

ABA Model Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render 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 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.

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 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 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 sections of governmental or public sector agencies.

[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 (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.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (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 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 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 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.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

**Proposed Rule 6.1 Voluntary Pro Bono Publico Service
Synopsis of Public Comments**

TOTAL = 3	A = 3
	D = 0
	M = 0
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-94e	Disability Rights California (DRC) (Mudryk)	Yes	A		DRC urges the Commission to include ABA Model Rule 6.1 in its proposed revisions to the California Rules. Increasing pro Bono representation is critical to reducing our state's enormous, unmet need for legal services among those who cannot afford them. Every day, legal services organizations such as DRC reach capacity and must turn away very low income people who need help. Millions more Californians earn too much to qualify for legal aid but too little to afford representation. These low- and moderate-income people rely on pro bono legal services to protect their housing, food, health care, safety, and civil rights. Nearly every state in the nation has adopted some version of Rule 6.1 and including Rule 6.1 would avoid unnecessary differences between California and other states, fostering the evolution of a national standard.	Please see response to CCAJ, X-2016-121a, below.
X-2016-121a	The California Commission Access to Justice (CCAJ) (Hartston)	Yes	A		CCAJ urges the State Bar Board of Trustees to include a version of ABA Model Rule 6.1 in the proposed amendments to the Rules of Professional Conduct.... There are numerous important	The Commission understands the concerns expressed by the commenter but continues to believe that a recommendation to adopt a rule patterned on ABA Model Rule 6.1 would be

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Proposed Rule 6.1 Voluntary Pro Bono Publico Service
Synopsis of Public Comments**

TOTAL = 3	A = 3
	D = 0
	M = 0
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
					<p>reasons why the Rules of Professional Conduct should include an aspirational rule promoting pro bono service by lawyers: Every lawyer has a professional responsibility to provide legal services to those unable to pay;</p> <ul style="list-style-type: none"> · There is a critical need for legal services among persons of limited means; · Legal services are not adequately funded by the state or federal government, and pro bono plays an important role in access to justice and in promoting the fair administration of justice in California; · Rule 6.1 will help address California's access to justice crisis, and provide a clear declaration of pro bono as a professional responsibility of California lawyers; · Nearly every state in the nation has adopted some version of Rule 6.1, and including Rule 6.1 would avoid unnecessary differences between California and other states, fostering the evolution of a national standard; · California law and the State Bar both recognize the professional responsibility of 	<p>in direct conflict with its Charter principle to draft only mandatory rules that provide minimal disciplinary standards.</p> <p>The Commission believes that the inclusion of Comment [5] in proposed Rule 1.0, which sets forth the purpose and function of the Rules as a whole, will provide similar encouragement to lawyers to engage in the provision of pro bono legal services.</p>

**Proposed Rule 6.1 Voluntary Pro Bono Publico Service
Synopsis of Public Comments**

TOTAL = 3	A = 3
	D = 0
	M = 0
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
					voluntary pro bono legal services.; Although Rule 6.1 sets an aspirational goal for voluntary pro bono service, this does not warrant exclusion from the proposed rules – especially because Rule 6.1 supports each of the other considerations recommended by the Supreme Court and included in the Commission's Charter.... Aspirational statements regarding pro bono legal services have become a generally accepted part of professional guidelines for attorneys in most U.S. jurisdictions.	
X-2016-123	One Justice (McConkey)	Yes	A		As those at legal aid programs and law schools in California who work to expand access to justice, we write in our personal capacities to urge the Commission to include ABA Model Rule 6.1 in its proposed revisions to the California Rules. At a minimum, the Commission should strengthen and emphasize the <i>pro bono</i> language it has proposed in Comment 5 to Rule 1.0. Furthermore, we encourage the State Bar of California to investigate the benefits to the public of requiring attorneys to report the number of hours they	Please see response to CCAJ, X-2016-121a, above.

**Proposed Rule 6.1 Voluntary Pro Bono Publico Service
Synopsis of Public Comments**

TOTAL = 3	A = 3
	D = 0
	M = 0
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
					spend providing <i>pro bono</i> services. California's severe need for <i>pro bono</i> representation underlies our concern about omitting Rule 6.1.	

ABA Model Rule 6.2 Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Comment

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

**Proposed Rule 6.2 Accepting Appointments
Synopsis of Public Comments**

TOTAL = 0 **A = 1**
D = 0
M = 0
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response A = 12
X-2016-121g	California Commission on Access to Justice (CCAJ) (Harston) (9-23-16)	Y	A	6.2	Lack of such a rule would have a negative impact on access to justice for poor people.	The Commission carefully considered the need for a rule patterned on Model Rule 6.2 and determined that given the rarity in California of appointments without compensation and the existence of Bus. & Prof. Code § 6068(h), the absence of such a rule would not have a substantial impact on access to justice. The Commission continues to believe that is the correct position.

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