



## At Sidebar

by Hon. Karoline Mehalchick

# Making the Case for Pro Bono Work

### Supreme Court Justice Sonia Sotomayor has said,

“We educated, privileged lawyers have a professional and moral duty to represent the underrepresented in our society, to ensure that justice exists for all, both legal and economic justice.”<sup>1</sup> Pro bono legal work is work done by lawyers on behalf of those litigants who cannot afford to help themselves. Each year, many of the cases filed in our federal courts are filed by indigent litigants who may have meritorious claims but cannot afford representation.

The American Bar Association’s Model Rule 6.1 states, in part: “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.” The vast majority of states have adopted the model rule in some form, either in their own rules of professional conduct, through a bar resolution, or in some other form.<sup>1</sup> For example, Florida’s Rules of Professional Conduct state, in pertinent part, “Each member of The Florida Bar in good standing, as part of that member’s professional responsibility, *should* (1) render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor.” Fla. ST B.A. Rule 4-6.1 (emphasis added). Pennsylvania’s Rules of Professional Conduct state that “[a] lawyer *should* render public interest legal service.” 204 Pa. Code § 6.1 (emphasis added). The State Bar of California has a Pro Bono Resolution, adopted in 1989 and amended in 2002, which urges all attorneys to devote at least 50 hours per year to providing or enabling “the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not-for-profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice.”<sup>2</sup> Rule 6.1 of the Colorado Rules of Professional Conduct states that “[e]very lawyer has a professional responsibility to provide legal services to

those unable to pay.” Colo. ST. RULES PROF. CONDUCT Rule 6.1. The preamble to Ohio’s Rules of Professional Conduct<sup>3</sup> notes:

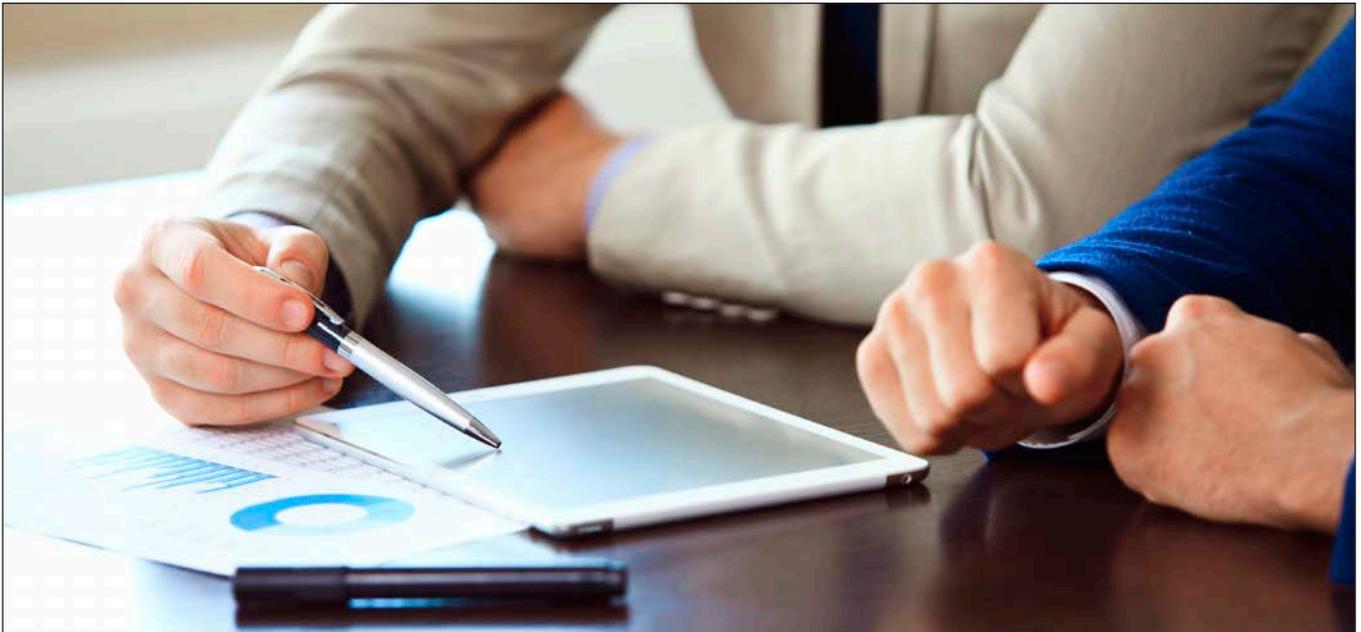
A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Judge Edward Roy Becker of the Third Circuit wrote in the case of *Tabron v. Grace*, 6 F.3d 147, 157 (3d Cir. 1993), “Representation of indigent litigants is ... an important responsibility of members of the bar. ... We encourage lawyers within this circuit to volunteer for such service, and we urge the district courts ... to seek cooperation of the bar in this regard.” Further, Title 28 of the United States Code provides federal courts with a mechanism to appoint pro bono counsel to pro se litigants. Section 1915(e)(1) provides that “[t]he court may request an attorney to represent any person unable to afford counsel.” 28 U.S.C.A. § 1915(e)(1).

However, despite the suggestion by the American Bar Association’s model rule, the number of rules of professional conduct adopted by the states and bar associations, and even the ability of the court to request representation, many district courts still struggle to locate resources to assist pro se, indigent litigants. One of the resources that is crucial to our system of justice is assistance from members of the bar. In federal court, pro se plaintiffs often seek appointment of counsel in cases involving important civil rights, such as claims made pursuant to 42 U.S.C. § 1983 or other

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allegations of violations of their constitutional rights. Volunteer attorneys are sometimes needed to help pro se indigent litigants avoid what might otherwise be unjust consequences. Generally speaking, the court has evaluated the case and made a determination that the case may have some merit and appointment of counsel is appropriate. When the court makes a determination that appointment of counsel may be appropriate, it will grant a request for appointment of counsel and then often turn to local chapters of the Federal Bar Association for help in locating a suitable volunteer attorney. Many chapters have pro bono chairs or committees assigned the task of coordinating these requests.

The Middle District of Pennsylvania Chapter of the Federal Bar Association has such a program. Attorneys are encouraged to enroll in the chapter's pro bono panel upon admission to practice before the district court by completing the form provided upon admission to practice before the district court, and can do so by contacting the chair of the pro bono program. The chapter's pro bono chair is responsible for acting upon the court's requests for volunteer attorneys. Most districts make an effort not to overburden any one attorney or firm by making frequent requests of the same individual or firm. Some courts and local chapters have funds available to defray some out-of-pocket litigation expenses, and some chapters or local bar associations offer malpractice coverage to pro bono panel attorneys who may not otherwise be insured.

Why should you volunteer to be a pro bono attorney with your local federal court? First, though § 1915(e)(1) does not permit district courts to require attorneys to represent indigent litigants in civil cases (*see Mallard v. U.S. Dist. Court for S. Dist. of Iowa*, 490 U.S. 296, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989)), the plain language of the ABA Model Rule and the various state rules of professional conduct indicates pretty clearly that pro bono work is something attorneys *should* do. Second, the litigants who have been identified by the court as needing counsel generally need your help. Volunteering as a pro bono attorney is a way in which you can help those who very much need your assistance. Third, volunteering as a pro bono attorney is a wonderful way to expand your experience and practice. Whether you are a newer attorney looking for some first-hand litigation experience rather than hours of document

review, or you are a more seasoned attorney who has spent years building a commercial practice and now are looking for a new challenge, volunteering as a pro bono attorney in a federal civil rights action gives you an opportunity to explore something new. If you are a newer attorney, it may be a chance to take the lead at briefing dispositive motions, first-chair a trial, or argue before an appellate court. Pro bono opportunities help build litigation skills in young lawyers—a benefit not only to the lawyer herself but also to her firm. Such experience also helps a younger lawyer build a network and recognition with opposition counsel, the court, and the client. Cultivating these relationships could, in turn, lead to other opportunities.

U.S. Supreme Court Justice Ruth Bader Ginsburg is quoted as saying, “Lawyers have a license to practice law, a monopoly on certain services. But for that privilege and status, lawyers have an obligation to provide legal services to those without the wherewithal to pay, to respond to needs outside themselves, to help repair tears in their communities.”<sup>4</sup> Volunteering as a pro bono attorney with your federal court is a chance to give back in a rewarding fashion by providing services to those in need of your special expertise. ☉

## Endnotes

<sup>1</sup>The Hispanic Outlook in Higher Education, November 2002 from content.time.com/time.nation/article/0,8599,1900943,00.html.

<sup>2</sup>American Bar Association's State Pro Bono Ethics Rules, [www.americanbar.org/groups/probono\\_public\\_service/policy/state\\_ethics\\_rules.html#appendix\\_a](http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html#appendix_a).

<sup>3</sup>Pro Bono Resolution, adopted by the Board of Governors of the State Bar of California at its Dec. 9, 1989, meeting and amended at its June 22, 2002, meeting, [cc.calbar.ca.gov/LinkClick.aspx?fileticket=ILe2Zrg9bG0%3d&tabid=1195](http://cc.calbar.ca.gov/LinkClick.aspx?fileticket=ILe2Zrg9bG0%3d&tabid=1195).

<sup>4</sup>Ohio Rules of Professional Conduct (Effective Feb. 1, 2007; as amended effective June 1, 2014), [www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf](http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf).

<sup>5</sup>Remarks from Justice Ruth Bader Ginsburg, 2014 Pro Bono Institute Annual Conference, [www.probonoinst.org/events/annual-conference/2014-pbi-annual-conference/remarks-from-justice-ginsburg/](http://www.probonoinst.org/events/annual-conference/2014-pbi-annual-conference/remarks-from-justice-ginsburg/).