

The Ethics of Pro Bono

“Our justice system must be there for all who need it.” Chief Justice Ronald George

The Chief Justice made the above comment at a recent meeting of the L.A. Pro Bono Council, a new organization made up of representatives of large law firms and nonprofits who support pro bono work. The need for pro bono work to help the poor and disadvantaged is indisputable. Meeting that need does raise some ethical issues which need to be considered by an attorney providing legal assistance on a pro bono basis.

An analysis of the ethical issues in pro bono requires, first, a definition of what pro bono is. Pro bono (short for *pro bono publico*, for the good of the public), is defined by the State Bar of California as follows:

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. *Pro Bono Resolution, adopted by the Board of Governors of the State Bar of California, amended 2002.*

The first question that arises is whether there is an ethical duty to provide pro bono legal assistance. Business and Professions Code section 6068(h) provides that it is the duty of a lawyer “never to reject, for any consideration personal to himself or herself, the cause of the defenseless and oppressed.” *County of Tulare v. Ybarra* (1983) 143 Cal App 3d 587. The State Bar, citing this section, adopted a resolution calling for all attorneys to voluntarily devote at least 50 hours per year to providing pro bono legal services. The ABA Model Rules, in Rule 6.1, urge a similar voluntary commitment.

Once the decision to provide pro bono services is made, the next question is: does the attorney owe a lesser ethical duty to a pro bono client? In California today, the answer is no. “Segal’s argument presupposes that pro bono clients deserve less diligent services than paying clients, a proposition that undermines the integrity of the legal profession. An attorney’s standard of professional conduct to a pro bono client should be no different from his or her responsibility to any other client.” *Segal v. State Bar of California* (1988) 44 Cal 3d 1077, 1084.

The most frequent ethical issue that arises in pro bono representation is conflicts of interest. In accepting a pro bono matter, an attorney must perform the same kind of conflicts check that he or she would for a paying client, and decline representation for the same reasons. One way around this problem is to seek out pro bono cases in areas that are unlikely to create a conflict. If your firm represents financial services institutions, you should probably not volunteer at a pro bono bankruptcy clinic, but work assisting immigrant victims of domestic violence to regularize their status is not likely to create

any conflicts. In its recent revision of its Model Rules, the ABA addressed a part of this concern in its Rule 6.5. Rule 6.5 allows a lawyer in “a program sponsored by a nonprofit organization or court” to provide “short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter.” In such circumstances, because the lawyer is not able to check conflicts firm-wide, conflicts are only disqualifying if the attorney is personally aware of them. This includes both direct and imputed conflicts. The commission currently revising the California rules has not yet considered Rule 6.5. Accordingly, until such time as California adopts a “safe harbor” such as Rule 6.5, a California lawyer providing pro bono services in a court or nonprofit setting is subject to the same conflict rules as in any other client matter.

Another concern many attorneys have about pro bono representation is their lack of skill and knowledge of litigation or of the particular substantive areas affecting the poor. Cal. Rules of Prof. Conduct Rule 3-110, which provides that an attorney “shall not intentionally or repeatedly fail to perform legal services with competence.” Pro bono needs are far more than just litigation. They include corporate and tax work for non-profits, transactional work for non-profit housing developers, employment issues, and even intellectual property issues. Most lawyers can find a need for pro bono services within their expertise. Beyond that, most pro bono legal services programs provide training and backup support which meet the requirements of Rule 3-110 (C).

The State Bar's call to provide pro bono services is only one of many reasons attorneys should volunteer their services. Others include: gaining training and experience, improving the image of lawyers, making you feel good about being a lawyer, and, most importantly, making your mother proud of you!