

April 29, 2025

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2023-22: Proposed Amendment of Rule 6.1 of the Michigan Rules of Professional Conduct

Dear Clerk Royster:

The Board of Commissioners of the State Bar of Michigan voted unanimously to support ADM File No. 2023-22 in concept, but to oppose the language published for comment by the Court and instead recommend that the Court adopt amendments to Rule 6.1 proposed by the Bar's Justice Initiatives Committee. These amendments are included with this letter as Attachment A.

The justice gap in Michigan and across the United States is well known to the Court. According to the most recent report published by the Legal Services Corporation, “low-income Americans did not receive any or enough legal help for 92% of their substantial civil legal problems.”¹ The number of legal aid attorneys falls far short of what would be necessary to close that gap and meet the needs of the roughly 1.7 million Michiganders qualified for legal aid services. Legal aid can't address this crisis alone. Pro bono service is a critical part of the solution.

While the Bar appreciates the Court bringing this issue to the fore by publishing ADM File No. 2023-22 for comment, the proposed rule raises several concerns. Perhaps most important, the proposed rule suggests that a lawyer should discharge their professional responsibility in this area by rendering pro bono service *or* making a financial contribution. ABA Model Rule 6.1 and the rules of most states that have sought to adopt some version of the model rule suggest both pro bono service *and* a financial contribution. Our recommended amendments follow the prevailing standard and uses *and*.

The proposed rule provides that a lawyer may discharge their duty by annually “providing legal representation without charge to a minimum of three low-income individuals.” This number of individuals measure is not used by any other jurisdiction and with good reason: it does not provide attorneys with clarity about their ethical obligations. An individual representation may range from a simple expungement to a complex civil trial, yet each of these would weigh equally as an individual represented under the text of the rule. Our recommended amendments follow the ABA model and the prevailing standard and measures pro bono service using hours of legal services provided.

The proposed rule also establishes a \$300 minimum contribution recommendation, as well as a recommendation of \$500 for those with higher incomes. The Bar does not believe it is necessary or advisable to write these figures into the text of the rule, because the rigidity of the rules and the rulemaking process will not allow for the consideration of changing economic conditions over time.

¹ Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans* <<https://justicegap.lsc.gov/>> (accessed April 29, 2025).



Instead, our amendments propose that a lawyer “should voluntarily contribute financial support to the Access to Justice Fund or an organization that provides legal services to individuals of limited means” and then charges the Michigan State Bar Foundation with the responsibility of regularly determining and publishing suggested annual donation amounts.

Several attempts have been made to reform Michigan’s Rule 6.1 in the three decades since the ABA model rule was adopted. In part, those previous efforts have fallen short because various stakeholders within the legal community have disagreed about the best path forward. That is no longer the case today. The amendments put forward by the State Bar of Michigan today are supported not only by the Justice Initiatives Committee and Access to Justice Policy Committee within the Bar, but also the Michigan State Bar Foundation, Access to Justice Steering Committee, Legal Services Association of Michigan, and State Planning Body. Together, we believe that the time is right for the Court to update Rule 6.1 and that the amendments proposed by the Bar will provide clarity to Michigan attorneys about their professional obligations, while encouraging more attorneys to provide pro bono legal services to those in need.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,

A handwritten signature in dark ink, reading "Peter Cunningham". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Joseph P. McGill, President

Attachment A

Rule 6.1. Pro Bono Public Service.

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to provide at least 50 hours of *pro bono* legal services per year and make a financial contribution to an organization that provides legal services to individuals with limited means or to the Access to Justice Fund. 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 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 at a 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 no fee or 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; and
- (c) in addition, the lawyer should voluntarily contribute financial support to the Access to Justice Fund or an organization that provides legal services to individuals of limited means. The Michigan State Bar Foundation will regularly determine and publish suggested annual donation amounts.

Comment

[1] Every lawyer, regardless of professional prominence or professional workload, 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 (a)(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 rulemaking 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 (a)(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 (a)(2). Accordingly, services rendered cannot be considered pro bona if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bona 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 bona services exclusively through activities described in paragraphs (a)(1) and (a)(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 bona services outlined in paragraphs (a)(1) and (a)(2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bona 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 and financial contributions 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 over the amount recommended by the Michigan State Bar Foundation.

[10] There is a tremendous need for civil legal aid resources for persons of limited means. The Access to Justice Campaign is administered by the Michigan State Bar Foundation, in partnership with the State Bar of Michigan, to increase resources for several nonprofit legal aid programs that provide civil legal aid for individuals with limited means throughout Michigan. The Michigan State Bar Foundation will regularly publish guidance and recognition lists suggesting annual contribution amounts.

[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.