



Arkansas Access To Justice Commission

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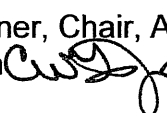
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MEMORANDUM

To: Nate Coulter, Chair, and Members, Arkansas Bar Association Board of Governors

From: Chuck Goldner, Chair, Arkansas Access to Justice Commission 

Subject: Recommendation for Data Collection – Rule 6.1 of the Arkansas Rules of Professional Conduct

Date: April 8, 2006

The Arkansas Supreme Court created the Arkansas Access to Justice Commission (the "Commission") in response to a petition filed by the Arkansas Bar Association. The Commission's charge includes:

- (a) reviewing and reporting on the efficient allocation and application of the available resources for providing civil legal services to persons of limited means;
- (b) educating the people of Arkansas about the importance of equal access to justice and about the problems many Arkansans face in gaining effective access to our civil justice system; and
- (c) encouraging a strong and consistent commitment to providing equal access to justice among the leaders of our state.

The Commissioners concluded that in order to carry out these tasks, the Commission needs information on the quantity and nature of pro bono publico service, as defined in Rule 6.1 of the Arkansas Rules of Professional Conduct (attached), provided by Arkansas lawyers. The Commission plans to request that the Court amend the attorney annual license renewal form filed with Court to provide for the attorney to report to the Court:

- (a) the number of hours of legal services devoted to civil matters provided by the attorney in the previous 12 months that meets the professional responsibility described in Rule 6.1(a);
- (b) the number of hours of legal services devoted to criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation provided by the attorney in the previous 12 months that meets the professional responsibility described in Rule 6.1(a);
- (c) the number of hours of legal services provided by the attorney in the previous 12 months that meets the professional responsibility described in Rule 6.1(b); and
- (d) the number of equivalent hours represented by a financial contribution in the previous 12 months to organizations providing free legal services to persons of limited means as described in Comment 9, Rule 6.1.

The Commission will not request that the reported information be made public on an individual basis, but will request that the cumulative hours reported in each category be released by the Court.

The Commission believes that reporting and collecting this data will provide several significant benefits:

- (a) lawyers will be reminded of the professional responsibility to provide pro bono publico legal services as defined in Rule 6.1;
- (b) reporting may serve as an incentive to lawyers to meet the professional responsibility to provide those services; and
- (c) the data will prove invaluable as the Commission seeks financial support from other sources for the provision of civil legal services to persons of limited means.

The Arkansas Access to Justice Commission respectfully requests that the Arkansas Bar Association join with the Commission in this request to our Court.

RULE 6.1. VOLUNTARY PRO BONO PUBLICO SERVICE.

1. Every lawyer has a professional responsibility to provide legal services to those unable to pay. 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 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.