

Rule Change # 1999(18)
The Colorado Rules of Civil Procedure

Colorado Rules of Professional Conduct
(Appendix to Chapters 18 to 20)
Rule 6.1. Pro Bono Public Service

The entire existing Rule 6.1 Pro Bono Public Service is repealed and readopted as follows. This repeal and readoption is adopted, En Banc, November 2, 1999, effective January 1, 2000.

BY THE COURT:

Rebecca Love Kourlis
Justice, Colorado Supreme Court

Rule Change # 1999(18)

RULE 6.1 VOLUNTARY PRO BONO PUBLIC SERVICE

A lawyer should aspire to render at least fifty (50) hours of pro bono public legal services per year. In fulfilling this responsibility, the lawyer should:

a) provide a substantial majority of the fifty (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 legal or public service through:

(1) delivery of legal services at no fee or 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;

(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.

Where constitutional, statutory or regulatory restrictions prohibit government and public sector lawyers or judges from performing the pro bono services outlined in paragraphs (a)(1) and (2), those individuals should fulfill their pro bono responsibility by performing services or participating in activities outlined in paragraph (b).

Comment

Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay. Indeed, the oath that Colorado lawyers take upon admittance to the Bar requires that a lawyer will never "reject, from any consideration personal to myself, the cause of the defenseless or oppressed." 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.

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.

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.

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 under paragraph (a) 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.

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 remain unfulfilled, the lawyer may satisfy the remaining commitment in a variety of ways as set forth in paragraph (b).

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.

Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

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.

Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. However, in special circumstances, such as death penalty cases and class action cases, it is appropriate to allow collective satisfaction by a law firm of the pro bono responsibility.

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. 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.

The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Model Code Comparison

There was no counterpart of this Rule in the Disciplinary Rules of the Model Code. EC 2-25 stated that the "basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer Every lawyer, regardless of professional prominence or professional work load, should find time to participate in serving the disadvantaged." EC 8-9 stated that "[t]he advancement of our legal system is of vital importance in maintaining the rule of law . . . [and] lawyers should encourage, and should aid in making, needed changes and improvements." EC 8-3 stated that "[t]hose persons unable to pay for legal services should be provided needed services."