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A Legislative Antidote for the Myths of Prostitution

Mandatory Pro Bono or ABA Model Rule 6.1?

Ahneen!*

It is time for the Minnesota legal community to reassess its commitment to providing pro bono legal services to the Minnesota general public. The need for pro bono legal services increases every year. Given the current political environment, there is also a concern in certain circles that the federally underfunded Legal Services Corporation will disappear from the map or be placed on an even shorter budgetary leash. There is every reason to believe that the private bar's legal expertise will be needed more than ever before in the pro bono arena.

Numerous individuals give of themselves unselfishly in pro bono service. Our own HCBA treasurer, Jim Baillie, stands out among his peers for years of committed volunteer service.

Nonetheless, the difficult and pressing issue we face and must address is What should (or must) the legal profession, *as a whole*, do to meet its professional and ethical obligation to serve the growing and ever-demanding public need for pro bono legal services? Although this question surely does not lend itself to an easy answer, the continuation of the present charted course is not a viable one nor a solution to this thorny question. Some suggest mandatory pro bono?

13 Arguments Against Mandatory Pro Bono

There are not many dirty four-letter words in the legal profession but for many attorneys "mandatory pro bono" is one of them. There are not many attorneys sitting on the proverbial fence on this issue. The Minnesota legal community needs to engage in healthy discourse on this subject given the increasing demands for pro bono legal services. Toward this end, I thought I would play devil's advocate by listing 13 statements commonly used against the adoption of mandatory pro bono (along, of course, with my soundbite responses in parentheses):

1. Many attorneys are incompetent in the needed pro bono areas. (Become competent.)
2. Not my responsibility. (Minn. Rules of Professional Conduct 6.1 and 6.2 say otherwise.)
3. Possibly government's responsibility. (New government; politically incorrect.)
4. Violates 4th, 5th, and 13th constitutional amendments. (Most courts disagree.)
5. Will clog up the court system. (Possibly? But it will reduce time-consuming pro-se cases.)
6. Can't force attorneys to do something they don't want to do. (Someone forgot to tell mandatory jurisdictions or bar associations such as Mercer County, Pa.; Orange County, Fla.; West Chester County, N.Y.; El Paso County, Texas; and McHenry County, Ill. The Nevada Supreme Court is presently considering a statewide policy.)
7. Can't police it. (We police other ethical obligations.)
8. The practice of law is already a "full-time" job. (Totally agree! But providing pro bono services is part of that "full-time" job.)
9. Coerced lawyers would handle cases grudgingly and *poorly*. (Not most of us. Rules of Professional Conduct still apply.)
10. Would lead to a significant increase in malpractice claims. (Might? But experience shows otherwise. Also, many pro bono organizations already provide malpractice coverage for their volunteers.)
11. Fails to recognize current pro bono efforts. (Recognizes *entire* profession's obligation to provide such services.)

And, my all-time favorite:

12. Mandatory pro bono is tantamount to slavery. (All regulatory mandates impose some degree of "involuntary servitude.")
13. Mandatory pro bono is a draconian response; need to go slower. (How about ABA Model Rule 6.1?)

ABA Model Rule 6.1: Voluntary Pro Bono

If we, in the legal professional, do not have the stomach to self-impose mandatory pro bono, what about the ABA aspirational pro bono numerical goal?

On Feb. 8, 1993, the ABA House of Delegates adopted a revised Rule 6.1 of the Model Rules of Professional Conduct, "Voluntary Pro Bono Public Service." (see sidebar, p. 4) ABA Model Rule 6.1 sets forth a voluntary standard for providing pro

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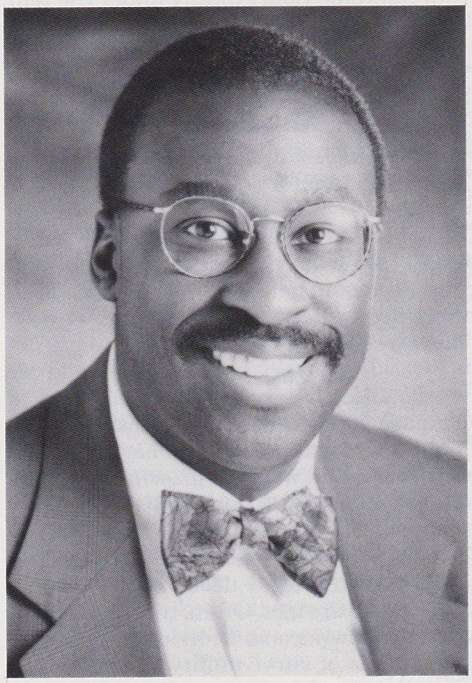
**Ahneen is a Native American greeting in the language of the Anishinabe (Ojibwe) people.*

Your President Reports



By Jarvis Cedric Jones

bono services. The comment section specifically provides that the "rule is not intended to be enforced through disciplinary process." Lawyers are asked to commit to a specific number (50) of pro bono hours. The number (50) is placed in parentheses to provide a state with flexibility to adjust its pro bono number to the needs of that particular locality.

Some attorneys will strenuously argue against the new ABA Model Rule 6.1 because they view it as the camel's nose under the tent, i.e., eventually resulting in mandatory pro bono. Query: What's worse, the camel's nose under the tent or eventually having the government or the Minnesota Supreme Court totally under the tent dictating our every activity in this area?

Two Compelling Reasons for Mandatory Pro Bono or ABA Rule 6.1

The Minnesota legal community should adopt a mandatory pro bono policy or, as an alternative, adopt ABA Model Rule 6.1. Although there are a multitude of arguments (some more convincing than others) why we should not adopt either as a policy, there are two compelling reasons why we should.

First, not surprisingly, the demand for pro bono legal services has continued to increase significantly. Even less surprisingly, the legal profession has not been able to keep up with the growing demands for pro bono legal services. Study after study, nationally and statewide, has consistently found that only about 15 to 20 percent of the legal needs of low-income individuals are met. Often, the unmet legal needs of low-income individuals fall into basic areas of survivability such as minimum levels of income and entitlements, utilities, shelter, public benefits, medical benefits, forced bankruptcy, and family matters such as child support and domestic abuse. So, what does all this mean for the legal profession?

The second compelling reason why the Minnesota legal profession should adopt mandatory pro bono or ABA Rule 6.1 is that we have a professional and ethical obligation to make a wholehearted attempt to meet the documented legal needs of those who can't afford our services. Upon initiation into the legal profession we swore under oath that we would not "delay any person's causes for lucre" (i.e., for profit). For those of us who cannot remember that far back, Minnesota Rules of Professional Conduct 6.1 and 6.2 serve as a gentle reminder of this absolute obligation. Minnesota Rule 6.1 reads, in part, that a lawyer should render public interest legal services at no fee or reduced fee to persons of limited means, while Rule 6.2 states, in part, that a lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause. Under Rule 6.2, the judiciary clearly has the power, if it so chooses, to appoint lawyers to provide pro bono legal services.

Lawyers' exclusive privilege to practice law and our public service obligation date back hundreds of years to the American legal profession's deeply rooted ties to England. Since we are not willing to relinquish our monopoly on the practice of law, we must be willing to shoulder the price (i.e., public service) that comes with the exclusive privilege. Few of us would seriously argue that an underrepresented individual has the same chance of prevailing in a legal matter as an individual represented by one of us. Therefore, it stands to reason that justice is seldom blind to those who must forgo our legal services because of financial considerations. As gatekeepers to the administration of justice and as officers of the court, we must work earnestly and diligently to ensure that justice is equally blind to those who can afford legal services and to those who cannot.

CONCLUSION

In fulfilling our professional and ethical obligation to the public, our choices are obviously not limited to mandatory pro bono or ABA Rule 6.1. However, maintaining the status quo should not be an option. While we may find mandatory pro bono difficult to swallow, we should find ABA Rule 6.1 more soothing to the profession and relieving to the public. After all, the Minnesota State Bar Association was one of the six sponsors in a 1993 report to the ABA calling for the ABA to adopt Model Rule 6.1. In addition, the HCBA passed a resolution in January 1993 supporting and endorsing the adoption of ABA Rule 6.1 and communicated this support to the ABA House of Delegates at its midyear meeting in Boston. We must be willing to do in our own backyard what we asked the ABA to do nationally.

Speaking of backyards, if you have been thinking about doing pro bono legal services but you are not quite sure how to get started, Duane Stanley at the HCBA can provide you with a list of organizations providing services in this area. However, I would be remiss if I failed to mention the Volunteer Lawyers Network (VLN). This is the new name for what most have known as the HCBA Legal Advice Clinics. VLN serves the legal needs of the economically disadvantaged in Hennepin County by providing them with volunteer attorneys. Give Executive Director Candee Goodman or VLN Chair Tim Shields a call at 339-5500. I did!

RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

A lawyer should aspire to render 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 which 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.

We need *you*. Have you ever thought about writing an article? Why not write or call with an article query, or send in an article? Why not send a letter to the editor?We want to publish quality articles by HCBA members. Have at it.

Thank You

Thanks to this issue's assistant editors, Courtney Ward and Leslie Sinner McEvoy. Their editing work has helped make this issue possible. Duane Stanley, the magazine's executive editor, is the sage who guides volunteer issue editors like myself through the process of getting the editing done, and who gets the publishing work done as well. Thanks, Duane, it wouldn't happen without you.