The Special Committee on Public Interest Practice recommends adoption of the following:

RESOLVED, that it is the professional duty of each lawyer engaged in the practice of law to provide public interest legal services;

FURTHER RESOLVED, that public interest legal service is legal service provided without fee or at a substantially reduced fee, which falls into one or more of the following areas:

1. **Poverty Law:** Legal services in civil and criminal matters of importance to a client who does not have the financial resources to compensate counsel.

2. **Civil Rights Law:** Legal representation involving a right of an individual which society has a special interest in protecting.

3. **Public Rights Law:** Legal representation involving an important right belonging to a significant segment of the public.

4. **Charitable Organization Representation:** Legal service to charitable, religious, civic, governmental and educational institutions in matters in furtherance of their organizational purpose, where the payment of customary legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.

5. **Administration of Justice:** Activity, whether under bar association auspices, or otherwise, which is designed to increase the availability of legal services, or otherwise improve the administration of justice.
FURTHER RESOLVED, that public interest legal services shall at all times be provided in a manner consistent with the Code of Professional Responsibility and the Code of Judicial Conduct;

FURTHER RESOLVED, that so long as there is a need for public interest legal services, it is incumbent upon the organized bar to assist each lawyer in fulfilling his obligation to provide such services as well as to assist, foster and encourage governmental, charitable and other sources to provide public interest legal services.

FURTHER RESOLVED, that the appropriate officials, committees or sections of the American Bar Association are instructed to proceed with the development of proposals to carry out the interest and purpose of the foregoing resolutions.

REPORT

This resolution was deferred to the Annual Meeting at the Chic Midyear Meeting so that it could be discussed with various segments of the organized bar.

Since then it has been reviewed from within the ABA and outside. Association. In February 1975, a Conference of Bar Leaders was held in New York City. Bar associations from Washington, D.C. to Boston were represented by their respective bar leaders; in most cases presidents-elect. The resolution was found generally acceptable and was uniform agreement that the organized bar should do more to assist lawyers in fulfilling their public interest legal services obligations. There was no dissent from the proposition that each lawyer had a duty to provide public interest legal services.

As of the writing of this report, several state and local bar associations have adopted a statement of obligation substantially similar to that being proposed for adoption by this Committee. It is the Committee opinion that these associations are leading associations, and the American Bar Association should also undertake the lead in this vitally important area of the delivery of legal services. The District of Columbia Bar Association, Chicago Council of Lawyers, the Beverly Hills Bar Association, the Arizona, Philadelphia and Boston Bar Associations have passed substantially identical resolutions to that being proposed. The Association
Bar of the City of New York, the Florida Bar and the Seattle-King County Bar Association presently have the subject matter under active consideration.

The resolution has been reviewed and approved by the ABA Committee on Ethics and Professional Responsibility, and has been referred to all relevant committees and sections of the Association. It has also been favorably acted upon by the Consortium on Legal Services and the Public, which includes the following ABA committees:

a) Standing Committee on Lawyer Referral Service
b) Special Committee on Delivery of Legal Services
c) Standing Committee on Legal Assistance to Servicemen
d) Standing Committee on Legal Aid & Indigent Defendants
e) Special Committee on Prepaid Legal Services
f) Special Committee to Survey Legal Needs

The Young Lawyers Section, the Council for Advancement of Public Interest Law, and the National Legal Aid and Defender Association have also approved this resolution.

In general, the resolution states that it is the lawyer's duty, as a function of his professional status, to provide public interest legal services; legal services without fee or at a substantially reduced fee. The resolution further provides several areas which would qualify for fulfillment of this obligation.

Suggestions received from the Council of Criminal Justice Section have been reflected in the resolution since the Midyear Meeting. The resolution reflects these suggestions and, additionally, those received from bar leaders contacted from within and outside the ABA.

Generally, the pertinent changes to the resolution are:

1) The duty has been expressly stated as deriving (among other things) from the professional status of a lawyer.

2) The application of the resolution is limited to lawyers in the practice of law (e.g., judges would be exempted from some activities because of their status as judges; government lawyers would not necessarily be exempt, unless by definition their work qualified and their compensation was substantially reduced as a result).
3) Areas 1 through 4 have been simplified and shortened and one additional area has been added; that is Area 5, which would cover certain uncompensated work, such as bar association or related activity.

4) The resolution has also imposed an obligation upon the organized bar to foster and encourage governmental and charitable sources to provide public interest legal services and to further encourage and assist each lawyer in fulfilling his obligation.

In our many deliberations since September 1973, the Committee has concluded that the Canons and Ethical Considerations, although not explicitly, make it clear that the legal profession and each individual lawyer share the responsibility for providing public interest representation and that there is a duty on each individual lawyer to provide his share of such public service work.

Of course, behind the development of the resolution is our Committee further conclusion that lawyers and the organized bar are in need of guidance in determining the areas in which they should become involved in performance of this duty.

The duty of each lawyer and the legal profession is well supported by authorities and in the basic precepts of the profession.

Roscoe Pound stated a profession's true function most succinctly:

There is much more in a profession than a traditionally dignified calling. The term refers to a group of men pursuing a learned art as a common calling in the spirit of public service -- no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.

For this reason, in part, a lawyer's time and energies must be allocated not only according to the demands of the marketplace, but as well to the needs of society for his professional skills. It is the element of public service which distinguishes a profession from a trade, and our profession should impose upon itself the duty of such public service.

The Code of Professional Responsibility supports the resolution and the Ethical Considerations encompass services to the poor, but there is a mention of a professional obligation to provide representation in cases
seeking the vindication of an individual's fundamental civil rights, or rights belonging to the public at large, where society needs to have its rights vindicated but as a practical matter the would-be plaintiff or defendant will take action to vindicate or defend those rights only if he receives aid, and does not have to bear the costs himself. (Canons 2; EC2-25; EC2-16; EC8-3)

Ethical Considerations are "aspirational in character." As such, unlike the Disciplinary Rules, they are not enforceable standards, but are "objectives toward which every member of the profession should strive." 1/

Canon 2 provides:

A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.

EC2-25 provides:

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer... Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need.

See also EC2-16, which states:

Persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should supply and participate in ethical activities designed to achieve that objective.

And see EC8-3, which states that:

Those persons unable to pay for legal service should be provided needed services.

It is clear from the Canons and Ethical Considerations that the legal profession accepts responsibility for providing public interest representation, and that each individual lawyer shares this responsibility, but it is not clear exactly what types of legal services will fulfill the individual lawyer's obligation, or how much he is expected to do. Lack of affirmative guidance as to what each individual lawyer is expected to do has resulted in many lawyers and law firms doing little or nothing. A collective responsibility must be translated into a defined individual duty in order to realistically expect that each lawyer will contribute his share. The profession has not yet done this and our resolution is designed to meet this end. The Committee strongly recommends that the Association take action to cause lawyers to recognize their professional obligation.

Respectfully submitted,

Harry L. Hathaway, Chairman
Edmund J. Burns
Roderick A. Cameron
Frank T. Gray
Charles A. Hobbs
Arnold B. Kanter
Charles J. Parker
William G. Paul
Howard L. Shecter
Marna S. Tucker

August, 1975