



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #14

REQUESTED ACTION: Discussion of an Association response to the Chief Judge's Pro Bono Initiative.

During his May Day address, Chief Judge Jonathan Lippman announced a new initiative to require bar applicants to complete 50 hours of pro bono service prior to admission to practice. An advisory committee appointed by the Chief Judge currently is considering how this initiative is to be implemented.

Immediate Past President Vincent E. Doyle III convened a working group comprised of representatives of interested sections and committees as well as a law school representative; the members were asked to confer with their representative groups and identify issues raised by the proposal. As set forth in the attached report, the Working Group has identified eight categories of issues raised and possible responses to those issues.

President Seymour W. James, Jr. will lead the discussion of this topic at the June 21, 2012 meeting.

NEW YORK STATE BAR ASSOCIATION REPORT AND RECOMMENDATIONS OF WORKING GROUP ON PRO BONO RULE¹

During his Law Day address on May 1, Chief Judge Jonathan Lippman announced that effective January 1, 2013, a new rule would require bar applicants to have completed 50 hours of pro bono service prior to their admission to practice. Thereafter, he announced the appointment of an advisory committee, co-chaired by Hon. Victoria A. Graffeo and Alan Levine, to provide recommendations to the Administrative Board as to how to implement this requirement. It is our understanding that the advisory committee will hold its first meeting on June 27, 2012 and plans to complete its work by Fall 2012.

Following the Chief Judge's announcement, then-NYSBA President Vincent E. Doyle III convened a Working Group, comprised of representatives of interested NYSBA sections and committees as well as a law student representative. The members of the Working Group were asked to confer with their representative constituencies and identify issues raised by this requirement as well as possible methods by which these issues might be addressed. We identified eight overall issues, to be discussed in detail below, together with our recommendations.

The Working Group discussed whether it should recommend that the Association take a position in support of the concept of the Chief Judge's rule. While a number of members advocated that we should, there were differing views. Furthermore, taking a position pro or con was not part of the Working Group's charge from Immediate Past President Doyle.

We are mindful that access to justice is a central focus of the Association's agenda. Ultimately, this is a public responsibility, requiring governmental resources; the need is too great to be met by the private bar. We must continue to press for adequate funding for legal services. However, lawyers play a special role by rendering pro bono services. The call to perform pro bono services, to "do the public good" in NYSBA's apt phrase, speaks to lawyers' finest instincts; it reminds us why we entered the profession.

We are also mindful that the Association continues to oppose mandatory pro bono service by lawyers. The burden would fall too heavily on solo and small firm practitioners.

We recognize that the Chief Judge's rule is different from a mandatory pro bono requirement on all lawyers in that it imposes a one-shot requirement on applicants for admission to practice in New York. Such a program, *if* well thought out and carefully supervised, can be a valuable learning tool for law students, while genuinely benefitting indigent clients. Finally, by making pro bono a requirement for admission to practice in New York, we will emphasize the importance of "doing the public good", in a way that only lawyers can; and encourage all new New York lawyers to provide pro bono legal services throughout their professional lives.

¹ The views expressed in this report are solely those of the Working Group. They do not represent those of the New York State Bar Association unless and until adopted by the Association's House of Delegates or Executive Committee.

There are a number of concerns and issues that need to be addressed in connection with implementing this proposal. We believe the program will require a significant amount of planning and coordination with law schools. In addition, it will be important to ensure that this program does not impose a financial or logistical burden on students, schools or providers. The following are some of the issues we have identified that will need to be resolved in implementing this program:

1. What should be included in the definition of “pro bono” in the context of requiring service prior to admission? The existing definitions of “pro bono” are geared toward people already admitted to practice. What types of public service activities should count toward the requirement (e.g., law school-based mentoring programs or working with high school mock trial programs, government internships and community development programs)? Should work for which a student is paid by a firm or receiving law school credit count toward the requirement?

A majority of the Working Group believes the rule should mirror the definition contained in Rule 6.1 of the Rules of Professional Conduct: (1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel; (2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and (3) professional services to charitable, religious, civil and educational organizations in matters predominantly to address the needs of poor persons. The rule should make clear that pro bono work in indigent criminal defense matters is permitted. Work for academic credit, government work, judicial clerkship and work for other not-for-profit organizations should not be included within the definition.

2. How will law students be matched with providers – will someone on staff at the law school be available to facilitate matching? How can local bar associations assist with matching? What can NYSBA do to assist with training, facilitating internships, etc.?

This is one of the most difficult – and most crucial – issues that must be addressed in the rules governing this program. It seems likely that law schools will be required to provide dedicated staff to matching students with appropriate service providers, and the program will need to be integrated into the law school curriculum. Providers will need to assist. There are existing models at law schools both within and outside New York State that should be reviewed.

3. How will recordkeeping and verification be handled? Who will be responsible for determining whether particular work satisfies the requirement?

The Administrative Board should develop a certification form for students/bar applicants to use to self-certify that they have completed the required hours of service.

4. Should there be a financial hardship exemption (e.g., for someone attending law school full-time while also employed)? If so, who will be responsible for granting the exemption? When would a candidate make the application for an exemption?

We do not believe the rules should include a specific provision for an exemption; however, the rules might provide that special circumstances justifying an exemption will be considered on a case-by-case basis.

5. How will this requirement affect potential applicants who attend law school outside New York State, foreign attorneys seeking admission in New York, part-time students and those who participate in LL.M. programs? How would this requirement affect admission on motion?

It will be important for the Office of Court Administration to notify law schools outside New York State of the pro bono requirement so that students planning to seek admission in New York will have an opportunity to complete the required hours prior to seeking admission. Because of the impact on out-of-state students and those seeking admission on motion, we strongly recommend that this program be deferred for those out-of-state and be phased in over a reasonable period of time to accommodate the interests of these applicants.

6. What type of supervision will be required, and how will the required supervision impact legal services providers? Will legal services staff be diverted from their current work? What steps need to be taken to address potential malpractice and ethics/unlawful practice issues?

All participants should be required to be supervised by a qualified supervisor. That supervisor would be responsible for ensuring the quality of work and an avoidance of unlawful practice. There are concerns, however, that legal services providers would not be able to supervise a large number of students without diverting staff from their work. Again, law schools will need to develop appropriate supervision requirements.

7. Should this requirement be phased in for students currently in law school? Possibilities include prorated time requirements for the classes of 2013 and 2014, or giving retroactive credit for services provided prior to implementation of the rules.

We recommend that the New York requirement be phased in for at least the classes of 2013 and 2014. Our concern is that students should have a sufficient amount of time to complete their requirement during their law school tenure, and in the case of current students their time is limited.

8. There are many areas in New York State without a nearby law school. How would the legal community and legal services providers in these areas be impacted?

There is a concern that in areas like Syracuse, local providers could be overwhelmed with the number of students seeking pro bono placements. Members noted that while the Volunteer Law Project could work with a limited number of Syracuse University law students, it would be unable to take a large number. One possibility might be to create a matching program based on the model of the Lawyer Referral Service program offered by NYSBA.

CONCLUSION

We hope that many benefits for law students, legal services providers, and the public will result from the program outlined by the Chief Judge. However, we also believe that this program will require careful planning and implementation in order to be successful. It will be necessary for bar associations, legal services providers, and law schools to work together to ensure that students and other applicants for admission receive meaningful pro bono experiences that will encourage a lifetime of pro bono service and provide competent and needed legal assistance for those in need of legal services.

Respectfully submitted,
Working Group on Pro Bono Rule

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