

pro bono



The Bar and Pro Bono

Structure and Spontaneity

Bob Gillett

In a recent article in the Ingham County Bar Association's *Briefs* ("Zorro and Robin Hood: Champions of the Poor"), the Hon. Richard Garcia talked about the early days of his law practice, when he spent an evening each week doing pro bono intake at the Cristo Rey Community Center in Lansing. Judge Garcia likened his pro bono work to the work of Zorro, the 19th Century California outlaw who was a nobleman by day but at night dressed in black and fought the oppression of the peasants by the Mexican governors.

It was a great article that drove home the two most important points about pro bono: (1) it is a lawyer's duty to give back to the community and to assure access to the courts for those who are unable to afford a lawyer; and (2) lawyers who engage in these community activities reap tremendous personal benefits through this work.

A third issue, implicit in Judge Garcia's article, is the core conundrum of the organized bar's pro bono efforts. What is the State Bar's role in pro bono? How can the Bar as an institution encourage and support the pro bono efforts of hundreds of individual lawyers? Or, to ask it differently, how do you organize and regulate a group of Zorros?

The short answer (thank goodness) is that the Bar can't really regulate pro bono; instead, the Bar encourages and supports pro bono efforts and helps develop new programs with expanded pro bono opportunities for lawyers.

What Are the Pro Bono Rules?

Pro bono service has traditionally meant "free legal services to low-income persons." The current Michigan Rule of Professional Conduct (MRPC) 6.1 states that every lawyer "should render public interest legal service." The rule states that a lawyer may fulfill this duty "by providing professional services at no fee or a reduced fee to

persons of limited means” or “by services in activities for improving the law . . .” or “by financial support for organizations that provide legal services to persons of limited means . . .”

MRPC 6.1 is arguably too general to move lawyers to action. To provide more guidance to Michigan lawyers, the State Bar’s Representative Assembly adopted in 1990 the “voluntary standard,” which set a “three cases or 30 hours or \$300” guideline. That is, to satisfy the pro bono obligation, on an annual basis, each lawyer should handle a minimum of three pro bono cases, or (if one case was especially time consuming) provide 30 hours of pro bono legal work, or (if direct service wasn’t possible) donate \$300 to a legal services program.

The Supreme Court is considering a new version of MRPC 6.1 as part of a comprehensive revision of the Code of Professional Conduct in response to the revised Model Code published by the American Bar Association (ABA) in 2001 (see sidebar). The proposed MRPC 6.1 would incorporate into the rule the voluntary standard of “three cases or 30 hours or \$300” and would significantly expand the definition of pro bono. While the proposed rule urges lawyers to “provide a substantial majority of [their] hours . . . to persons of limited means,” it also recognizes as pro bono “additional services” such as services for civil rights groups and “charitable, religious, civic, community, governmental, and educational organizations . . .”

Patterns of Pro Bono Practice

How do lawyers respond to the current pro bono rules? Well, the good news is that a very high percentage of lawyers are engaged in pro bono work. This has been documented by numerous surveys conducted in Michigan and elsewhere. The ABA published the first national scientific survey of lawyers’ pro bono work in August 2005. This was a survey of 1,100 randomly selected attorneys from across the country, balanced by geographic area and practice type.

According to the ABA survey, 66 percent of lawyers reported doing pro bono work within the past year, 46 percent reported that they had met the ABA standard of 50 hours of pro bono work, and the average number of pro bono hours reported was over 70 hours per year. The ABA reports similarly high numbers regarding lawyers’ contributions to legal services: 43 percent reported donating money to a legal services program within the past year, and the average reported donation was \$276.

The most surprising statistic in the report is that only 40 percent of lawyers who did pro bono work received their cases from a formal pro bono referral program. The largest single source of referrals was family and friends. Still others received cases through an employer program or through a religious group.

The fact that the majority of pro bono work is still done outside organized referral programs has caused considerable concern within the Bar’s pro bono community. Many Bar leaders strongly support organized pro bono programs. They note that “volunteer” pro bono is sometimes not for the poor; in some circumstances (e.g., sitting on a church or musical society board), the work may have an obvious business development aspect.

As a result, tension exists within the Bar between accepting broader definitions of pro bono and restricting it to organized programs providing direct service to the poor.

PROPOSED NEW MICHIGAN RULES OF PROFESSIONAL CONDUCT

PUBLIC SERVICE

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.~~

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 publico legal services per year, or contribute \$300 per year to entities performing pro bono publico services. 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, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

*To view the staff comment, refer to the Redline Copy of the Proposed Rules of Professional Conduct at http://www.michbar.org/generalinfo/pdfs/MRPC_Final_Redline.pdf.

The Goals of the Pro Bono Initiative

In most respects, the State Bar has moved past this debate. Our current thinking is that pro bono work is, after all, volunteer work, and that as such, it must engage and reward each individual volunteer. Under this approach, all pro bono is good. The role of the Bar is to encourage and support the development of many different kinds of pro bono opportunities so that every lawyer can identify pro bono work that will be rewarding.

At the same time, we recognize the huge unmet legal needs of the poor. (See the Legal Services Corporation’s most recent report on “Justice Gap in America” at <http://www.lsc.gov>.) The ABA Model Rule addresses this tension by recognizing “Tier 1” pro bono (direct service to the poor as defined by Model Rule 6.1(a)) versus

“Tier 2” pro bono (the broader, non poverty-related charitable work described in Model Rule 6.1(b)). Lawyers are urged to “provide a substantial majority” of their pro bono hours in Tier 1 services.

To implement this goal, the construct that the Pro Bono Initiative has worked with for the past several years is the “Pro Bono Menu.” Under this approach, the Bar’s role is to support a range of pro bono activities, so that a lawyer who wants individual cases can receive those cases; a lawyer who wants cases in a specific legal specialty area can receive those cases; a lawyer who wants high-profile civil rights cases can receive those cases; a lawyer who wants training or mentoring can receive that support; a lawyer who prefers not to do litigation can participate in advice clinics or pro se centers; a lawyer who doesn’t have the time or expertise to do pro bono work can fulfill the pro bono obligation by donating to the Bar’s Access to Justice Fund; etc. The goal is that every lawyer who has an interest in supporting access to justice can find a setting to do so—a setting that aligns with his or her interests, skills, and resources.

It is important to note that the vast majority of organized pro bono in Michigan occurs outside of the State Bar. Many local bar associations, local legal aid programs, and domestic violence shelters have pro bono referral programs. Several nonprofits and some courts also have programs. The role of the Bar is not to manage all these programs; rather, it is to help publicize them to lawyers and to support them administratively and financially. Ideally, to an individual private lawyer, the various programs will seem like a coordinated menu of volunteer opportunities—not like numerous competing programs clamoring for their time.

The Changing Landscape of Pro Bono

With this background, we’ve seen tremendous growth in lawyers’ pro bono efforts in the last five to ten years. Ten years ago, pro bono consisted of local referral panels administered by local bar associations and local legal services programs. Since then, the landscape has changed dramatically. These major changes include:

- **Large firm pro bono.** Ten years ago, the state’s largest 25 law firms had very little presence in pro bono. Presently, there are active pro bono and/or donation programs at almost all of the major firms. Eleven of the 25 largest firms are currently members of the Bar’s Circle of Excellence—the Pro Bono Initiative’s measure of 100 percent compliance with the voluntary standard.
- **Statewide programs.** Ten years ago, there were no statewide pro bono programs. Since then, two large general programs have been developed, and other specialty programs have begun. The Michigan Litigation Assistance Partnership Program refers out complex litigation cases. Community Legal Resources refers out corporate and transactional matters for non-profit organizations. Some specialty programs seek to refer education (suspension and expulsion) cases, immigration cases, and family law pension cases. All these programs operate on a statewide basis.
- **The ATJ Fund.** Ten years ago, there were two established local legal services fundraising campaigns in Kent County and Washtenaw County. The Bar, under the leadership of Al

Butzbaugh, established the Access to Justice Campaign in 1998. Now there is an established statewide campaign that is staffed by the Bar and has raised over \$6 million in endowment and operating gifts for legal services programs across the state.

- **Non-LSC programs.** Ten years ago, the legal services community was primarily made up of the 14 Legal Services Corporation (LSC)-funded programs plus the locally funded Legal Aid and Defender Program in Detroit. Since then, LSC has consolidated down to six programs, and many new non-LSC-funded programs have sprung up. The Bar’s list of approved programs for ATJ gifts is now 42 programs.
- **Regional coordination.** Ten years ago, almost all pro bono consisted of county-specific referral programs. Now, due to the regional structure of the ATJ Campaign, the proliferation of smaller legal services programs, and the desire to coordinate among programs, there are a growing number of regional pro bono outreach and recruitment efforts.
- **Pro se centers.** Early in 2002, the first two court-based pro se centers opened—the Kent County Legal Assistance Center in Grand Rapids and the Access to Justice Center in Lansing. Currently, there are at least five centers around the state. These centers each have a significant pro bono aspect; they are often co-sponsored by the court, the local Bar, and the local legal services program with pro bono opportunities for lawyers or law students or paralegal students.

Conclusion

The proudest tradition of the legal profession is the tradition of pro bono—undertaking free legal work on behalf of the poor, advocating for legal rights for the disadvantaged, and working to assure access to justice for all persons.

As the Bar matures as an institution, pro bono work has grown as well. There are more structured opportunities for volunteer lawyers, more specialized programs, and a more formal Bar role in supporting, coordinating, and recognizing our pro bono work.

The actual decision to volunteer is ultimately an individual one. Many low-income people benefit each year from the decisions of thousands of attorneys to accept a pro bono case or matter. The State Bar recognizes that it is the charitable work of so many lawyers—individual lawyers making personal decisions to support a program or to take on a client—that reflects so well on the Bar and the profession. While the Pro Bono Initiative works to organize and encourage and recognize pro bono work, we also wish to express our admiration and gratitude to the many thousands of Michigan lawyers who undertake pro bono matters every year. ♦



Bob Gillett is the executive director of Legal Services of South Central Michigan. He has served as chair of the State Bar’s Pro Bono Initiative since 2001. He served as co-chair of the Washtenaw County Bar Association Pro Bono Committee from 1984–1999 and is a past president of the WCBA.