

Staff Memorandum

HOUSE OF DELEGATES Agenda Item #6(b)

<u>REQUESTED ACTION</u>: Approval of amendments to the Comments to Rule 6.1 of the Rules of Professional Conduct.

Attached is a report from the Committee on Standards of Attorney Conduct recommending amendment to the Comments to Rule 6.1 (Voluntary Pro Bono Service) to bring the Comments into conformity with a May 1, 2013 amendment to the Rule made by the Appellate Divisions. As set forth in the report, Rule 6.1 was amended to increase the number of aspirational hours of pro bono service from 20 hours to 50 hours. The proposed amendment to the Comments reflects this change.

The Appellate Divisions adopt only the black-letter Rules of Professional Conduct; the court does not adopt the Comments, which are published by the New York State Bar Association after approval by the House of Delegates.

The report will be presented by Joseph E. Neuhaus, chair of the Committee on Standards of Attorney Conduct.

REPORT OF THE COMMITTEE ON STANDARDS OF ATTORNEY CONDUCT (COSAC)

PROPOSED AMENDMENT TO THE COMMENT TO RULE 6.1
OF THE NEW YORK RULES OF PROFESSIONAL CONDUCT
TO BRING THE COMMENT INTO CONFORMITY WITH
THE MAY 1, 2013 AMENDMENTS TO THE TEXT OF RULE 6.1

The Committee on Standards of Attorney Conduct (COSAC) proposes a small amendment to the Comment to Rule 6.1 of the New York Rules of Professional Conduct. The amendment is needed to make the Comment consistent with the black letter text of Rule 6.1 as amended by the Appellate Divisions effective May 1, 2013.

When Rule 6.1 was originally adopted by the Appellate Divisions as part of the New York Rules of Professional Conduct that took effect on April 1, 2009, Rule 6.1(a)(1) stated: "(a) Every lawyer should aspire to: (1) provide at least 20 hours of pro bono legal services each year to poor persons" Accordingly, the first sentence of Comment [2] to Rule 6.1 said:

[2] Paragraph (a) urges all lawyers to provide a minimum of 20 hours of pro bono legal service annually without fee or expectation of a fee, either directly to poor persons or to organizations that serve the legal or other basic needs of persons of limited financial means. ...

Effective May 1, 2013, the Administrative Board of the Courts amended Rule 6.1(a)(1) by increasing the aspirational minimum number of pro bono hours from 20 hours to 50 hours annually. Comment [2] should now be amended to reflect the increase from 20 hours to 50 hours. Thus, the first sentence would read, in pertinent part: "[2] Paragraph (a) urges all lawyers to provide a minimum of 50 hours of pro bono legal service annually" The change to Rule 6.1(a)(1) and the proposed change to Comment [2] are presented in legislative-style in the attachment to this Report.

The Administrative Board of the Courts also amended Rule 6.1(a)(2) effective May 1, 2013 by adding specific aspirational guidelines for annual financial contributions to organizations that provide legal services to poor persons. However, the existing Comment to Rule 6.1 does not conflict in any way with the new guidelines, and the existing Comment adequately covers the main thrust of Rule 6.1(a)(2). COSAC has therefore determined that no other changes to the Comment

to Rule 6.1 are needed to bring the Comment into conformity with the text of Rule 6.1 as amended effective May 1, 2013.

Respectfully submitted,

Joseph E. Neuhaus, Chair Committee on Standards of Attorney Conduct (COSAC)

Rule 6.1. Voluntary Pro Bono Service

Lawyers are strongly encouraged to provide pro bono legal services to benefit poor persons.

(a) Every lawyer should aspire to:

(1) provide at least $\frac{20}{50}$ hours of pro bono legal services each year to poor persons

COMMENT

[2] Paragraph (a) urges all lawyers to provide a minimum of $\frac{20}{20}$ hours of probono legal service annually without fee or expectation of fee, either directly to poor persons or to organizations that serve the legal or other basic needs of persons of limited financial means. 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 the lawyer's career, the 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.