McCurdy, Lauren

From: Dominique Snyder [snyderlaw@charter.net]
Sent: Tuesday, October 27, 2009 12:03 PM
To: linda.foy@jud.ca.gov; avoogd@stanfordalumni.org; CommissionerJ2@gmail.com; ignazio.ruvolo@jud.ca.gov
Cc: McCurdy, Lauren; Difuntorum, Randall; hbsondheim@verizon.net; 'Kevin Mohr'
Subject: FW: RRC - 6.1 [BOG] - III.E. - 11/6-7/09 Meeting
Attachments: RRC - 6-1 - BOG Resolution re Pro Bono Resolution (2002).doc; RRC - 6-1 - Model Rule 6.1 Adoptions - REV (09-03-09).pdf; RRC - 6-1 - Rule - DFT1 (10-26-09) - Cf. to MR.doc

Fellow drafters,

Attached is a proposed rule 6.1 together with the additional materials for your consideration. Please get back to me with your input by tomorrow morning to enable us to make the noon deadline for submission. As usual, Kevin was invaluable on this as well as on 6.2 in which some of you also are drafters.

Thanks. I look forward to hearing from you.

Dom

From: Kevin Mohr [mailto:kemohr@charter.net]
Sent: Tuesday, October 27, 2009 9:29 AM
To: Dominique Snyder
Subject: Re: RRC - 6.1 [BOG] - III.E. - 11/6-7/09 Meeting

Dom:

I've attached the following:

1. Draft 1 (10/26/09) of Rule 6.1, redline, compared to MR 6.1. In Word.

2. The BOG Pro Bono Resolution (2002). In Word.

3. The ABA Chart on Model Rule 6.1 adoptions. In PDF.

KEM Notes:

1. I've made a number of revisions to the Model Rule. After further consideration, I think my idea to incorporate some of the BOG language was ill-founded, except in a few spots. Instead, I quote the language of the relevant Resolution paragraph in the footnotes, which will give the Commission members an opportunity to decide whether they prefer the BOG's language. I think the MR language for the most part is fine. I don't think there is all that much variation around the country but please review item #3, above.

2. I'd send this to the drafters requesting their response by tomorrow morning so you can submit by the 12:00 noon deadline.

I can't work on this further before the deadline. I have several rules I have to get out today.

Please let me know if you have any questions. Thanks,

Kevin

Dominique Snyder wrote:
Kevin,

Attached is a redline and some observations regarding Rule 6.1 – I have done as you suggested and more closely compared the actual language of the Board Resolution with the ABA.

Let me know your thoughts and what I should do next.

Dom

From: Dominique Snyder [mailto:snyderlaw@charter.net]
Sent: Thursday, October 22, 2009 11:21 AM
To: 'Kevin Mohr'
Subject: RE: RRC Assignments - 6.1 & 6.2 - November 2009 Meeting

Kevin,

I was finally able to open these and review them. It occurs to me, however, that an important history for the RRC's consideration of these rules would be the Board of Governors Resolution taken some years ago. (See attached.) COPRAC also endorsed voluntary pro bono service. Unless you see some reason we should not do so, I would recommend that we put forth the recommendation of adopting these two rules to the drafting team and get their views. However, I note that the term "***voluntary***" pro bono service is somewhat at odds with the view expressed in the rule that "every lawyer has a ***professional responsibility*** to provide legal services to those unable to pay." (Emphasis added.)

Let me know what you think. I wonder if this will be categorized as "controversial"?

Dom

From: Kevin Mohr [mailto:kemohr@charter.net]
Sent: Wednesday, October 21, 2009 11:10 PM
To: Dominique Snyder
Cc: 'McCurdy, Lauren'; kevinm@wsulaw.edu
Subject: Re: RRC Assignments - 6.1 & 6.2 - November 2009 Meeting

Dom:

I'm not sure where the agenda for November stands as we've been scrambling to package the 40+ rules in Batches 1, 2 and 3 for BOG by this Friday. I know Lauren is chiefly responsible for proofing what Randy, Mary, Mimi and I have done, and packaging all the latest drafts, so she hasn't been able to address the next agenda.

Best thing to do is look at the rolling agenda for September through November, which I've attached. Start w/ Batch 6 on page 10. You're down as lead drafter for Rules 6.1 (pro bono) and 6.2 (appt. of counsel). I would guess that at least one and probably both will be on the November agenda. The due date is next Wednesday, 10/28, at noon.

I've also attached Word files of the MR 6.1 & 6.2 Annotated, and separate files of their legislative histories that will give you the historical context of the rules.

You are already familiar and know much more about the history of the State Bar's pro bono resolution than anyone else on the Commission. I hope this helps.

Kevin

Dom Snyder wrote:
Lauren,

I just left you a voicemail message. As you will see from the email address generating this message – I am having serious computer problems. Stan has set this up temporarily so that I can function somewhat. My computer is in the shop. If you reply, please send the message to my usual snyderlaw@charter.net. address – I get everything fine. I'm getting concerned, however, about what I need to do for the November meeting which is swift approaching. Can you and/or Kevin send me whatever I need so that I can talk to Kevin about what I should do? I can't access prior RRC information and emails very well – searching is a nightmare.

Thanks

Dom

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714-738-1000 x1147
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Proposed Rule 6.1 [N/A]
"Voluntary Pro Bono Publico Service"

(Draft #1, 10/26/09)

Summary:

Comparison with ABA Counterpart	
Rule	**Comment**
☐ ABA Model Rule substantially adopted	☐ ABA Model Rule substantially adopted
☐ ABA Model Rule substantially rejected	☐ ABA Model Rule substantially rejected
☐ Some material additions to ABA Model Rule	☐ Some material additions to ABA Model Rule
☐ Some material deletions from ABA Model Rule	☐ Some material deletions from ABA Model Rule
☐ No ABA Model Rule counterpart	☐ No ABA Model Rule counterpart

Primary Factors Considered

☐ Existing California Law

Rules

Statute

Case law

☐ State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

☐ Other Primary Factor(s)

Stakeholders and Level of Controversy

Minority/Position Included on Model Rule Comparison Chart: ☐ Yes ☐ No

☐ No Known Stakeholders

☐ The Following Stakeholders Are Known:

☐ Very Controversial – Explanation:

☐ Moderately Controversial – Explanation:

☐ Not Controversial

ABA Model Rule Rule 6.1 Voluntary Pro Bono Publico Service	Commission's Proposed Rule* Rule 6.1 Voluntary Pro Bono Publico Service	Explanation of Changes to the ABA Model Rule
Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to renderat least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:	Every lawyer has a professional responsibility to 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 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	(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	

* Proposed Rule 6.1, Draft 1 (10/26/09). Redline/strikeout showing changes to the ABA Model Rule

ABA Model Rule Rule 6.1 Voluntary Pro Bono Publico Service	Commission's Proposed Rule* Rule 6.1 Voluntary Pro Bono Publico Service	Explanation of Changes to the ABA Model Rule
(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.	(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, or increasing access to justice. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.	

ABA Model Rule Rule 6.1 Voluntary Pro Bono Publico Service Comments	Commission's Proposed Rule* Rule 6.1 Voluntary Pro Bono Publico Service Comments	Explanation of Changes to the ABA Model Rule
[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.	[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~~ 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	[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	

* Proposed Rule 6.1, Draft 1 (10/26/09). Redline/strikeout showing changes to the ABA Model Rule

ABA Model Rule Rule 6.1 Voluntary Pro Bono Publico Service Comments	Commission's Proposed Rule* Rule 6.1 Voluntary Pro Bono Publico Service Comments	Explanation of Changes to the ABA Model Rule
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.	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.	[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 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, the intent of the lawyer to render	[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	

ABA Model Rule Rule 6.1 Voluntary Pro Bono Publico Service Comments	Commission's Proposed Rule* Rule 6.1 Voluntary Pro Bono Publico Service Comments	Explanation of Changes to the ABA Model Rule
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.	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).	[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 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).	

ABA Model Rule Rule 6.1 Voluntary Pro Bono Publico Service Comments	Commission's Proposed Rule* Rule 6.1 Voluntary Pro Bono Publico Service Comments	Explanation of Changes to the ABA Model Rule
[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.	[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 encouraged under this section.	[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~~ 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	[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession, or that are 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	

ABA Model Rule Rule 6.1 Voluntary Pro Bono Publico Service Comments	Commission's Proposed Rule* Rule 6.1 Voluntary Pro Bono Publico Service Comments	Explanation of Changes to the ABA Model Rule
system or the profession are a few examples of the many activities that fall within this paragraph.	in legislative lobbying to improve the law, the legal system or the profession, or to increase 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.	[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.	[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	

ABA Model Rule Rule 6.1 Voluntary Pro Bono Publico Service Comments	Commission's Proposed Rule* Rule 6.1 Voluntary Pro Bono Publico Service Comments	Explanation of Changes to the ABA Model Rule
[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.	[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.	[12] The responsibility set forth in this Rule is not ~~intended to be enforced~~enforceable through disciplinary process.	

Rule 6.1 Voluntary[1] 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~~provide or enable the direct delivery of[2] 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[3] to:

(1) persons of limited means[4] 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;[5] 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

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[1] **Drafters' Note**: The term "voluntary" can be viewed to be at odds with the language of a rule that states that it is the lawyer's "professional responsibility" to provide pro bono services. The language used in the Board resolution states that a lawyer has a "pro bono" responsibility. Historically, the State Bar and the Supreme Court have been extremely supportive of pro bono work as a necessary response to the Access to Justice problems facing California's justice system. The RRC may wish to consider omitting the term "voluntary" in the title to reflect this policy.

[2] **Drafters' Note**: Language taken from ¶. (1) of BOG Pro Bono Resolution (2002). Paragraph (1) of the BOG Resolution provides:

> [The Board of Governors] (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;

[3] **Drafters' Note**: Language taken from ¶. (1) of BOG Pro Bono Resolution (2002).

[4] **Drafters' Note/Recommendation**: Paragraph (1) of the BOG Pro Bono Resolution refers to "indigent persons." As "persons of limited means" and "indigent persons" appear to mean the same thing, see Comment [3], we recommend using the Model Rule language.

[5] **Drafters' Note/Recommendation**: Paragraph (1) of the BOG Pro Bono Resolution (2002) provides in pertinent part:

> [to provide or enable the direct delivery of legal services] to not for profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged

However, we see no reason not to use the Model Rule language. As we did with proposed Rule 6.5, we should not limit the provision of legal services to "not-for-profits" because there are for-profit educational institutions that provide such services to indigents.

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;[6] or

(3) participation in activities for improving the law, the legal system or the legal profession, or increasing access to justice.[7]

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

Comment

[1][8] 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~~[9] 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][10] 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

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[6] **Drafters' Note**: See footnote 4.

[7] **Drafters' Note**: Language taken from ¶. (1) of BOG Pro Bono Resolution (2002). The addition of the reference to "access to justice" is particularly appropriate in California, where the problems of access to justice are well-documented.

[8] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [1], as revised.

[9] **Drafters' Note**: Deleted discursive language that does not explain the Rule.

[10] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [2].

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][11] 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 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][12] 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.~~[13]

[5][14] 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 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).[15] 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).

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[11] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [3], as revised.

[12] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [4], as revised.

[13] **Drafters' Note**: A lawyer in California will not be able to comply with the suggestion in the last sentence of MR 6.1, cmt. [4], given that the Commission has recommended that MR 5.4(a)(4) not be adopted. MR 5.4(a)(4) provides:

> (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

[14] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [5], as revised.

[15] **Drafters' Recommendation**: We recommend this revision of the first sentence of MR 6.1, cmt. [5]. The Model Rule sentence appears to conflict with the next-to-last sentence of Comment [1], which states that a lawyer's 50 hour goal need not be fulfilled in every year but can be averaged over a professional lifetime.

[6][16] 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,[17] and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7][18] 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~~ Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8][19] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession, or that are designed to increase access to justice.[20] 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, or to increase access to justice are a few examples of the many activities that fall within this paragraph.

[9][21] 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.

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[16] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [6], as revised.

[17] Drafters' Note: We've added a reference to claims brought under California statutory authority so as not to suggest that such services are limited to those arising under the U.S. Constitution or federal statutes.

[18] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [7], as revised.

[19] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [8], as revised.

[20] See footnote 7.

[21] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [9]. See BOG Resolution ¶. (4), which provides:

> [The Board of Governors] (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.

[10][22] 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][23] 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][24] The responsibility set forth in this Rule is not ~~intended to be enforced~~enforceable through disciplinary process.

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[22] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [10]. See BOG Resolution ¶. (4), quoted in previous footnote.

[23] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [11]. See BOG Resolution ¶. (2), which provides:

> [The Board of Governors] (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

[24] **Drafters' Recommendation**: Adopt MR 6.1, cmt. [12], as revised.

Rule 6.1 Voluntary Pro Bono Publico Service

(Commission's Proposed Rule – Clean Version)

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

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.

Policies - State Pro Bono Ethics Rules

State-By-State Pro Bono Service Rules

* See Appendix A, *STATES WITH OTHER PRO BONO POLICIES*, attached hereto.
† See Appendix B, *DEVELOPMENT OF ABA MODEL RULE 6.1: HISTORICAL TIMELINE*, attached hereto.

The header information for this table may scroll offscreen - to cause it to hover over the record of your choice, place the mouse over the state abbreviation in the left column at any time.
To make it invisible, move the cursor out of the first column.

	Compared to ABA Model Rule 6.1† (Adopted 1983, Revised 1993, Revised 2002)											
State	**Same as 1993 Revision**	**Similar to 1993 Revision**	**Same as 2002 Revision**	**Similar to 2002 Revision**	**Same as Original**	**Similar to Original**	**Different**	**Date**	**Specific Annual Goal**	**Financial Contri-bution Quantified?**	**Details or Comments**	**Link to State Rule**
AL			X					5/2/90	No	No	Rule 6.1	**AL State Rule**
AK	X							7/15/93 Amended 4/03	50 hrs	No	Rule 6.1	**AK State Rule**
AZ		X						12/1/90	50 hrs	No	Rule 6.1 Allows for carryover of excessive hrs.	**AZ State Rule**
AR			X					12/16/85 revised 5/1/05	50 hrs	No	Rule 6.1	**AR State Rule**
CA							**X***		50 hrs	No	Resolution	**CA State Rule**

State	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different	Date	Specific Annual Goal	Financial Contri-bution Quantified?	Details or Comments	Link to State Rule
CO	X							11/2/99, effective date 1/1/00	50 hrs	No	Rule 6.1. Judicial Advisory Counsel rejected mandatory service proposal in 3/99. Comment added encouraging law firms to adopt a pro bono policy - (added comment – Nov. 23, 2005)	**CO State Rule**
CT					X			6/23/86	No	No	Rule 6.1	**CT State Rule**
DE					X			9/12/85	No	No	Rule 6.1	**DE State Rule**
DC						**X***		amended 8/1/06; effective 2/1/07	50 hrs	$400 or 1% of income	Rule 6.1. Addition of Comment 6 which parallels ABA Model Rule 6.1 comment 11.	**DC State Rule**
FL		X						6/23/93	20 hrs	$350 to legal aid organization alternative	Rule 6.1. Excuses certain bar members and includes reporting requirement, allows for carryover of excess hours. Circuit pro bono committee system in place (see rule 4-6 5 - voluntary pro bono plan).	**FL State Rule**
GA	X							6/12/00, effective 1/1/01	50 hrs	No	Rule 6.1. Language added to ensure that mandatory pro bono reporting might only be adopted through court order.	**GA State Rule**

State	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different	Date	Specific Annual Goal	Financial Contri-bution Quantified?	Details or Comments	Link to State Rule
HI		X						1/1/94	50 hrs (provide at least 25 hours of legal services to persons of limited means and to organizations in matters which primarily address the needs of persons of limited means)		Rule 6.1	**HI State Rule**
ID				X				9/3/86 Amended 7/1/2004	50 hours	No	Rule 6.1.	**ID State Rule**
IL								2/8/90			Preamble to Rules of Prof. Conduct states pro bono rule is inappropriate for disciplinary code. Separate mandatory reporting pro bono plan instituted via SC Rule 756. (passed 6/06)	**IL State Rule**
IN					X			adopted 9/30/04; effective 1/1/05	No	No	Rule 6.1. Separate voluntary pro bono plan instituted via Rule 6.6	**IN State Rule**
IA			X					effective 7/1/05	50 hours	No	Rule 32: 6.1	**IA State Rule**
KS					X			1/29/88	No	No	Rule 6.1	**KS State Rule**

State	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different	Date	Specific Annual Goal	Financial Contri-bution Quantified?	Details or Comments	Link to State Rule
KY		X						Adopted 1/1/90; Amended 10/1/94	50 hrs	No but "financial support" encouraged.	Supreme Court Rule 3.130 (6.1). Includes optional reporting and recognition awards; *Comment* identical.	**KY State Rule**
LA		X						12/18/86; Revised 1/20/04	50 hrs	No	Rule 6.1. Omits *Comments*.	**LA State Rule**
ME						X		2/1/84	No	No	Rule 3.10. Recognizes referrals from central agency. Omits Comment.	**ME State Rule**
MD		X						effective 7/1/02	50 hrs For full-time practicing attorneys	No	Rule 6.1. Required reporting and State Committee and Action Plans also adopted. (Rules 16-901, 902 & 903).	**MD State Rule**
MA		X						1/4/99	25 hrs	$250 to 1% annual taxable professional income encouraged	Rule 6.1.	**MA State Rule**
MI					X			3/11/88	No	No	Rule 6.1.	**MI State Rule**
MN			X					Adopted 6/17/05; effective 10/1/05	50 hrs	No	Rule 6.1.	**MN State Rule**
MS		X						9/12/96; Amended 3/21/05	20 hrs	$200	Rule 6.1. Includes mandatory reporting requirement. Allows for carryover of excessive hours.	**MS State Rule**

State	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different	Date	Specific Annual Goal	Financial Contri-bution Quantified?	Details or Comments	Link to State Rule
MO					X			Adopted 9/28/93; effective 7/1/95	No	No	Rule 6.1.	**MO State Rule**
MT				X				Effective 4/1/04	50 hrs		Rule 6.1. Comments omitted.	**MT State Rule**
NE				X				2/14/96 Revised 9/1/05	No	No	Rule 6.1	**NE State Rule**
NV				X				Amended 4/7/06; effective 5/1/06	20 hrs @ no fee or 60 hrs @ reduced fee	$500/yr to pro bono services org alternative	Rule 191. Includes mandatory pro bono reporting. Defines what does not qualify as pro bono. Establishes PB Committees by District Court.	**NV State Rule**
NH					X			1993	No	No	Rule 6.1 New rule proposed by Supreme Ct, unlike 6.1. 11/99	**NH State Rule**
NJ					X			Adopted 7/17/84; caption and text amended and effective 1/1/04	No	No	Rule 6.1. *Minus Comment*. In 1992, S. Ct. decided Madden v. Delran, requiring 25 hrs mandatory assignments in municipal court for quasi-crim., crim and traffic offenses. In 4/00, S. Ct. rejected *Ad Hoc* Committee's 11/98 recommendation to alter or eliminate policy.	**NJ State Rule**

State	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different	Date	Specific Annual Goal	Financial Contri-bution Quantified?	Details or Comments	Link to State Rule
NM		X						1/1/97 Amended 3/15/08	50 hrs	$500 or a combination of hours and financial contribution as defined by a table	Rule 16-601. See also Rule 24-108	**NM State Rule** Rule 24-108 outlines the number of hours of service that should be provided as well as a suggested financial contribution
NY							X	4/2/05	20 hrs	No	Rule 6.1 adopted 4/1/2009 - Similar in substance to EC 2-34	**NY State Rule**
NC											In preamble of The Revised Rules of Professional Conduct mentions that a lawyer should render public interest legal service.	
ND					X			Adopted 8/1/06	No	No	Rule 6.1. Added comment four mirroring ABA Model Rule Comment 11, to emphasize that law firms should encourage lawyers to do pro bono work.	**ND State Rule**
OH							X		No	No	Preamble	**OH State Rule**

State	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different	Date	Specific Annual Goal	Financial Contri-bution Quantified?	Details or Comments	Link to State Rule
OK					X			Effective 7/1/88	No	No	Rule 6.1.	**OK State Rule**
OR							**X***	3/10/88	80 hrs (2 cases or 20-40 hrs in direct legal services to the poor)	No	Oregon State Bar Board of Governor's Policy 13.1	**OR State Rule**
PA					X			10/16/87	No	No	Rule 6.1. Added comment four mirroring ABA Model Rule Comment 11, to emphasize that law firms should encourage lawyers to do pro bono work.	**PA State Rule**
RI					X			11/1/88	No	No	Rule 6.1.	**RI State Rule**
SC					X			1/9/90	No	No	Rule 6.1.	**SC State Rule**
SD						X		12/15/87	No	No	Rule 6.1. Nearly identical but recognizes "uncomp-ensated service in public interest activities."	**SD State Rule**
TX							**X***	9/22/00	50 hrs	No	State Bar Policy	**TX State Rule**
UT	X							Effective 11/1/05	50 hrs	$500 alternative	Rule 6.1. Includes voluntary reporting.	**UT State Rule**
VT		X						Adopted 3/6/02	50 hrs	No	Rule 6.1	**VT State Rule**

State	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different	Date	Specific Annual Goal	Financial Contri-bution Quantified?	Details or Comments	Link to State Rule
VA		X*						1/25/99, effective 1/1/00	2% of professional time	No, but contribution suggested as alternative.	Rule 6.1 (similar to ABA 6.1 1993 Revision). *See also* Rules 6.2 and 6.3.	VA State Rule
WA							X	Amended effective 9/1/03; 9/1/06	30 hours	No	Rule 6.1. Includes voluntary reporting. Comments added to Rule 6.1 effective 9/1/05	WA State Rule
WV					X			1/1/89	No	No	Rule 6.1.	WV State Rule
WI					X			6/10/87	No	No	Supreme Court Rule 20:6.1.	WI State Rule
WY				X				Amended and effective 4/11/06	50 hours	$500 alternative	Rule 6.1.	WY State Rule
Totals	**4**	**11**	**4**	**6**	**15**	**3**	**5**		**28**	**8**		

APPENDIX A

STATES WITH OTHER PRO BONO POLICIES

State	Form	Date of Adoption	Specific Annual Goal	Financial Contribution Quantified	Details
CA	Resolution	12/9/89, Revised 6/02	50 hrs	No	
DC	Resolution of Judicial Conferences of D.C. (2)	(1) D.C.: '97 (2) D.C. Circuit: '98	50 hrs + 1 Ct appt.	Yes - $400 or 1% of earned income	Rule 6.1 refers to these Resolutions in its *Comment 5*
OH	Preamble to the Ohio Rules of Professional Conduct	2007	No	No	The OH Supreme Court encourages each Ohio lawyer to particiapte in pro bono activities and describes ways for attorneys to get involved.
OR	Oregon State Bar Board of Governors' Policy 13.1	1988	80 hrs, of which 20-40 hrs of services to poor or 2 cases	No, but "comparable financial contribution" suggested as	

State	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different	Date	Specific Annual Goal	Financial Contri-bution Quantified?	Details or Comments	Link to State Rule
										alternative.		
TX	State Bar Policy	9/22/00				50 hrs				No		
VA	Council of the Virginia State Bar Resolution	2/27/99				No				No	Bar agrees to: 1)provide periodic opps for attys to describe pb and other community svc work; 2)use info to inform public of work lawyers; 3)provide generic info and technical assistance upon request. Consistent with provisions in Rule 6.1	

APPENDIX B

DEVELOPMENT OF ABA MODEL RULE 6.1: HISTORICAL TIMELINE

1969: the ABA adopted the Code of Professional Responsibility, which addresses for the first time the responsibility of the lawyer to engage in pro bono work, in Ethical Consideration 2-25. It states among other things: "*Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged*."

1975: the ABA House of Delegates adopted a resolution which formally acknowledges *"the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services"* (the "Montreal Resolution"). It defined pro bono in part by specifying areas in which the services should be rendered, namely: poverty law, civil rights law, public rights law charitable organization representation and the administration of justice.

1983: the ABA adopted Model Rule 6.1, which states that a *lawyer "should render public interest legal service*." It specifies certain ways a lawyer can discharge the responsibility: "by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

1988: the ABA adopted the "Toronto Resolution," which, among other things, resolves to *"[R]ecognize and support the professional obligation of all attorneys to devote a reasonable amount of time, but in no event less than 50 hours per year to pro bono and other public service activities that serve those in need or improve the law, the legal system or the legal profession."*

1993: the ABA revised Model Rule 6.1 to include a quantified aspirational goal (i.e. at least 50 hours per year), a more refined definition of pro bono, and more specific ways to discharge the pro bono responsibility. The substantial majority of the 50-hour responsibility should be discharged through the provision of legal services to low-income people and groups that serve low-income people.

2002: the ABA revised Model Rule 6.1 to add a sentence at the beginning of the Rule to give greater prominence to the proposition that every lawyer has a professional responsibility to provide legal services to persons unable to pay. A new Comment [11] was also added that calls upon law firms to act reasonably to enable all lawyers in a firm to provide the pro bono legal services called for by this Rule.

Last Updated: 9/3/2009

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Harry: I just picked up this story about a new Illinois rule. The story says that Illinois did not adopt MR 6.1.

rlk

Public Interest

New Illinois Rule Requires Lawyers
To Report Pro Bono Work Each Year

The Illinois Supreme Court June 14 modified its rules governing attorney registration to require lawyers in that state to report how much time or money they devote each year to providing or funding legal services for those on the lower end of the economic scale.

As amended, Supreme Court Rule 756(f) now requires lawyers to reveal on their annual registration form how many hours of pro bono legal services they have performed in the past 12 months, and how much money they contributed to legal services organizations that assist persons of limited means.

The accompanying commentary indicates that the rule will serve as a reminder to lawyers that pro bono work is important and is designed to encourage attorneys to do more free legal work for the poor. There is no target number of hours and the rule does not include a penalty if lawyers report that they did not perform any pro bono services.

Illinois is only the fifth state to enact mandatory reporting of pro bono service, joining Florida, Maryland, Mississippi, and Nevada. The rule takes effect immediately.

Expanded Definition of Pro Bono.

The new rule gives a broadened definition of pro bono work. According to the comments, qualifying activities include not only direct legal services to those of “limited means,” but also the provision of legal services to charitable, religious, civic, community, government, or educational organizations that are involved in helping the poor, donating money to such organizations, or training other volunteer lawyers.

In a fee case, the comment adds, a lawyer's billable hours may qualify as pro bono activity if both client and lawyer agree that further services in a particular matter will be provided at no extra charge. However, the rule explains that lawyers cannot claim credit for pro bono work merely because a bill has become “uncollectible.”

The comment makes it clear that a client need not have an income below the federal poverty standard to be considered a person of limited means. The rule is designed, the comment says, to include in its scope those who are often referred to as the “working poor.”

Moreover, lawyers don't have to closely examine the finances of clients to see if they qualify as a person of limited means. The rule indicates that a “good faith determination by the lawyer of client eligibility is sufficient.”

Judges, government lawyers, and others who are prevented from performing legal services are encouraged to make a financial contribution or help train volunteer attorneys, the comment states.

Florida Model Persuasive.

The reporting rule stems directly from the recommendations of the Illinois Supreme Court's Special Committee on Pro Bono Publico Legal Service, which were issued in 2003. The committee commended Illinois lawyers for making significant strides in this area, but said that much more is needed to address the “vast and burgeoning needs of persons of limited means in Illinois.”

The committee categorically rejected, on practical and philosophical grounds, the idea that Illinois attorneys should be required to perform pro bono service as a condition of their licensure. It concluded, however, that a model similar to Florida's voluntary pro bono plan offered the best hope for increasing the level of pro bono participation in Illinois.

In 1993, the Florida Supreme Court adopted Rule 4-6.5, which sets an aspirational standard for Florida attorneys of at least 20 hours of pro bono service or a $350 financial contribution to a legal aid program each year. Although compliance with that standard is voluntary, members of the Florida bar must report the number of hours of service and/or contributions devoted to pro bono service as part of the attorney registration process.

In addition to the reporting requirement, the committee also recommended that the Illinois Supreme Court appoint a committee to review, monitor, and evaluate the voluntary pro bono plan and adopt Rule of Professional Conduct 6.1 that would call on lawyers to provide each year at least 20 hours of pro bono legal service to persons of limited means or make an annual contribution of at least $250 to a legal aid organization.

The court elected not to adopt these two additional recommendations, however. In the Illinois Rules of Professional Conduct, pro bono and public service responsibilities are addressed in the rules' preamble. The preamble declares that Illinois did not adopt ABA Model Rule 6.1, on service in the public interest, “because an appropriate disciplinary standard regarding pro bono and public service is difficult, if not impossible, to articulate.”

The new Illinois reporting rule is posted on the supreme court's Web site at http://www.state.il.us/court/SupremeCourt/Rules/Amend/2006/061406.pdf.

Overview of Pro Bono Reporting Guidelines

According to a survey put together by the ABA Standing Committee on Pro Bono and Public Service, most states have no mandatory reporting requirement.

Five states—Florida, Illinois, Maryland, Mississippi, and Nevada—now have mandatory pro bono reporting.

Eight states—Colorado, Indiana, Massachusetts, Minnesota, New York, Pennsylvania, Tennessee, and Utah—have rejected mandatory pro bono reporting.

Eleven states—Arizona, Georgia, Hawaii, Kentucky, Louisiana, Missouri, Montana, New Mexico, Texas, Utah, and Washington—have voluntary pro bono reporting.

Two states—Michigan and Vermont—are considering voluntary pro bono reporting.

Eight states—Arizona, Colorado, Delaware, New York, Tennessee, Vermont, Washington, and Wyoming—permit attorneys who take pro bono cases to earn credit toward mandatory continuing legal education requirements.

August 27, 2009 McCurdy E-mail to Snyder, cc Chair, Vapnek, Tuft & Staff:

Given the recent measures taken to expedite the completion of the rule revision project, the purpose of this letter is to lay out the assignments for which you are a lead drafter that are scheduled to be discussed during the Commission's upcoming September, October and November meetings. A "rolling assignments agenda" is enclosed that covers all of the matters that must be completed at those meetings. This agenda format is being used due to the short turnaround time between these meetings and the interest of many Commission members in working on assignments for future meetings when they have an opportunity to do so. The assignments are considered "rolling" because, for example, any rule that is not completed at the September meeting should be treated as automatically re-assigned and carried forward to the October meeting. Accordingly, the Commission is facing a significant challenge to complete fully each assigned rule in order to avoid a domino effect of rules that are not finished.

Because the Commission has been given a mandate to meet a rigorous schedule of deliverables to the Board for action, it is very important that all assignments be submitted by the assignment due dates. As emphasized by the Chair, if a lead drafter anticipates a conflict, or a conflict unexpectedly arises, that interferes with the ability to complete an assignment, the lead drafter must take the initiative to make alternate arrangements with the codrafters so that the assignment can be submitted by the due date.

Below is a list of your lead draft assignments for the next meeting, September 11, 2009, to be held at the San Diego State Bar Annual Meeting. Enclosed are materials for those assignments. Below that list is a list of assignments for the subsequent meetings in November and October. Materials for those assignments will be distributed soon. If you need any those materials immediately, then please send me an email with a copy to Randy and Kevin. Codrafter responsibilities are not listed. Please refer to the rolling agenda document which identifies the drafting team for each rule assignment. In addition staff will prepare an updated chart listing all rule assignments by Commission member.

Your continued hard work and dedication to this important project is appreciated, and don't forget that staff and the Commission Consultant are here to help so please feel free to contact us for assistance.

ASSIGNMENTS FOR SEPTEMBER MEETING

September 11, 2009 Meeting **Assignments Due: Wed., 9/2/09**

No lead assignments for this meeting.

ASSIGNMENTS FOR OCTOBER MEETING

October 16 & 17, 2009 Meeting **Assignments Due: Wed., 9/30/09**

1. III.Z. Rule 1.2(a), (b) & (c) Advising Violation of Law (Draft #1 7/6/09 to be revised following July 2009 meeting) Codrafters: Peck, Tuft

Assignment: (1) a chart comparing proposed Rule 1.2 to MR 1.2; (2) a "dashboard" cover sheet; and (3) a chart summarizing the public comment received and the Commission's response.

2. III.OO. Rule 3.5 Impartiality of the Tribunal [5-300, 5-320] (Post Public Comment Draft #4 dated 9/28/08)Codrafters: Peck, Ruvolo, Vapnek

Assignment: (1) a chart comparing proposed Rule 3.5 to MR 3.5; (2) a "dashboard" cover sheet; and (3) a chart summarizing the public comment received and the Commission's response.

(NOTE: This is in addition to any assigned rule not completed at the September meeting.)

ASSIGNMENTS FOR NOVEMBER MEETING

November 6 & 7, 2009 Meeting **Assignments Due: Wed., 11/28/09**

1. IV.E. Rule 6.1 Voluntary Pro Bono Service [N/A] (new matter assigning the preparation of a first draft rule in a MR comparison chart format) Codrafters: Foy, Julien, Ruvolo, Voogd

Assignment: (1) a chart comparing proposed Rule 6.1 to MR 6.1; and (2) a "dashboard" cover sheet. (If a California version of the MR is not recommended, then the chart should show the MR as stricken.)

2. IV.F. Rule 6.2 Accepting Appointments [N/A] (new matter assigning the preparation of a first draft rule in a MR comparison chart format) Codrafters: Foy, Ruvolo

Assignment: (1) a chart comparing proposed Rule 6.2 to MR 6.2; and (2) a "dashboard" cover sheet. (If a California version of the MR is not recommended, then the chart should show the MR as stricken.)

(NOTE: This is in addition to any assigned rule not completed at the October meeting.)

October 21, 2009 Snyder E-mail to McCurdy, cc KEM:

My computer is down. I'm getting concerned, however, about what I need to do for the November meeting which is swift approaching. Can you and/or Kevin send me whatever I need so that I can talk to Kevin about what I should do? I can't access prior RRC information and emails very well – searching is a nightmare.

October 21, 2009 KEM E-mail to Snyder, cc McCurdy:

I'm not sure where the agenda for November stands as we've been scrambling to package the 40+ rules in Batches 1, 2 and 3 for BOG by this Friday. I know Lauren is chiefly responsible for proofing what Randy, Mary, Mimi and I have done, and packaging all the latest drafts, so she hasn't been able to address the next agenda.

Best thing to do is look at the rolling agenda for September through November, which I've attached. Start w/ Batch 6 on page 10. You're down as lead drafter for Rules 6.1 (pro bono) and 6.2 (appt. of counsel). I would guess that at least one and probably both will be on the November agenda. The due date is next Wednesday, 10/28, at noon.

I've also attached Word files of the MR 6.1 & 6.2 Annotated, and separate files of their legislative histories that will give you the historical context of the rules.

You are already familiar and know much more about the history of the State Bar's pro bono resolution than anyone else on the Commission. I hope this helps.

October 22, 2009 Snyder E-mail to KEM:

I was finally able to open these and review them. It occurs to me, however, that an important history for the RRC's consideration of these rules would be the Board of Governors Resolution taken some years ago. (See attached.) COPRAC also endorsed voluntary pro bono service. Unless you see some reason we should not do so, I would recommend that we put forth the recommendation of adopting these two rules to the drafting team and get their views. However, I note that the term "***voluntary***" pro bono service is somewhat at odds with the view expressed in the rule that "every lawyer has a ***professional responsibility*** to provide legal services to those unable to pay." (Emphasis added.)

Let me know what you think. I wonder if this will be categorized as "controversial"?

October 22, 2009 McCurdy E-mail to Snyder, cc KEM:

Sorry for not getting back to you. As Kevin mentioned, we've all been up against the wall formatting and compiling the RRC mega agenda item for the RAC & BOG. I had intended to forward the documents that Kevin has so helpfully took care of. We may be coming out with something further, but the rolling assignments agenda was intended to set the stage for the coming meetings, knowing that the RRC meeting dates were tightly spaced, and the work to be done was well defined.

October 24, 2009 Snyder E-mail to KEM:

Attached is a redline and some observations regarding Rule 6.1 – I have done as you suggested and more closely compared the actual language of the Board Resolution with the ABA.

Let me know your thoughts and what I should do next.

October 27, 2009 KEM E-mail to Snyder:

I've attached the following:

1. Draft 1 (10/26/09) of Rule 6.1, redline, compared to MR 6.1. In Word.

2. The BOG Pro Bono Resolution (2002). In Word.

3. The ABA Chart on Model Rule 6.1 adoptions. In PDF.

KEM Notes:

1. I've made a number of revisions to the Model Rule. After further consideration, I think my idea to incorporate some of the BOG language was ill-founded, except in a few spots. Instead, I quote the language of the relevant Resolution paragraph in the footnotes, which will give the Commission members an opportunity to decide whether they prefer the BOG's language. I think the MR language for the most part is fine. I don't think there is all that much variation around the country but please review item #3, above.

2. I'd send this to the drafters requesting their response by tomorrow morning so you can submit by the 12:00 noon deadline.

I can't work on this further before the deadline. I have several rules I have to get out today.

Please let me know if you have any questions.

October 27, 2009 Snyder E-mail to Drafters (Foy, Julien, Ruvolo, Voogd), cc Chair & Staff:

Attached is a proposed rule 6.1 together with the additional materials for your consideration. Please get back to me with your input by tomorrow morning to enable us to make the noon deadline for submission. As usual, Kevin was invaluable on this as well as on 6.2 in which some of you also are drafters.

Thanks. I look forward to hearing from you.

Attached:
RRC - 6-1 - Rule - DFT1 (10-26-09) - Cf. to MR.doc
RRC - 6-1 - BOG Resolution re Pro Bono Resolution (2002).doc
RRC - 6-1 - Model Rule 6.1 Adoptions - REV (09-03-09).pdf

November 1, 2009 Sapiro E-mail to RRC:

1. I agree with the concept of this rule, except for proposed Comments [8] and [9].

2. Attending a luncheon or a banquet for Law Day is not *pro bono* work. Mediators and arbitrators often are compensated at exorbitant rates. People who get paid to give continuing education programs are not engaged in *pro bono* activities. Comment [8], provides too many easy ways out for people who do not really provide *pro bono* services.

3. Similarly, I do not like proposed Comment [9]. During the civil war, people who were drafted could avoid serving in the union army by hiring substitutes or by paying a commutation fee. Those who had the money did not have to serve. Similarly, under this Comment, a wealthy partner of a big firm does not have to provide *pro bono* services. He or she can, instead, claim sanctuary because his or her firm makes financial donations to legal services organizations. This is neither fair nor right.