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Pro Bono Feature

Pro Bono

Judicial Promotion of Pro Bono: A New Frontier

Judicial
Promotion
of Pro Bono

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From the Chair

Judges, by virtue of their position, are viewed as leaders in both the legal community and the community at large. As a result, the judiciary possesses a unique ability to promote access to justice.

Deferred
Law Firm
Associates

Judicial support of pro bono can increase attorney awareness of their responsibility to do pro bono work and promote pro bono as a necessary component to the delivery of access to justice. Throughout the country, judges are opening doors by exerting their unique influence to increase participation in pro bono work. They are encouraging more attorneys to provide pro bono legal services, making administrative accommodations for pro bono and forging alliances with community leaders to develop methods for increasing access to the courts.

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ABA Model Code of Judicial Conduct Rule 3.7

In February 2007, the ABA House of Delegates approved changes to the ABA Model Code of Judicial Conduct, and in particular, Rule 3.7(B). According to Rule 3.7(B), a "judge may encourage lawyers to provide pro bono publico legal services." Comment [5] to the Rule states that in addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono legal services, if in doing so the judge does not employ coercion, or abuse the prestige of her judicial office. Such encouragement, according to Comment 5, may take many forms, including providing lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

Furthermore, Section (A) of the rule permits a judge, with certain exceptions, to participate in "activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations, not conducted for profit." When doing so, the comments to the Rule make clear that a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that would adversely reflect upon the judge's independence, integrity and impartiality. For example, under the old Model Code, it was unclear whether judges could assist in fundraising efforts for such organizations. Under the new rule, fundraising is permissible, as long as the judge limits solicitation to family members or from other judges over whom

the judge does not exhibit any supervisory authority. Under the new Model Code judges are also able to assist an organization in planning related to fundraising and the management and investment of the organization's funds.

State Adoption of ABA Model Code of Judicial Conduct Rule 3.7

Currently, four states (CO, NH, UT and WY) have adopted or proposed the identical language of Rule 3.7, while twelve (AZ, AR, HI, IN, KS, MD, MN, MT, NE, NV, OH and OK) have adopted or proposed similar language. Most of the twelve states that have adopted similar language have not altered the Model Code language significantly; rather, they add language that provides additional examples of pro bono activities in which judges can engage. For example, some states have added a section C to the rule or an addition to the comments which states that a judge can provide leadership in addressing issues involving access to justice, develop public education programs, engage in outreach activities to promote justice, and participate in advisory committees to improve the law. In addition, some states have explicitly stated in their rule's comments that a judge can be an announced speaker at a fundraising event benefiting indigent representation, scholarships for law students or law schools.

Three states (DE, NY and WA) have adopted rules with different language than Rule 3.7 of the ABA Model Code of Judicial Conduct. Delaware has implemented many of the aspects of Rule 3.7 but its comments proscribe judges from doing any kind of fundraising. Also, Delaware omits Section 3.7(B) of the Model Rule, which states that a judge may encourage lawyers to provide pro bono legal services. Washington's proposed 3.7 is substantively similar to ABA Model Rule 3.7, however, it does not specifically state that judges can solicit membership for an organization nor does it state that judges can make recommendations to a public or private fund granting organization in connection with its programs and activities. It also does not include provision 3.7(B) from the Model Rule but instead places the language within its comments. The comments also incorporate some of the additional examples of leadership that judges can engage in identified in other state rule adoptions as 3.7(C). Finally, New York's proposed Rule 3.7 does not include the language of the Model Rule regarding the solicitation of contributions. The rule replaces this language with the statement that a judge may attend an organization's fundraising events, but may not be a speaker or guest of honor at such events.

Recruitment

Judges are actively involved in the recruitment of pro bono attorneys. In many jurisdictions, judges sign letters urging members of the bar to join a pro bono program and thank you letters to attorneys who have been serving on a program's panel of volunteers. These letters can take the form of "opt-in letters," which invite attorneys to participate in pro bono activities, or "opt-out letters," which inform attorneys that they have been assigned pro bono work, and are expected to perform such work unless they inform the court that they are unable to provide the requested assistance. These letters have proved to be a particularly effective strategy for increasing the number of volunteers in pro bono programs.

In addition to letters, judges have often contributed editorials and opinion pieces for newspapers, magazines and bar publications on the increasing need for volunteer attorneys. In 2001, Chief Justice Ronald M. George of the Supreme Court of California contributed an article entitled "Pro Bono Work is Lawyer's Duty" to the *California Bar Journal*, highlighting the need for pro bono legal services in California. Other judges have spoken about the issue in speeches to bar associations and to new bar admittees.

Some judges have taken a more novel approach to recruiting pro bono attorneys. For example, Alabama Supreme Court Chief Justice Sue Bell Cobb recently sent a letter to new admittees of the State Bar. In the letter, Chief Justice Cobb encouraged each new member to join the Volunteer Lawyers Program and to become increasingly active in providing pro bono services as their career progresses. Following the dinner, Chief Justice Cobb hosted select members of the admission class for a private dinner. The dinner guests were selected by raffle from those admittees who registered for the

Volunteer Lawyers Program at or before the admission ceremony.

Recognition

By its very definition, pro bono represents a cost on attorneys for which there is no monetary reimbursement. Accordingly, many judges reward volunteer attorneys through praise, awards and publicity. Many courts host annual pro bono awards ceremonies in which judges recognize the contributions of volunteer attorneys within their jurisdictions. For example, in October 2009, Justice Richard C. Bosson of the New Mexico Supreme Court held a luncheon at which he presented Certificates of Appreciation to 31 attorneys who have provided Pro Bono services for the last five years.

The Colorado Supreme Court has also established a program to recognize attorneys who provide pro bono legal services. Through its website and *The Colorado Lawyer* magazine, the Court recognizes attorneys who inform the court of their voluntary commitment to achieving the goal of 50 hours of pro bono legal services per year.

Resolutions

Judges can also help by passing resolutions that reinforce the need for pro bono legal services. These resolutions can have a very positive effect on attorneys. Recently, the Supreme Court of Iowa issued such a resolution which urged all Iowa attorneys to devote at least 50 hours of pro bono legal services per year.

Court Based Pro Bono Programs

Judges may also promote pro bono by creating programs in their courts. The U.S. District Court for the Northern District of California posts cases in need of pro bono attorneys on its website. Other courts have created more complex programs. The United States District Court for the Northern District of Illinois, for example, requires that attorneys join a pro bono panel when they are members of a court-associated bar.

Other courts have devoted a portion of the fees they receive from attorney admissions to help volunteer attorneys cover the costs they necessarily incur. The United States District Court for the Eastern District of Wisconsin requires newly admitted attorneys to pay a fee of \$25.00, which is then deposited in the District Court Pro Bono Fund. This fund is used for prepayment or reimbursement of out of pocket expenses necessarily incurred by court-appointed attorneys representing indigent pro bono in civil cases not covered by the Criminal Justice Act.

In addition to programs existing within the court system, some judges have worked to establish pro bono programs outside of the court. For example, U.S. District Judge Jim Zainey founded Project H.E.L.P. (the Homeless Experience Legal Project) in New Orleans to provide the homeless with free legal assistance. The program, which sets up legal clinics in homeless shelters, has now expanded to over 15 cities.

Local Pro Bono Committees

Judicial involvement in pro bono may also take place locally. Florida, Indiana, Maryland, Nevada, New Mexico, New York and Ohio involve judges in a "hands-on" manner to promote pro bono. In these states, court rules establish a system in which pro bono efforts are organized into districts with local judges overseeing the efforts of each district. Judicial participation is integral to these programs. In addition to increasing bar support for pro bono, judicial participation provides the program with prestige, credibility, and a heightened visibility within the legal community.

Administrative Accommodations

Some courts have afforded a docket preference to pro bono attorneys. The Civil Courts of Dallas County, Texas for example, allow an attorney representing pro bono clients to alert the Court when the matter is set for a hearing. The court will then attempt to accommodate the attorney by moving the new matter towards the beginning of the docket.

Training and Education

Judges can also do pro bono work by giving their time to provide Continuing Legal Education (CLE) training in their area of expertise. In addition, states have offered CLE programs to clarify what judges can do to participate in and/or promote pro bono. A CLE program entitled "Judicial Ethics: *Pro Bono Publico* Options for Judges" was offered at the 2005 Alaska Judicial Conference. The program included a mock-game show, "Wheel of Pro Bono Fortune," which addressed the various ways in which judges can encourage pro bono in their area.

The judiciary is in a unique position to promote pro bono and engage in certain pro bono activities themselves due to the less restrictive rules outlined in Model Rule 3.7. Accordingly, judges should take an active role in recruiting and recognizing pro bono attorneys, providing free legal training, and authoring articles espousing the importance of pro bono. Judges can also establish internal programs in their courts to promote pro bono or establish administrative accommodations for pro bono attorneys. As the work in the judiciary increases, so will the number of volunteer attorneys. The costs to the courts for such measures are small when compared to their immediate and long-lasting contributions to justice.

Andrew N. Monson, third-year law student at DePaul University, assisted in the preparation of this article.

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