

A Lawyer's Duty:

Pro Bono Opportunities in West Virginia

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"The phrase 'Equal Justice for All' should not be an empty one. Our country has a government and a legal system grounded on the legal importance of every citizen. ...No one is above the law; but we must also ensure that no one is beneath the law."

- P. Nathan Bowles, Esq.

I. THE DUTY:

The West Virginia Supreme Court of Appeals has asked, "Isn't every lawyer required to be of good character, a performer of pro bono work, a contributor to the betterment of the community in which he lives?" Committee on Legal Ethics of the West Virginia State Bar v. Craig, 187 W.Va. 14, 415 S. E. 2d 255, 262 (W.Va. 1992). The answer, of course, is found in Rule 6.1 of the West Virginia Rules of Professional Conduct.

Rule 6.1. Pro bono publico service.

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal service to persons of limited means.

Indeed, the Preamble to the West Virginia Rules of Professional Conduct states, "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, and should therefore devote professional time and civic influence in their behalf."

However, pro bono is more than a professional obligation. A lawyer who participates in pro bono work has the opportunity to expand their own areas of legal knowledge, as well as broaden their visibility in the legal community. In addition to career enhancement, a pro bono attorney experiences the satisfaction of providing a service that supports our legal system, and the reward of

knowing they have assisted in ensuring that everyone, including our most vulnerable citizens, has access to justice.

II. THE OPPORTUNITIES:

Attorneys are encouraged to provide pro bono services based upon their interests and available time. For example, a sole practitioner may decide to draft simple wills without cost to elderly citizens in his or her community. A lawyer from a small firm may complete incorporation papers without charge for a non-profit soup kitchen being established. A large firm may donate attorney time to participate in school programs about our legal system.

The following are organizations and structures that exist to offer support and assistance to attorneys who wish to provide direct pro bono services to individuals:

a. Pro Bono Referral Project

The Pro Bono Referral Project is a cooperative effort by the West Virginia State Bar, Legal Aid of West Virginia (LAWV) and West Virginia Senior Legal Aid (WVSLA), with the goal of developing strong, state-wide involvement by private attorneys. Through the Project, LAWV and WVSLA serve as a convenient point of entry for attorneys who want to engage in pro bono activities in their community.¹

i. Legal Aid of West Virginia

There are several ways to become involved in pro bono work through LAWV.²

Volunteer opportunities include:

¹ LAWV and WVSLA report pro bono hours to the State Bar and those hours are recognized through certain awards presented at the State Bar's Annual Meeting.

² Attorneys interested in volunteering with LAWV should contact the Pro Bono Assistant in your local LAWV office. For more information about LAWV go to www.lawv.net.

- **Direct Representation:** Direct representation is the heart of the pro bono effort to involve private attorneys. Due to the overwhelming need, LAWV attorneys simply cannot assist all of the individuals who reach out to LAWV for help. Pro bono attorneys are needed to help low-income clients in many types of individual cases, including, but not limited to, divorces, custody disputes, child support, domestic violence, bankruptcy, evictions from both privately-owned and public housing, debt collection, and receipt of public benefits. LAWV screens clients for financial eligibility, areas of law, and conflicts. Each case is then evaluated carefully, to ensure that pro bono attorneys receive referrals that will allow them to engage in meaningful legal work. LAWV matches cases to pro bono attorneys according to the attorney's interests, expertise, and available time. LAWV also provides first dollar malpractice coverage for every volunteer attorney, offers funds for necessary out-of-pocket litigation costs, and grants volunteer attorneys access to LAWV's extensive legal materials.
- **Free Days:** Many LAWV offices across West Virginia hold "Free Days" to provide free legal advice to low-income persons. On "Free Days", pro bono attorneys meet with individuals for scheduled half-hour appointments to give legal advice and counsel. Attorneys may accept these cases for direct representation, if desired. LAWV's malpractice insurance covers the participating attorneys during the course of the session.

- **Pro Se Clinics:** Given that the scarcity of resources makes it impossible for everyone who needs representation to obtain it, LAWV sponsors occasional pro se clinics for cases such as bankruptcy, divorce, and custody. Volunteer attorneys participate by presenting a general review of the applicable law to a group of eligible clients and explaining how to complete the necessary pleadings.
- **Judicare Program:** Many cases that clients present to LAWV are in remote areas or involve legal problems which require specialization; thus, many private attorneys are unwilling or unable to undertake representation without compensation. As a solution, LAWV offers a limited amount of Judicare funds to contract attorneys to provide representation on a reduced-fee schedule with a specified maximum payment. Counsel must agree not to charge the clients any additional fees for the legal work rendered. Malpractice coverage is provided by LAWV.
- **Mentor or Co-Counsel:** Pro bono attorneys with special experience and expertise may volunteer to mentor or co-counsel with LAWV staff attorneys or other volunteer attorneys who are new to the practice of law or who wish to become more familiar with an area of the law.

- **Continuing Legal Education Trainers:** LAWV occasionally sponsors Continuing Legal Education seminars on subject matters of special concern to lawyers representing low-income individuals. Attorneys may volunteer to make presentations, develop written materials, and organize the seminars.
- **Domestic Violence Project/Domestic Violence Panel:** Administered by LAWV and local domestic violence shelter programs, and funded by grants from the West Virginia Coalition Against Domestic Violence and the United Way of Monongalia and Preston Counties, this program exists in limited areas in West Virginia. Volunteer attorneys register to provide representation to petitioners at hearings for Domestic Violence Protective Orders in Family Court. Local domestic violence shelter programs refer the cases to LAWV, where volunteer schedules are organized. Shelter workers provide information to LAWV and the volunteer attorneys so that conflicts may be checked. The attorneys may represent one or more petitioners at Family Court domestic violence hearings on a certain day. Assistance is not limited to low-income petitioners.

In cases where LAWV has a conflict of interest and cannot represent the petitioner, some shelter programs have funding in place to retain private counsel at a reduced rate. Attorneys wishing to participate in the conflicts program should contact their local domestic violence

shelter programs. Representation is not limited to low-income persons.

- **Ohio County Bar Association Pro Bono Program:** In 1989, the Ohio County Bar Association recognized the importance of pro bono assistance and formed the Ohio County Bar Association Pro Bono Program in conjunction with the local legal services office and the Pro Bono Referral Project. This program requires participation by all attorneys practicing in Ohio County, West Virginia. Seventeen years later, private attorneys continue to meet with low-income clients two afternoons per week at the Wheeling office of LAWV. The volunteers interview and advise clients, and if appropriate, the cases are referred to private attorneys for further representation. Thousands of low-income citizens have been served.

ii. **West Virginia Senior Legal Aid:**

WVSLA recruits attorneys to provide pro bono legal assistance to needy seniors age 60 and over in all 55 counties of the state. WVSLA, in keeping with the Older Americans Act, defines neediness more broadly than merely client income. Client eligibility for WVSLA's pro bono referral process includes factors such as minority status, disability, LGBT status, and rural area, as well as income. Case eligibility takes into consideration WVSLA's priorities, which include any legal issue that puts home, income security, access to healthcare, or personal autonomy and decision-making at stake for the senior.

Attorneys are needed to assist individuals on a pro bono basis for legal representation in litigation, but also for legal advice, document review, document preparation, and a range of out-of-court advocacy. WVSLA does not recruit and maintain lists or panels of attorneys who agree to accept cases pro bono. Rather WVSLA assumes that every licensed attorney with the necessary experience and expertise might be willing to accept a particular local case. When a client is found eligible and appropriate for pro bono referral WVSLA develops a short list of individual attorneys local to the case through the State Bar directory and local bar leaders where available, and calls down the list to ask if the attorney is able and willing to handle the case pro bono, and offers conflict check information.

Once an attorney agrees to accept the case WVSLA sends opening letters to client and attorney tracks the case with periodic status calls, collects case closing information and sends client close letters when the case is complete, and reports hours and cases handled to the State Bar annually. WVSLA provides malpractice insurance on each pro bono case, substantive legal support and assistance to pro bono attorneys, and access to national elder law support centers. WVSLA does not provide funds for out-of-pocket litigation or other costs, and clarifies to clients in opening letters that they will be responsible any such costs.

WVSLA also seeks pro bono assistance from attorneys to review publications on elder law topics for the public and for aging service professionals. Publications include Legal Questions Frequently Asked by WV Seniors (over 100 questions

and answers updated annually, published in hardcopy and on the web at www.seniorlegalaid.org), Mental Capacity Standards in WV: An Handbook on Legal Decision-making Authority, the quarterly West Virginia Aging and Law News, and various info sheets and brochures on legal topics relevant to senior West Virginians. Any attorney interested in finding volunteer opportunities to review elder law publications may contact WVSLA by clicking the Contact Us link on www.seniorlegalaid.org.

WVSLA respects the experience and knowledge of attorneys about the communities where they live and practice, and can provide support for ideas that local attorneys have to enhance the lives of senior West Virginians. Any attorney who wants to start a pro bono project for the benefit of seniors is encouraged to contact WVSLA for assistance.

b. Lawyer Information Service Committee of the West Virginia State Bar

Commonly referred to as the "Tuesday Night Advice Line" or "Young Lawyers' Hotline," this free information service has been assisting West Virginians with legal questions for over 20 years. The Lawyer Information Service, which is maintained and operated by the State Bar's Lawyer Information Service Committee and Legal Aid of West Virginia, utilizes volunteer attorneys each Tuesday night from 6:00 p.m. until 8:00 p.m. to answer telephone calls to provide legal information to individuals who call a toll-free number. The service is operated throughout the state at LAWV's twelve regional offices. Participating volunteers are required to be licensed in West Virginia. For more information, contact the West Virginia State Bar.

III. THE HONORS AND RECOGNITION:

In addition to gaining knowledge and receiving the personal reward of helping the less fortunate, attorneys participating in pro bono activities are eligible for various honors and awards. Yearly, the West Virginia attorney who has spent the most hours performing pro bono work and best exemplifies the true meaning of pro bono publico is named the winner of the Kaufman Award by the Pro Bono Referral Project. This prestigious award, named in honor of the late Paul Kaufman, a founder of the Legal Aid Society of Charleston in 1954, is presented at the State Bar's Annual Meeting. Also announced at the Annual Meeting is the Pro Bono Referral Project's Firm of the Year Award, given to the law firm which devotes the greatest number of hours to representing low-income citizens pro bono and which best exemplifies the true meaning of pro bono publico. Local recognition and awards for pro bono service also are given to West Virginia attorneys by Legal Aid of West Virginia, non-profit organizations, and county bar associations.

IV. CONCLUSION:

The need for private attorneys to provide pro bono work in their community is considerable, and is likely to grow in the future. There are a number of established opportunities available to attorneys who want to become involved in pro bono work. Whether activities are pursued on one's own, or in conjunction with LAWV or WVSLA, every West Virginia attorney should pursue pro bono work, for the professional and personal fulfillment it can provide, as well as for the satisfaction of knowing that they are working to provide access to the justice system that governs us all.