



AttPro Ally

'Tis the Season for Giving



Providing Pro Bono

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We Choose Pro Bono . . . **BECAUSE IT IS HARD**

By: Jason H. Long, Esq.

When we undertake a pro bono client, we do so with the same assurances that we will adhere to those ethics rules as we do with any other clients.

I drafted a will for a pleasant older woman years ago (when I was a baby lawyer). She paid her modest bill, and I closed the file and did not think another thing about it. In March of this year, I was contacted by the woman's daughter. Her mother had long since passed and the family probated the estate, without my assistance. However, this woman recently received a notice from the state department of unclaimed property informing her there was still a sizeable asset in her mother's name. The daughter did not know what to do with this information or where to turn. She found my name on the will and asked if I could help. She did not have money for a lawyer and the extra income would be a great help to her and her family (they had no immediate need for the funds, but there were always rainy days coming).

Maybe it was the soft spot in my heart or my fondness for her mother who had hired and trusted a newbie lawyer to handle her will, but I offered to handle the matter for the daughter pro bono. While I haven't drafted a will in years, and I had never done much actual probate work, I was convinced this was a relatively simple task of petitioning to reopen the estate, making a claim for the assets, distributing them to the two beneficiaries, and then closing the estate again. It seemed to be a fairly straightforward process, and I knew that handling the matter pro bono for this woman in need was the right thing to do.

My new client was appropriately appreciative. She poured effusive thanks upon me. I got that warm feeling that comes

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when you know you are helping another in need, and I felt pride that I could put training and skills to use to help her. It was a good day. Then, the problems started.

It was apparent from the beginning that this project was going to require some small level of research and investigation. I put the new file on the corner of my desk and promised myself I would get to it as soon as I finished compiling discovery for a fee-paying client that was due in two days. The two days passed and a few more fires flared up that required my immediate attention. Then, a close partner in my firm took a position with another firm and my world was further upended. The new firm needed additional attorneys to handle work that was being brought over, and I, too, made the move to the new firm. The next several weeks involved wrapping up critical matters for my old firm, preparing for the transfer of cases to my new firm, my first bout with COVID, and all of the attendant issues that come up both in the regular course practice and when making a significant move.

Once at my new firm, I was inundated with learning new procedures, getting up to speed on files pushed in my direction and running around from crisis to crisis, staying just one step ahead of the demands being made. A second bout of COVID followed and the work continued to pile up. Days turned into weeks and weeks turned into months. Through it all, the slender file of my pro bono client stayed on the corner of my desk, untouched. There was no filing deadline and nothing to demand I take immediate action. My client called me a couple of times and when I embarrassingly explained I had taken no action so far, she was understanding and still thankful that I was willing to handle it in the first place. In short, there was absolutely no pressure to get anything done.

Then, I got the call a couple of weeks ago. It was my client. She was crying. Another legal issue had popped up and suddenly she was looking at a bill of several thousand dollars. She did not have that kind of money and was hoping she could get the funds from her mother's estate to pay off the debt if necessary. Her rainy day had come. I cannot explain the sinking feeling in my stomach listening to this woman work through all of her anxiety, knowing that if I had taken some simple actions earlier it could all have been avoided. Needless to say, that prompted me to action. I am pleased to say things are now on track and I expect to get the funds shortly for my client. Nonetheless, I will never forgive myself for putting her through a very stressful situation, unnecessarily.

It is surprisingly easy to get into the situation I did with my client. As lawyers, we know the value and importance of doing pro bono work. It is an obligation we owe for having the privilege to practice. Indeed, it is woven into the fabric of our ethics rules. The ABA Model Rule 6.1 states that "Every lawyer has a professional responsibility

to provide legal services to those unable to pay." It further sets an aspirational goal of 50 hours per year. But even above our obligations as lawyers, there are really good reasons to do pro bono work. It is an altruistic action which in part justifies the work we do and brings a certain amount of pride and good feeling to be able to help others. It is an opportunity to learn and do work outside of our traditional comfort zone, making us better overall lawyers. It reinforces faith in our system of justice and respect for the rule of law. There are countless reasons why pro bono work is important and necessary for our profession.

And yet, there are just as many reasons why it is easy to neglect or procrastinate doing such work. For those of us still living subject to the billable hour, we have a limited quantity of our only valued commodity, time. Whether a new associate or senior partner, we are all subject to immense pressure to preserve that commodity, and only trade it for something of tangible value. Like my case above, pro bono work often takes us out of our comfort zone. That fear of uncertainty can paralyze us to inaction. Fair or not, there is a certain sense that people should be happy with any pro bono work we do and therefore it can take a back seat to other matters. In short, for every reason there is to take a pro bono case, there is a reason to subjugate it to other, fee-paying work.

Of course, we can't do that. Ethics rules apply with equal vigor whether or not a client is paying a fee. When we undertake to represent a pro bono client, we do so with the same assurances that we will adhere to those ethics rules as we do with any other clients. That means, among other things, that we must act with competence (MRPC 1.1) and diligence (MRPC 1.3) and we must communicate with clients concerning representation, including keeping them reasonably informed (MRPC 1.4). Once we undertake representation, it is our obligation to serve pro bono clients just as we would any other.

I have to remind myself of that obligation every time I take a pro bono case. In truth, the knowledge that I cannot cut corners in pro bono representation makes it more meaningful and causes me to value the work more. It reminds me of the famous quote from John F. Kennedy: "We choose to go to the moon . . . , not because [it is] easy, but because [it is] hard . . . because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one which we intend to win." In my mind, access to justice for all in our society is at least as worthy a goal as going to the moon.

This article was originally published in December 2022 at www.americanbar.org/groups/law_practice/resources/law-practice-today/2022-december/we-choose-pro-bono-because-it-is-hard/. It has been reprinted with permission.



Pro Bono: Opportunity or Obligation?

By: Kate Gould, Esq.

As I reflect on why I wanted to go to law school, I think about all the essays I wrote for the applications. When asked to explain my “why,” I discussed wanting to work in International Law (not really knowing what that was) and assisting refugees seek asylum. Fast forward three years, and I was working as an associate at an insurance defense firm in the Midwest. While not the job I had envisioned for myself (though always very thankful for), I still had numerous opportunities to help those with legal needs.

Regardless of where you landed after law school and what practice area has become your niche, there are endless pro bono opportunities where you can help – which is likely why you became a lawyer in the first place. But, if you are feeling like offering free legal work is more of an obligation, let’s reframe what it means to provide pro bono legal services in this season of gratitude.

What Does The ABA Say About Pro Bono?

ABA Model Rule 6.1 states that “[e]very 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.”

I hate to admit that I had no idea this rule existed. And, not only is it a rule, it prescribes a minimum amount of time a lawyer should aspire to devote to pro bono work. Further, the rule suggests that a substantial majority of the fifty hours should be offered to persons of limited means or to charitable, religious, and educational organizations that are designed to serve persons of limited means.

The Comment to Rule 6.1 goes on to explain that “[b]ecause the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer.” The Comment does

acknowledge that there are times when it is simply not feasible for a lawyer to offer pro bono services. In that case, the lawyer can satisfy their pro bono responsibility by offering financial support to organizations that provide free legal services to those with limited means.

While it is our professional responsibility to provide pro bono legal services, the ABA does state that this duty is not intended to be enforced through the disciplinary process. Thus, in a sense, the ABA encourages lawyers to offer pro bono legal services as an opportunity to help.

How Are Various States Addressing Pro Bono Work?

States have adopted different approaches to addressing pro bono work. Only twenty-three states have pro bono reporting systems in place. Ten have mandatory reporting requirements, and thirteen states have voluntary pro bono reporting.

Florida, Hawaii, Illinois, Indiana, Maryland, Minnesota, Mississippi, Nevada, New Mexico, and New York have mandatory pro bono reporting. Florida was the first state to implement mandatory pro bono in 1993. Florida attorneys, as well as Mississippi, Nevada, and New Mexico attorneys, report their hours when they pay their annual membership dues. For those lawyers in Hawaii, Illinois, Indiana, Minnesota, and New York, attorneys report their pro bono hours during the annual (or biannual in New York) registration process. In Maryland, attorneys report their pro bono hours annually when confirming IOLTA compliance.

While somewhat controversial in the sense that many lawyers may prefer not to disclose the number of pro bono hours they work (as with any charitable

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donation), there are some benefits to requiring reporting. The [ABA](#) suggests it can be a simple mechanism for increasing the delivery of legal services to the poor in our communities. Further, it promotes increased access to justice and the court system that someone may not have otherwise received. And, in addition to accurate data collection, it can encourage fulfillment of professional responsibility and enhance the image of lawyers.

As noted above, more states have taken a less stringent approach by implementing voluntary pro bono reporting systems. In 1994, Arizona was the first state to ask its attorneys to voluntarily report their hours on their annual dues statement. Washington, Virginia, Tennessee, Louisiana, Kentucky, Georgia, and Connecticut ask their attorneys to report pro bono hours during the annual licensing or dues renewal process. Montana reports a high response rate for its attorneys who report hours with their mandatory IOLTA report. North Carolina takes a different approach with reporting coordinated by the North Carolina Pro Bono Resource Center. In 2005, Texas began conducting random phone surveys of 500 lawyers about pro bono work. Pro bono hours can now also be reported through the State Bar of Texas website. In Ohio, its Supreme Court partners with the Ohio Legal Assistance Foundation to collect data, and Oregon encourages its attorneys to voluntarily report their pro bono time as part of the “Pro Bono Roll Call” on the state bar website.

According to the ABA, voluntary pro bono reporting is obviously less burdensome on attorneys because it is optional, but still enables recognition of contributing lawyers. It can also raise awareness about the professional responsibility to provide pro bono legal services. Of course, the downside is a lower response rate which results in insufficient data that may have been helpful to raise awareness about the need for more lawyers to offer their services pro bono.

What Can You Do To Incorporate Pro Bono Work In Your Practice?

So, now that you know what your obligations (opportunities?) are regarding pro bono work, where do you start? After all, Rule 6.1 suggests law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by the Rule.

You might start with your local bar association. Most operate after-hours hotlines or pro bono referral services to match those with a legal need to your practice area. From there, see what resources are offered by your state bar association. As an Indiana-barred attorney, I was surprised (but encouraged!) to learn of the existence of the Indiana Pro Bono Academy and Resource Center, a self-proclaimed “one-stop shop” for Indiana attorneys, paralegals, and staff who provide – or who want to provide – pro bono or civil legal aid to low-income Hoosiers. And, of course, the ABA has a wealth of resources and pro bono opportunities available in its Center for Pro Bono.

From a firm management perspective, encourage your associates and fellow partners to seek out organizations where they can offer pro bono legal services. If you have a billable hour requirement, consider including a lawyer’s pro bono hours in that goal, so they can understand the value of doing pro bono work without feeling like they must “make up” the time later.

Whether it has been just a few years since you submitted an essay with your law school application or many, many decades, our responsibility to serve the less fortunate in our communities is the same. As we reflect on the year that has nearly passed and the one ahead, let’s recommit to pro bono work – as both an opportunity and welcome obligation.

Defending Your Good Name

HIGHLIGHTING ATTPRO DEFENSE COUNSEL

Seth Laver is a partner in the Philadelphia offices of Goldberg Segalla. He devotes the majority of his practice to defending professionals, primarily representing attorneys and accountants. A trial attorney for over 20 years, Seth is admitted to practice in Pennsylvania, New Jersey, and New York, but regularly counsels and represents professionals throughout the United States. Seth’s focus on professional liability includes counseling all professionals in how to minimize risk so that they might avoid litigation, and rigorously defending them when they cannot. He has successfully represented individuals and large professional firms, leveraging his extensive experience to custom fit legal strategies to each client’s immediate needs and long-term goals.

An AV-rated attorney, Seth routinely publishes articles and lectures on trends impacting the professional liability and employment landscapes. He is a past chair of, and remains heavily active in, DRI’s Professional Liability Committee. He is chair-elect of the ABA’s Tort Trial and Insurance Practice Section (TIPS), having recently been appointed as a Vice Chair.





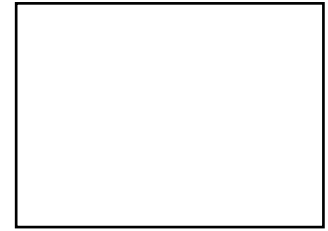
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