

# Michigan Pro Bono Toolkit

## A Few Key Things that Judicial Officers Can Do to Encourage Attorneys to Provide Pro Bono Assistance

### 1. What is "Pro Bono" in Michigan?

Pro bono in Michigan includes both legal services and financial contributions. Lawyers can meet their annual pro bono obligations through providing three cases or 30 hours of free legal help for low-income persons or a minimum \$300 donation for a nonprofit legal aid program.<sup>2</sup>

Judges may not ask an individual lawyer to take a particular case pro bono or make a donation because those are solicitations of charity. However, there is much judges can do to direct lawyers to information about how they can fulfill their pro bono obligations and to assist and thank those who do. This "Toolkit" offers suggestions to judges for encouraging pro bono.

### 2. Suggestions for Encouraging Pro bono

**A. Thank volunteer lawyers.** Make positive comments about pro bono service and how great it is to have attorneys who volunteer their services. Make it known that you understand that attorneys make a sacrifice by donating this time. Thank them for making that commitment.

1. Publicly recognize the volunteer service of pro bono attorneys at bar functions or social settings. Try to acknowledge their efforts in front of other people.
2. Attend award ceremonies recognizing pro bono attorneys. Many local bar associations and legal services organizations hold these ceremonies annually. It makes all the difference in the world if judges are available to congratulate and thank the honorees.
3. When attorneys handle pro bono cases in high-volume areas where they may not have as much expertise, make a special effort to thank

---

<sup>1</sup> This toolkit was prepared by Lorraine Weber, the Director of Access and Fairness for the Supreme Court under the supervision of Chief Justice Marilyn Kelly in September 2009. The Chief Justice acknowledges the leadership of her colleague Chief Justice Ron George from California whose court published a similar toolkit on which this toolkit is largely based.

<sup>2</sup> State Bar of Michigan Voluntary Pro Bono Standard.

them for taking on these cases. For example, recognize that while they may be skilled corporate attorneys, this may be their first family law case, and their extra efforts are appreciated.

4. If your court produces an annual report, when acknowledging volunteer hours given to the court by attorneys, include a statement acknowledging the important services of attorneys who have handled cases pro bono. Acknowledge that these services assist the court in handling cases more efficiently and contribute to the public's confidence in the courts.

**B. Refer litigants needing pro bono assistance.** Let litigants know that they may get assistance from a legal aid program or a pro bono lawyer if they are unable to afford to hire a lawyer, and send them to your court's self-help center or to the Michigan Legal Aid website where they can see how to contact the legal aid program serving their community: [www.michiganlegalaid.org](http://www.michiganlegalaid.org).

**C. Help with training.** Be available for training new pro bono attorneys for your local legal services agency. Often attorneys need training in family law, landlord/tenant, and other areas of law in which they don't practice but for which there is a large need. Your presence and information about how you run your court make it clear to attorneys that you care about pro bono service and ensure that they are better prepared for court.

**D. Encourage pro bono publicly.** When speaking to lawyers, local bar associations, or the public, mention pro bono. Note how important it is to the profession and to access to justice.

1. Support local bar board efforts to pass resolutions in favor of pro bono or to sponsor pro bono trainings or programs.
2. Familiarize yourself with the State Bar's effort to revise the pro bono ethics rule (MRPC 6.1). These changes, which clarify and expand the current rule, have been approved by the Representative Assembly and are pending before the Supreme Court.
3. Encourage the heads of local government attorney offices, such as the Prosecutor, Public Defender, and county corporation counsel offices, to promote pro bono service among their staff attorneys and direct them to the State Bar Pro Bono Menu, [www.michbar.org/probono.cfm](http://www.michbar.org/probono.cfm), that identifies ways for government and corporate counsel to contribute pro bono services without creating potential conflicts of interest.
4. Discuss with your colleagues the importance of pro bono lawyers and the good works they are doing.
5. Co-author articles with legal services programs in local bar journals (county bar, specialty bars) on the importance of pro bono work.

6. Meet regularly with local legal services and pro bono leadership to better understand their services.
7. Be aware that when you donate to the Access to Justice Fund to support civil legal aid, your name on the donor list can serve as an example to lawyers and other judges.
8. When speaking to groups of lawyers or writing articles about pro bono, let them know that the State Bar's Voluntary Pro Bono Standard includes financial donations as a way to meet the annual pro bono obligation for those who may not be able to provide services. Information about the Access to Justice Fund is available at [www.atjfund.org](http://www.atjfund.org).

**E. Award fees to attorneys.** Award attorney fees for pro bono services when appropriate. These fees are allowable in family law cases; fees are also allowable to prevailing parties in some consumer and civil rights cases. It may be particularly helpful to impose sanctions when appropriate in pro bono cases if it becomes apparent that the other side is intentionally and unfairly driving up costs.

**F. Expedite pro bono lawyer calendaring.** Consider making special calendar arrangements for attorneys appearing on a pro bono basis. Some judges try to hear those matters at the beginning of a calendar. Others allow court clerks to grant docket time close to times that attorneys are appearing on other matters.

**G. A few words of caution:**

1. Remember, it is prohibited to ask an attorney to take on a specific case pro bono or make a financial donation. Ethics opinions indicate that this may be improper as you are asking for a solicitation of charity. Instead, have information about the Access to Justice Fund through which lawyers can make donations for local or statewide legal aid and have a list of legal services agencies in your community that coordinate pro bono assistance and refer litigants who need assistance to those agencies. Help local bar associations and local legal services programs recruit volunteers by signing generic letters encouraging lawyers to join the pro bono panel. Consider being on a legal aid financial appeal letterhead which shows generic support without being a direct solicitation.
2. When referring self-represented litigants to a legal services or to a pro bono program, make sure they understand that these services are not guaranteed and that there is no entitlement to legal services in civil cases. It is important that people realize pro bono work is a gift of the lawyer's time.
3. Make sure it is clear that pro bono services are those given without any expectation of compensation, as opposed to those matters the

attorney handles without pay because the client is unable to or refuses to pay the bill.

4. Lawyers and litigants look to you for guidance and approval, and they will pick up on subtle signals. By letting them know that you are aware of the practical problems they face and the commitment that they are making by volunteering their time, you create a climate where pro bono work is the norm.

### **3. Pro Bono Talking Points for Judges**

These talking points are intended for judges to use when speaking to groups of attorneys at events such as swearing-in ceremonies, local bar meetings, and pro bono recognition gatherings. Hopefully, they are helpful to you in preparing your remarks and tailoring them to your audience and available time.

#### **A. Introductory remarks**

1. As lawyers, you are members of an honorable profession, with a proud history of pro bono legal services. With the privilege of law practice comes the obligation to ensure that our system is accessible to all, including those who are not able to afford to hire an attorney.
2. By doing pro bono work, you are not only helping the vulnerable, you are also improving the administration of justice.

"I am proud to be in a profession whose long tradition includes pro bono assistance. Lawyers who give back to their communities through volunteer legal services and financial donations for legal aid not only help individuals in need; they also help to advance our shared goal of access and fairness for all." Chief Justice Marilyn Kelly (October, 2009)

3. Systems have been put in place across the state to facilitate pro bono service. These systems, offered by legal services programs, local bar associations, pro bono programs, and court-based self-help centers, make it easy for you to volunteer by:

Offering training;

Connecting you with individuals in need who have already been interviewed to determine their legal issues and financial eligibility; and,

Helping with the necessary follow-up to ensure quality services for pro bono clients.

#### **B. Who needs help?**

1. About one in three persons in Michigan qualifies for free legal aid, or about 3.1 million (31.8%) of Michigan's 10 million residents, because their annual income is below 200% of the federal poverty limit, e.g.,

\$29,140 for a family of two. More than 40% of Michigan children under the age of 18 live in households with annual income below 200% of the federal poverty limit.<sup>3</sup> And our poor include many persons with limited English proficiency making it difficult to navigate the court system on their own.

2. Judges constantly see vulnerable low-income families and seniors attempting to handle their own serious legal matters. Some courts now have self-help centers which are a great resource. But these centers provide limited services and there are many individuals who need a lawyer who can provide more in-depth assistance.

3. Here's how your services can help our community:

Every time a pro bono lawyer is able to help a domestic violence victim, it can prevent serious injury, save lives, prevent costly county medical expenses, and alleviate already clogged courts and overworked law enforcement agencies.

When a pro bono lawyer helps keep family members in their home, it may prevent them from becoming homeless and from creating an additional demand on shelters and other charitable and governmental services.

When a pro bono lawyer helps prevent workers from wrongfully losing their jobs or from being denied earned wages, it allows individuals to put food on their tables and pay their rent or mortgage.

When a pro bono lawyer helps keep a child in school, truancy and juvenile crime are reduced, saving court time and reducing the costs of incarceration.

When a pro bono lawyer helps a senior remain in his or her home with supportive care, the much higher cost associated with full nursing home care can be avoided.

When a pro bono lawyer helps create a guardianship, it achieves the result of protecting the child, without the child going through the dependency system, thus easing the burden on both the courts and the county.

In all these examples, in addition to providing critical assistance to the individual client, pro bono assistance benefits the broader community by saving limited community resources.

### **C. Limited capacity of legal aid**

1. Legal aid agencies must turn away about half of all eligible prospective clients who request assistance each year due to inadequate resources to

---

<sup>3</sup> Center for Law and Social Policy calculations of American Community Survey data, Table B17002, <http://www.census.gov/acs/>.

serve them. The half who do get assistance do not necessarily receive the level of service they want and need. Many who need more get only brief advice and counsel.<sup>4</sup>

2. In Michigan, there are approximately 180 legal aid attorneys out of a total of more than 32,545 active attorneys.<sup>5</sup> That makes a ratio of 17,666 eligible low-income (200% federal poverty limit) clients per legal aid attorney. In contrast, there is one private lawyer for every 305 persons in Michigan.<sup>6</sup>
3. National and state studies have estimated that no more than 20% of the civil legal needs of the poor are being met.<sup>7</sup>

**D. Pro bono service is a lawyer's duty**

1. The American Bar Association's Model Rule 6.1 states, "Every lawyer has a professional responsibility to provide legal services to those unable to pay." The proposed Michigan rule creates an aspirational goal of 30 hours per year or a donation of \$500 in lieu of direct service.
2. The State Bar Voluntary Pro Bono Standard (adopted in 1990) also urges all attorneys to provide at least 30 hours of pro bono services per year or to donate \$300 per year to nonprofit organizations providing civil legal assistance to the poor.

**E. Pro bono work serves the administration of justice**

1. Pro bono ensures meaningful access to justice to millions who need legal representation but cannot afford it.
2. It improves public perception of the legal profession.
3. It helps the courts operate more efficiently and effectively.

**F. Pro bono service makes business sense for attorneys, from large firms to small firms and solo practitioners**

---

<sup>4</sup> Legal Services Corporation September, 2009 "Justice Gap" study, and 2005 State Bar of Michigan Justice Gap study.

<sup>5</sup> State Bar of Michigan membership data February, 2009.

<sup>6</sup> Center for Law and Social Policy calculations of American Community Survey data, Table B17002, <http://www.census.gov/acs/>.

<sup>7</sup> The statement that no more than 20% of the civil legal needs of the poor is met annually is from a 1994 ABA Study, *Report on the Legal Needs of the Low-Income Public: Findings of the Comprehensive Legal Needs Study*, but seven more recent state studies (referenced in the LSC 2009 Justice Gap Report) also came to the same conclusion - that fewer than 1 in 5 of the legal problems of the poor is addressed with the help of a legal aid or a private lawyer.

1. Law firm corporate clients are interested in evidence of their lawyers' corporate social responsibility.
2. Annual law firm rankings in publications such as *The American Lawyer* include in their ratings the quality of a firm's pro bono practices.
3. New lawyers, smaller firms, and solo practitioners can benefit from pro bono work by developing skills and expertise and creating contacts in the community.
4. Pro bono providers offer training for volunteers at little or no cost, as well as opportunities to network with other lawyers. This is a great way for lawyers to learn a new area of the law (e.g., bankruptcy or immigration) and expand their practices.
5. Pro bono programs often provide mentoring and malpractice coverage for their volunteers.

**G. Many ways to do pro bono work**

1. Pro bono opportunities for both new and experienced attorneys are available for litigators, transactional attorneys, and mediators.
2. There are varying levels of time commitments and opportunities for limited scope representation.
3. Pro bono opportunities exist in many areas of civil law:
  - Advice and counsel clinics and hotlines, and provision of legal information at court self-help centers;
  - Impact litigation and policy advocacy;
  - Community education and outreach;
  - Mediation of legal disputes;
  - Workshops focusing on a volume of cases in a single legal area;
  - Traditional individual in-court representation; and
  - Transactional legal assistance to nonprofit organizations.

**4. Get involved**

- A. Join your local bar association's pro bono program.
- B. Contact local legal aid and other legal services agencies.
- C. Work with your firm's pro bono manager/partner.
- D. Contact your court's self-help center.
- E. Use state bar resources:
  - Celebrate Pro Bono: [www.michbar.org/probono.cfm](http://www.michbar.org/probono.cfm)

- Pro Bono Reference Manual:  
[www.michbar.org/programs/atj/probonomanual.cfm](http://www.michbar.org/programs/atj/probonomanual.cfm)
- Access to Justice Campaign: [www.atfund.org](http://www.atfund.org)