

Proposal 04-20 (P.R. 0133)
Amends Supreme Court Rule 756 and
Creates New Rules of Professional Conduct Regarding Pro Bono Public Service
Offered by the Special Supreme Court Committee on Pro Bono Legal Service

(Note: The proposal does not contain amendments to Rule 756 filed June 15, 2004, regarding disclosure of malpractice insurance.)

Supreme Court Rule 756. Registration and Fees

(a) Annual Registration Required. Except as hereinafter provided, every attorney admitted to practice law in this State shall register and pay an annual registration fee to the Commission on or before the first day of January. Until further order of the court, the following schedule shall apply:

(1) No registration fee is required of an attorney admitted to the bar less than one year before the first day of January for which the registration fee is due; an attorney admitted to the bar for more than one year but less than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of \$90; an attorney admitted to the bar for more than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of \$229, out of which \$7 shall be remitted to the Lawyers' Assistance Program Fund and out of which \$42 shall be remitted to the Lawyers Trust Fund. For purposes of this rule, the time shall be computed from the date of an attorney's initial admission to practice in any jurisdiction in the United States.

(2) An attorney in the Armed Forces of the United States shall be exempt from paying a registration fee until the first day of January following discharge.

(3) An attorney who has reached the age of 75 years shall be excused from the further payment of registration fees.

(4) No registration fee is required of any attorney during the period he or she may be serving in the office of justice, judge, associate judge or magistrate of a court of the United States of America or the State of Illinois or the office of judicial law clerk, administrative assistant, secretary or assistant secretary to such a justice, judge, associate judge or magistrate, or during any period in which he or she is receiving a retirement annuity pursuant to Title 28, Chapter 17 of the United States Code or Chapter 40, Act 5, Article 18 of the Illinois Compiled Statutes.

(5) An attorney may advise the Administrator in writing that he or she desires to assume inactive status and, thereafter, register as an inactive status attorney. The annual registration fee for an inactive status attorney shall be \$90. Upon such registration, the attorney shall be placed upon inactive status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this State. An attorney who is on the master roll as an inactive status attorney may advise the Administrator in

writing that he or she desires to resume the practice of law, and thereafter register as active upon payment of the registration fee required under this rule. If the attorney returns from inactive status after having paid the inactive status fee for the year, the attorney shall pay the difference between the inactive status registration fee and the registration fee required under paragraphs (a)(1) through (a)(4) of this rule. Inactive status under this rule does not include inactive disability status as described in Rules 757 and 758. Any lawyer on inactive disability status is not required to pay an annual fee.

(6) An attorney may advise the Administrator in writing that he or she desires to assume retirement status and, thereafter, register as a retired attorney. Upon such registration, the attorney shall be placed upon retirement status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state. The retired attorney is relieved thereafter from the annual obligation to register and pay the registration fee. A retired attorney may advise the Administrator in writing that he or she desires to register as an active or inactive status lawyer and, thereafter so register upon payment of the fee required for the current year for that registration status, plus the annual registration fee that the attorney would have been required to pay if registered as active for each of the years during which the attorney was on retirement status.

(7) An attorney who is on voluntary inactive status pursuant to former Rule 770 who wishes to register for any year after 1999 shall file a petition for restoration under Rule 759. If the petition is granted, the attorney shall advise the Administrator in writing whether he or she wishes to register as active, inactive or retired, and shall pay the fee required for that status for the year in which the restoration order is entered. Any such attorney who petitions for restoration after December 31, 2000, shall pay a sum equal to the annual registration fees that the attorney would have been required to pay for each full year after 1999 during which the attorney remained on Rule 770 inactive status without payment of a fee.

(8) Upon written application and for good cause shown, the Administrator may excuse the payment of any registration fee in any case in which payment thereof will cause undue hardship to the attorney.

(b) The Master Roll. The Administrator shall prepare a master roll of attorneys consisting of the names of attorneys who have registered and have paid or are exempt from paying the registration fee. The Administrator shall maintain the master roll in a current status. At all times a copy of the master roll shall be on file in the office of the clerk of the court. An attorney who is not listed on the master roll is not entitled to practice law or to hold himself out as authorized to practice law in this State. An attorney listed on the master roll as on inactive or retirement status shall not be entitled to practice law or to hold himself or herself out as authorized to practice law in Illinois.

(c) Notice of Registration. On or before the first day of November of each year the Administrator shall mail to each attorney on the master roll a notice that annual registration

is required on or before the first day of January of the following year. It is the responsibility of each attorney on the master roll to notify the Administrator of any change of address. Failure to receive the notice from the Administrator shall not constitute an excuse for failure to register.

(d) Disclosure of Trust Accounts. As part of registering under this rule, each lawyer shall identify any and all accounts maintained by the lawyer during the preceding 12 months to hold property of clients or third persons in the lawyer's possession in connection with a representation, as required under Rule 1.15(a) of the Illinois Rules of Professional Conduct, by providing the account name, account number and financial institution for each account. For each account, the lawyer shall also indicate whether each account is an IOLTA account, as defined in Rule 1.15(d) of the Illinois Rules of Professional Conduct. If a lawyer does not maintain a trust account, the lawyer shall state the reason why no such account is required.

(e) Reporting on voluntary pro bono service. As part of registering under this rule, each lawyer shall annually report whether the lawyer has satisfied the lawyer's professional responsibility to provide *pro bono* legal services to the poor as set forth in Rule 6.1 of the Illinois Rules of Professional Conduct. Each lawyer shall report this information through a simplified reporting form that is made a part of the lawyer's annual registration fee statement. The form will contain the following categories from which each lawyer will be allowed to choose in reporting on whether the lawyer has provided pro bono legal services to the poor:

(1) I have personally provided _____ hours of pro bono legal service. These hours were divided as follows:

(A) Civil legal assistance to low-income individuals or families: (_____ hours without charge).

(B) Criminal representation (_____ hours without charge).

(C) Legal assistance to a not-for-profit organization serving the poor (_____ hours without charge).

(D) Provision of legal services to the poor in the following special manner (_____ hours). (Supply explanation.)

(2) I have contributed \$ _____ to the following legal aid or pro bono program(s):

(3) I am deferred from the provision of pro bono legal services to the poor because I am: (indicate whether lawyer is: a member of the judiciary or judicial staff; a government lawyer prohibited by statute, rule or regulation from providing services; retired, or inactive.)

(e) (f) Removal From the Master Roll. On February 1 of each year the Administrator shall remove from the master roll the name of any person who has not registered for that year. A lawyer will be deemed not registered for the year if the lawyer has failed to provide trust account information required by paragraph (d) of this rule and information on voluntary pro bono service required by paragraph (e) of this rule. Any person whose name is not on the master roll and who practices law or who holds himself out as being authorized to practice law in this State is engaged in the unauthorized practice of law and may also be held in contempt of the court.

(f) (g) Reinstatement to the Master Roll. An attorney whose name has been removed from the master roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying the registration fee prescribed for the period of his suspension, plus the sum of \$10 per month for each month that such registration fee is delinquent.

(g) (h) No Effect on Disciplinary Proceedings. The provisions of this rule pertaining to registration status shall not bar, limit or stay any disciplinary investigations or proceedings against an attorney.

Article VIII. Illinois Rules of Professional Conduct

Preamble

The practice of law is a public trust. Lawyers are the trustees of the system by which citizens resolve disputes among themselves, punish and deter crime, and determine their relative rights and responsibilities toward each other and their government. Lawyers therefore are responsible for the character, competence and integrity of the persons whom they assist in joining their profession; for assuring access to that system through the availability of competent legal counsel; for maintaining public confidence in the system of justice by acting competently and with loyalty to the best interests of their clients; by working to improve that system to meet the challenges of a rapidly changing society; and by defending the integrity of the judicial system against those who would corrupt, abuse or defraud it.

To achieve these ends the practice of law is regulated by the following rules. Violation of these rules is grounds for discipline. No set of prohibitions, however, can adequately articulate the positive values or goals sought to be advanced by those prohibitions. This preamble therefore seeks to articulate those values in much the same way as did the former canons set forth in the Illinois Code of Professional Responsibility. Lawyers seeking to conform their conduct to the requirements of these rules should look to the values described in this preamble for guidance in interpreting the difficult issues which may arise under the rules.

The policies which underlie the various rules may, under certain circumstances, be in some tension with each other. Wherever feasible, the rules themselves seek to resolve such conflicts with clear statements of duty. For example, a lawyer must disclose, even in breach of a client confidence, a client's intent to commit a crime involving a serious risk of bodily harm. In other cases, lawyers must carefully weigh conflicting values, and make decisions, at the peril of violating one or more of the following rules. Lawyers are trained to make just such decisions, however, and should not shrink from the task. To reach correct ethical decisions, lawyers must be sensitive to the duties imposed by these rules and, whenever practical, should discuss particularly difficult issues with their peers.

Timely, affordable counsel is essential if disputes are to be avoided and, when necessary, resolved. Basic rights have little meaning without access to the judicial system which vindicates them. Effective access to that system often requires the assistance of counsel.

It is the responsibility of those licensed as officers of the court to use their training, experience and skills to provide services in the public interest for which compensation may not be available. It is the responsibility of those who manage law firms to create an environment that is hospitable to the rendering of a reasonable amount of uncompensated service by lawyers practicing in that firm.

Service in the public interest may take many forms. These include but are not limited to *pro bono* representation of persons unable to pay for legal services and assistance in the organized bar's efforts at law reform. An individual lawyer's efforts in these areas is evidence of the lawyer's good character and fitness to practice law, and the efforts of the bar as a whole are essential to the bar's maintenance of professionalism.

~~The absence from the proposed new rules of ABA Model Rule 6.1 regarding *pro bono* and public service therefore should not be interpreted as limiting the responsibility of attorneys to render uncompensated service in the public interest. Rather, the rationale for the absence of ABA Model Rule 6.1 is that this concept is not appropriate for a disciplinary code, because an appropriate disciplinary standard regarding *pro bono* and public service is difficult, if not impossible, to articulate. That ABA Model Rule 6.1 itself uses the word "should" instead of "shall" in describing this duty reflects the uncertainty of the ABA on this issue.~~

The quality of the legal profession can be no better than that of its members. Lawyers must exercise good judgment and candor in supporting applicants for membership in the bar.

Lawyers also must assist in the policing of lawyer misconduct. The vigilance of the bar in preventing and, where required, reporting misconduct can be a formidable deterrent to such misconduct, and a key to maintaining public confidence in the integrity of the profession as a whole in the face of the egregious misconduct of a few.

Legal services are not a commodity. Rather, they are the result of the efforts, training, judgment and experience of the members of a learned profession. These rules reflect the sensitive task of striking a balance between making available useful information regarding the availability and merits of lawyers and the need to protect the public against deceptive or overreaching practices. All communications with clients and potential clients should be consistent with these values.

The lawyer-client relationship is one of trust and confidence. Such confidence only can be maintained if the lawyer acts competently and zealously pursues the client's interests within the bounds of the law. "Zealously" does not mean mindlessly or unfairly or oppressively. Rather, it is the duty of all lawyers to seek resolution of disputes at the least cost in time, expense and trauma to all parties and to the courts.

Article VIII. Rules of Professional Conduct

Rule 6.1 Pro Bono Public Service

(a) Professional Responsibility. Each lawyer, as part of that lawyer's professional responsibility, should render pro bono legal services to the poor and participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor.

(b) Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor. The professional responsibility to provide pro bono legal services as established under this rule is aspirational rather than mandatory in nature. The failure to fulfill one's professional responsibility under this rule will not subject a lawyer to discipline. The professional responsibility to provide pro bono legal service to the poor may be discharged by:

- (1) annually providing at least 20 hours of pro bono legal service to the persons of limited means; or
- (2) making an annual contribution of at least \$250 to a legal aid organization.

(c) Out-of-State Members of the Bar. Out-of-state members of the bar may fulfill their professional responsibility in the states in which they practice or reside.

Comment

Pro bono legal service to the poor is an integral and particular part of a lawyer's professional responsibility. As our society has become one in which rights and responsibilities are increasingly defined in legal terms, access to legal services has become of critical importance. This is true for all people, be they rich, poor, or of moderate means. However, because the legal problems of the poor often involve areas of basic need, their inability to obtain legal services can have dire consequences. The vast unmet legal needs of the poor in Illinois have been recognized by both statewide and regional studies undertaken over the past two decades. The Supreme Court of Illinois has further recognized the necessity of finding a solution to the problem of providing the poor greater access to legal service, taking into account the unique role of lawyers in our adversarial system.

Certain lawyers are prohibited from performing legal services by constitutional, statutory, rule, or other regulatory prohibitions. Consequently, members of the judiciary and their staffs, government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions, members of the bar who are retired, inactive, or suspended, or who have been placed on the inactive list for incapacity not related to discipline are deferred from participation in this program. Members of the legal profession who fall into these exempt categories are encouraged to make a financial contribution to support the provision of legal services to the poor.

They are also encouraged to assist in pro bono efforts by undertaking activities, such as participating in training programs for volunteer attorneys, that do not conflict with the prohibitions that prevent them from providing direct legal services.

In discharging the professional responsibility to provide pro bono legal service to the poor, each lawyer should furnish a minimum of 20 hours of pro bono legal service to the poor annually or contribute \$250 to a legal aid organization. The 20-hour standard for the provision of pro bono legal service to the poor is a minimum. Additional hours of service are to be encouraged. Many lawyers will, as they have before the adoption of this rule, contribute many more hours than the minimum.

While the personal involvement of each lawyer in the provision of pro bono legal service to the poor is generally preferable, such personal involvement may not always be possible or produce the ultimate desired result, that is, a significant increase in the quantity and quality of legal service provided to the poor. The annual contribution alternative recognizes a lawyer's professional responsibility to provide financial assistance to increase and improve the delivery of legal service to the poor when a lawyer cannot or decides not to provide legal service to the poor through the contribution of time. The contribution alternative also recognizes that legal aid and pro bono organizations need financial support in order to effectively coordinate and support the work of volunteer attorneys. There is no prohibition against a lawyer contributing a combination of hours and financial support.

"Pro bono legal service" means legal service rendered without charge or expectation of a fee for the lawyer at the time the service commences. Legal services written off as bad debts do not qualify as pro bono service.

"Pro bono legal service" includes the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental or educational organizations in matters which are designed primarily to address the needs of persons of limited means; and the provision of legal assistance to charitable, religious, civic, community, governmental or 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 otherwise be inappropriate.

Pro bono legal service to the poor is to be provided not only to those persons whose household incomes are below the federal poverty standard, but also to those persons frequently referred to as the "working poor." Lawyers providing pro bono legal service on their own need not undertake an investigation to determine client eligibility. Rather, a good faith determination by the lawyer of client eligibility is sufficient.

The reporting requirement set forth in Article VII, Rule 756(e) is designed to provide a sound basis for evaluating the results achieved by this rule, reveal the strengths and weaknesses of the pro bono plan, and to remind lawyers of their professional responsibility under this rule.

Article VIII. Rules of Professional Conduct

Rule 6.5 Voluntary Pro Bono Plan

(a) Purpose. The purpose of the voluntary pro bono attorney plan is to increase the availability of legal services to the poor and to expand the pro bono services provided by Illinois lawyers. The following operating plan shall be implemented to accomplish this purpose.

(b) Standing Committee on Pro Bono Legal Service. The Chief Justice of the Supreme Court of Illinois shall appoint a standing committee on pro bono legal service to the poor.

(1) The standing committee shall be composed of fifteen lawyers, judges or other members of the public.

(2) Responsibilities of the Standing Committee. The standing committee shall:

(A) receive reports from the circuit committees submitted based on reporting standards developed by the standing committee;

(B) review and evaluate circuit committees' pro bono plans;

(C) beginning in the first year in which individual attorney pro bono reports are due, submit an annual report as to the activities and results of the pro bono plan to the Supreme Court of Illinois.

(D) present to the Supreme Court of Illinois any suggested changes or modifications to the pro bono rules as may be deemed necessary.

(c) Circuit Pro Bono Committees. There shall be one circuit pro bono committee in each of the judicial circuits of Illinois. In each judicial circuit, the chief judge shall appoint and convene the initial circuit pro bono committee and appoint its chair.

(1) Composition of the Circuit Pro Bono Committee. Each circuit pro bono committee shall be composed of no fewer than seven and no more than fifteen lawyers, judges or other members of the public from that circuit.

(2) Responsibilities of the Circuit Pro Bono Committee. The circuit pro bono committee shall:

(A) prepare in written form a circuit pro bono plan after evaluating

the needs of the circuit and making determination of available pro bono services;

(B) implement the plan and monitor its results;

(C) submit an annual report to the Standing Committee on Pro Bono Legal Service;

(3) Avoidance of Duplication of Effort. To the extent possible, current legal aid organizations, pro bono programs, and/or bar associations shall be utilized to implement circuit pro bono plans and provide the necessary coordination and administrative support for the circuit pro bono committee;

(4) Training and Support for Pro Bono Work. To encourage more lawyers to participate in pro bono activities, each circuit pro bono plan should insure that adequate training and support services are available to participating pro bono lawyers, which, to the extent possible, should include:

(A) intake, screening and referral of prospective clients;

(B) matching cases with the interest and expertise of individual attorneys;

(C) resources for litigation and out-of-pocket expenses for pro bono cases;

(D) legal education and training for pro bono lawyers in areas of the law useful in providing pro bono legal service;

(E) the availability of consultation with attorneys who have expertise in areas of law with respect to which a volunteer lawyer is providing pro bono legal service;

(F) malpractice insurance for volunteer pro bono lawyers with respect to their pro bono legal service;

(G) procedures to insure adequate monitoring and follow-up for assigned pro bono cases and to measure client satisfaction; and

(H) recognition of pro bono legal service by lawyers.

(5) Range of Pro Bono Opportunities. The following are suggested pro bono service opportunities that should be included in circuit plans, to the extent feasible:

(A) representation of clients through case referral;

(B) interviewing of prospective clients;

(C) participation in pro se clinics and other bar or legal aid-sponsored programs through which lawyers provide advice and counsel;

(D) acting as co-counsel on cases or matters with legal aid providers and other pro bono lawyers;

(E) providing consultation services to legal aid providers for case reviews and evaluations;

(F) participation in policy advocacy;

(G) providing training to the staff of legal assistance providers and other volunteer pro bono attorneys;

(H) making presentations to groups of poor persons regarding their rights and obligations under the law;

(I) providing legal research;

(J) providing guardian ad litem services;

(K) providing legal assistance in the formation and operation of not-for-profit organizations serving poor persons; and

(L) serving as a mediator or arbitrator at no fee in a case involving poor persons.