

To: Rules Revision Commission
From: 1-650 Drafting Team
Re: Proposed Rule 6.1 (Voluntary Pro Bono Publico Service)
Date: January 6, 2016
January 22-23, 2016 Meeting

Background re Proposed Rule 6.1

At the October 23, 2015 meeting, the 1-650 drafting team submitted a proposed Rule 6.1 concerning voluntary pro bono publico service. The rule presented to the Commission was modeled on RRC1's proposed Rule, which in turn was modeled on Model Rule 6.1. After discussion, the Commission approved the following motion by a vote of 11-2-0:

Approve concept of an aspirational Rule that would promote pro bono, a rule that might more closely track the Board of Trustee's Pro bono Resolution.

The drafting team has prepared a draft rule conforming to the Commission's direction.

Attachments:

ATT1 - Rule Draft 2.4, Clean;
ATT2 - Rule Draft 2.4, Color-coded to show derivation of the provisions;
ATT3 - Rule Draft 2.4, redline, compared to Draft 1.1, the draft for the October 23, 2015 meeting;
ATT4 - State Bar Pro Bono Resolution
ATT5 - Excerpt from Rule 1-650 Report & Recommendation re proposed Rule 6.1 (10/5/2015)

Proposed Rule 6.1 for Consideration at January 2016 Meeting

Attached to this memorandum is Draft 2.4 (1/3/2016) of proposed Rule 6.1, that incorporates features of both Model Rule 6.1 and the Board of Trustees Pro Bono Resolution ("BOT Resolution"). In preparing the attached draft, the drafting team was uncertain exactly what was intended by the Commission's direction to prepare "a rule that might more closely track the [BOT Resolution]." The position the drafting team took was to prepare a rule draft that on the one hand retained the basic structure of the Model Rule while including additional substantive provisions from the BOT Resolution.

Model Rule Structure. By retaining the basic structure of the Model Rule we mean that the rule separates the kinds of services that are contemplated under the rule. For example, paragraph (a) sets forth the preferred services to be provided: directly provision of legal services to indigent individuals or to organizations that provide legal services to indigent individuals. Paragraph (b) identifies other services, including "low bono" services, that could be provided in addition to the services listed in paragraph (a). Paragraph (c), suggests a third category, participation in activities intended to improve the law or legal system, or increase access to justice. The drafting team believes that retaining the model rule structure appropriately places emphasis on the direct delivery of pro bono legal services by lawyers. This same emphasis on lawyers providing legal services to persons in need is also found in the BOT Resolution.

BOT Resolution Substance. By including additional substantive provisions from the BOT Resolution, we mean we have incorporated the substance of provisions from the resolution. As can be seen from the attached “color-coded” rule draft, nearly the entire introductory clause of the rule is from the BOT Resolution. Further, the language in paragraph (a) is derived from the resolution, as is paragraph (b)(3). In addition, paragraphs (d) through (f) are taken nearly verbatim from the resolution; these are the paragraphs of the BOT Resolution under which the Board “urges” employers, law firms and law schools to contribute to the effort of providing pro bono services by facilitating the ability of its lawyers and students to engage in such activities. The drafting team believes that it is appropriate to include in the rule these provisions, which are intended to create a culture of pro bono where lawyers work.

Color-coded draft. The color-coded rule draft shows in blue the provisions that are derived from the BOT resolution and in red those provisions derived from the Model Rule (most of which were also adopted by the Board when presented with the RRC1’s proposed rule in 2010. Finally, those provisions in black are either common to the BOT resolution and Model Rule or derived from the RRC1 rule.

Drafting Team’s Recommendation

There was consensus among the drafting team members to recommend a proposed amended rule 6.1 [1-650] as set forth in the attached Draft 2.4 (1/2/2016).

Recommendation and Proposed Commission Resolution

Recommendation:

That the Commission recommend that the Board of Trustees of the State Bar of California adopt proposed amended rule 6.1 [1-650] in the form attached to this memorandum.

Proposed Resolution:

RESOLVED: That the Commission for the Revision of the Rules of Professional Conduct recommends that the Board of Trustees adopt proposed amended rule 6.1 [1-650] in the form attached to this Report and Recommendation.

Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer, as a matter of professional responsibility, should devote a reasonable amount of time to providing or enabling the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to persons unable to pay. A lawyer should provide at least 50 hours of pro bono publico legal services per year.

- (a) A substantial majority of the 50 hours of legal services should be provided to:
 - (1) indigent individuals, or
 - (2) nonprofit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged.
- (b) A lawyer should provide any additional legal services at no fee or substantially reduced fee to:
 - (1) persons of limited means;
 - (2) 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; or
 - (3) nonprofit organizations with a purpose of improving the law and the legal system, or increasing access to justice.
- (c) A lawyer may also provide additional service through participation in activities for improving the law, the legal system or the legal profession, particularly with the goal of increasing access to justice.
- (d) All law firms and governmental and corporate employers should promote and support the involvement of associates and partners in pro bono and other public service activities by counting all or a reasonable portion of their time spent on these activities, at least 50 hours per year, toward their billable hour requirements, or by otherwise giving actual work credit for these activities.
- (e) All law schools should promote and encourage the participation of law professors and law students in pro bono activities. In addition, all law schools should require any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its lawyers in public service and pro bono activities.
- (f) All lawyers and law firms should also contribute financial support to nonprofit organizations that provide free legal services to the poor, especially those lawyers who are precluded from directly rendering pro bono services.
- (g) The responsibility set forth in this Rule is not enforceable through disciplinary process.

Comment

[1] Given (i) the recognized need for pro bono publico legal services for the needy and disadvantaged, (ii) the insufficient government funding available for the provision of those services; and (iii) the importance of those services to the fair administration of justice, every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay. (Business and Professions Code § 6068(h).) In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. 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.

[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 may 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 a qualified legal services program under Business and Professions Code section 6213 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 under paragraph (a)(1) or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means under paragraph (a)(2). The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without compensation, 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. However, the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this paragraph. 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. In addition, see Rule 5.4(a)(5) regarding a lawyer's agreement to pay court awarded fees to a legal services organization.

[5] While it is preferable that a lawyer fulfill his or her annual responsibility to perform pro bono services through activities described in paragraphs (a)(1) and (2), the lawyer's commitment can also be met in a variety of ways as set forth in paragraphs (b) and (c). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers from performing the pro bono services outlined in paragraphs (a) and (b). Accordingly, where those restrictions apply, government and public sector lawyers may fulfill their pro bono responsibility by performing services outlined in paragraph (c).

Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer, as a matter of professional responsibility, should ~~provide~~devote a reasonable amount of time to providing or enabling the direct delivery of legal services ~~to these~~, without expectation of compensation other than reimbursement of expenses, to persons unable to pay. A lawyer should ~~aspire to provide or enable the direct delivery of~~ at least 50 hours of pro bono publico legal services per year. ~~In fulfilling this responsibility, the lawyer should:~~

- (a) ~~provide a~~A substantial majority of the 50 hours of legal services ~~without expectation of compensation other than reimbursement of expenses~~ should be provided to:
- (1) ~~persons of limited means~~ indigent individuals, 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~~ nonprofit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged.
- (b) A lawyer should provide any additional ~~services through:~~
(1) ~~delivery of~~ legal services at no fee or substantially reduced fee to:
- (1) persons of limited means;
 - (2) 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; or
 - (2) ~~delivery of legal services at a substantially reduced fee to persons of limited means; or~~
 - (3) nonprofit organizations with a purpose of improving the law and the legal system, or increasing access to justice.
- (3c) A lawyer may also provide additional service through participation in activities for improving the law, the legal system or the legal profession, particularly with the goal of increasing access to justice.
- ~~In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.~~
- (d) All law firms and governmental and corporate employers should promote and support the involvement of associates and partners in pro bono and other public service activities by counting all or a reasonable portion of their time spent on these activities, at least 50 hours per year, toward their billable hour requirements, or by otherwise giving actual work credit for these activities.
- (e) All law schools should promote and encourage the participation of law professors and law students in pro bono activities. In addition, all law schools should require any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its lawyers in public service and pro bono activities.

ATT2 - Rule Draft 2.4,
Color-coded to show derivation of the provisions

- (f) All lawyers and law firms should also contribute financial support to nonprofit organizations that provide free legal services to the poor, especially those lawyers who are precluded from directly rendering pro bono services.
- (eg) The responsibility set forth in this Rule is not enforceable through disciplinary process.

Comment

[1] ~~Every~~ Given (i) the recognized need for pro bono publico legal services for the needy and disadvantaged, (ii) the insufficient government funding available for the provision of those services; and (iii) the importance of those services to the fair administration of justice, 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.~~ (Business and Professions Code § 6068(h).) In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. 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 may 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 a qualified legal services program under Business and Professions Code section 6213 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 under paragraph (a)(1) or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means under paragraph (a)(2). The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without compensation, 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. However, ~~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~~ paragraph. 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. In addition, see Rule 5.4(a)(5) regarding a lawyer's agreement to pay court awarded fees to a legal services organization.

ATT2 - Rule Draft 2.4,
Color-coded to show derivation of the provisions

[5] While it is preferable that a lawyer fulfill his or her annual responsibility to perform pro bono services through activities described in paragraphs (a)(1) and (2), the lawyer's commitment can also be met in a variety of ways as set forth in ~~paragraph~~paragraphs (b) and (c). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers from performing the pro bono services outlined in paragraphs (a)(~~1~~) and (~~2~~b). Accordingly, where those restrictions apply, government and public sector lawyers may fulfill their pro bono responsibility by performing services outlined in paragraph (bc).

~~[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, claims under the California Fair Employment and Housing Act, 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. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate is 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, particularly those designed to increase access to justice. 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, particularly with the goal of increasing access to justice, 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 reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate 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. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.~~

~~[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.~~

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- (a) A substantial majority of the 50 hours of legal services should be provided to:
 - (1) indigent individuals, or
 - (2) nonprofit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged.
- (b) A lawyer should provide any additional legal services at no fee or substantially reduced fee to:
 - (1) persons of limited means;
 - (2) 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; or
 - (3) nonprofit organizations with a purpose of improving the law and the legal system, or increasing access to justice.
- (c) A lawyer may also provide additional service through participation in activities for improving the law, the legal system or the legal profession, particularly with the goal of increasing access to justice.
- (d) All law firms and governmental and corporate employers should promote and support the involvement of associates and partners in pro bono and other public service activities by counting all or a reasonable portion of their time spent on these activities, at least 50 hours per year, toward their billable hour requirements, or by otherwise giving actual work credit for these activities.
- (e) All law schools should promote and encourage the participation of law professors and law students in pro bono activities. In addition, all law schools should require any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its lawyers in public service and pro bono activities.
- (f) All lawyers and law firms should also contribute financial support to nonprofit organizations that provide free legal services to the poor, especially those lawyers who are precluded from directly rendering pro bono services.
- (g) The responsibility set forth in this Rule is not enforceable through disciplinary process.

Comment

ATT3 - Rule Draft 2.4, redline, compared to Draft 1.1,
the draft for the October 23, 2015 meeting

[1] Given (i) the recognized need for pro bono publico legal services for the needy and disadvantaged, (ii) the insufficient government funding available for the provision of those services; and (iii) the importance of those services to the fair administration of justice, every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay. (Business and Professions Code § 6068(h).) In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. 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.

[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 may 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 a qualified legal services program under Business and Professions Code section 6213 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 under paragraph (a)(1) or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means under paragraph (a)(2). The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without compensation, 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. However, the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this paragraph. 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. In addition, see Rule 5.4(a)(5) regarding a lawyer's agreement to pay court awarded fees to a legal services organization.

[5] While it is preferable that a lawyer fulfill his or her annual responsibility to perform pro bono services through activities described in paragraphs (a)(1) and (2), the lawyer's commitment can also be met in a variety of ways as set forth in paragraphs (b) and (c). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers from performing the pro bono services outlined in paragraphs (a) and (b). Accordingly, where those restrictions apply, government and public sector lawyers may fulfill their pro bono responsibility by performing services outlined in paragraph (c).

Pro Bono Resolution

(Adopted by the Board of Governors of the State Bar of California
at its December 9, 1989 Meeting and amended at its June 22, 2002 Meeting)

RESOLVED that the Board hereby adopts the following resolution and urges local bar associations to adopt similar resolutions:

WHEREAS, there is an increasingly dire need for pro bono legal services for the needy and disadvantaged; and

WHEREAS, the federal, state and local governments are not providing sufficient funds for the delivery of legal services to the poor and disadvantaged; and

WHEREAS, lawyers should ensure that all members of the public have equal redress to the courts for resolution of their disputes and access to lawyers when legal services are necessary; and

WHEREAS, the Chief Justice of the California Supreme Court, the Judicial Council of California and Judicial Officers throughout California have consistently emphasized the pro bono responsibility of lawyers and its importance to the fair and efficient administration of justice; and

WHEREAS, California Business and Professions Code Section 6068(h) establishes that it is the duty of a lawyer "Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed"; now, therefore, it is

RESOLVED that the Board of Governors of the State Bar of California:

- (1) Urges all attorneys to devote a reasonable amount of time, at least 50 hours per year, to provide or enable the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not-for-profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice;
- (2) Urges all law firms and governmental and corporate employers to promote and support the involvement of associates and partners in pro bono and other public service activities by counting all or a reasonable portion of their time spent on these activities, at least 50 hours per year, toward their billable hour requirements, or by otherwise giving actual work credit for these activities;
- (3) Urges all law schools to promote and encourage the participation of law students in pro bono activities, including requiring any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its attorneys in public service and pro bono activities; and
- (4) Urges all attorneys and law firms to contribute financial support to not-for-profit organizations that provide free legal services to the poor, especially those attorneys who are precluded from directly rendering pro bono services.

**DRAFTING TEAM REPORT AND RECOMMENDATION: RULE 1-650
[and Model Rules 6.1, 6.2, 6.3 & 6.4]**

Lead Drafter: Martinez
Co-Drafters: Harris, Rothschild
Meeting Date: November 13-14, 2015

D. Concepts Recommended (Pros and Cons): Recommend adoption of versions of Model Rules 6.1, 6.3, and 6.4

1. **Proposed Rule 6.1.**

Introduction: Proposed Rule 6.1, which encourages lawyers to provide or enable the direct delivery of pro bono publico services to persons of limited means, tracks Model Rule 6.1, except that it incorporates language from the Board of Governors Pro Bono Resolution (2002) (“Board Resolution,” attached) and includes specific references to California statutory law.

- Pros: This rule is critical for addressing California’s access to justice crisis and, in the first Commission, had the strong support of the legal services community. This rule is consistent with existing California law (Bus. & Prof. Code §§ 6068(h) and 6072 - 6073) and the Board of Trustee’s Pro Bono Resolution. Although it is admittedly aspirational, it is not a rule that purports to be a disciplinary standard. One could narrowly construe the Commission’s charter as rejecting only those aspirational rules that create a misleading impression that they are disciplinary. This proposed rule does not mislead. It appeals to a lawyer’s sense of professional obligation without the façade of a disciplinary intent.
- Cons: By its terms, this rule is not a lawyer disciplinary standard. Aspirational provisions are not appropriate for the California rules given the Commission’s charter. In addition, depending on one’s perspective, the concept of “pro bono” described in the rule might be criticized as both under-inclusive (e.g., community and civic activities unrelated to the legal profession are not recognized) or over-inclusive (e.g., true pro bono should be limited to direct delivery of legal services to persons of limited means and should not include participation in activities to improve the law).

2. **Proposed Rule 6.1** – Move Comment [12] of Model Rule 6.1 into the rule text as a new paragraph (c).

- Pros: This change to the Model Rule version of 6.1 helps assure that lawyers, judges, and the public will know that the Rule is not intended to be a disciplinary standard. This change also is consistent with the objective of avoiding commentary that might contradict the terms of a rule.

**DRAFTING TEAM REPORT AND RECOMMENDATION: RULE 1-650
[and Model Rules 6.1, 6.2, 6.3 & 6.4]**

Lead Drafter: Martinez
Co-Drafters: Harris, Rothschild
Meeting Date: November 13-14, 2015

- Cons: Making the non-disciplinary nature of this rule more prominent might dilute the intended effect of the rule in encouraging pro bono activity.

The following is a clean version of proposed Rule 6.1

Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer, as a matter of professional responsibility, should provide legal services to those unable to pay. A lawyer should aspire to provide or enable the direct delivery of at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the 50 hours of legal services without expectation of compensation other than reimbursement of expenses 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;
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In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

- (c) The responsibility set forth in this Rule is not enforceable through disciplinary process.

Comment

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the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. 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.

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Accordingly, where those restrictions apply, government and public sector lawyers 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, claims under the California Fair Employment and Housing Act, 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. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate is 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, particularly those designed to increase access to justice. 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, particularly with the goal of increasing access to justice, 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 reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate 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. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[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.

**DRAFTING TEAM REPORT AND RECOMMENDATION: RULE 1-650
[and Model Rules 6.1, 6.2, 6.3 & 6.4]**

Lead Drafter: Martinez
Co-Drafters: Harris, Rothschild
Meeting Date: November 13-14, 2015

The following is a redline version of proposed Rule 6.1 to ABA Model Rule 6.1

Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer ~~has a~~, as a matter of professional responsibility ~~to~~, should provide legal services to those unable to pay. A lawyer should aspire to ~~render~~provide or enable the direct delivery of at least ~~(50)~~ hours of pro bono publico legal services per year. 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~~compensation other than reimbursement of expenses 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, particularly with the goal of increasing access to justice.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

(c) The responsibility set forth in this Rule is not enforceable through disciplinary process.

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. ~~The American Bar Association urges all lawyers to provide a minimum of~~

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~~50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that~~ In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. 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~~ a qualified legal services Corporation program under Business and Professions Code section 6213 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 under paragraph (a)(1) or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means under paragraph (a)(2). The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without ~~fee or expectation of fee~~ compensation, 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. In addition, see Rule 5.4(a)(5) regarding a lawyer's agreement to pay court awarded fees to a legal services organization.

[5] While it is ~~possible for~~ preferable that a lawyer ~~to~~ fulfill ~~the~~ his or her annual responsibility to perform pro bono services ~~exclusively~~ through activities described in

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paragraphs (a)(1) and (2), ~~to the extent that any hours of service remained unfulfilled, the remaining lawyer's~~ 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, claims under the California Fair Employment and Housing Act, 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~~is 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, particularly those designed to increase access to justice. 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, particularly with the goal of increasing access to justice, 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 reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate 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. Every lawyer should financially support such programs, in addition to either providing direct pro bono

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services or making financial contributions when pro bono service is not feasible.

[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.~~

- Variations in other jurisdictions. Nearly every jurisdiction has adopted some version of Model Rule 6.1. There is a wide range of variation in their adoption of Model Rule 6.1, with some retaining the 1983 version, some adopting the 2002 version, and others implementing unique provisions, ranging from D.C.'s relatively short rule to Florida's rule, which establishes an elaborate pro bono framework. As of 2013, 7 states have mandatory pro bono reporting (Florida, Hawaii, Illinois, Maryland, Mississippi, Nevada, and New Mexico); 8 states have formally rejected mandatory pro bono reporting (Colorado, Indiana, Massachusetts, Minnesota, New York, Pennsylvania, Tennessee, and Utah); 11 states encourage voluntary pro bono reporting (Arizona, Georgia, Kentucky, Louisiana, Missouri, Montana, New Mexico, Oregon, Texas, Utah, and Washington); and 2 states were actively considering voluntary pro bono reporting (Michigan and Vermont). Moreover, as of January 1, 2015, New York will require all applicants to the New York State Bar (except those applying for admission by motion) to show that they have completed at least 50 hours of law-related pro bono service as a condition of bar admission. California has no comparable rule. See: <http://apps.americanbar.org/legalservices/probono/reporting.html>.