—Dennis W. Archer, Dennis W. Archer PLLC

The Unmet Need is a Significant Challenge for the Profession

"The lack of basic civil legal services for large numbers of persons of limited means is the single greatest challenge we face as lawyers committed to the principle of equal justice under law."

—John Nussbaumer, Professor and Associate Dean,
JD Programs, Thomas M. Cooley Law School

Lawyers Step Up to Meet the Need for Pro Bono Legal Services

"As a firm, we expect all of our attorneys to (1) devote a minimum of 30 hours each year to pro bono legal services or (2) contribute financially each year to an approved legal service organization consistent with applicant guidelines.... Further, the firm extends economic 'credit' for up to 50 hours of pro bono legal work for each of its attorneys."

—Thomas W. Linn, Chairman Emeritus and Chair of Pro Bono Committee, Miller, Canfield, Paddock and Stone, PLC

Lawyers Recognize Pro Bono Service Means Legal Service

“The focus on a lawyer’s provision of legal services to those individuals of limited means or to organizations serving those individuals of limited means holds to a long and respected tradition within the legal profession.”

—Lloyd A. Semple, Dean and Professor of Law,
University of Detroit Mercy School of Law

“[O]ur responsibility as lawyers is to serve the legal needs of the poor in greater proportion to our volunteer work to meet other community needs.”

—Michael L. Pitt, Pitt, McGehee, Palmer, Rivers & Golden

“Many lawyers engage in charitable and civic activities for both personal and business-related reasons. Nevertheless, members of the bar often do not recognize that they can make their maximum contribution to the indigent by practicing law.”

—William T. Burgess, Chief Executive Officer
of Dickinson Wright PLLC

Lawyers Know Clear and Measurable

Pro Bono Goals are Needed

“The most effective way to encourage pro bono participation by lawyers is for leadership to establish clear, measurable, and quantifiable goals for attorneys to follow. Once our leadership team established such goals for the GM legal staff in 2008, our pro bono participation among lawyers increased significantly and the lawyers became more engaged in these representations than they had previously.”

—E. Christopher Johnson Jr., Associate Professor and Director,
Graduate Program in Corporate Law & Finance,
Thomas M. Cooley Law School

Lawyers Recognize Pro Bono Work Helps

Ordinary People with Ordinary Problems

“It has not been our experience at Miller Johnson that there is anything political in this work. We have spent thousands of hours over the years helping ordinary people with ordinary legal problems.”

—Craig A. Mutch, Managing Member, Miller Johnson

An Early Exposure to Pro Bono Goes a Long Way

“Our recently adopted Voluntary Pro Bono Pledge, which recognizes Michigan law students who provide at least 50 hours of pro bono service before graduation, seeks to instill a lifelong commitment to pro bono service while introducing them to possible avenues such pro bono service might take during their careers.”

—Evan Caminker, Dean, University of Michigan Law School

Conclusion

It is inspiring for us to work with Michigan’s pro bono leaders. We see their commitment to providing access to the courts for the poor and hear the details of the work they do, the services they provide, the benefits to their clients, the contributions to their communities, and the positive impact they have on the public’s regard for the profession. The State Bar’s Pro Bono Initiative will continue to work with leaders in law firms and in legal aid programs to focus on the great unmet legal needs of the poor and identify opportunities for lawyers to direct their legal skills and financial contributions to address those needs. ■



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FOOTNOTES

1. Rhode, *Pro Bono in Principle and in Practice*, pp 5, 12–18 (Stanford, CA: Stanford University Press, 2005).
2. American Bar Association, *State-by-State Pro Bono Service Rules* <http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html#appendix>. All websites cited in this article were accessed September 15, 2011.
3. State Bar of Michigan Pro Bono Initiative, *Pro Bono Reference Manual*, pp 17–18, available at <<http://www.michbar.org/programs/ATJ/pdfs/justiceforall.pdf>>.
4. Hembroff, Hardy & Ehrlich, State Bar of Michigan, “...and justice for all,” *A Report on Pro Bono in Michigan: 2007*, pp 44–45, available at <<http://www.michbar.org/programs/ATJ/pdfs/justiceforall.pdf>>.