

## MEMORANDUM

To: Joint Commission to Evaluate the ABA Model Code of Judicial Conduct

From: Debbie Segal, Chair  
ABA Standing Committee on Pro Bono and Public Service

Date: February 3, 2004

Re: Testimony Before the Joint Commission to Evaluate the ABA Model Code of Judicial Conduct

For quite a long time and without violating their ethical obligations, judges have played a critical role in supporting pro bono efforts in order to improve access to justice. The fact today is that an overwhelming majority of the legal needs of the poor remain unmet. The ABA concluded in its legal needs study conducted in the mid-1990s that 80% of the legal needs of the poor go unmet. For those of us who have worked in the legal services trenches, we recognize that this number has not been significantly reduced over the last eight years and that pro bono attorneys provide an urgently needed supply of legal services. We also recognize that judges, as leaders in the legal community, can have a direct and positive impact on supporting the development and expansion of pro bono.

I am here today because there exists a common misperception that judges are *prohibited* by the Model Code of Judicial Conduct from supporting and encouraging pro bono – while *just the opposite is true*. Judges share an important duty to ensure that justice is available for all citizens, without regard to their economic or social status. Judges have a specific duty to dedicate themselves to the improvement of the law and to the fair administration of justice. Encouraging pro bono service falls squarely within this duty. Pro bono service is a critical component in our judicial system for meeting the legal needs of the poor.

While only anecdotal, the Pro Bono Committee routinely hears stories of judges who are hesitant to support the work of pro bono providers for fear of violating their codes of judicial conduct. In fact, there have been interpretations of the Model Code that have explicitly limited judicial participation in support of pro bono, and the Pro Bono Committee believes that these inconsistent interpretations only erode the potential that judges have to improve the judicial system within their ethical guidelines.

Judges play a vital role in setting a tone – in fact, in developing a culture -- that encourages the legal profession to provide pro bono legal service and thus breathe life into the concept that “justice is blind.”

The Standing Committee on Pro Bono and Public Service believes that the ABA Model Code of Judicial Conduct can be more proactive in empowering and authorizing judges to assume this duty while upholding their ethical responsibilities. The Committee notes examples from the Conference of Chief Judges and the Colorado and Nevada Supreme Courts where a judge’s role in promoting pro bono has been more clearly articulated.

Around the country, we have witnessed judges lead the way in creating innovative approaches to delivering pro bono legal services. Some of these approaches include:

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- Sending recruitment letters to potential volunteer lawyers
- Sending thank you notes to attorneys who regularly provide pro bono assistance
- Writing articles or letters for newspapers, magazines or bar publications about the need for volunteer lawyers and the contributions that these volunteer lawyers can make to their communities through pro bono service
- Designing, participating or leading CLE seminars for pro bono lawyers
- Lending their name and presence to pro bono awards and recognition ceremonies
- Serving as a member of an advisory board for a pro bono program
- Providing scheduling flexibility or calendar preferences for lawyers handling pro bono matters
- Expressing the Court's appreciation from the bench to lawyers who make pro bono appearances
- Including references to the importance of pro bono and public service in speeches to lawyers, new bar members and law students
- Sponsoring judicial resolutions that encourage pro bono participation

Canon 4 of the ABA Model Code of Judicial Conduct is interpreted as permitting judges to be involved in activities that improve the legal system as long as they do not personally participate in fundraising activities or do anything that (1) cast[s] reasonable doubt on the judge's capacity to act impartially as a judge; (2) demean[s] the judicial office; or (3) interfere[s] with the proper performance of judicial duties.

The Standing Committee on Pro Bono and Public Service has developed suggested textual changes to Canon 4 and its Commentary which it would be happy to share with you at your request. We welcome the opportunity to work with the Joint Commission to Evaluate the ABA Model Code of Judicial Conduct on specific language as you move forward with this important project.