

**PRO BONO TASK FORCE REPORT  
SANTA CLARA COUNTY BAR ASSOCIATION  
FALL 2005**

*[note: The Santa Clara County Bar Association Board of Trustees at its regular meeting on September 29, 2005, adopted the Task Force's Pro Bono Definition and Recommended Attorney Legal Service and accepted the Recommendations for the Role of the Legal Community Constituents]*

Santa Clara County Bar Association ("SCCBA") President Julie Emede in her Installation address on January 17, 2005, noted:

Working in the law profession, we hold ourselves, our staff and our opposing counsel to the highest standards for integrity, fairness, diligence, and collegiality, and earn a feeling that we belong to a larger, higher calling. Personally providing or contributing to pro bono services is a way to gain additional satisfaction through the practice of law, by knowing you have helped a person who otherwise would not have the benefit of legal representation and by knowing you have given back to your profession and your community.

**TASK FORCE COMPOSITION AND CHARGE**

Bar Association President Julie Emede appointed a task force to develop recommendations to address the responsibility of Santa Clara County attorneys and SCCBA members to render pro bono legal services to the indigent residents of Santa Clara County. The Task Force was comprised of former SCCBA presidents, members of the Santa Clara County Superior Court bench, solo and small firm practitioners, legal service agency executives, public lawyers and large law firm attorneys responsible for coordinating and/or managing their firm's pro bono activities. A list of the members of the Task Force and Task Force Subcommittees is attached as Appendix A.

The Pro Bono Task Force was specifically charged with defining pro bono legal services and recommending an appropriate level of pro bono services that attorneys should aspire to achieve. In addition, the Task Force developed recommendations as to the role various constituents of the legal community can play to facilitate attorneys meeting the pro bono service goals set forth in this Report. The Task Force was not charged with determining how the recommendations should be implemented, though some preliminary steps are included for future consideration. An Executive Summary of the Task Force Recommendations is attached as Appendix B.

**PRO BONO DEFINITION AND  
RECOMMENDED ATTORNEY LEVEL OF SERVICE**

The Task Force's definition of what constitutes "pro bono" work and its recommendation as to the appropriate level of service are based on the conviction that every lawyer has a responsibility to provide legal services to those unable to pay, and that personal involvement in the problems of

the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. This conviction results from the unique training and role of lawyers in the judicial system, which gives them the knowledge and ability to protect community members' legal rights, thus assuring that all persons, regardless of income and education, can gain access to justice.

The Pro Bono Task Force recommends that the Santa Clara County Bar Association adopt the following rule:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least 60 hours of pro bono publico legal services per year and should aspire to render at least 100 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the 60 hours of legal services without fee or expectation of fee to persons of limited means; and

(b) provide any additional hours through:

(1) legal services provided without fee or expectation of fee to charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means;

(2) legal services provided for no fee or for a 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;

(3) legal services provided at a substantially reduced fee to persons of limited means; or

(4) activities for improving the law, the legal system or the legal profession, such as court pro tem service or other services to the courts that promote the administration of, and access to, justice and board service for nonprofit organizations that directly provide legal services to persons of limited means.

The Santa Clara County Bar Association will formally recognize those lawyers who have contributed 100 hours or more of legal services on an annual basis pursuant to this definition and will also recognize those lawyers who have increased their pro bono contribution substantially over the prior year.

In addition, a lawyer should voluntarily contribute financial support valued at a minimum of one billable hour per year to local organizations that provide legal services to persons of limited means.

*Comment:* In reviewing definitions of pro bono, the Task Force considered the American Bar Association's Model Rule 6.1; the policies adopted by the Pro Bono Institute Law Firm Pro Bono Challenge; policies adopted by several different states, including a recent policy statement adopted by the New York State Bar Association and the Pro Bono Resolution of the Board of Governors of the State Bar of California; and policies adopted by several different county bars.

This rule is largely based on the ABA Model Rule 6.1 and the comments to that rule, a copy of which is attached as Appendix C. However, given the critical need for legal services that exists among persons of limited means in Santa Clara County and elsewhere, the Task Force felt that 60 hours, rather than the 50 hours recommended in Rule 6.1 and the California State Bar's Pro Bono Resolution is an appropriate goal. Every attorney has an individual obligation to meet this hourly goal. This goal does not represent a collective obligation of any particular group of attorneys. The Task Force set the aspirational goal of 100 hours based on the evidenced need of indigent residents in Santa Clara County for pro bono legal services. The Task Force also felt it important to specifically encourage lawyers to volunteer their time to (1) serve the courts promoting the administration of, and access to, justice and (2) serve on boards of nonprofit organizations directly providing legal services to persons of limited means. The definition of pro bono services encompasses those cases that may result in fees awarded post-resolution so long as the case was originally taken "without the expectation of fee," as set forth in the definition. The Task Force recommends a recognition program for those lawyers who meet or exceed 100 hours of pro bono legal services on an annual basis or substantially increase their pro bono efforts over the previous year.

Finally, the Task Force felt that an aspirational goal of financially donating the value of one billable hour by each lawyer to local legal services organizations serving indigent persons or those of limited means would further aid in meeting the local demand for pro bono legal services. Increased funding for local legal service agencies allows the agencies to maintain and increase full-time attorney staff. Experience shows that such attorney staffing is an effective and desirable model for providing more direct services to indigent individuals than by relying solely on pro bono attorney assistance.

## **I. ROLE OF LEGAL COMMUNITY CONSTITUENTS: RECOMMENDATIONS**

This section of the Task Force Report is a series of recommendations to facilitate attorneys meeting the Pro Bono Recommendation as well as to assist indigent residents of Santa Clara County in obtaining services of pro bono attorneys. The Task Force identified six critical constituent groups: (1) legal services agencies; (2) judiciary; (3) large law firms and corporate law departments; (4) solo/small firm practitioners, (5) public lawyers; and (6) the organized bar, particularly the SCCBA.

## ***A. LEGAL SERVICES AGENCIES***

### **BACKGROUND**

The Legal Services Agency Subcommittee was charged with determining how legal services agencies in Santa Clara County currently are using volunteer attorneys, what inhibits their use of volunteer attorneys, what substantive cases are assigned to volunteer attorneys, and what might increase their use of volunteer attorneys. The Subcommittee prepared a survey for this purpose and distributed the survey to all the legal services agencies in the County that provide direct legal services to indigent residents. Ten agencies completed the survey. This represents the majority of the legal services agencies in Santa Clara County and all the agencies that receive funds from the Silicon Valley Campaign for Legal Services.

Overall, the survey responses show:

(1) That most legal services agencies use volunteer attorneys to some extent but not to the extent they would like to use volunteer attorneys;

(2) Legal services agencies that do not use volunteer attorneys to the extent they could or would prefer to report that they do not because they cannot effectively recruit or access attorneys willing to volunteer;

(3) Legal services agencies using volunteer attorneys primarily use them in four substantive areas: family law, landlord-tenant, consumer and immigration; and

(4) Legal service agencies would use volunteer attorneys in a greater number of substantive areas if they could identify those attorneys willing to volunteer for other substantive areas.

### **RECOMMENDATIONS FOR THE ROLE OF LEGAL SERVICE AGENCIES**

1. Define the types of cases for which pro bono attorney assistance is requested, the experience and training required, and the associated time commitments involved.

2. Participate in establishing a mechanism to more easily communicate and coordinate the agencies' needs on a regular and ongoing basis with large law firms, small law firms and sole practitioners. The following considerations ought to be kept in mind in determining the appropriate communication mechanism:

- Include use of electronic communication and/or the internet rather than requiring additional meetings of agency and volunteer attorney representatives;
- Include not only a method for the agencies to make requests for volunteer attorneys from law firms, but also provide for regular post-participation feedback from the law firms on how the assignment worked for the law firm and whether the attorney had the appropriate training and/or ongoing support from the agency.

3. Provide substantive training, ongoing mentorship, appropriate materials and liability insurance for volunteer attorneys, particularly in substantive areas where volunteer attorneys are needed but where agencies are not successful in recruiting volunteer attorneys. To the extent needed, an organization, such as the SCCBA, could take the lead in organizing such assistance for the agencies.

## **B. JUDICIARY BACKGROUND**

Both state and federal court judges in Santa Clara County have traditionally encouraged and supported the Bar's efforts to increase pro bono service in the county. Judges have actively participated with the SCCBA and local legal services agencies in recognizing attorneys who provide pro bono services and served as presenters in training programs either through the SCCBA or the local legal services agencies. The U.S. District Court, Northern District for California, for example, reimburses pro bono attorneys for litigation costs such as court reporters, transcripts, filing fees incurred in pro bono cases through a discretionary fund of the Northern District Court.

## **RECOMMENDATIONS FOR THE ROLE OF THE JUDICIARY**

1. Continue to encourage, support, and recognize the efforts of the bar to increase attorneys' pro bono participation, in conjunction with the SCCBA, local legal services agencies, and other organizations, where appropriate.
2. Participate with the bar, through the SCCBA, and with local legal services agencies to provide training to attorneys in areas where pro bono services are needed.
3. Make litigants aware of existing agencies and programs by providing litigants with referral information.
4. Participate in statewide judicial efforts such as the Judicial Council and its advisory committees, the California Judges Association and federal judicial organizations that support and encourage pro bono legal services.
5. Recognize lawyers for their pro bono services when they appear before the judiciary and accommodate calendaring requests to give pro bono counsel priority where appropriate.
6. Establish a protocol to recognize pro bono and pro tem attorneys at Court-sponsored events.
7. Develop and/or provide funding sources for pro bono attorneys to be reimbursed for necessary and reasonable litigation-related costs.

## **C. LARGE LAW FIRMS and CORPORATE LAW DEPARTMENTS BACKGROUND**

The Subcommittee on Law Firms and Corporate Law Departments reviewed recently

published surveys, conducted an anonymous survey of law firms, and held follow-up interviews with a number of individual firms and corporate law departments to determine the status of pro bono practice in law firms and corporate law departments. This information formed the basis of the recommendations in this section of the report.

National surveys show that there is a wide range in the amount of pro bono work contributed annually by large law firms. The range is from approximately .5% to 5% of billable hours, with most firms averaging 2% to 3%. The surveys and interviews conducted by the Subcommittee indicate that both the range and average in Santa Clara County are probably similar to what has been observed nationally. However, the local sample size was small and the response rate was low, so it is difficult to draw any firm quantitative conclusions.

Overall, it is probably fair to say that many of the law firms in this community have exhibited strong commitment to pro bono work, with some of the larger law firms contributing many thousands of hours annually. However, the hours contributed by a given firm are often reflective of the efforts of a relatively small group of attorneys at the firm; many attorneys do not contribute any time at all on pro bono matters. Furthermore, some firms have not provided significant pro bono services and need encouragement to make more substantial pro bono contributions. The differences in pro bono performance from firm to firm appear to be more closely related to firm leadership and firm culture than factors such as firm size, office size, or primary practice areas.

The structure of pro bono programs in large firms varies significantly. There has, however, been a clear trend nationally toward designating a full-time attorney as pro bono coordinator, especially in larger firms. This national trend can also be observed locally with more firms in the Bay Area designating full- or part-time attorney pro bono coordinators. All of the firms who responded to the Subcommittee's survey indicated that they had a written pro bono policy in place that encourages pro bono work. Some but not all firms have made a public pledge to contribute a certain amount of pro bono work annually.

Corporate law departments, both nationally and locally, are generally less involved than law firms in pro bono work. This may be due in part to the fact that there tends to be less institutional structure to assist corporate attorneys in identifying, taking on, and handling pro bono matters. There may also be a cultural component, but this likely varies substantially from one organization to the next.

#### RECOMMENDATIONS FOR THE ROLE OF LARGE LAW FIRMS AND CORPORATE LEGAL DEPARTMENTS

1. Encourage the leadership of all law firms and corporate law departments to play a more active role in encouraging each individual attorney to take on pro bono matters.
2. Encourage all law firms and corporate law departments to identify a contact person for pro bono issues.
3. Encourage all law firms and corporate law departments to adopt a written pro bono policy that encourages its attorneys to participate in pro bono work.

4. Encourage all law firms and corporate law departments to make a public commitment to contribute an average of 60 hours of pro bono work per attorney on an annual basis.

5. Encourage all law firms and corporate law departments to provide full credit to attorneys for time spent on pro bono matters.

6. Encourage all law firms and corporate law departments to make significant financial contributions to the legal services providers in the community.

In implementing these recommendations, the following ought to be taken into consideration:

- Set up a website through which attorneys can identify pro bono opportunities and pro bono-related trainings available through the various legal services providers throughout the county.
- Provide a contact person at the bar association to coordinate periodic pro bono fairs and provide support to attorneys in identifying appropriate pro bono opportunities.
- Conduct outreach to corporate law departments with the goal of educating their leadership about pro bono opportunities in the county and facilitating the involvement of their departments in more pro bono work.
- Establish a project that would facilitate the development of partnerships between law firms and corporate law departments on pro bono projects.

#### ***D. SOLO/SMALL FIRM ATTORNEYS*** **BACKGROUND**

Solo practitioners and small firms (less than 10 attorneys) face special challenges in providing pro bono legal services. Among those most relevant are (1) the direct and personal impact of lost income and availability for fee generating cases; and (2) the difficulties in identifying and accessing pro bono opportunities.

#### **RECOMMENDATIONS FOR SOLO/SMALL LAW FIRMS**

1. Recommend to legal services agencies, partnering with the SCCBA, that they provide training in exchange for pro bono services, with MCLE credit where possible.

2. Provide attorney trainers with pro bono service credit.

3. Recommend that attorneys from small firms be provided no cost substantive training in exchange for contributing a certain number of pro bono service hours to the legal services agency providing the training.

4. Provide a communication link between legal service agencies and solo practitioners/small firms through the SCCBA, which would include pro bono opportunities organized by practice area, taking into consideration the following:

- SCCBA to use its website to create a communicate link.
- SCCBA Sections to identify pro bono needs and opportunities in their practice areas.
- SCCBA Sections to coordinate with legal services agencies on ongoing coordination regarding needs and opportunities.

5. Encourage small firms to count pro bono hours toward yearly billable hour requirements.

6. Recognize solo practitioners and small firms that meet pro bono goals.

### ***E. PUBLIC LAWYERS***

#### **BACKGROUND**

Public lawyers are in a unique position regarding how and when they can participate in providing pro bono legal services. Some public lawyers, by regulation, are precluded from providing direct pro bono legal services. Others can provide direct pro bono legal services, but the types of cases are limited due to conflicts of interest. Nonetheless, many public lawyers have expertise that could be of great assistance in training private sector lawyers and legal services agency staff lawyers, thus assisting in expanding the number of attorneys available to provide pro bono legal services in critical areas of need such as elder law, probate, guardianships, juvenile dependency and juvenile delinquency.

One notable approach by a public law office to increase private sector pro bono legal services is the Santa Clara County Counsel's Office, where at the initiation of County Counsel Ann Ravel, the County instituted a policy requiring private law firms hired by County Counsel's Office to provide a certain minimum number of hours in pro bono legal services each year as long as the firm represents the County.

#### **RECOMMENDATIONS FOR THE ROLE OF PUBLIC LAWYERS**

1. Encourage every director/managing attorney/supervising attorney in public law offices to find appropriate opportunities for their attorneys to provide pro bono legal services by:

- Encouraging and supporting direct participation in pro bono cases with indigent clients; and
- Encouraging and supporting participation in training programs for other private sector lawyers or legal services agency staff attorneys in substantive areas where pro bono services are needed and public lawyers have particular expertise.

2. Encourage other public law offices to follow the example of the Santa Clara County Counsel's office by requiring that outside counsel provide minimum levels of pro bono services.

**F. ORGANIZED BAR: SANTA CLARA COUNTY BAR ASSOCIATION**  
**BACKGROUND**

While not directly providing pro bono services, the SCCBA has actively encouraged its members, local legal services agencies and the judiciary to ensure that appropriate time, energy and money is contributed to meet the legal services needs of the indigent residents of Santa Clara County. The SCCBA, over the decades, has facilitated its members in providing pro bono services helping to recruit volunteer attorneys for local legal services agencies and annually recognizing its members who provide pro bono services to these agencies. These efforts have resulted in the SCCBA establishing and supporting the Pro Bono Project of Silicon Valley that in conjunction with the SCCBA sponsors an annual recognition event, establishing the Law Foundation of Silicon Valley (formerly the Santa Clara County Bar Association Law Foundation), helping to establish and funding the start-up of the Silicon Valley Campaign for Legal Services, providing a negative dues check-off on its annual invoice for members to donate to local legal services agencies and helping to coordinate communication among the local legal services agencies. Still, the civil legal needs of the indigent residents of Silicon Valley continue to increase, as reported in the Santa Clara County Board of Supervisors' Unmet Civil Legal Needs of Indigent Residents, dated August 10, 2001. The SCCBA must continue its historical role in ensuring that attorneys donate pro bono services sufficient to meet the unmet needs of low-income members of this community.

**RECOMMENDATIONS FOR THE ROLE OF THE SCCBA**

1. Provide leadership in implementing the recommendations of this Report, taking into consideration that it may require dedicated staffing resources to do so.
2. Implement a process to review the effectiveness in implementing these recommendations by the various legal community constituents and to update these recommendations as necessary.
3. Provide leadership, where necessary, in developing communication and organizational structures for legal services agencies to communicate their needs for volunteer attorneys to the attorneys of Santa Clara County whether the attorneys practice in solo or small firms, large firms, corporate law departments, public law offices or other practice settings.
4. Explore and implement efficient and cost-effective means of encouraging attorneys to fulfill the recommended pro bono hours consistent with the recommendations in this Report.
5. Assist attorneys in providing pro bono services by identifying free or low-cost litigation support and other resources in areas such as court costs, discovery costs, available training materials, and mentor programs.

6. Provide venues and mechanisms for recognizing attorneys who meet and exceed the recommended number of pro bono legal services as well as attorneys who increase the number of pro bono hours from the previous year.

## **II. NEED FOR PRO BONO LEGAL SERVICES IN THE AREA OF FAMILY LAW**

Though family law is one of the four substantive areas where volunteer attorneys provide significant pro bono services, it is also one of the substantive areas where the unmet need is substantial. The focus in this section on pro bono services for family law cases does not mean that the legal needs of indigent residents are fully met in other substantive areas. The Task Force highlights the need in the family law area, however, because of the increased number of pro se litigants in Santa Clara County Family Court and the inability of family law attorneys alone to meet the tremendous need for volunteer attorneys in this area. Nearly 70% of litigants in Santa Clara County Family Court are not represented by attorneys. The Family Court uses volunteer family law attorneys in a variety of capacities to deal with the need. Many family law practitioners volunteer time in Family Court as outlined below. Still, the substantial need in family law and Family Court services is so great that additional volunteer attorneys are needed, from not only solo and small firm practitioners, but from large firm and corporate law departments as well.

Some of the difficulty in recruiting and using volunteer attorneys in the numbers needed is the fact that some family law experience is often required; in some instances at least five years of family law or similar experience is needed. Pro bono opportunities that require such experience are marked with an asterisk (\*) and double asterisk (\*\*), respectively, in the list below. The Pro Bono Project of Silicon Valley coordinates legal services in a variety of family law cases and provides training opportunities because of the tremendous need in this area.

Currently Family Court has the following needs for pro bono assistance:

1. Serve as judge pro tem for:
  - settlement conferences\*\*
  - settlement officer conferences\*
  - child support department calendars \*\*
  - family court default calendar \*\*
  - personal property arbitration
2. Conduct early neutral evaluations\*
3. Assist the family law facilitator's office and/or self-help clinic with restraining order/domestic violence issues, guardianships, and/or family law generally

4. Provide pro bono representation on all types of family law cases through the Pro Bono Project that offers family law training.
5. Provide pro bono representation on domestic violence cases through the Pro Bono Project or other legal services provider. Family Court Judge Grilli requests that all family law attorneys take one pro bono domestic violence case per year.

### RECOMMENDATIONS FOR INCREASING FAMILY LAW PRO BONO LEGAL SERVICES

1. Maximize availability of Limited Scope Representation (“LSR”) cases and one time advice opportunities, such as the Lawyers in the Library program.
2. Request that the appropriate agency or entity within the SCCBA develop model LSR forms, agreements, and other necessary forms or agreements for volunteer attorneys to provide limited representation or advice in family law cases.
3. Increase participation of volunteer attorneys representing indigent family law clients taking into consideration the following activities coordinated through the SCCBA.
  - Offer a website link between legal services agencies and volunteer attorneys that provides information about pro bono opportunities.
  - Facilitate email solicitation of volunteer attorneys, if appropriate.
  - Offer free training and/or continuing legal education credit in exchange for pro bono service.
  - Offer outreach efforts for legal services agencies, such as regular emails and recruitment events.
4. Survey SCCBA Family Law Section members to obtain information regarding how many section members provide pro bono services (including acting as a judge pro tem), the types of pro bono services provided, and the number of pro bono hours contributed.
5. Increase participation of attorneys as judges pro tem through a closer, more active relationship between the Family Court and the bar, considering such areas as the following:
  - Identify SCCBA family law section members who have been in practice for more than five years for solicitation as judges pro tem and provide those names to the Court.
  - Assist Court with scheduling of judges pro tem, either through funding a part time position or providing volunteers for the scheduling task.

- Increase regular outreach efforts to attorneys, such as periodic emails, and recruitment events by the bar and Family Court.
- Offer incentives to serve as judges pro tem, such as free CLE for training seminars, perhaps through on-line seminars, if practical and available.
- Develop an internet posting for the Family Court’s volunteer attorney needs and for attorneys looking to provide pro bono service.

## **CONCLUSION**

Increased and coordinated efforts among the various constituent groups in the legal community to provide pro bono services to the indigent residents of Santa Clara County can reduce significantly the substantial unmet civil legal needs. The Task Force’s recommendations, while ambitious, are achievable through a concentrated, sustained implementation effort. All constituent groups identified in this Report are encouraged to participate actively in the implementation effort, individually and collectively.

Access to the legal system for all citizens can only become a reality if the legal profession meets its obligation and responsibilities by a generous pro bono service commitment, such as that as defined in this Report. The Task force believes this County and the members of the local legal community can be a leader in developing and implementing the means to make “equal justice under law” a reality for all county residents.

## APPENDIX A: TASK FORCE COMPOSITION

Co-Chairs: James E. Towery\*\*\*\*

*Partner, Hoge Fenton  
San Jose, CA*

Margaret (Peggy) Stevenson\*

*Supervising Attorney, Stanford Community Law Clinic  
East Palo Alto, CA*

Members: Julie Emede, SCCBA President\*\*\*

*Partner, Schlepphorst & Emede  
San Jose, CA*

Christopher Arriola, SCCBA President-Elect

*Deputy District Attorney, Santa Clara County  
District Attorneys Office  
San Jose, CA*

Ane Murphy\*\*\*

*Law Office of Ane Murphy  
San Jose, CA*

Phillip Hammer\*\*\*

*Partner, Hammer & Jacobs  
San Jose, CA*

William Abrams\*\*

*Partner, Pillsbury Winthrop  
Palo Alto, CA*

Maureen Alger\*\*

*Pro Bono Counsel, Cooley Godward LLP  
Palo Alto, CA*

Kristin Major\*\*\*\*

*Pro Bono Coordinator, Skadden Arps Slate Meagher & Flom  
Palo Alto, CA*

Mark Parnes\*\*\*\*

*Assistant General Counsel, Wilson Sonsini Goodrich & Rosati  
Palo Alto, CA*

Andrew Vu\*\*  
*Sony Computer Entertainment America*  
*Foster City, CA*

John Hedges\*  
*Executive Director, Pro Bono Project of Silicon Valley*  
*San Jose, CA*

Kyra Kazantzis  
*Managing Attorney, Public Interest Law Firm, Law*  
*Foundation of Silicon Valley*  
*San Jose, CA*

Hon. Patrick Tondreau\*\*\*  
*Supervising Judge, Family Court, Superior Court of*  
*Santa Clara County*  
*San Jose, CA*

Hon. Erica Yew\*\*\*\*\*  
*Domestic Violence Court, Superior Court of*  
*Santa Clara County*  
*San Jose, CA*

Staff: Christine Burdick\* & \*\*\*\*\*  
*SCCBA Executive Director & General Counsel*

- \* Legal Services Agencies Subcommittee: Peggy Stevenson, Chair
- \*\* Large Law Firm/Corporate Counsel Subcommittee: Maureen Alger, Chair
- \*\*\* Solo/Small Firm Subcommittee: Julie Emede, Chair
- \*\*\* Family Law Subcommittee: Ane Murphy, Chair
- \*\*\*\* Pro Bono Definition Subcommittee: Mark Parnes, Chair
- \*\*\*\*\* Judiciary Subcommittee: Hon. Erica Yew, Chair

## **APPENIX B: EXECUTIVE SUMMARY**

### **PRO BONO DEFINITION AND RECOMMENDED ATTORNEY LEVEL OF SERVICE**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least 60 hours of pro bono publico legal services per year and should aspire to render at least 100 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the 60 hours of legal services without fee or expectation of fee to persons of limited means; and
- (b) provide any additional hours through:
  - (1) legal services provided without fee or expectation of fee to charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means;
  - (2) legal services provided for no fee or for a 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;
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In addition, a lawyer should voluntarily contribute financial support valued at a minimum of one billable hour per year to local organizations that provide legal services to persons of limited means.

## **I. ROLE OF LEGAL COMMUNITY CONSTITUENTS**

### **A. RECOMMENDATIONS FOR THE ROLE OF LEGAL SERVICE AGENCIES**

1. Legal services agencies specifically define the types of cases for which pro bono attorney assistance is requested, the experience and training required, and the associated time commitments involved.

2. Legal services agencies participate in establishing a mechanism to more easily communicate and coordinate with large law firms, small law firms and sole practitioners the agencies' needs on a regular and ongoing basis. Certain considerations ought to be kept in mind in determining the appropriate mechanism:

- Include use of electronic communication and/or the internet rather than requiring additional meetings of agency and volunteer attorney representatives;
- Include not only a method for the agencies to make requests for volunteer attorneys from law firms, but also provide for regular post participation feedback from the law firms on how the assignment worked for the law firm and whether the attorney had the appropriate training and/or ongoing support from the agency.

3. Legal services agencies provide substantive training, ongoing mentorship, appropriate materials and liability insurance for volunteer, particularly in substantive areas where volunteer attorneys are needed but where agencies are not successful in recruiting volunteer attorneys. To the extent needed, an organization, such as the SCCBA, could take the lead in organizing such assistance for the agencies.

### **B. RECOMMENDATIONS FOR THE ROLE OF THE JUDICIARY**

1. Continue to encourage, support, and recognize the efforts of the bar to increase attorneys' pro bono participation, in conjunction with the SCCBA, local legal services agencies, and other organizations, where appropriate.

2. Participate with the bar, through the SCCBA, and with local legal services agencies to provide training to attorneys in areas where pro bono services are needed.

3. Make litigants aware of existing agencies and programs by providing litigants with referral information.

4. Participate in statewide judicial efforts such as the Judicial Council and its advisory committees, the California Judges Association and federal judicial organizations that support and encourage pro bono legal services.

5. Recognize lawyers for their pro bono services when they appear before the

judiciary and accommodate calendaring requests to give pro bono counsel priority where appropriate.

6. Establish a protocol to recognize pro bono and pro tem attorneys at Court-sponsored events.

7. Develop and/or provide funding sources for pro bono attorneys to be reimbursed for necessary and reasonable litigation-related costs.

C. RECOMMENDATIONS FOR THE ROLE OF LARGE LAW FIRMS AND CORPORATE LEGAL DEPARTMENTS

1. Encourage the leadership of all law firms and corporate law departments to play a more active role in encouraging each individual attorney to take on pro bono matters.

2. Encourage all law firms and corporate law departments to identify a contact person for pro bono issues.

3. Encourage all law firms and corporate law departments to adopt a written pro bono policy that encourages its attorneys to participate in pro bono work.

4. Encourage all law firms and corporate law departments to make a public commitment to contribute an average of 60 hours of pro bono work per attorney on an annual basis.

5. Encourage all law firms and corporate law departments to provide full credit to attorneys for time spent on pro bono matters.

6. Encourage all law firms and corporate law departments to make significant financial contributions to the legal services providers in the community.

7. In implementing these recommendations, the following ought to be taken into consideration:

- Set up a website through which attorneys can identify pro bono opportunities and pro bono-related trainings available through the various legal services providers throughout the county.
- Provide a contact person at the bar association to coordinate periodic pro bono fairs and provide support to attorneys in identifying appropriate pro bono opportunities.
- Conduct outreach to corporate law departments with the goal of educating their leadership about pro bono opportunities in the county and facilitating the involvement of their departments in more pro bono work.

- Establish a project that would facilitate the development of partnerships between law firms and corporate law departments on pro bono projects.

#### D. RECOMMENDATIONS FOR SOLO/SMALL LAW FIRMS

1. Recommend to legal services agencies, partnering with the SCCBA, that they provide training in exchange for pro bono services, with MCLE credit where possible.
2. Provide attorney trainers with pro bono service credit.
3. Recommend that attorneys from small firms be provided no cost substantive training in exchange for contributing a certain number of pro bono service hours to the legal services agency providing the training.
4. Provide a communication link between legal service agencies and solo practitioners/small firms through the SCCBA, which would include pro bono opportunities organized by practice area, taking into consideration the following:
  - SCCBA to use its website to create a communicate link.
  - SCCBA Sections to identify pro bono needs and opportunities in their practice areas.
  - SCCBA Sections to coordinate with legal services agencies on ongoing coordination regarding needs and opportunities.
5. Encourage small firms to count pro bono hours toward yearly billable hour requirements.
6. Recognize solo practitioners and small firms that meet pro bono goals.

#### E. RECOMMENDATIONS FOR THE ROLE OF PUBLIC LAWYERS

1. Encourage every director/managing attorney/supervising attorney in public law offices to find appropriate opportunities for their attorneys to provide pro bono legal services by:
  - Encouraging and supporting direct participation in pro bono cases with indigent clients; and
  - Encouraging and supporting participation in training programs for other private sector lawyers or legal services agency staff attorneys in substantive areas where pro bono services are needed and public lawyers have particular expertise.

2. Encourage other public law offices to follow the example of the Santa Clara County Counsel's office by requiring that outside counsel provide minimum levels of pro bono services.

#### F. RECOMMENDATIONS FOR THE ROLE OF THE SCCBA

1. Provide leadership in implementing the recommendations of this Report, taking into consideration that it may require dedicated staffing resources to do so.

2. Implement a process to review the effectiveness in implementing these recommendations by the various legal community constituents and to update these recommendations as necessary.

3. Provide leadership, where necessary, in developing communication and organizational structures for legal services agencies to communicate their needs for volunteer attorneys to the attorneys of Santa Clara County whether the attorneys practice in solo or small firms, large firms, corporate law departments, public law offices or other practice settings.

4. Explore and implement efficient and cost-effective means of encouraging attorneys to fulfill the recommended pro bono hours consistent with the recommendations in this Report.

5. Assist attorneys in providing pro bono services by identifying free or low-cost litigation support and other resources in areas such as court costs, discovery costs, available training materials, and mentor programs.

6. Provide venues and mechanisms for recognizing attorneys who meet and exceed the recommended number of pro bono legal services as well as attorneys who increase the number of pro bono hours from the previous year.

## **II. NEED FOR PRO BONO LEGAL SERVICES IN THE AREA OF FAMILY LAW: RECOMMENDATIONS**

1. Maximize availability of Limited Scope Representation ("LSR") cases and one time advice opportunities, such as the Lawyers in the Library program.

2. Request that the appropriate agency or entity within the SCCBA develop model LSR forms, agreements, and other necessary forms or agreements for volunteer attorneys to provide limited representation or advice in family law cases.

3. Increase participation of volunteer attorneys representing indigent family law clients taking into consideration the following activities coordinated through the SCCBA.

- Offer a website link between legal services agencies and volunteer attorneys that provides information about pro bono opportunities.

- Facilitate email solicitation of volunteer attorneys, if appropriate.
- Offer free training and/or continuing legal education credit in exchange for pro bono service.
- Offer outreach efforts for legal services agencies, such as regular emails and recruitment events.

4. Survey SCCBA Family Law Section members to obtain information regarding how many section members provide pro bono services (including acting as a judge pro tem), the types of pro bono services provided, and the number of pro bono hours contributed.

5. Increase participation of attorneys as judges pro tem through a closer, more active relationship between the Family Court and the bar, considering such areas as the following:

- Identify SCCBA family law section members who have been in practice for more than five years for solicitation as judges pro tem and provide those names to the Court.
- Assist Court with scheduling of judges pro tem, either through funding a part time position or providing volunteers for the scheduling task.
- Increase regular outreach efforts to attorneys, such as periodic emails, and recruitment events by the bar and Family Court.
- Offer incentives to serve as judges pro tem, such as free CLE for training seminars, perhaps through on-line seminars, if practical and available.
- Develop an internet posting for the Family Court's volunteer attorney needs and for attorneys looking to provide pro bono service.

## APPENDIX C: ABA MODEL RULE 6.1

### RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

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 which 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 workload, 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 lawyers' 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 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.**