

A Lawyer's Duty

Pro Bono Opportunities in West Virginia

Originally Drafted by:

Nan G. Brown, Esq., Supervising Attorney, Legal Aid of West Virginia

With assistance from:

**Diane Young, Private Attorney Coordinator, Legal Aid of West Virginia
Jean Audet, Private Attorney Coordinator, Retired, Legal Aid of West Virginia
Robin Lucas, Pro Bono Assistant, Legal Aid of West Virginia**

Revised & Updated by:

**Heidi Holland Seamon, Esq.
Managing Attorney
Pro Bono Referral Project
Legal Aid of West Virginia
110 South Third Street
Clarksburg, WV 26301
(304) 623-6651
hseamon@lawv.net**

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“To do right is noble: to advise others to do right is also noble and so much less trouble for yourself.” --Mark Twain, as quoted by Dan Ringer, Esq.

I. THE DUTY:

The West Virginia Supreme Court of Appeals 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.

The comment following this Rule notes that, “The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional work load, should find time to participate in or otherwise support the provision of legal services to the disadvantaged.” The ABA House of

Delegates has recognized that all practicing lawyers carry the basic responsibility to provide public interest legal services without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organizations representations and administration of justice. Comment to Rule 6.1. of the West Virginia Rules of Professional Conduct.

Indeed, the Preamble to the West Virginia Rules of Professional Conduct, states that, "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."

II. THE OPPORTUNITIES:

Attorneys are encouraged 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. Pro bono service may also include offering financial assistance to organizations providing legal services to those who cannot afford private counsel. Various structures exist to offer support and assistance to attorneys who wish to provide more extensive and direct pro bono services to low-income individuals, including the Pro Bono Referral Project, the West Virginia State Bar, Wet Virginia Senior Legal Aid, Inc., and the Appalachian Center for Law and Public Service at the West Virginia University College of Law.

Pro Bono Referral Project

The Legal Aid Society of Charleston created the Pro Bono Referral Project in the early 1980's in response to funding cut-backs. The Project is now operated jointly by the West Virginia State Bar, Legal Aid of West Virginia, Inc. (Legal Aid), and West Virginia Senior Legal Aid, Inc.,¹ with an aim to develop strong, state-wide involvement by private attorneys.² Cases are screened for financial eligibility, area of law, and conflicts, then evaluated and closed by the local Legal Aid office to allow pro bono attorneys to invest their valuable time in cases instead of administrative details. Legal Aid provides first dollar malpractice coverage for every volunteer attorney, offers funds for necessary out-of-pocket litigation costs, grants access to a well-developed document collection and legal research as support for our volunteers, and organizes Continuing Legal Education trainings at no cost to attorneys who pledge pro bono time.

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The four original legal services organizations in West Virginia funded by the federal Legal Services Corporation in the 1970s are now merged into one organization, Legal Aid of West Virginia, Inc. Legal Aid provides civil legal assistance and representation to low-income residents of West Virginia. The organization currently is funded largely by the Legal Services Corporation, IOLTA monies, The West Virginia Department of Health and Human Resources, and the Legal Assistance for Victims Act.

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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 Wheeling office of Legal Aid of West Virginia. The volunteers interview and advise clients, and if appropriate, the cases are referred to private counsel for free representation. Thousands of low-income citizens have been served. In May, 2006, the Board of Directors for Legal Aid of West Virginia passed a resolution to formally recognize the Ohio County Bar's commitment and to express gratitude to the lawyers who recognize the duty and the right to represent the less fortunate. For additional information, contact Robin Lucas, Pro Bono Assistant in the Wheeling Legal Aid office at (304) 232-1260.

There are several ways to participate, and interested volunteers should sign up on the Legal Aid Website³ or contact the local Legal Aid office.⁴ Volunteer opportunities include:

Direct Representation Services:

Direct representation is the heart of the pro bono effort to involve private attorneys. A great need exists for private attorneys to assist 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. Attorneys may elect the types of cases they wish to handle.

Free Days:

Many Legal Aid offices across West Virginia hold approximately one Free Day per year to provide free legal advice to the community. Private attorneys volunteer to spend part of a day dispensing legal advice and counsel to eligible persons who have been screened by the local Legal Aid office. Prior to the Free Day session, Legal Aid employees check conflicts and schedule half-hour appointments in a convenient location, usually a school in the community. Legal Aid's malpractice insurance covers the participating attorneys during the course of the session.

³ http://www.lawv.net/Home/PublicWeb/ProBono/index_html

⁴ Available at <http://www.lawv.net/Home/PublicWeb>

Attorney of the Day:

Attorneys provide legal advice and counsel or brief services to low-income clients at the local Legal Aid office, and may accept cases for pro bono representation if desired. The Attorney of the Day is covered by Legal Aid's malpractice insurance.

Pro Se Clinics:

Given that the scarcity of resources makes it impossible for everyone who needs representation to obtain it, Legal Aid 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. Along with the forms, general information about the legal system and hearing procedures is provided by the local Legal Aid office.

Mentors:

Private attorneys with special experience and expertise may volunteer to mentor 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:

Legal Aid occasionally sponsors Continuing Legal Education seminars on subject matters of special concern to lawyers representing low-income individuals. Private attorneys may volunteer to make presentations, develop written materials, and organize the seminars.

Domestic Violence Project/Domestic Violence Panel:

Administered by Legal Aid of West Virginia and local domestic violence shelter programs, and funded by a grant in conjunction with the West Virginia Coalition Against Domestic Violence, this program exists in limited areas in West Virginia. 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 Legal Aid, where volunteer schedules are organized. Shelter workers provide information to Legal Aid 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 Legal Aid 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.

Judicare Program:

Many cases that clients present to Legal Aid 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, Legal Aid expends 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 Legal Aid.

Lawyer Referral 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 and problems for over 20 years. Maintained and operated by the State Bar’s Lawyer Referral Service Committee, the program utilizes three volunteer attorneys each Tuesday night from 6:00 p.m. until 8:00 p.m. to answer telephone calls to a toll-free number. Attorneys in the Charleston area may use the State Bar offices to conduct the sessions, but technology also has made it possible to reroute the phone service to any law office in the state with at least two or three telephone lines. Participating volunteers are required to be licensed in West Virginia and must be covered by malpractice insurance. Contact E. William Harvitt, Esq., Chair of the Lawyer Referral Service Committee, at (304) 343-4100, or Connie Blessing, West Virginia State Bar, at (304) 558-7994.

Appalachian Center for Law and Public Service

This partnership between the West Virginia University College of Law, the private bar, and Legal Aid of West Virginia provides direct representation to low-income clients in and around Morgantown, West Virginia. Additionally, technology now allows services to clients statewide. Law students are paired with private attorneys to assist clients in several types of cases, from family law to tax matters. If interested in volunteering, please contact Randy Minor, WVU College of Law, at (304) 293-8555.

III. THE HONORS AND RECOGNITION:

In addition to gaining knowledge and receiving the personal reward from helping the less fortunate, lawyers participating in pro bono activities are eligible for various honors and

awards. Attorneys who have expended 100 hours or more assisting low-income clients in a year are inducted into the 100 Hours Club at the State Bar's Annual Meeting. 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. THE END:

With cutbacks in funding, Legal Aid finds it more and more difficult to provide the assistance our low-income neighbors need and deserve. Pro bono support and assistance from the lawyers resident in West Virginia is crucial to our system of justice. As Morgantown attorney and past president of the West Virginia State Bar has written:

"I'd like to believe that every good deed should beget another, but it does start with us. With apologies to Mr. Twain, it is not enough to simply encourage others to 'do right.'" – Dan Ringer, Esq.

We must Do Right and Do Good ourselves.