



**Report of the New Jersey State Bar Association's  
Pro Bono Task Force:  
Closing the Justice Gap  
May 2012**

**Submitted by the NJSBA  
Pro Bono Task Force:**  
Emily Goldberg, chair  
Karen Sacks, chair

Judge Glenn A. Grant (ex-officio)  
Judge Edwin Stern (ret.)  
Celeste Como  
Meredith Cook  
Nancy Eberhardt  
Jane M. Hanson  
John Hargrave  
Christina Vassiliou Harvey  
Kevin Kelly  
Jessica Kitson  
Eve Klothen  
Brenda C. Liss  
Jeanne LoCicero (ex-officio)  
Kristen Mateo\*  
Isabel McGinty (ex-officio)  
Melville D. Miller, Jr. (De)\*  
Dianne Pecoraro  
Akil Roper\*  
Diane K. Smith  
Catherine Weiss

\* Task Force member Melville D. Miller, Jr., President and General Counsel of Legal Services of New Jersey, appointed Ms. Mateo and Mr. Roper, each a Vice President and Assistant General Counsel of LSJ, as his designees to vote and serve on the Task Force in his absence (one vote was shared between them). Mr. Miller requested that it be noted that although his designees participated in Task Force discussions, and voted, they did not concur with the "great majority of conclusions and associated narrative."

## **NJSBA President's Message:**

I believe – at my core – that taking the skills that we have as lawyers and giving back to people whose lives are in jeopardy and cannot afford legal assistance is what being a lawyer is all about.

I began my legal career at Lowenstein Sandler where I had the opportunity to know Alan Lowenstein, a leader in the legal community and a supporter of pro bono service. He instilled in me, and the other young lawyers at the firm, a consciousness to serve those less fortunate, and that has stayed with me throughout my career.

Thirty years ago, as a young lawyer, I followed his advice and with mentoring from Doug Eakeley and Maureen McCully, was able to help create the Legal Services Foundation of Essex County, which foundation funds pro bono and legal aid projects in Essex County. In addition to providing financial aid to critical legal service organizations, in recent years that effort resulted in the launch of Volunteer Lawyers for Justice (VLJ), which provides assistance to low-income people in diverse issue areas ranging from family law matters to bankruptcy filings. I am also proud that my firm, McCarter & English, provides office space and significant pro bono support to VLJ.

As president of the New Jersey State Bar Association, I vowed to make pro bono a priority of my administration. In May 2011, I launched a Task Force to examine the “justice gap” that leaves so many residents and organizations of this state without the legal help they need and deserve, and to identify ways to engage more lawyers in meaningful pro bono service. I appointed Karen Sacks, Executive Director of VLJ, and Emily Goldberg, Director of Pro Bono at McCarter & English, to chair “The Pro Bono Task Force: Closing the Justice Gap”. With the assistance of the NJSBA Pro Bono Committee and volunteer members from every corner of the pro bono legal landscape, including representatives of the judiciary, the Task Force diligently examined the state of pro bono in New Jersey and identified concrete ways of improving the pro bono services afforded our low-income and disadvantaged fellow citizens.

In just a year, the Task Force has undertaken a herculean effort to thoroughly examine the delivery of pro bono services in New Jersey, make recommendations about how to better coordinate the delivery of pro bono services in the state and, most importantly, find better ways to help those who cannot afford to hire an attorney.

This project continues what has been for me a long commitment to pro bono service, and I am grateful for the efforts that made this report possible. I extend my gratitude, most especially, to Karen Sacks and Emily Goldberg, and all of the volunteers who participated on this Task Force.

Susan A. Feeney  
May 2012

## TABLE OF CONTENTS

<b>Executive Summary</b> .....	<b>3</b>
<b>Introduction</b> .....	<b>7</b>
<b>I.    Creation and Purpose of The Task Force</b> .....	<b>7</b>
<b>II.   Mission of the Task Force</b> .....	<b>7</b>
<b>III.  Areas of Study, Methodology and Status of Work</b> .....	<b>8</b>
<b>Report and Recommendations</b> .....	<b>10</b>
<b>I.    Access to Justice Commission or Similar Entity</b> .....	<b>10</b>
<b>II.   Proposed Rules and Rule Amendments</b> .....	<b>16</b>
<b>III.  CLE Credit for Pro Bono</b> .....	<b>23</b>
<b>IV.   Statewide Portal</b> .....	<b>24</b>
<b>V.    Judicial Promotion of Pro Bono</b> .....	<b>31</b>
<b>VI.   The NJSBA and Pro Bono Coordination and Communication</b> .....	<b>38</b>
<b>VII.  Bankruptcy Conflict Issues</b> .....	<b>41</b>
<b>VIII. Retired Attorneys and Pro Bono Work</b> .....	<b>42</b>
<b>Bibliography</b> .....	<b>44</b>
<b>Appendix A</b> .....	<b>48</b>
<b>Appendix B</b> .....	<b>49</b>
<b>Appendix C</b> .....	<b>60</b>
<b>Appendix D</b> .....	<b>61</b>

## EXECUTIVE SUMMARY

In May 2011, Susan A. Feeney, the newly installed president of the New Jersey Bar Association, empanelled a Pro Bono Task Force to advance one of the missions of her presidency: to encourage and expand pro bono legal services by the private bar. The Task Force was broadly comprised of representatives of important stakeholders in the legal services community, including the judiciary, the bar, small, medium and large law firms, corporate law departments, solo practitioners, all three New Jersey law schools, Legal Services of New Jersey (LSNJ) and the associated regional programs, and an array of other legal services and public interest organizations.

The Task Force began its work unanimous in the view that there is a crisis in the delivery of legal services to the poor. A 2009 study by LSNJ, the largest and most comprehensive legal services organization in the state, indicates that one-third of the adult poor population will experience an average of 2.3 civil legal problems each year, up from 1.8 problems revealed in a 2002 study. Approximately one in five lower-income people (21.7 percent) with a legal issue are able to secure the assistance of a lawyer, which translates to more than 736,000 legal problems per year for which assistance is not available. These numbers derive from a 2007 survey; the crisis has only deepened since the onset of the Great Recession in 2008.

As more people have fallen into poverty and the demand for civil legal assistance has grown, the sector providing full-time legal services has sustained devastating budget cuts. LSNJ and the six associated regional programs, with offices in all twenty-one New Jersey counties, have suffered the deepest cuts, with a 35 percent decline in funding between 2008 and early 2011. Other organizations have also seen their funding drop. Some of these entities serve target populations with specialized needs, while others provide general services. Some are fully staffed, while others depend primarily on pro bono volunteers. Collectively, the professional legal services sector offers a lifeline to low-income people facing eviction, loss of benefits, domestic violence, loss of health care, and an array of other civil legal problems. Yet all of these organizations have seen key funding sources evaporate during the extended economic downturn, and all report extensive unmet demand from low-income clients.

The Task Force believes that this crisis must be addressed through collective action involving all of the key stakeholders who are committed to the provision of desperately needed, quality legal services to low-income people. The starting point must be restoring funding to LSNJ and the other full-time legal services programs that provide the infrastructure for effective pro bono service. As national organizations have repeatedly found, and experience in the state has reinforced, pro bono activities can meaningfully address the needs of low-income individuals and families only when supported by experienced poverty attorneys and organizations. This requires strong, stable and resourced professional legal services organizations.

At the same time, New Jersey has witnessed increasing energy and commitment from many quarters attempting to expand and improve pro bono service in the state. This trend is a positive one that should be reinforced and supported. While pro bono service cannot alone close the justice gap in New Jersey, the Task Force is unanimous in its view that in order to address this crisis, the private bar can and must contribute more pro bono legal services to those in need, and

do so more effectively. It thus viewed as its charge: the study of pro bono around the state; identification of what works, what could work better and what isn't working; research on models, policies, rules and/or practices in other states; and issuance of a series of recommendations to support, encourage and expand pro bono.

To conduct its work, the Task Force divided into subcommittees to identify and address issues in four key areas broadly identified as: (i) coordination, communication and collaboration; (ii) recruitment, outreach, and marketing efforts to encourage participation in pro bono efforts; (iii) pro bono rules and policies, including infrastructure issues and funding; and (iv) access to justice in areas of unmet legal needs, including alternative models, particularly when full representation is unavailable. The Task Force met as a whole throughout the year to identify key issues, gather and evaluate information, and develop its recommendations.

This resulting Task Force Report consists of a series of specific recommendations designed to increase pro bono service in New Jersey. Through its yearlong evaluative process, the Task Force reached some overarching conclusions that ultimately served as guiding principles in the crafting of specific recommendations in this Report. The Task Force therefore requests that any review of the recommendations contained herein be undertaken with the following key points in mind:

- The needs and issues concerning pro bono legal service warrant attention at the highest levels of the legal community, including the NJSBA, the judiciary and the legislature.
- A broad cross-section of stakeholders, including representatives from the judiciary, legal services and pro bono organizations, the law schools, the private bar (including law firms, solo practitioners and in-house counsel), and the client community, must be included and participate in efforts to address access to justice issues, including pro bono service.
- There is a pressing need for greater coordination, collaboration and communication by and among stakeholders.
- Court rules and policies encouraging or impacting pro bono work should be created and, where existing, should be clarified and clearly communicated, so as to encourage pro bono work.
- Stakeholders should have formal mechanisms (e.g., dedicated staff, websites, newsletters), programs and/or policies to market, promote and encourage pro bono work.

Below is a summary of the Task Force's Recommendations. Explanatory text and further details concerning each can be found in the "Report and Recommendations" section set forth in the body of this Report.

## **Summary of Task Force Recommendations:**

### **1. Access to Justice Commission**

- A. The Supreme Court of New Jersey should establish an “Access to Justice Commission” with an initial focus on advancing the recommendations of this Task Force, as approved by the NJSBA Trustees, and should work with the NJSBA to identify personnel to staff the Commission.
- B. Should the Court determine that further study is required before establishing an Access to Justice Commission, the Court should instead create a joint Supreme Court/NJSBA committee, modeled on the Commission on Professionalism, which is a joint effort of the Supreme Court and NJSBA. Its charge should be to advance the following recommendations of the Task Force (below) and to study, for possible recommendation to the Court, the establishment of an Access to Justice Commission or similar entity.

### **2. Rules and Rule Amendments**

- A. The Supreme Court of New Jersey should consider and adopt the proposed rules and rule amendments, attached as Appendix B, in order to clarify, streamline, and encourage pro bono practice, including identifying those organizations through which attorneys can provide pro bono services and qualify for a *Madden*-exemption.
- B. Any new or amended rules, as well as lists of the entities certified under those rules, should be publicized through a variety of means. The headings for the postings should advertise their contents. In addition, LSNJ, the associated regional programs, other legal services and public interest organizations, and law school clinical and pro bono programs should publish the fact of their certification on their websites and link to the rules and lists on other sites.

### **3. CLE Credit for Pro Bono Service**

The Supreme Court should adopt a rule pursuant to which an attorney may receive CLE credit for qualifying pro bono service. A proposed rule is attached as Appendix C. The Task Force proposes that CLE credit may be earned at a rate of one hour of CLE credit for every six hours of qualifying pro bono service.

### **4. Statewide Portal**

- A. New Jersey should have a statewide pro bono portal that provides attorneys with information about pro bono programs, resources, and opportunities – with the goal of supporting and expanding meaningful pro bono legal service.
- B. Because the Task Force is committed to a single joint effort, if at all possible, the LSNJ pro bono portal that is in the beta-testing stage should become the statewide pro bono portal

for a trial period. The implementation of the LSNJ portal should be monitored during the trial period and a report submitted to the Access to Justice Commission or similar entity created as a result of this Task Force report, and to the NJSBA. This report should include an analysis of whether the LSNJ portal adequately serves the goals of the Task Force's recommendation and whether an alternative site should be established.

**5. Judicial Support of Pro Bono**

- A. The Court should consider adoption of a modified version of Rule 3.7(B) of the ABA Model Code of Judicial Conduct pursuant to which a judge may encourage lawyers to provide pro bono services.
- B. Judges should be encouraged to accommodate, recognize, educate and recruit pro bono attorneys in a variety of suggested ways.

**6. NJSBA Promotion of Pro Bono Work**

- A. The NJSBA should encourage each county bar association and specialty bar association to promote pro bono activities by their members.
- B. The NJSBA should explore how social media and mobile technology may be used to communicate information about pro bono.
- C. The NJSBA should improve and expand its marketing and communication about pro bono to attorneys, both NJSBA members and non-members.
- D. The NJSBA should dedicate a position, at least in substantial part, to support pro bono practice.

**7. Bankruptcy Conflict Issues**

To address perceived conflicts expressed by private attorneys when prospective bankruptcy pro bono clients have creditors who are represented by the attorney or his or her firm, entities engaged in pro bono bankruptcy projects should seek an opinion from the Advisory Committee on Professional Ethics regarding the potential conflicts issues.

**8. Retired Attorneys and Pro Bono Work**

The judiciary should take steps to educate attorneys approaching or at retirement of their option to continue to engage in pro bono practice without paying the annual registration fee.

## INTRODUCTION

### I. Creation and Purpose of The Task Force

Upon being sworn in as president of the New Jersey Bar Association (NJSBA) in May 2011, Susan A. Feeney appointed a Pro Bono Task Force to advance one of the core missions of her presidency: to encourage and expand pro bono legal services by the private bar.

A focus on pro bono work is especially critical at this time as the economic downturn continues to further widen the justice gap in this country. Recent studies indicate that 80 percent or more of America's poorest citizens are unable to secure legal assistance they need.<sup>1</sup>

This crisis is felt equally in New Jersey. Legal Services of New Jersey (LSNJ), the largest legal services organization in the state, has found that one-third of New Jersey's poorest residents will face at least two civil legal issues annually, but only one in five of those with legal issues will secure the assistance of counsel.<sup>2</sup> The lack of access to counsel is even more profound in certain areas of law. For example, in the housing context, 99 percent of defendants in tenancy cases are unrepresented.<sup>3</sup> In administrative hearings (including hearings involving denials of welfare grants), welfare recipients are pro se in 95 percent of cases.<sup>4</sup>

As the economic downturn persists, more people are descending into poverty, and greater numbers are facing legal problems (i.e., foreclosures, debt actions, evictions) due to loss of income. At the same time, funding cuts and dwindling resources have crippled legal services organizations' efforts to meet demand. While private attorneys cannot meet the need, it is critical that they step into the breach through increased pro bono work. Undertaking pro bono legal service is every attorney's professional obligation, and the private bar must do more, but to do more, attorneys in private practice must be encouraged and supported in their efforts. It was the charge of this Task Force, therefore, to conduct a thorough evaluation of New Jersey's delivery of pro bono legal services system and suggest concrete changes to increase, support and encourage pro bono work, work more important now than ever.

### II. Mission of the Task Force

The mission of the Task Force, at its inception, was stated as follows:

---

<sup>1</sup> See "Report on the 2010 Pro Bono Institute Law Firm Pro Bono Challenge Statistics," Pro Bono Institute (June 2011).

<sup>2</sup> See "The Civil Justice Gap, An Inaugural Annual Report of Legal Services of New Jersey," Legal Services of New Jersey (April 2011).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

The overriding goal of the NJSBA Pro Bono Task Force is to make recommendations that will encourage and expand pro bono participation by the private bar. In furtherance of this goal, the Pro Bono Task Force shall, through surveys and otherwise, identify and review:

- Groups providing pro bono service in New Jersey and the services the groups provide, how services are provided, whom the groups serve, unmet legal needs, and barriers to effective service;
- Coordination efforts among law firms, corporations, and pro bono providers (i.e., nonprofit legal organizations that work with pro bono attorneys);
- Existing collaborations among pro bono providers, as well as collaborations among law firms, corporations, and/or pro bono providers;
- Marketing and communication efforts by pro bono providers;
- Funding sources and funding issues of pro bono providers;
- Law firm policies to encourage pro bono efforts including billable hour credit and support for pro bono work;
- New and effective trends in the delivery of pro bono services (signature law firm projects, clinics, use of non legal staff); and
- Support for pro bono work in general from the courts and the NJSBA.

### **III. Areas of Study, Methodology and Status of Work**

The Task Force thus viewed as its charge: the study of pro bono around the state; identification of what works, what could work better and what isn't working; research on models, policies, rules and/or practices in other states; and issuance of a series of recommendations to support, encourage and expand pro bono. To conduct its work, the Task Force divided into subcommittees to identify and address issues in four broad areas of study. It sought to examine and investigate:

- Ways to improve coordination, communication and collaboration among current stakeholders and within participating affinity groups;
- Recruitment, outreach, and marketing efforts with an eye toward encouraging wide-ranging participation in pro bono;
- Pro bono rules and policies, including infrastructure issues and funding; and
- Means to facilitate access to justice in areas of unmet legal needs, including consideration of alternative models, particularly when full representation is unavailable.

The subcommittees used a variety of methods to gather information, including personal and telephone interviews with New Jersey legal services programs, county bar representatives and

other New Jersey stakeholders. They also sought information from other states by conducting Internet research, querying the ABA's Pro Bono Center and speaking with law firm pro bono coordinators, and legal services and other organizations throughout the nation.

Much has been accomplished by this Task Force but there is still more work to be done. Recommendations will need to be implemented. Moreover, the Task Force did not fully explore and produce recommendations on every issue on its agenda. Some study and work undertaken by the subcommittee reviewing best practices and methods to increase pro bono assistance in response to unmet legal needs is continuing. Cognizant of a comprehensive national pro bono study to be released by the Legal Services Corporation, that subcommittee is meeting its charge by conducting informal surveys with organizations that work with pro bono attorneys, both in New Jersey<sup>5</sup> and in other states. The purpose of these discussions is to gather information on the types of pro bono programs in operation, with an emphasis on innovative practices, and their limitations and successes. Information from the surveys will be used to recommend best programs and practices in New Jersey. The Task Force will report on the important work of this subcommittee when it is complete.

---

<sup>5</sup> Many organizations in New Jersey coordinate pro bono services in different areas of the law. These organizations do important and impactful work throughout the state. The representatives of many of those organizations served on this Task Force (*see infra* note 7) and some are referenced throughout this Report. The recommendations are intended to support and strengthen the work of all of these organizations, in addition to promoting the expansion of pro bono efforts, by supporting pro bono in general. Until such time as the subcommittee issues its findings, which will include a discussion of such New Jersey organizations, information regarding some of these providers can be found at [www.njsba.com](http://www.njsba.com) (under the resources tab) and [www.probononj.org](http://www.probononj.org). At present, there is no single, public listing of all of the various organizations that provide pro bono services in the state.

## REPORT AND RECOMMENDATIONS

### I. Access to Justice Commission or Similar Entity

#### 1. Introduction

As a result of their own individual and collective experience, Task Force members are unanimous in their view – and painfully aware – that there is a great need for the provision of more pro bono services for low-income people in New Jersey who cannot fairly represent themselves in courts and with respect to other legal transactions. Task Force members are also unanimous in their view that there is a pressing need to examine new sources of funding for legal services for underserved populations, to maintain and improve services for qualified persons through both legal services organizations and greater utilization of volunteer attorneys, and to provide oversight and coordination of these efforts.

No single sector can meet the legal needs of low-income people, and the Task Force recognizes that fully staffed legal services organizations provide direct representation to low-income clients of a scope and on a scale that other entities do not, and usually cannot, match. Nor can volunteer pro bono attorneys hope to fill the widening justice gap. The Task Force values and supports fully staffed legal services and other public interest organizations, organizations that operate primarily through pro bono volunteers, and all of the hybrids along this spectrum. The issue of how best to fund, coordinate, and deploy all of the entities that contribute to the provision of legal services for low-income people, as well as other forms of public interest practice, warrants attention at the highest levels of the legal community, with involvement of legal services and public interest organizations, client representatives, a broad spectrum of the private bar, law schools, legislators and the judiciary.

#### 2. The Issue

The legal needs of low-income New Jersey residents and others in the state who cannot afford necessary legal assistance are extensive.<sup>6</sup> They cover a broad range of issues in areas such as civil rights, consumer rights, housing, family law, domestic violence, education, immigration, prisoners' rights, prisoner re-entry, and bankruptcy; and they cover all legal practice areas, in litigation, counseling and transactional assistance. Numerous organizations exist to address these needs in various ways,<sup>7</sup> but all of these organizations report extensive unmet demand for their services and all have lost vital funding during the economic downturn. In some areas, such as prisoners' rights, there is no organization dedicated primarily to, or capable of, meeting the need. Moreover, the state's courts struggle mightily to provide justice to the large and increasing

---

<sup>6</sup> See "The Civil Justice Gap, An Inaugural Annual Report of Legal Services of New Jersey," Legal Services of New Jersey (April 2011).

<sup>7</sup> Task Force members include representatives of Legal Services of New Jersey, Legal Services of Northwest Jersey, Volunteer Lawyers for Justice, the Pro Bono Partnership, Partners for Women and Justice as well as the state's three law schools and the private bar. In addition to these organizations, several others have active pro bono programs.

numbers of pro se litigants who appear as both plaintiffs and defendants, many of whom would benefit immensely from legal representation.

In addition to efforts by all of those organizations as well as the NJSBA and the courts to increase pro bono service by attorneys, the state and its residents would benefit from a more substantial effort to support and promote pro bono legal services. The experience of the Task Force itself, over the past several months, has shown that focused attention by representatives of a broad cross-section of the legal community, including the judiciary, is effective and indeed essential to addressing the issues pertinent to improvement of pro bono legal services. The Task Force is also well aware that the issues it was charged with addressing will not be resolved quickly or easily, or with the end of the Task Force's finite existence. Therefore, the need for sustained focused attention on issues relating to pro bono legal service is clear.

Several entities currently exist which could, theoretically, provide a forum for such sustained attention. The Pro Bono Committee of the NJSBA, comprised of representatives of the bar membership and key legal services organizations, disseminates articles and information regarding pro bono efforts, makes recommendations to the Trustees of the NJSBA, and sponsors an annual Pro Bono Conference. The Supreme Court Advisory Committee on Access and Fairness, established in 2011, focuses on the administration of justice in the face of challenges such as increasing numbers of self-represented litigants, the growing multicultural population in New Jersey, economic pressures applied to litigants and to the courts, and the need to treat each case and each litigant with dignity and respect. The Court has also created initiatives to study the issue of, and assist, self-represented litigants by creating an "ombudsman" position in each county, hiring a "litigants' services manager," creating self-help publications, and instituting a self-help resource center. LSNJ regularly studies access to justice issues through its Poverty Research Institute and produces a variety of publications on the subject each year.<sup>8</sup>

As valuable and effective as each of these entities clearly is, none of them provides a vehicle by which representatives of various stakeholders, including decision-makers, can come together to address, in a coordinated fashion, policy and practice regarding legal services and access to justice for the underserved. The Task Force recommends establishment of an entity that would do so without duplicating the ongoing efforts of established entities, and would draw on the knowledge and experience of all pertinent constituencies, while serving the ultimate goal of promoting effective, efficient, high-quality legal service to those who otherwise would not receive the benefit of such service.

---

<sup>8</sup> The Poverty Research Institute, established by LSNJ in 1997, is the first and only initiative exclusively focused on developing and updating information on poverty in New Jersey. A primary and continuing area of inquiry by the Institute concerns the legal needs of the poor, including those for which there is no legal representation, those for which there is only partial or limited representation, as well as those for which lawyers are secured. It examines gaps in representation, assesses causes and patterns, considers demographic aspects, studies the consequences of having and not having representation (including having only limited representation), and analyzes the effects of judicial and non-legal assistance. See [www.lsnj.org](http://www.lsnj.org).

### **3. Other States' Efforts to Promote Pro Bono Legal Service: Access to Justice Commissions**

Over the last ten years or so, state supreme courts in 34 states have created "Access to Justice (ATJ) Commissions," charged with the overall goal of ensuring effective delivery of justice for all. Whether called Justice Action Groups, Equal Justice Groups or Access to Justice Commissions, the most important aspect of these bodies is that they provide an ongoing structure for the engagement of the very highest levels of the state courts and bar in the delivery of civil legal aid. Their primary activities relate to planning, education, resource development, coordination, delivery system enhancement, and oversight. They are not primarily a funder or direct provider of legal assistance, but instead include representatives from the courts, the bar, civil legal aid providers, law schools, legislators, representatives of the state executive branch and other key entities. Issues they typically address, depending on the state, include pro bono, legal aid funding, court access/self-represented litigants, limited scope representation, communications and public awareness, civil right to counsel, and more.

### **4. The American Bar Association**

The ABA defines Access to Justice Commissions as follows:<sup>9</sup>

A blue-ribbon commission or similar formal entity comprised of leaders representing, at minimum, the state courts, the organized bar, and legal aid providers. Its membership may also include representatives of law schools, legal aid funders, the legislature, the executive branch, and federal and tribal courts, as well as stakeholders from outside the legal and government communities. Its core charge is to expand access to civil justice at all levels for low-income and disadvantaged people in the state (or equivalent jurisdiction) by assessing their civil legal needs, developing strategies to meet them, and evaluating progress. Its charge may also include expanding access for moderate-income people. Its charge is from and/or recognized by the highest court of the state or equivalent jurisdiction; the highest court and the highest levels of the organized bar are engaged with the commission's efforts and the commission reports regularly to them. Its primary activities relate to planning, education, resource development, coordination, delivery system enhancement, and oversight; it is not primarily a funder or direct provider of legal assistance. It meets on a regular basis and has ongoing responsibility for carrying out its charge.

According to the ABA Resource Center for Access to Justice Initiatives, ATJ Commissions typically strive to increase public awareness of the need for expanded access to justice and civil legal assistance to low-income residents through studies, communications campaigns, hearings, and other events. They also typically work to increase funding for civil legal assistance; increase pro bono service; increase support for self-represented litigants; increase collaboration and coordination among legal aid providers and, as appropriate, promote the creation of new

---

<sup>9</sup> "Definition," ABA Resource Center for Access to Justice Initiatives (July 2011).

providers; and address related issues, such as student loan repayment for public interest lawyers, administrative fairness, and challenges faced in the legal context by people with limited English proficiency.<sup>10</sup> Several factors make these groups successful, according to the ABA:

- Active engagement and leadership of the highest court and the highest levels of the organized bar of the state or jurisdiction, who are represented by individuals of stature and commitment, resulting in a high level of credibility and visibility for commission initiatives;
- Primary focus on overcoming specific barriers to civil justice created by inability to afford counsel, rather than a broad “access and fairness” approach (although disadvantages created by factors such as culture, language, age, and disability are also usually addressed);
- Consideration of the state’s legal assistance delivery system as a whole, including staffed legal aid programs, support for self-represented litigants, limited scope representation, pro bono services, and other models, as well as potential innovations, rather than focus on a single delivery mechanism;
- Scope not limited only to the courts, but encompassing a full range of contexts, including the provision of information about legal rights and responsibilities; negotiation and transactional assistance; administrative proceedings; and advocacy with state and local legislative and administrative bodies;
- Ability to maintain a “big-picture” perspective, encompassing the viewpoints of the different institutions represented on the commission and not limited to that of any one particular institution; and
- Institutionalization of the commission structure, to ensure follow-through and ongoing commitment.<sup>11</sup>

## 5. Conference of Chief Judges

In 2010, in recognition of the achievements of these Commissions, the Conference of Chief Judges adopted a resolution encouraging each state to develop an ATJ commission,<sup>12</sup> the ABA created the

---

<sup>10</sup> “About Access to Justice Commissions,” ABA Resource Center for Access to Justice Initiatives (prepared for the Conference of Chief Justices and Conference of State Court Administrators)(August 2010).

<sup>11</sup> *Id.* For examples of Access to Justice Commissions around the nation, see Robert Echols, *Examples of State Access to Justice Commissions: Creation, Structure and Accomplishments*.

<sup>12</sup> **CONFERENCE OF CHIEF JUSTICES**  
**CONFERENCE OF STATE COURT ADMINISTRATORS**  
**Resolution 8 In Support of Access to Justice Commissions**

WHEREAS, many states have established an access to justice commission to ensure the effective delivery of justice to all; and

WHEREAS, access to justice commissions have achieved remarkable results and have been recognized as one of the most important justice-related developments in the past decade as championed by Professor Laurence H. Tribe,

“ABA Resource Center for Access to Justice Initiatives,” and since 2005, there has been a yearly “National Meeting of Access to Justice Commission Chairs.”

As the Chief Judge of Montana, The Honorable Karla Gray, summed up in an article on ATJ commissions:

[J]udicial involvement is almost certainly the single most important factor in the success of access to justice commissions. It distinguishes these commissions from traditional bar-based legal aid or access to justice committees. Although state bar committees have been—and continue to be—extremely effective in a number of states, an entity created by the state’s highest court in conjunction with state bar leadership has built-in credibility and visibility that typically cannot be matched. The chief justice or another state supreme court justice is the co-chair or vice-chair of state access to justice commissions in a number of states, and the impact of that leadership cannot be overstated. In addition to raising the visibility and credibility of the access to justice mission as a whole, supreme court leadership can greatly enhance the effectiveness of efforts to increase state funding for civil legal assistance, to increase lawyer pro bono services, and to make justice more accessible to low-income people. Federal judges, who serve on commissions in several states, can be similarly effective. At the bottom line, judicial involvement at all levels and in all appropriate ways plays a key role in ensuring the effectiveness of access to justice efforts.<sup>13</sup>

## 6. Staffing

ATJ Commissions typically are more effective when they are staffed by at least one part-time professional staff person. Different commissions have found different ways to provide such staffing, including positions at the bar (the most common), the courts, a statewide legal aid support program, or independent staff paid for by funding from IOLTA, fee add-ons, or law firm contributions. Several commissions operate successfully with only ad hoc staffing from stakeholder institutions; however, these commissions recognize that they would be more effective with a staff person.<sup>14</sup> According to Cheryl Zalenski, the Director of the ABA’s Center for

---

Senior Counselor for Access to Justice, United States Department of Justice in his remarks to the Conference of Chief Justices and the Conference of State Court Administrators during their 2010 annual meeting;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support the aspirational goal that every state and United States territory have an active access to justice commission or comparable body.

*Adopted as proposed by the CCJ/COSCA Access, Fairness and Public Trust Committee at the 2010 Annual Meeting on July 28, 2010.*

<sup>13</sup> Chief Justice Karla M. Gray and Robert Echols, “Mobilizing Judges, Lawyers, and Communities, State Access to Justice Commissions,” *The Judges’ Journal*, Volume 47, Number 3 (Summer 2008).

<sup>14</sup> “About Access to Justice Commissions,” ABA Resource Center for Access to Justice Initiatives, (prepared for the Conference of Chief Justices and Conference of State Court Administrators) (August 2010).

Pro Bono, “31 states have at least one state support position. Most staff the state’s Access to Justice Commission, encompassing pro bono as well as other areas.”

Until the creation of this Pro Bono Task Force, no organization or body representative of key stakeholders in the area of pro bono legal services existed in New Jersey, in contrast with many other states. As has become clear through the work of this Task Force, there is a great need for collaboration, coordination and education by and among a wide variety of key players, including the courts, law schools, civil legal services providers, the bar, private attorneys, and the legislature, if the State is to make effective strides toward increasing legal services to low-income residents of New Jersey. Also, this Task Force has studied a large number of issues that have heretofore gone unaddressed, and is making several recommendations that will require implementation or further consideration. It is critical that a continuing entity deputized by the NJSBA and Supreme Court of this State provide oversight for implementation of this Task Force’s recommendations, if adopted by the NJSBA Trustees, and that this entity be tasked with further studying and implementing key issues in the area of pro bono legal service.

An Access to Justice Commission would address that critical need. While the focus of such a commission, if modeled on those in other states, would be broader than the issues this Task Force has been charged to consider, it seems clear that issues relating to pro bono legal service are best addressed in the context of a larger statewide effort toward the provision of legal services for underrepresented constituencies. It also seems clear that such a commission, if established by the Supreme Court and the NJSBA jointly, would provide the necessary high-level focus warranted by the significant issues involved, without duplicating the efforts of any existing bar association or Supreme Court committee, or the efforts of LSNJ. The Task Force believes an Access to Justice Commission should be established without delay, in order to maintain the momentum of the Task Force’s efforts.

## **RECOMMENDATIONS:**

1. Based on the foregoing, the Task Force recommends that the Supreme Court of New Jersey establish an Access to Justice Commission with an initial focus on advancing the recommendations of this Task Force, as approved by the NJSBA Trustees, and that the Court work with the NJSBA to hire support personnel to both staff the Commission and support pro bono efforts statewide.
2. Should the Court determine that further study is required before establishing an Access to Justice Commission, the Task Force makes the following alternative recommendation: that a joint Supreme Court/NJSBA committee be established. The committee should be modeled on the Commission on Professionalism, which is a joint effort of the Supreme Court and NJSBA. Its charge should be to advance the following recommendations of the Pro Bono Task Force (below) and to study for possible recommendation the establishment of an Access to Justice Commission or similar entity.

## II. Proposed Rules and Rule Amendments

### 1. Clarify Court Rules That Affect Pro Bono Practice

New Jersey has a particular need for clear and transparent rules to govern pro bono practice. At present, a number of rules and directives, promulgated at different times and for different purposes, touch on pro bono practice. These rules and directives often cause confusion and generate unnecessary administrative work that is burdensome to the courts as well as to legal services and public interest organizations, law school clinical or pro bono programs, and volunteer pro bono attorneys. New rules, as well as revisions to existing rules, are necessary to encourage and streamline pro bono practice in the state.

This need arises in part because, alone among the states, New Jersey authorizes the courts to appoint licensed attorneys to represent indigent defendants in certain kinds of cases without compensation. *Madden v. Delran*, 126 N.J. 591 (1992).<sup>15</sup> By way of a court directive, attorneys in New Jersey may claim an exemption from *Madden* assignments (under Exemption Code 88) if they perform at least twenty-five hours of voluntary pro bono service in conjunction with certain organizations.<sup>16</sup> Yet several issues have made it difficult for legal services and other public interest organizations to know whether they qualify for this purpose. The Court lists on its website certain approved organizations<sup>17</sup> and incorporates by reference another list of organizations,<sup>18</sup> but these lists can be unclear and are not comprehensive.

In addition, several other rules affect how and whether legal services and public interest organizations and law school clinical or pro bono programs can rely on the service of law

---

<sup>15</sup> So far as our research has shown, no other state has adopted a system of court-appointed, mandatory pro bono work. See ABA Standing Committee on Pro Bono and Public Service, Table of State Ethics Rules, [http://www.americanbar.org/groups/probono\\_public\\_service/policy/state\\_ethics\\_rules.html](http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html). Thus, New Jersey has no points of comparison for managing the *Madden* system.

<sup>16</sup> Exemption 88 reads as follows:

88. Attorneys who certify that they have performed at least twenty-five (25) hours of pro bono services in New Jersey in the form of legal assistance to the poor in the year prior to the registration date, in conjunction with a R. 1:21-1(e) Legal Assistance Organization, Legal Aid Society, or a Supreme Court approved program are exempt. A list of Supreme Court approved programs may be found at <http://www.judiciary.state.nj.us/probono/index.htm>. Additionally, attorneys who satisfy the same twenty-five (25) hour requirement by serving as a court-appointed attorney-trustee pursuant to R. 1:20-19 or who volunteer to handle Termination of Parental Rights Appeals as compensated Public Defender Pool Attorneys are also exempt under this category.

Memorandum to Members of the Bar from Glenn A. Grant, J.A.D., re: 2012 Pro Bono Exemption Categories (Jan. 3, 2012), <http://www.judiciary.state.nj.us/probono/2012memotothebaronexemptions.pdf>.

<sup>17</sup> New Jersey Courts, *Approved Pro Bono Organizations under Exemption Code 88* (February 2012), <http://www.judiciary.state.nj.us/probono/pborgs.pdf>.

<sup>18</sup> Rutgers Law Library, Legal Reference Guide for Public Libraries in New Jersey, *Legal Services/Legal Aid Organizations*, <http://law-library.rutgers.edu/resources/legalref.php#6>.

students, recent graduates, or out-of-state attorneys.<sup>19</sup> In the current form, these rules cause confusion because of their inconsistent references to the various kinds of nonprofit entities that provide legal assistance and because of the duplicative administrative obligations they impose.

In the absence of a clear definition of the kinds of organizations or programs that work with pro bono attorneys, the courts and others have relied on *R. 1:21-1(e)*, which describes certain “Legal Assistance Organizations.” This Rule was adopted, however, for a separate and distinct purpose – to implement court decisions that enabled legal services organizations and public interest law firms to practice under their corporate names, provided that certain conditions were met.<sup>20</sup> Rule 1:21-1(e) was not designed to, and does not, provide a sound basis for defining legal services or public interest organizations for other purposes.

### **RECOMMENDATION:**

The Supreme Court of New Jersey should consider and adopt the proposed rules and rule amendments, attached as Appendix B, in order to clarify, streamline, and encourage pro bono practice.

### **Commentary on Proposed Rules and Conforming Amendments**

#### **A. Proposed Rule 1:21-XX. Definitions and Certifications Regarding Pro Bono Practice**

The definition of qualifying pro bono service in proposed Rule 1:21-XX is drawn from the definition originally set out in ABA Model Rule 6.1,<sup>21</sup> and subsequently modified by the Pro Bono

---

<sup>19</sup> *R. 1:21-3(b), (c)* (special practice rule for law students, recent graduates, and out-of-state attorneys); *1:21-10* (special practice rule following determination of major disaster); and *1:27-2(g)* (special practice rule for limited-license attorneys).

<sup>20</sup> See *Rules Governing the Courts of the State of New Jersey*, comments to *R. 1:21-1(e)*.

<sup>21</sup> ABA Model Rule 6.1 reads:

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;

Institute (PBI) for the purpose of implementing the Pro Bono Challenge®, through which PBI encourages large law firms and corporate legal departments to meet certain pro bono targets.<sup>22</sup> This latter definition has become the “industry standard” in that it provides the basis for reporting on pro bono work, not only to PBI, but also to publications such as *The American Lawyer* that rank law firms’ pro bono programs. In addition, PBI publishes guidance to elucidate and explain the definition.<sup>23</sup>

The definition of qualifying pro bono service in the proposed rule tracks its sources in most respects. Like the ABA and PBI definitions, the rule definition encompasses an array of pro bono matters in order to encourage attorneys with a wide range of skills, experience, passions, and interests to participate in pro bono work. Yet, within the range of qualifying pro bono service, the definitions underscore the importance of legal assistance to low-income people, in that the first two prongs of the definition pertain to such work. The rule refers to “low-income persons” whereas the ABA and PBI definitions refer to “persons of limited means.” In each case, however, the meaning is the same: the definition encompasses not only those “who qualify for participation in programs funded by the Legal Services Corporation,” but also those whose incomes and financial resources exceed the guidelines used by such programs but who still cannot afford counsel in the matter for which they need legal assistance.<sup>24</sup> Finally, as in the PBI definition, the definition in the rule makes legal representation and advice the litmus test of qualifying pro bono

- 
- (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.

See ABA Model Rule 6.1,

[http://www.americanbar.org/groups/probono\\_public\\_service/policy/aba\\_model\\_rule\\_6\\_1.html](http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html).

<sup>22</sup> The PBI definition reads:

[T]he term “pro bono” refers to activities of the firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice and consisting of (i) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; (ii) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; and (iii) the provision of legal assistance to charitable, religious, civic, community, governmental or 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.

Pro Bono Institute, *Law Firm Pro Bono Challenge* ¶ 7,

[http://www.probonoinst.org/images/pdfs/law\\_firm\\_challenge\\_2010.pdf](http://www.probonoinst.org/images/pdfs/law_firm_challenge_2010.pdf).

<sup>23</sup> Pro Bono Institute, *Law Firm Pro Bono Challenge, Commentary to Statement of Principles*,

[http://www.probonoinst.org/images/pdfs/law\\_firm\\_challenge\\_commentary.pdf](http://www.probonoinst.org/images/pdfs/law_firm_challenge_commentary.pdf) (see especially Commentary on Definition of Pro Bono at the end); Pro Bono Institute, *What Counts? A Compilation of Queries and Answers*, <http://www.probonoinst.org/images/pdfs/what%20counts%202008.pdf>.

<sup>24</sup> See ABA Commentary to Rule 6.1.

service, to the exclusion of other worthy types of community service that do not demand a license to practice law.

While sharing many similarities, the definition in the proposed rule differs from its sources in some ways. Most obviously, the proposed rule governs pro bono service only in New Jersey. The PBI definition recognizes pro bono service to for-profit companies in some circumstances,<sup>25</sup> whereas the rule does not. Qualifying pro bono service under the rule may be rendered to an entity only if it is a nonprofit charitable, religious, civic, community, or educational organization, or a unit of government. The rule refers to some common examples of what “counts” and does not “count” as pro bono service, but other questions will arise, and reference to PBI’s more thorough explanations may prove useful.<sup>26</sup>

The definition in the rule also differs from the ABA and PBI definitions in its explanation regarding the impact of fees on qualifying pro bono service. The ABA and PBI definitions appear to contemplate that some fee-generating work will count as pro bono.<sup>27</sup> In contrast, the rule’s definition makes clear that qualifying pro bono service excludes matters in which the client is charged a fee. As to matters in which fee-shifting statutes may apply, the rule’s definition incorporates and strengthens guidance from the commentary to the PBI definition, providing that attorneys and firms in commercial practice are “strongly encouraged” to donate any fees they may receive in pro bono cases to legal services or public interest organizations or law school clinical or pro bono programs.<sup>28</sup> This exhortation to donate applies whether fees in pro bono fee-shifting cases are obtained by court award or through settlement. If an attorney or firm in commercial practice chooses instead to retain all or part of a fee in an otherwise qualifying pro bono fee-shifting case, the matter will qualify for the purpose of the special practice rules – permitting law students, recent graduates, out-of-state, and limited-license attorneys to participate<sup>29</sup> – but an attorney may not claim a *Madden*-exemption based on the hours expended in such a case.<sup>30</sup> An attorney or firm may, however, recover costs in pro bono cases without sacrificing a *Madden*-exemption. Contingency cases do not count as qualifying pro bono service whether or not the attorney receives a fee.

The definitions of a “legal services or public interest organization” and a “law school clinical or pro bono program” refer back to the definition of qualifying pro bono service for their substance. Such organizations or programs must have a central, though not necessarily the sole, purpose of providing qualifying pro bono service.

---

<sup>25</sup> See PBI, *supra* note 23, *Commentary to Statement of Principles* (Commentary on Definition of Pro Bono).

<sup>26</sup> See PBI, *supra* note 23, *What Counts*.

<sup>27</sup> See ABA, *supra* note 21; PBI, *supra* note 22.

<sup>28</sup> See PBI, *supra* note 23, *Commentary to Statement of Principles* (Commentary on Definition of Pro Bono).

<sup>29</sup> See *Rules*, *supra* note 19.

<sup>30</sup> See proposed R. 1:21-YY(c) (Appendix B).

LSNJ and the associated regional programs receive special treatment under the rules. Because these entities constitute the statewide, federally funded legal services network in New Jersey, they are included by name in the definition of legal services organizations and they are deemed certified under the rules governing certifications, such that they need not file or update information about themselves with the Administrative Director of the Courts. To the extent that these entities receive funding from the Legal Services Corporation, they must already conform to an elaborate set of federal rules and should be relieved from duplicative state filings.

The certification provisions build on the definitions. The idea is that the rules will create an integrated system through which legal services and public interest organizations, and law school clinical or pro bono programs, can certify themselves to the Administrative Director of the Courts and update these certifications so as to become and remain qualified for other benefits the rules offer. Thus, an entity (other than LSNJ and the associated regional programs) must go through the certification process if it wants: (1) to be qualified for the purpose of enabling cooperating pro bono counsel to claim a *Madden*-exemption; (2) to engage law students, those who have not yet passed the bar exam, or out-of-state attorneys in qualifying pro bono service; or (3) to engage limited-license attorneys in qualifying pro bono service. Additional certifications, establishing that the entity serves low-income clients, are required for entities (again, other than LSNJ and the associated regional programs) that seek approval for fee waivers without the necessity of a court order.

In addition, governmental entities, such as the Office of the Public Defender or the United States District Court for the District of New Jersey, may engage private attorneys in voluntary qualifying pro bono service without having to file certifications with the Administrative Director. Likewise, certification requirements are lifted for legal services and public interest organizations, and law school clinical and pro bono programs, insofar as they act with the approval of courts or adjudicative agencies to enlist volunteer attorneys in providing qualifying pro bono service to clients appearing in those courts or adjudicative agencies. Thus, nonprofit organizations that appear on lists compiled by the United States Executive Office for Immigration Review<sup>31</sup> or by the United States Bankruptcy Court for the District of New Jersey<sup>32</sup> do not require certifications to place pro bono matters with volunteer attorneys in matters pending before immigration courts or officials or bankruptcy courts or trustees.

The certification process is administrative in nature. The Administrative Director of the Courts will determine whether the certifications establish that the entity meets the definition in the rules. The Administrative Director will not assess the mission or viewpoint of the entity in question.

The certification process will eliminate the current guesswork about whether an entity is permitted to take advantage of the other rules. Either an entity will seek and renew its certification under the rules or it will not. After an initial period when the relevant entities

---

<sup>31</sup> See [www.justice.gov/eoir/probono/freelgchtNJ.htm](http://www.justice.gov/eoir/probono/freelgchtNJ.htm).

<sup>32</sup> See <http://www.njb.uscourts.gov/content/pro-bono-programs>.

ascertain whether they are on preexisting lists, and apply for certification if not, the Administrative Director will have a comprehensive list of qualified entities. These lists will be updated as information comes in and systematically after April 30 in even-numbered years.

#### B. Proposed Rule 1:21-YY. *Madden*-Exemption Based on Voluntary Pro Bono Service

The *Madden*-exemption rule largely tracks the content of Exemption Code 88.<sup>33</sup> The rule clarifies that the twenty-five hours of pro bono work must occur in the calendar year before the registration date for the attorney to qualify for an exemption during the calendar year of the registration. The rule incorporates Rule 1:21-XX, such that entities certified under Rule 1:21-XX(b)(1) or (3) are qualified to enable cooperating pro bono attorneys to claim an exemption.

As noted above, the rule denies a *Madden*-exemption for pro bono service in a matter in which an attorney or firm in commercial practice retains fees, whether awarded by a court or negotiated in settlement of a claim to which a fee-shifting statute applies. An attorney or firm may, however, recover costs and still claim a *Madden*-exemption for time expended on the matter.

#### C. Conforming Amendments

These proposed amendments ensure that the other rules that affect pro bono practice make appropriate reference back to the new rules proposed above. Again, the goal is to institute an integrated system, so that legal services and public interest organizations and law school clinical and pro bono programs, once certified under Rule 1:21-XX(b), can take advantage of all the other rules governing pro bono practice. This system should eliminate or reduce duplicative applications to the Administrative Director of the Courts.

These relevant rules to which amendments are proposed include:

- R. 1:13-2 (fee waivers);
- R. 1:21-3(b), (c) (special practice rule for law students, recent graduates, and out-of-state attorneys);
- R. 1:21-10 (special practice rule following determination of major disaster); and
- R. 1:27-2(g) (special practice rule for limited-license attorneys).

## 2. Educate Stakeholders about the New and Amended Rules

One of the issues currently impeding pro bono practice is a lack of clarity – neither members of the bar nor the legal services, public interest, and law school clinical or pro bono programs they work with understand the relevant rules. If the proposed new and amended rules are adopted,

---

<sup>33</sup> Exemption Code 87, which excuses full-time legal services or public interest attorneys from service under *Madden*, should also be amended to reflect the new rules, as follows: “Attorneys employed full time by a ~~Legal Assistance Organization, as described in R. 1:21-1(e), or by a Legal Aid Society~~ legal services or public interest organization or law school clinical or pro bono program, as defined in R. 1:21-XX(a)(2) & (3), are exempt.”

there will be clear answers to many recurring questions. Wide dissemination of the rules and associated lists can help to ensure that all stakeholders have access to the information they need.

**RECOMMENDATION:**

Any new or amended rules, as well as lists of the entities certified under those rules, should be publicized through a variety of means. The headings for the postings should advertise their contents. E.g.,

- Court Rules Related to Pro Bono Practice;
- Entities Certified for *Madden*-Exemption;
- Entities Certified for Fee Waiver for Themselves and Cooperating Pro Bono Attorneys;
- Entities Certified to Engage Law Students, Recent Graduates, Limited-License Attorneys, and Out-of-State Attorneys in Pro Bono Practice. (This list will be the same as the *Madden* list, as the same certification applies).

The means of dissemination should include, among others:

- Posting on the judiciary’s website (on the “Attorney Pro Bono Information and Materials” page);
- Posting on the NJSBA website (on a new or improved pro bono page, with links on the pages of interested divisions, sections, and committees);
- Posting on the LSNJ pro bono portal;
- Posting on any other statewide pro bono portal;
- Posting on the specialty bar and county bar websites; and
- Publication as a Notice to the Bar.

In addition, LSNJ, the associated regional programs, other legal services and public interest organizations, and law school clinical and pro bono programs should publish the fact of their certification on their websites and link to the rules and lists on other sites.

### **III. CLE Credit for Pro Bono**

#### **1. Introduction**

Ten states now permit a portion of their CLE requirements to be fulfilled by pro bono work. Given that CLE is a relatively new phenomenon (the first state enacted such a rule in 2000), it is foreseeable that more and more states will take this step. Unfortunately, no studies exist yet to demonstrate that such a rule leads to more pro bono work, but it seems self-evident that it would do so.

Like New Jersey, Delaware and New York require 24 CLE credits over the course of two years. Delaware permits up to 6 of those credits to be fulfilled by pro bono work at an approved agency, at an “exchange rate” of 6 hours of pro bono per CLE credit, while other states have different requirements and “exchange rates” not dissimilar to them. Until recently, New York had a similar rule; recently it was expanded to permit attorneys to earn up to 10 hours of CLE for pro bono work at the same “exchange rate.” Moreover, older attorneys under its Attorney Emeritus program can earn up to 15 hours of CLE using the same formula, and newly minted attorneys who have completed the Bridge-the-Gap CLE can, over the course of two years, earn 16 hours of CLE in exchange for 50 hours of pro bono.

The proposed draft rule is based upon, but not identical to, the Delaware rule.

#### **RECOMMENDATION:**

The proposed rule attached as Appendix C should be adopted.

## IV. Statewide Portal

### 1. Introduction

Internet portals (websites) that provide attorneys with web-accessible information about pro bono programs, resources, and “live” case opportunities have proliferated in many states in the past several years.<sup>34</sup> These websites seek to harness the power of the Internet and have proven to be important to the identification of pro bono opportunities for lawyers and, in turn, the recruitment of pro bono attorneys by organizations whose clients need legal services. In addition, pro bono portals can serve as an important resource for attorneys who do pro bono work, e.g., as a “bulletin board” for trainings and other events of interest to pro bono attorneys and as a repository of resource materials (e.g., model documents, best practices information, etc.) useful to pro bono attorneys.

A comprehensive statewide Internet portal is necessary to support and expand meaningful legal assistance to the thousands of New Jersey residents in need of legal services but unable to afford a private attorney. Members of the private bar in New Jersey – who often do not have the time to do the extensive research that is needed to find available pro bono opportunities in their areas of expertise or interest predictably report having difficulty identifying opportunities, as well as resources to support existing pro bono efforts.<sup>35</sup> This is particularly true for the majority of New Jersey attorneys who practice in solo offices or smaller firms that do not have a pro bono “coordinator” who can dedicate time to gathering and distributing information about pro bono opportunities and available resources.

The Task Force therefore recommends that there be an inclusive statewide pro bono portal based on certain functionalities and operating principles more specifically described below. The Task Force believes that the ideal portal is one that is consistent with this recommendation.

At the beginning of its work, the Task Force learned of LSNJ’s longstanding plan to launch its Internet portal in the spring of 2012 and engaged LSNJ in extensive discussions about the design, functionality and governance of its proposed site. It became evident from the discussions (and as reflected in LSNJ’s Statement on ProBonoNJ)<sup>36</sup> that LSNJ’s site may or may not function in a

---

<sup>34</sup> See Commentary A, *infra* for a description of the portals being used in other states.

<sup>35</sup> See Commentary B, *infra* for a description of prior efforts to achieve a statewide portal in New Jersey.

<sup>36</sup> LSNJ’s Statement on ProBonoNJ provides:

In its role as the coordinating entity for the statewide Legal Services system, Legal Services of New Jersey (LSNJ) has committed substantial resources to revise and upgrade the statewide *pro bono* web portal, ProBonoNJ, that it instituted some years ago. Simply put, we seek to build the most effective site possible to recruit and support *pro bono* attorneys in New Jersey, both for Legal Services and for other organizations that provide legal assistance to people of limited means, especially those in most severe poverty, as well as to organizations comprised primarily of lower income people or that primarily serve or benefit such people. The site will also welcome as participants those public interest organizations that address issues that have a disproportionate and detrimental effect on low-income people, persons of color, or members of other minority or disadvantaged groups.

manner consistent with this recommendation. In particular, there appear to be at least theoretical differences between this recommendation and the LSNJ Statement with respect to the important issues of governance (how policy decisions about the portal will be made) and inclusivity (what entities will be invited to participate). The Task Force could not determine, however, whether these differences in description would matter in practice. Therefore, and in recognition of the importance of having a single statewide site if at all possible and LSNJ's already extensive work on its site, the Task Force decided at this time to recommend that LSNJ's site become the statewide pro bono portal on a trial basis. After the trial period, LSNJ's site will be assessed to determine whether it adequately serves the goals of this recommendation and whether an alternative site should be established.

## **RECOMMENDATIONS:**

1. New Jersey should have a statewide pro bono portal that provides attorneys with information about pro bono programs, resources, and opportunities – with the goal of supporting and expanding meaningful pro bono legal service.

### **2. Features**

A. **Functional and Technical Features:** While the Task Force recognizes that technology is evolving and other committees outside New Jersey may be conducting more comprehensive assessments of the available technology, certain essential functionalities are important aspects of a statewide portal.

- i. The portal should allow prospective and existing pro bono attorneys to: (a) find pro bono opportunities specific to their individual areas of expertise/interest; (b) link to all participating agencies in New Jersey whose clients need pro bono legal services; (c) “register” on the site, including by providing information about their area of expertise and/or interest and send their contact information to agencies who post pro bono opportunities on the site in areas of stated interest; (d) access a calendar of trainings and other events of interest, allow registration for such events, and access to videos of trainings; (e) access specialized/practice area discussion groups and listservs; (f) access information about relevant court rules

---

To the end of having the most effective possible portal, LSNJ will consider suggestions from any source that seeks to advance the web portal mission. Specifically, LSNJ will:

- (1) Concurrent with the launching of the revised portal, institute a *pro bono* portal e-forum to invite and collect suggestions for site enhancement on an ongoing, real-time basis, and these will be considered promptly. This portal forum will be in addition to a more general *pro bono* e-forum for all site participants, and also to several substantive-area specific forums.
- (2) Convene, at least twice in the first year of the re-launched portal, an advisory committee consisting of one representative of any organization which participates in the portal, as well as attorneys enrolled on ProBonoNJ who have taken a *pro bono* case during the past year. The committee's purpose will be to provide input and recommendations for improvement of the site. After the first year, LSNJ will consider, with the committee's input, whether this committee should continue to function and, if so, how its work might be enhanced.

(e.g., *Madden*-exemptions); (g) access resources (e.g., model documents, treatises, etc.) in substantive areas of the law; (h) download an “app” from the website to their mobile devices; (i) “share” items of interest from the website via various and multiple social networks.

- ii. The portal should allow participating legal services and public interest organizations (including law school clinical and pro bono programs) to communicate by, for example: (a) posting trainings or other events of interest (e.g., attorney-recognition events); (b) posting pro bono opportunities; and (c) managing their information through independent, remote access to the site; and be assured that there are security measures in place so that each agency’s information on the site is protected from access by unauthorized users.

B. **Administrative/Technical Support:** There should be administrative and technical support for the site and for its ongoing governance and maintenance.

3. **Essential Principles.** The statewide portal should be based on the following essential principles:

- A. **Shared Decision-Making:** In order to ensure the broadest possible participation in the statewide portal (and prevent “piecemeal” representation of some, but not all agencies on the website), the site should be a collaboration among stakeholders (defined *infra*) within the pro bono community. As such, policy decisions with respect to the site (e.g., whether particular organizations meet established qualifications (defined *infra*) to participate in the site, what core functionalities the site may need to add going forward), should be made by an oversight committee composed of representatives of essential stakeholders. The goal should be to make such decisions by consensus whenever possible. In the event that agreement is not reached, however, the committee should make decisions in accordance with a formal voting procedure – to be devised by the committee itself – that ensures fair and meaningful participation by all members.
- B. **Essential Stakeholders:** Essential stakeholders include: (a) the LSNJ community; (b) other legal services and public interest organizations (with geographic and subject-matter diversity); (c) the law firm community (with geographic and size diversity); (d) the small firm/solo community and retired attorneys (with geographic and size diversity); (e) the corporate in-house community; (f) law schools; and (g) bar associations and foundations; and also possibly (h) community-based agencies in need of pro bono services for their clients; and (i) funders supporting the portal.
- C. **Qualified Participants in the Site:** The qualifications for participation in the site should be broad, to encompass a wide array of legal services and public interest organizations, and law school clinical and pro bono programs, that work with volunteer attorneys to serve low-income clients and the organizations that serve them, to pursue matters of pressing public importance, and to assist the nonprofit sector. In line with this goal, organizations should qualify for participation in the statewide portal if they offer pro bono opportunities to provide:

(i) legal assistance to low-income persons;

(ii) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters that are designed primarily to address the needs of low-income persons;

(iii) legal assistance to individuals, groups, or organizations seeking to secure, protect, or advance civil rights, civil liberties, or other rights of great public importance; or

(iv) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters in furtherance of their purposes, where payment of standard legal fees would significantly deplete the organization's or entity's economic resources or would otherwise be inappropriate.

#### 4. **Other Features**

A. **Funding:** Any fundraising on the site should be explicitly and exclusively dedicated to support the operation of the site.

B. **Neutrality in Design:** The site should reflect neutral design features. For example, any lists of participating organizations should be in alphabetical or other neutral ordering (although affiliated organizations might nonetheless be listed together).

C. **Use of Proprietary Information:** To the extent the site contains proprietary information, such as lists of an organization's donors or cooperating pro bono attorneys, agreements should be negotiated to govern whether and how other participating organizations may access and use this information.

5. Because the Task Force is committed to a single joint effort, if at all possible, the LSNJ portal should become the statewide pro bono portal for a trial period beginning on the date of the Task Force Report and ending on December 31, 2012. The subcommittee of the Task Force that has worked on this portal recommendation should monitor the implementation of the LSNJ portal in accordance with this recommendation and report to the Access to Justice Commission or similar entity created as a result of this Task Force report, and to the NJSBA by January 31, 2013. This report should include an analysis of whether the LSNJ portal adequately serves the goals of this recommendation and whether an alternative site should be established. Should a separate site be established in order to implement this recommendation, every effort should be made to coordinate with and link to any alternative, independent sites that other organizations might elect to maintain.

## Commentary

### Comment A: What Other States Are Doing with Respect to Pro Bono Portals

While the Task Force has not had the resources to conduct an exhaustive review of what other states are doing, it collectively reviewed the pro bono websites of three other states – Illinois and Connecticut, which were developed independently, and New York, which was developed using the “probono.net” template. Members of the subcommittee also spoke at length with the administrators of the Connecticut site. Individual members independently reviewed the sites of 19 other states that also use the probono.net platform and spoke at length to site administrators in Washington, D.C. and Illinois. Our observations about what other states are doing are based on the website review and these conversations. As would be expected, the 22 sites vary considerably in important respects – functionality, extent of collaboration, funding sources and maintenance.

**1. Portal Infrastructure.** Pro Bono Net ([www.probono.net](http://www.probono.net)), a nonprofit organization that works in partnership with public interest organizations to facilitate the distribution of information about pro bono opportunities and resources, is a national leader in providing the technical infrastructure and platform for pro bono portals. Approximately 20 states currently use Pro Bono Net to provide the platform (software) for their pro bono sites.<sup>37</sup> Certain individual states have taken a different approach by developing their own infrastructure, using their own platforms. For example, in Illinois in 2001, a local law school, the IOLTA fund, and a bar foundation developed the site that is now “Illinois Legal Aid On Line” ([www.illinoisprobono.org](http://www.illinoisprobono.org)). More recently, in Connecticut, several different private legal services agencies and government-funded legal services programs for the poor collaborated to produce a website of their own design (<http://probono.ctlawhelp.org>), using a free and open source platform (Drupal for Legal Aid Websites).

**2. Functionality.** The functionality of the 22 sites reviewed by members of the subcommittee ranges from the fairly simple to the complex. The more sophisticated sites allow agencies to access and manage their own information on the website, post training dates and useful resource materials, send e-mails and post news. For the attorney seeking information about pro bono opportunities, the more sophisticated sites identify current pro bono opportunities and allow searches by area of the law, geography, and type of assistance. Such sites also allow the user to contact a pro bono program directly through the portal. The more simple sites appear, like the original LSNJ pro bono site and the NJSBA pro bono web page discussed below, to be relatively static. Interested attorneys can review explanations about the type of work each organization does and the kinds of pro bono opportunities that are available in general; attorneys can also complete an online form, which is then transmitted to the pro bono program chosen by the attorney. Simpler sites do not list current pro bono opportunities, however; nor do they have the many of the other functionalities listed above.

---

<sup>37</sup> Based on a review of the [www.probono.net](http://www.probono.net) website as of Jan. 25, 2012. A list of the states that appear to use Pro Bono Net may be accessed through [www.probono.net](http://www.probono.net).

3. **Collaboration.** 15 of the 22 sites seem to be a collaboration of several entities (bar associations, bar foundations, government-funded programs, privately funded public interest organizations, law schools, law firms – all to varying degrees). The collaborations range from two to three organizations (Alaska, Louisiana) to collaborations involving 20 to 30 different organizations (Washington, D.C., New York). Some of the collaborations appear to be limited to Legal Services Corporation-funded agencies.

4. **Funding.** Many of the sites reviewed online, particularly those powered by Pro Bono Net, receive funding from the Legal Services Corporation, the federally funded organization that supports legal service programs throughout the country. In addition, local bar associations and foundations, IOLTA funds, law schools, United Way, law firms, commercial entities, e.g., LexisNexis, and private foundations provide funding for sites. If the NJSBA were ultimately to decide to recommend the creation of an independent pro bono portal, fundraising to create and support the site on an ongoing basis would be necessary.

5. **Maintenance.** The Task Force portal subcommittee spoke to three sites about maintenance. The Connecticut site uses a dedicated staff person (half-time equivalent), who is employed by one of the local Legal Services offices, to maintain the site. That staff person works with all the agencies that collaborate on the site; she is viewed as a consensus-builder and the overall administrator for the site. She reports every three months to an oversight committee (comprised of a funder (IOLTA) and four legal services programs (three that are private and one that is funded by Legal Services Corporation)). The oversight committee decides on policy for the site. This system facilitates a highly collaborative approach among the agencies participating in the site.

In Illinois, the pro bono website is part of a larger website (a separate 501(c)(3)) that serves the public through information and self-help assistance. The organization has staff dedicated to managing the pro bono portion of the site. As a collaboration, the site's main goal is to connect all legal service organizations in Illinois.

The New York site, which is powered by Pro Bono Net, appears to be maintained by several different agencies, each responsible for a content area on the site.

In Washington, D.C., the pro bono site is a collaboration among the D.C. Bar's pro bono program and 29 legal service providers in the city. The Bar's pro bono program hosts the site, and collaborating agencies help to maintain it, e.g., to provide content for the resource section of the site.

### **Comment B: Prior Efforts to Achieve a Statewide Portal in New Jersey**

In or about 2009, LSNJ launched a web site ([www.probononj.org](http://www.probononj.org)), after having invited organizations that have pro bono programs or use pro bono attorneys to list agency information and trainings on the site. As of January 25, 2012, 12 programs, in addition to LSNJ and its affiliated organizations, had elected to participate in the original LSNJ pro bono site. The agencies provide information about their program to LSNJ, which then posts the information on the website. The site allows users to find pro bono opportunities by searching by type of legal work,

substantive area of the law and county or particular agency. Participating agencies can provide LSNJ with details of upcoming trainings, and LSNJ will post that information on the website.

In or about 2009, the New Jersey State Bar Association created a pro bono page on its website. (The site is accessed under the Resources tab of the Association's website.) As of January 25, 2012, the NJSBA's website lists 13 pro bono programs, in addition to the several run by the Association, and includes background information for each agency. All information is provided by the agencies and uploaded by the Association.

Neither the original LSNJ pro bono site nor the NJSBA website provides the functionality that the Task Force believes is required to make a pro bono website useful to all constituents. Perhaps most importantly, neither site appears to have a comprehensive list of pro bono programs in the state. Some organizations that have pro bono programs are on neither website; others are on one and not the other. Only three organizations/programs are on both sites. As a result, attorneys seeking information about pro bono opportunities currently have access only to a "piecemeal" picture of what is available in the state. Moreover, the sites are relatively static, and neither site allows a participating organization to manage its own information. Any changes must first be sent to LSNJ or NJSBA, which will then post the information.

## V. Judicial Promotion of Pro Bono

### 1. Introduction

The judiciary possesses a unique ability to promote access to justice. Judicial support of pro bono services can increase attorney awareness of their responsibility to do pro bono work and promote pro bono as a necessary component to the delivery of access to justice. Throughout the country, judges are exerting their unique influence to increase participation in pro bono work. They are encouraging more attorneys to provide pro bono legal services, making administrative accommodations for pro bono and developing methods for increasing access to the courts.

While individual courts and judges around New Jersey do encourage and support pro bono efforts, there are a variety of ways to increase judicial promotion of pro bono service.

### ABA Model Code of Judicial Conduct Rule 3.7

The ABA Model Code of Judicial Conduct Rule 3.7(B)<sup>38</sup> governs judicial promotion of pro bono. It

---

<sup>38</sup> Although Rule 3.7 is set forth below in its entirety for reference purposes, this recommendation is concerned only with Section (B) of Rule 3.7 and Note [5] thereto. Model Code of Judicial Conduct R. 3.7 (2007): *Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities*:

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities: (1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds; (2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority; (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice; (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; (6) Serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity: (a) will be engaged in proceedings that would ordinarily come before the judge; or (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

#### COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. [2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the

provides that a “judge may encourage lawyers to provide pro bono publico legal services.” Comment [5] to the Rule states that, in addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in providing pro bono legal services. Such encouragement, according to Comment 5, may take many forms, including providing lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

## **2. State Adoption of ABA Model Code of Judicial Conduct Rule 3.7**

Currently, four states (CO, NH, UT and WY) have adopted or proposed the identical language of Rule 3.7, while twelve (AZ, AR, HI, IN, KS, MD, MN, MT, NE, NV, OH and OK) have adopted or proposed similar language. Most of the twelve states that have adopted similar language have not altered the Model Code language significantly; rather, they add language that provides additional examples of pro bono activities in which judges can engage. For example, some states have added a section C to the rule or an addition to the comments which states that a judge can provide leadership in addressing issues involving access to justice, develop public education programs, engage in outreach activities to promote justice, and participate in advisory committees to improve the law. In addition, some states have explicitly stated in their rule’s comments that a judge can be an announced speaker at a fundraising event benefiting indigent representation, scholarships for law students or law schools. Three states (DE, NY and WA) have adopted rules different from Rule 3.7. New Jersey has not adopted Model Rule 3.7 in any form.

## **3. Other Activities to Encourage Pro Bono Service**

In addition to adopting Model Rule 3.7, the members of the judiciary in other states engage in the following activities to encourage pro bono efforts in their states:

### **A. Recruitment**

Judges are actively involved in the recruitment of pro bono attorneys. In many jurisdictions, judges sign letters urging members of the bar to join a pro bono program and thank you letters to attorneys who have been serving on a program’s panel of volunteers. These letters have proven

---

organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely upon a judge’s independence, integrity, and impartiality. [3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office. [4] Identification of a judge’s position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate the Rule. The letterhead may list the judge’s title or judicial office if comparable designations are used for other persons. [5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

to be a particularly effective strategy for increasing the number of volunteers in pro bono programs.

In addition to letters, judges have often contributed editorials and opinion pieces for newspapers, magazines and bar publications on the increasing need for volunteer attorneys. The Chief Justice of the Supreme Court of California contributed an article entitled “Pro bono work is lawyers’ duty” to the *California Bar Journal*, highlighting the need for pro bono legal services in California. Other judges have spoken about the issue in speeches to bar associations and to new bar admittees.

## **B. Recognition**

Many judges reward volunteer attorneys through praise, awards and publicity. Many courts host annual pro bono awards ceremonies in which judges recognize the contributions of volunteer attorneys within their jurisdictions. For example, Justice Richard C. Bosson of the New Mexico Supreme Court holds a luncheon at which he presents Certificates of Appreciation to attorneys who have provided pro bono services.

The Colorado Supreme Court has also established a program to recognize attorneys who provide pro bono legal services. Through its website and *The Colorado Lawyer* magazine, the Court recognizes attorneys who inform the court that they reached or exceeded the goal of providing at least 50 hours of pro bono legal services per year, which is consistent with the ABA recommendation of 50 hours of pro bono per year for all attorneys.

Washington D.C. has become a leader and national model in mobilizing members of the bar to engage in pro bono. For nearly a decade, the Chief Judges of the D.C. Circuit and District Courts annually host the “40 at 50” Judicial Recognition Breakfast honoring firms at which a substantial percentage of their attorneys (at least 40 percent) have done at least 50 hours of pro bono in the prior year.<sup>39</sup> Firms receive special recognition at this event if 40 percent of their partners reach this target. This program has seen a significant increase in pro bono involvement by the private bar: when the program began, seven firms were recognized; this year, 29 firms were honored.<sup>40</sup>

Another example of effective judicial recognition efforts is the “Capital Pro Bono Honor Roll,” a project launched recently by the D.C. courts which recognizes attorneys who provide 50 hours or more of pro bono per year, and a “High Honor Roll” recognizing those who do 100 hours or more of pro bono time per year.<sup>41</sup> The Honor Roll program relies on self-reporting to identify honorees. Data is uploaded through Pro Bono Net and, for the most part, pro bono coordinators

---

<sup>39</sup> See “Law Firm Pro Bono Programs: Learning from Success.” Philadelphia attorneys are recognized by the First Judicial District (Philadelphia County) in a similar way, *i.e.*, with an annual Honor Roll. See “The First Judicial District 2011 Pro Bono Roll of Honor” (full citation in bibliography).

<sup>40</sup> See “Description of 40 at 50 Judicial Recognition Breakfast Hosted by Standing Committee on Pro Bono Legal Services of the Judicial Conference of the D.C. Circuit,” drafted by Susie Hoffman, pro bono partner at Crowell Mooring (full citation in bibliography).

<sup>41</sup> See “Chief Judges of DC Courts Launch ‘Capital Pro Bono Honor Roll’” (full citation in bibliography).

do bulk entries of all of their qualifying attorneys. In its inaugural year, more than 3,000 attorneys qualified for the honor roll, including more than 2,000 who qualified for the High Honor Roll. The honorees represent a diverse constituency, including large firm attorneys and solos. The event takes place during the work day (over breakfast), and prominent judges offer welcome remarks, remarks regarding the importance of pro bono, and remarks recognizing the honored firms. For the most part, attendees at the event tend to be the managing partners and/or chairs of the firms' pro bono committees. All judges on the court are also invited to attend. The media are likewise invited to attend and take photographs of honorees. In addition to this external marketing opportunity, some firms have turned this honor into an internal marketing advantage by posting their honorees on their websites.<sup>42</sup>

Finally, the Standing Committee on Pro Bono Legal Services of the Judicial Conference of the D.C. Circuit surveys the managing partners of more than 125 law firms in Washington D.C. regarding their pro bono activities and publishes aggregate data regarding pro bono involvement by these firms. The survey seeks information about the steps firms have taken to inform their lawyers of the Circuit's Resolution (discussed below) urging all lawyers to do 50 hours of pro bono each year. The survey also asks whether the firm has a written pro bono policy, whether there are any stated goals set for pro bono work, and how the pro bono program is managed. Beginning in 2002, the Standing Committee's survey also asked firms to report the percentage of their lawyers who met the 50 hour/year pro bono goal. The responses to this survey have shown a clear trend toward greater awareness at the firm management level of the value of pro bono work. Pro bono programs of the responding firms have demonstrated a trend toward being more structured, and more firms have employed pro bono coordinators/ counsel/partners and offer associates "credit" for pro bono work.

### **C. Resolutions**

Judges can also help by passing resolutions that reinforce the need for pro bono legal services. The Supreme Court of Iowa issued a resolution urging all Iowa attorneys to devote at least 50 hours of pro bono legal services per year. The same type of resolution was issued by the Standing Committee on Pro Bono Legal Services of the Judicial Conference of the D.C. Circuit.

### **D. Court-Based Pro Bono Programs**

Judges may also promote pro bono by creating programs in their courts. The U.S. District Court for the Northern District of California posts cases in need of pro bono attorneys on its website. Other courts have devoted a portion of the fees they receive from attorney admissions to help volunteer attorneys cover the costs they necessarily incur. The United States District Court for the Eastern District of Wisconsin requires newly admitted attorneys to pay a fee of \$25.00, which is then deposited in the District Court Pro Bono Fund. This fund is used for prepayment or reimbursement of out-of-pocket expenses.

---

<sup>42</sup> Details regarding this program were obtained from "Description of 40 at 50 Judicial Recognition Breakfast Hosted by Standing Committee on Pro Bono Legal Services of the Judicial Conference of the D.C. Circuit," *supra*.

## E. Administrative Accommodations

Some courts have afforded a docket preference to pro bono attorneys. In Texas, for example, the courts accommodate pro bono attorneys by allowing them to alert the courts when their matters are set for a hearing. The court will then attempt to move the new matter towards the beginning of the docket. Volunteer Lawyers for Justice runs a divorce clinic where all of VLJ's clients ready for a divorce are heard at the beginning of the calendar on one day per month before the same judge.

## F. Training and Education

Judges can also do pro bono work by giving their time to provide Continuing Legal Education (CLE) training in their area of expertise. In addition, states have offered CLE programs to clarify what judges can do to participate in and/or promote pro bono. A CLE program entitled "*Judicial Ethics: Pro Bono Publico Options for Judges*" was offered at an Alaska Judicial Conference.

### RECOMMENDATIONS:

#### 1. **The Court should consider adoption of Rule 3.7(B) of the ABA Model Code of Judicial Conduct, modified as follows<sup>43</sup>:**

Rule 3.7. A judge may encourage lawyers to provide pro bono publico legal services if in doing so the judge does not employ coercion or abuse the prestige of judicial office. Pursuant to this section, a judge may:

- (1) Provide leadership in identifying and addressing issues involving equal access to the justice system, improvement of the law, the legal system, the provision of legal services, or the administration of justice.
- (2) Develop public education programs.
- (3) Engage in activities to promote the fair administration of justice.
- (4) Convene, participate, or assist in advisory committees and community collaborations devoted to equal access to the justice system, the improvement of the law, the legal system, the provision of services, or the administration of justice.
- (5) Be an announced speaker at an event benefiting indigent representation, scholarships for law students, or accredited institutions of legal education, even if the event includes fundraising for such purposes.
- (6) Write, speak, lecture, teach and participate in extrajudicial activities that promote the administration of justice.

---

<sup>43</sup> Language is an adaptation of language appearing in Model Code of Judicial Conduct R. 3.7(B) and Note 5 to R. 3.7 (2007), and Neb. Rev. Code of Judicial Conduct § 5-303.7(B) and Notes 6 and 7 to § 5-303.7.

2. **In addition, with regard to pro bono, judges should be encouraged to:**

A. **Accommodate**, as appropriate to the circumstances and with due regard to the needs of the court, the litigants and counsel, by considering one or more of the following:

- Giving priority/early listings to pro bono counsel when calling or scheduling cases, to reduce the amount of waiting time.
- Giving pro bono counsel the chance to schedule their matters in "groups" to reduce the number of court appearances.
- Scheduling cases in different time slots throughout the day so that all cases are heard closer to the time for which they are scheduled (i.e., call some cases for 8:30 a.m., some for 12:00 p.m., and some for 3:00 p.m.).
- Scheduling attorneys' pro bono cases together with their "paid" cases to reduce the number of court appearances.

B. **Recognize:**

- Acknowledge/thank pro bono attorneys after a hearing (to encourage other attorneys in the courtroom to participate) or after the matter is concluded (e.g., by letter).
- Contact senior/managing partners in the law firms of those attorneys who have completed a matter, complimenting the attorney, acknowledging the firm, and thanking it for its commitment to equal justice.
- Nominate pro bono attorneys for awards.
- Have a pro bono attorney "honor roll" on the judiciary's website.
- Host a yearly recognition event for pro bono attorneys.
- Acknowledge pro bono attorneys in published or posted opinions.

C. **Educate:**

- Participate in training pro bono attorneys and law students about procedures in the courts where pro bono matters are being handled.
- Develop a "Pro Bono Toolkit" focusing on judicial encouragement of pro bono legal services including helpful tips for judges and judicial employees wishing to encourage pro bono work (advice on how to thank lawyers for their pro bono work, etc.).

D. **Recruit:**

- Consider requesting pro bono volunteer information or promoting voluntary pro bono service through the annual attorney registration process.

- Make announcements in the courtroom about the importance of pro bono service and/or ask for volunteers to sign up.
- Draft letters or sign correspondence from public interest or legal services organizations or law school clinical or pro bono programs encouraging pro bono participation with such organizations and programs.
- Visit the law schools and encourage law students to undertake pro bono work while in school, and to continue when they enter practice.
- Communicate with new admittees regarding the need for pro bono service.
- Contact senior/managing partners at law firms to encourage pro bono work by the firm and firm attorneys.
- Encourage law clerks to take pro bono cases, provided such does not conflict with their professional duties and responsibilities.
- Write articles and editorials on the importance of pro bono work.
- Issue resolutions with suggested pro bono hours.
- Give speeches regarding the importance of pro bono service (e.g., at the NJSBA Pro Bono Conference.)

## **VI. The NJSBA and Pro Bono Coordination and Communication**

### **1. Introduction**

The Task Force recognizes that some coordination and communication exists within New Jersey, among and between stakeholders, which includes the judiciary, legal services and pro bono organizations, the law schools and the private bar (including law firms, solo practitioners and in-house counsel) and the client community. However, there are few regular channels of communication and points of contact are not always clear.

The NJSBA has a standing Pro Bono Committee, currently comprised of 28 members, appointed by the president. The NJSBA also convened this Pro Bono Task Force, comprised of 19 members, also appointed by the president. While these groups have broad participation, all the stakeholders identified above do not have a presence in these groups.

No single member of the NJSBA staff is charged with responsibility for the issue of pro bono. The NJSBA's communications director staffs the Pro Bono Task Force and the NJSBA's legislative liaison staffs the Pro Bono Committee and manages the Military Law Assistance Project. Other NJSBA staff assists with the Mass Disaster Response assistance program.

The NJSBA maintains a page on the website devoted to pro bono, with the following pages:

- Opportunities: Listing of organizations that have pro bono opportunities;
- FAQ: Responses to questions regarding exemptions and professional liability;
- Military Law: Information about the bar's pro bono program for vets;
- Mass Disaster Response: Provides information about the bar's pro bono efforts in the event of a mass disaster;
- Pro Bono Award: Information about the award, which includes a release on the yearly award winners;
- Pro Bono Committee (which is under construction);
- The site also has a bar/court produced video on closing the justice gap.

At the county level, Task Force survey results indicate the following relationships between the county bars and legal services groups: Hunterdon, Somerset and Union have no formal relationship with any legal services provider or public interest organization; Mercer has a formal partnership with Central Jersey Legal Services-Mercer to handle pro bono referrals for legal services, funded by legal services, and a monthly clinic at community locations where people can get free consultations with a volunteer attorney; and the ACLU in Somerset has a similar clinic, with which the Somerset County Bar Association cooperates.

## 2. Other States

Several jurisdictions have well-coordinated and communicated pro bono systems.<sup>44</sup> Several use probono.net as the platform. Others have their own platform. Some are groups of the public interest organizations that utilize pro bono attorneys. Others include all the stakeholders described above. It appears that all have regular meetings of the organizations and subgroups and a pro bono summit. All offer training.

As discussed in the ATJ recommendation, according to Cheryl Zalenski, the Director of the ABA's Center for Pro Bono, "31 states have at least one state support position. Most staff the state's Access to Justice Commission, encompassing pro bono as well as other areas." However, five states have a support position specifically dedicated to pro bono (in addition to a statewide ATJ position). The range of activities covered by a pro bono state support staff varies widely from state to state, and the level of funding and staffing of the pro bono state support staff will also be a consideration in determining which goals to pursue.

The Task Force reviewed social media and mobile technology efforts in New York, Connecticut, Washington, DC and California. The San Francisco group is well organized and is working on a Best Practices manual, which may include information on use of social media for pro bono coordination. New Jersey pro bono providers use social media to communicate. See, e.g. Facebook pages for Partners for Women and Justice, LSNJ and LSNWJ. Some also have Twitter and Linked In accounts.

### **RECOMMENDATIONS:**

1. The NJSBA should encourage each county bar association and specialty bar association to promote pro bono activities by their members.

Some methods through which the NJSBA may accomplish this goal are:

- Providing links to pro bono resources, such as the NJSBA pro bono page and a statewide portal;
- Providing templates for bar associations to use to create pro bono pages on their sites;
- Including pro bono as a topic of discussion at the County Executive meetings;
- Promoting pro bono awards at the county level.

2. The NJSBA should explore how social media and mobile technology may be used to communicate information about pro bono.

---

<sup>44</sup> Connecticut: <http://probono.ctlawhelp.org/news/>; DC: <http://www.probono.net/dc/consortium/about/>; NYC: <http://www.probono.net/ny/>; Southern California: <http://www.californiaprobono.org/socal/>; San Francisco area: <http://www.probono.net/sf/>.

3. The NJSBA should improve and expand its marketing and communication about pro bono to attorneys, both NJSBA members and non-members.

Some ideas the NJSBA may consider:

- Including pro bono as a topic of discussion at General Council meetings;
- Including pro bono as a standing agenda item at Board of Trustee meetings, with reports from responsible staff;
- Expanding and improving the pro bono FAQs on the website;
- Promoting pro bono in its communications with NJSBA members, new admittees and attorneys who are not members of the NJSBA;
- Linking with any statewide pro bono portal.

4. The NJSBA should dedicate a position, at least in substantial part, to support pro bono practice.

The responsibilities of the staff person in that position could include:

- Providing technical assistance and support to pro bono programs in the state;
- Providing NJSBA Pro Bono page maintenance and updating;
- Providing staff support for the NJSBA's pro bono projects focused on specific substantive issues (military families, disaster response);
- Providing staff support for the NJSBA's Pro Bono Committee, including its work on pro bono policies;
- Staffing pro bono committees and/or access to justice bodies in which the NJSBA participates;
- Promoting and facilitating pro bono conferences and events;
- Working with stakeholders to facilitate training for the judiciary, pro bono managers, and volunteer attorneys;
- Developing and implementing strategies to recruit volunteers;
- Working with stakeholders to develop model pro bono policies for law firms, in-house corporate legal departments, government agencies, law schools and others;
- Maintaining linkage with statewide pro bono portal.

## VII. Bankruptcy Conflict Issues

Several nonprofit legal organizations in New Jersey recruit pro bono attorneys to represent low-income individuals seeking relief from their debts by filing for Chapter 7 bankruptcy. When the attorney in question is a bankruptcy specialist who frequently represents creditors, he or she often voices concerns about how to deal with perceived conflicts that may arise if the prospective pro bono client has creditors who are represented by the attorney of his or her firm.

The bar associations of New York City and Boston have issued ethics opinions to address this issue.<sup>45</sup> Both opinions conclude that an attorney whose firm represents creditors may participate in a pro bono Chapter 7 bankruptcy project without fear of conflicts of interest, so long as certain conditions are met. If New Jersey's Advisory Committee on Professional Ethics were to issue a similar opinion, it would help to ease the recruitment of pro attorneys for bankruptcy projects, dispel what may be unfounded concerns about conflicts of interest, and most important, meet the growing needs of low-income people for debt-relief.

### **RECOMMENDATION:**

The entities engaged in pro bono bankruptcy projects should seek an opinion from the Advisory Committee on Professional Ethics (ACPE) regarding the potential conflicts issues.<sup>46</sup>

---

<sup>45</sup> See The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, Formal Opinion 2005-1, *available at* [http://www2.nycbar.org/Publications/reports/show\\_html\\_new.php?rid=299](http://www2.nycbar.org/Publications/reports/show_html_new.php?rid=299); Boston Bar Association Ethics Committee Opinion 2008-01, *available at* <http://bbabankruptcy.blogspot.com/2010/02/boston-bar-association-ethics-committee.html>.

<sup>46</sup> Progress has already been made in this regard. In collaboration with the legal department at Merck, Lowenstein Sandler participates in a pro bono bankruptcy project run by Volunteer Lawyers for Justice (VLJ). Accordingly, Lowenstein Sandler has agreed to represent VLJ on a pro bono basis in preparing and filing a petition to the ACPE. Lowenstein Sandler and VLJ will also reach out to the Bankruptcy Section of the NJSBA and other interested parties for their advice and support in approaching the ACPE.

## VIII. Retired Attorneys and Pro Bono Work

Legal nonprofits are interested in recruiting retired attorneys to do pro bono work. The Task Force investigated what other states have done to encourage pro bono work by retired attorneys and what New Jersey has done.

In response to advocacy by the NJSBA Pro Bono Committee, the New Jersey Lawyers' Fund for Client Protection adopted a form titled Certification of Retirement (Legal Services Volunteer) that waives the annual registration fee for retired attorneys while also allowing them to "volunteer for Legal Services of New Jersey or for an organization identified in R. 1:21-1(e) that engages in the volunteer public interest legal services described in RPC 6.1, for which practice [they] receive no remuneration."<sup>47</sup> This form is available on the webpage of the New Jersey Lawyers' Fund for Client Protection, but is not otherwise advertised.

Many other states have gone further by adopting special rules for pro bono practice by emeritus attorneys.<sup>48</sup> Tennessee's rule is typical.<sup>49</sup>

In addition, other states have developed special programs targeting emeritus attorneys for volunteer work. A 2006 survey conducted by the ABA Commission on Law and Aging found that "adopting emeritus attorney pro bono practice rules without establishing an emeritus attorney pro bono program is not effective in meeting the unmet civil legal needs of persons unable to pay for those services or providing a meaningful volunteer experience for emeritus attorneys. Without a program in place, very few attorneys take advantage of the limited practice rules and volunteer to provide pro bono legal services."<sup>50</sup> The New York Court of Appeals, the California State Bar, and the Supreme Court of Tennessee sponsor such programs.

The Task Force considered whether to recommend changes to the court rules to reinforce the pro bono option already outlined in the Certification of Retirement (Legal Services Option). The Task Force also considered whether to recommend that the courts or the NJSBA institute a full-fledged emeritus attorney program to foster and support pro bono practice by retired attorneys. In the end, however, the Task Force concluded that these efforts were more resource-intensive than would be justified by potential new additions to the ranks of pro bono volunteers. The data show, for example, that while New York has launched an emeritus attorney program and prominently

---

<sup>47</sup> New Jersey Lawyers' Fund for Client Protection, Certification of Retirement (Legal Services Volunteer), <http://www.judiciary.state.nj.us/cpf/CORLegalVolunteers.pdf>.

<sup>48</sup> See ABA, State Emeritus Pro Bono Practice Rules (updated April 4, 2011), <http://www.americanbar.org/content/dam/aba/migrated/legalservices/probono/emeritus.authcheckdam.pdf>.

<sup>49</sup> See *Tenn. R. Ct. 50A* (permitting emeritus attorneys to provide pro bono legal services under the auspices of a supervising attorney and in conjunction with an approved legal assistance organization).

<sup>50</sup> ABA, "No Longer on Their Own: Using Emeritus Attorney Pro Bono Programs To Meet Unmet Civil Legal Needs," [http://www.americanbar.org/content/dam/aba/migrated/aging/docs/V2\\_pro\\_bono\\_emeritus\\_brochure\\_3\\_5.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/docs/V2_pro_bono_emeritus_brochure_3_5.authcheckdam.pdf).

advertised this program on its annual attorney registration form, only 242 out of 45,600 eligible emeritus attorneys have signed up (a participation rate of 0.5 percent).<sup>51</sup>

## **RECOMMENDATIONS:**

### **1. Revise the Certification of Retirement**

The Certification of Retirement should be revised to reflect the Task Force's proposed changes in the court rules governing pro bono practice. A draft reflecting the necessary revisions is attached as Appendix D.

### **2. Educate the Bar about the Option to Continue Pro Bono Practice During Retirement**

In addition to posting the Certification of Retirement on the Lawyers' Fund for Client Protection webpage, the judiciary should take other steps to educate attorneys approaching or at retirement of their option to continue to engage in pro bono practice even without paying the annual registration fee. For example, the Certification of Retirement with the pro bono option might be included when registration forms are mailed to attorneys older than 55. To the extent that registration occurs online, a link to this Certification of Retirement should appear when an attorney identifies him- or herself as retired.

---

<sup>51</sup> Joel Stashenko, *Courts Approve Increase in CLE Bonus for Lawyers Who Offer Pro Bono Services*, New York Law Journal, March 9, 2012, available at <http://www.newyorklawjournal.com/PubArticleFriendlyNY.jsp?id=1202544907646&slreturn=1>.

## BIBLIOGRAPHY

- American Bar Association, Commission on Law and Aging, *No Longer on Their Own. Using Emeritus Attorney Pro Bono Programs to Meet Unmet Civil Legal Needs*, available at [http://www.americanbar.org/content/dam/aba/migrated/aging/docs/V2\\_pro\\_bono\\_emeritus\\_brochure\\_3\\_5.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/docs/V2_pro_bono_emeritus_brochure_3_5.authcheckdam.pdf)
- American Bar Association, Commission on Law and Aging, *State Emeritus Pro Bono Practice Rules* (May 31, 2001), available at <http://apps.americanbar.org/legalservices/probono/emeritus.pdf>
- American Bar Association, Conference of Chief Justices/Conference of State Court Administrators Access, Fairness and Public Trust Committee, *Resolution 8 In Support of Access to Justice Commissions* (July 28, 2010), available at [http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/Resolution\\_8\\_ATJ\\_07\\_10.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/Resolution_8_ATJ_07_10.authcheckdam.pdf)
- American Bar Association, Judges' Journal. Vol. 47, No. 3, *Mobilizing Judges, Lawyers, and Communities, State Access to Justice Commissions* (Summer 2008), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/grayechols.authcheckdam.pdf>
- American Bar Association, Management Information Exchange Journal, *Examples of State Access to Justice Commissions: Creation, Structure and Accomplishments* (Spring 2008), available at [http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/example\\_of\\_atj\\_mie\\_2008.authcheck.dam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/example_of_atj_mie_2008.authcheck.dam.pdf)
- American Bar Association, Resource Center for Access to Justice Initiatives, *About Access to Justice Commissions* (Aug. 2010), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_atj\\_about\\_access\\_to\\_justice\\_commissions.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_about_access_to_justice_commissions.authcheckdam.pdf)
- American Bar Association, Resource Center for Access to Justice Initiatives, *Definition of Access to Justice Commission* (July 2011), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_atj\\_definition\\_of\\_a\\_commission.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_definition_of_a_commission.authcheckdam.pdf)
- American Bar Association, Standing Committee on Pro Bono & Public Service and the Center for Pro Bono, *Judicial Promotion of Pro Bono Promotional Tool* (Dec. 7 2010), available at <http://apps.americanbar.org/legalservices/probono/judicial/promotools.html>
- American Bar Association, Standing Committee on Pro Bono & Public Service and the Center for Pro Bono, *State Adoption of ABA Model Code of Judicial Conduct Rule 3.7* (June 5, 2010),

available at

<http://apps.americanbar.org/legalservices/probono/judicial/statejudicialconduct.html>

American Bar Association, Standing Committee on Pro Bono & Public Service and the Center for Pro Bono, *State of Judicial Facilitation of Pro Bono* (Apr. 1, 2011), available at <http://apps.americanbar.org/legalservices/probono/judicial/home.html>

American Bar Association, Standing Committee on Pro Bono and Public Service, *Table of State Ethics Rules*, available at [http://www.americanbar.org/groups/probono\\_public\\_service/state\\_ethicsrules.html](http://www.americanbar.org/groups/probono_public_service/state_ethicsrules.html)

District of Columbia Bar, Standing Committee on Pro Bono Legal Services, Judicial Conference of the District of Columbia Circuit, *Law Firm Pro Bono Programs: Learning From Success* (June 16, 2004), available at [http://www.dcbbar.org/for\\_lawyers/pro\\_bono/resources/learning\\_from\\_success/index.cfm](http://www.dcbbar.org/for_lawyers/pro_bono/resources/learning_from_success/index.cfm)

District of Columbia Courts, *DC's Chief Judges Launch 'Capital Pro Bono Honor Roll'* (Oct. 24 2011), available at [http://www.dccourts.gov/internet/documents/DC\\_Courts\\_Announces\\_Launch\\_of\\_Pro\\_Bono\\_Honor\\_Roll.pdf](http://www.dccourts.gov/internet/documents/DC_Courts_Announces_Launch_of_Pro_Bono_Honor_Roll.pdf)

First Judicial District of Pennsylvania, *The First Judicial District 2011 Pro Bono Roll of Honor*, available at <http://www.courts.phila.gov/probonoawards/>

Glenn A. Grant, *2012 Pro Bono Exemption Categories*, New Jersey Courts (Jan. 3, 2012), available at <http://www.judiciary.state.nj.us/probono/2012memotothebaronexemptions.pdf>

Jamie Hochman-Herz & Andrew N. Monson, *Judicial Promotion of Pro Bono: A New Frontier*, Dialogue 14.2 (May 5, 2010), available at [http://apps.americanbar.org/legalservices/dialogue/sp10/sp10\\_probono1.html](http://apps.americanbar.org/legalservices/dialogue/sp10/sp10_probono1.html)

Joel Stashenko, *Courts Approve Increase in CLE Bonus for Lawyers Who Offer Pro Bono Services*, New York Law Journal (Mar. 9, 2012), available at <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202544907646&slreturn=1>

Legal Services of New Jersey, *The Civil Justice Gap: An Inaugural Report of Legal Services in New Jersey* (Apr. 2011), available at [http://www.lsnj.org/PDFs/The\\_Civil\\_Justice\\_Gap\\_2011.pdf](http://www.lsnj.org/PDFs/The_Civil_Justice_Gap_2011.pdf)

New Jersey Courts, *Approved Pro Bono Organizations under Exemption Code 88* (Feb 2012), available at <http://www.judiciary.state.nj.us/probono/pborgs.pdf>

- New Jersey Courts, *Attorney Pro Bono Information and Materials* (2012), available at <http://www.judiciary.state.nj.us/probono/index.htm>
- New Jersey Lawyers' Fund for Client Protection, *Certification of Retirement (Legal Services Volunteer)*, available at <http://www.judiciary.state.nj.us/cpf/CORLegalVolunteers.pdf>
- Pro Bono Institute, *Law Firm Pro Bono Challenge* (2010), available at [http://www.probonoinst.org/images/pdfs/law\\_firm\\_challenge\\_2010.pdf](http://www.probonoinst.org/images/pdfs/law_firm_challenge_2010.pdf)
- Pro Bono Institute, *Law Firm Pro Bono Challenge, Commentary to Statement of Principles* (2010), available at [http://www.probonoinst.org/images/pdfs/law\\_firm\\_challenge\\_commentary.pdf](http://www.probonoinst.org/images/pdfs/law_firm_challenge_commentary.pdf)
- Pro Bono Institute, *Report on the 2010 Pro Bono Institute Law Firm Pro Bono Challenge Statistics* (June 2011), available at <http://www.probonoinst.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenger.html>
- Pro Bono Institute, *What Counts? A Compilation of Queries and Answers* (2008), available at <http://www.probonoinst.org/images/pdfs/what%20counts%202008.pdf>
- Rutgers University, *Legal Reference Guide for Public Librarians in New Jersey: General Legal Internet Sites* (2012), available at <http://law-library.rutgers.edu/resources/legalref.php#6>
- Rutgers University, *Legal Reference Guide for Public Librarians in New Jersey: Legal Services/Legal Aid Organizations* (2012), available at <http://law-library.rutgers.edu/resources/legalref.php#6>
- Susan Hoffman, *Description of 40 at 50 Judicial Recognition Breakfast Hosted by Standing Committee on Pro Bono Legal Services of the Judicial Conference of the D.C. Circuit*, Report of the Standing Committee on Pro Bono Legal Services (June 2008), available at [http://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20%20Report%20of%20the%20Standing%20Committee%20on%20Pro%20Bono%20Legal%20Services/\\$FILE/ProBonoReport.pdf](http://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20%20Report%20of%20the%20Standing%20Committee%20on%20Pro%20Bono%20Legal%20Services/$FILE/ProBonoReport.pdf)
- United States Bankruptcy Court District of New Jersey, *Pro Bono Programs*, available at <http://www.njb.uscourts.gov/content/pro-bono-programs>
- United States Department of Justice, *Free Legal Service Providers – New Jersey*, available at <http://www.justice.gov/eoir/probono/freelglchtNJ.htm>

## Rules

Model Rules of Professional Conduct R. 6.1, *available at*

[http://www.americanbar.org/groups/probono\\_public\\_service/policy/aba\\_model\\_rule\\_6\\_1.html](http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html)

Model Code of Judicial Conduct R. 3.7 and Notes (2007), *available at*

[http://apps.americanbar.org/legalservices/probono/judicial/downloads/rule\\_3.7\\_aba\\_model\\_code\\_judicial\\_conduct.pdf](http://apps.americanbar.org/legalservices/probono/judicial/downloads/rule_3.7_aba_model_code_judicial_conduct.pdf)

Neb. Rev. Code of Judicial Conduct § 5-303.7 (B) and Notes (6) and (7), *available at*

<http://court.nol.org/rules/pdf/Ch5Art3.pdf>

N.J. Ct. R. 1:20-19, *available at*

<http://www.judiciary.state.nj.us/rules2004/rule1-20-19.pdf>

N.J. Ct. R. 1:21-1(e), *available at*

<http://www.judiciary.state.nj.us/rules/r1-21.htm>

N.J. Ct. R. 1:21-3(b) and (c), *available at*

<http://www.judiciary.state.nj.us/rules/r1-21.htm>

N.J. Ct. R. 1:21-10, *available at*

<http://www.judiciary.state.nj.us/rules/r1-21.htm>

N.J. Ct. R. 1:27-2(g), *available at*

<http://www.judiciary.state.nj.us/rules/r1-27.htm>

Tenn. R. Ct. 50A, *available at*

<http://www.tncourts.gov/rules/supreme-court/50a>

## Ethics Opinions

Association of the Bar of the City of New York, Committee on Professional and Judicial Ethics, *Pro Bono Consumer Bankruptcy Representation*, Formal Opinion 2005-1. (Jan 2005), *available at* [http://www2.nycbar.org/Publications/reports/show\\_html\\_new.php?rid=299](http://www2.nycbar.org/Publications/reports/show_html_new.php?rid=299)

Boston Bar Association, *Ethics Committee Opinion 2008-01: Bankruptcy Pro Bono Initiative*, *available at* <http://bbabankruptcy.blogspot.com/2010/02/boston-bar-association-ethics-committee.html>

## APPENDIX A

### NJSBA PRO BONO TASK FORCE MEMBERS

Emily Goldberg, chair, McCarter & English, LLP  
Karen Sacks, chair, Volunteer Lawyers for Justice

Hon. Glenn A. Grant, J.A.D. (ex officio)\*  
Hon. Edwin Stern, J.A.D. (ret.)\*\*  
Celeste Como, Verizon Wireless  
Meredith Wells Cook, Morgan, Lewis & Bockius LLP  
Nancy Eberhardt, Pro Bono Partnership  
Jane M. Hanson, Partners for Women and Justice  
John Hargrave, John Hargrave & Associates  
Christina Vassiliou Harvey, Lomurro Davison Eastman & Munoz PA  
Kevin Kelly, Seton Hall University School of Law  
Eve Klothen, Rutgers School of Law-Camden  
Jessica Kitson, Rutgers School of Law-Newark  
Brenda C. Liss, Riker Danzig Scherer Hyland Perretti LLP  
Jeanne LoCicero, American Civil Liberties Union – New Jersey (ex officio)  
Kristen Mateo, Legal Services of New Jersey\*\*\*  
Isabel McGinty, Isabel McGinty, PC (ex officio)  
Melville D. Miller, Jr. (De), Legal Services of New Jersey\*\*\*  
Dianne Pecoraro, Merck & Co., Inc.  
Akil Roper, Legal Services of New Jersey\*\*\*  
Diane K. Smith, Legal Services of Northwest New Jersey  
Catherine Weiss, Lowenstein Sandler PC

---

\*Judge Grant participated on behalf of the New Jersey Judiciary in the Task Force discussions and deliberative process however he abstained from voting since it will be within the province of the Supreme Court to consider, approve and implement some elements of the recommendations.

\*\*Judge Stern joined the Task Force after retiring from the bench and participated as an individual and not on behalf of the Judiciary or Gibbons PC where he is currently employed.

\*\*\*Task Force member Melville D. Miller, Jr., President and General Counsel of Legal Services of New Jersey, appointed Ms. Mateo and Mr. Roper, each a Vice President and Assistant General Counsel of LSNJ, as his designees to vote and serve on the Task Force in his absence (one vote was shared between them). Mr. Miller requested that it be noted that although his designees participated in Task Force discussions, and voted, they did not concur with the “great majority of conclusions and associated narrative.”

## APPENDIX B

### Proposed Rules and Rule Amendments

#### 1:21-XX. Definitions and Certifications Regarding Pro Bono Practice

##### (a) Definitions.

**(1) Qualifying Pro Bono Service.** Qualifying pro bono service consists of:

- (i) legal assistance to low-income persons;
- (ii) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters that are designed primarily to address the needs of low-income persons;
- (iii) legal assistance to individuals, groups, or organizations seeking to secure, protect, or advance civil rights, civil liberties, or other rights of great public importance; or
- (iv) legal assistance to nonprofit charitable, religious, civic, community, or educational organizations or governmental entities in matters in furtherance of their purposes, where payment of standard legal fees would significantly deplete the organization's or entity's economic resources or would otherwise be inappropriate.

Qualifying pro bono service does not include service on a nonprofit board of directors or other service that is unrelated to the provision of legal representation or legal advice. It does include legal mentoring and training to prepare attorneys, or students in a law school clinical or pro bono program as defined in subsection (a)(3), to provide qualifying pro bono service.

Qualifying pro bono service is undertaken outside the course of ordinary commercial practice and is performed without a fee from the client. If a fee-shifting statute applies in a qualifying pro bono case, attorneys or firms in commercial practice may seek fees and are strongly encouraged to donate them to a legal services or public interest organization or law school clinical or pro bono program as defined in subsections (a)(2) and (3). If an attorney or firm in commercial practice retains fees in a qualifying pro bono case, no attorney may claim an exemption from court-appointed pro bono service based on the hours expended on that case. See R. 1:21-YY(b). Cases accepted on a contingency-fee basis do not constitute qualifying pro bono service regardless of whether the attorney receives a fee.

**(2) Legal Services or Public Interest Organization.** Legal Services of New Jersey and the associated regional programs are legal services organizations. Other legal services or public interest organizations include any nonprofit organization incorporated in this or any state with a central purpose of providing qualifying pro bono service as defined in subsection (a)(1).

**(3) Law School Clinical or Pro Bono Program.** A law school clinical or pro bono program is one that operates under the auspices of a law school accredited in this state

and has a central purpose of providing qualifying pro bono service as defined in subsection (a)(1).

**(b) Certifications.**

**(1) Certification of Legal Services or Public Interest Organizations and Law School Clinical or Pro Bono Programs.** Legal Services of New Jersey and the associated regional programs shall be deemed certified under this Rule without the need to file certifications.

Except as provided in subsection (b)(3), any other legal services or public interest organization or law school clinical or pro bono program that provides legal assistance at least in part through the cooperation of pro bono volunteers and seeks to take advantage of the opportunities offered in Rules 1:21-YY(a) (Madden-exemption based on pro bono service in conjunction with certified organization or program); 1:21-3(b), (c) (special practice rule for law students, recent graduates, and out-of-state attorneys); 1:21-10 (special practice rule following determination of major disaster); or 1:27-2(g) (special practice rule for limited license attorneys) shall:

(i) file with the Administrative Director of the Courts an initial certification, signed by the organization's or program's lead attorney who practices law in New Jersey, demonstrating that the organization or program meets the definition in subsection (a)(2) or (3) of this rule, provided, however, that any organization or program that has already received Supreme Court approval as of the date of this Rule, as reflected in a list to be made available by the Administrative Director of the Courts, shall not be required to provide such a certification; and

(ii) file with the Administrative Director of the Courts, by April 30 in every even-numbered year, a certification signed by the organization's or program's lead attorney who practices law in New Jersey, that the organization or program continues to meet the definition in subsection (a)(2) or (3) of this rule; and

(iii) notify the Administrative Director of the Courts at such time as the organization or program no longer meets the definition in subsection (a)(2) or (3) of this rule.

**(2) Approval and Certification for Waiver of Fees.** Legal Services of New Jersey and the associated regional programs shall be deemed eligible, without the need to seek approval or file certifications, for a waiver of fees without the necessity of a court order as provided in R. 1:13-2(a).

Any other public interest or legal services organization or law school clinical or pro bono program may seek approval for such a waiver by filing a certification with the Administrative Director of the Courts, which may be included with an initial certification filed under subsection (b)(1)(i), demonstrating that the organization or program screens its clients to establish their low incomes, provided, however, that organizations and programs that have already received Supreme Court approval for a fee waiver as of the date of this Rule, and submit documentation of such prior approval to the Administrative Director of the Courts, shall not be required to provide such a certification.

If approval is granted, the entity shall:

(i) file with the Administrative Director of the Courts by April 30 in every even-numbered year a certification, which may be included with the certifications filed biennially under subsection (b)(1)(ii), demonstrating that the organization or program continues to screen its clients to establish their low incomes; and

(ii) notify the Administrative Director of the Courts at such time as the organization or program, or any part thereof, no longer screens clients to establish their low incomes.

**(3) Certification of Governmental Entities and Court-Approved Organizations and Programs.** Federal, state, or local governmental entities shall be deemed certified under this Rule without the need to file certifications insofar as they provide qualifying pro bono service at least in part through the voluntary cooperation of pro bono attorneys. In addition, a legal services or public interest organization or law school clinical or pro bono program shall be deemed certified under this Rule without the need to file certifications insofar as it acts with the approval of any court or adjudicative agency to engage attorneys in qualifying pro bono service on behalf of clients appearing in such court or adjudicative agency.

#### **1:21-YY. Madden-Exemption Based on Voluntary Qualifying Pro Bono Service**

**(a) Exemption Based on Qualifying Pro Bono Service in Conjunction with a Certified Entity.** Attorneys who certify that they have performed at least twenty-five (25) hours of voluntary (as distinct from court-appointed) qualifying pro bono service in New Jersey in the year ending on December 31 before the certification date shall be exempt from court-appointed pro bono service under Madden v. Delran, 126 N.J. 591 (1992), for the following year, provided that the certification states that the voluntary qualifying pro bono service was performed in conjunction with an entity certified under R. 1:21-XX(b)(1) or (3) and identifies the entity with which the attorney collaborated.

**(b) No Madden-Exemption If Attorney Retains Fees.** If an attorney or firm in commercial practice retains fees (as distinct from costs) in a qualifying pro bono case, whether awarded by a court or negotiated in settlement of a matter in which a fee-shifting statute applies, no attorney may claim an exemption from court-appointed pro bono service based on the hours expended on that case.

## Conforming Amendments

**Rule 1:13-2** shall be amended as follows:

1:13-2. Proceedings by Indigents

**(a) Waiver of Fees.** Except when otherwise specifically provided by these rules, whenever any person by reason of poverty seeks relief from the payment of any fees provided for by law which are payable to any court or clerk of court including the office of the surrogate or any public officer of this State, any court upon the verified application of such person, which application may be filed without fee, may in its discretion order the payment of such fees waived. In any case in which a person is represented by a legal aid society, a Legal Services project services or public interest organization or law school clinical or pro bono program approved under R. 1:21-XX(b)(2), private counsel representing indigents in cooperation with any of the preceding entities, the Office of the Public Defender, or counsel assigned in accordance with these rules, all such fees and any charges of public officers of this State for service of process shall be waived without the necessity of a court order.

**(b) Compensation of Attorneys.** Except as provided by any order of the court, no attorney assigned to represent a person by reason of poverty shall take or agree to take or seek to obtain from the client, payment of any fee, profit or reward for the conduct of such proceedings for office or other expenses; but no attorney shall be required to expend any personal funds in the prosecution of the cause.

**Rule 1:21-3** shall be amended as follows:

1:21-3. Appearance by Law Graduates and Students; Special Permission for Out-of- State Attorneys

**(a) Appearance Prior to Passing Bar Examination.** A graduate of a law school approved by the American Bar Association ~~who has successfully completed an approved skills and methods course~~ may, before passing the bar examination, appear in any court for the purpose of answering the calendar call in an action in which the attorney or firm employing the graduate is the attorney of record.

**(b) Appearance by Law Students and Graduates.** A third year law student at, or graduate of, a law school approved by the American Bar Association may appear before a trial court or agency in accordance conjunction with a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), ~~program approved by the Supreme Court on submission by such law school, a legal aid society, legal services project or an agency of municipal, county or state government. A program once approved, need not be resubmitted to the Supreme Court provided that reports are filed listing the participants and the nature of their assignments, as required by the Administrative Office of the Courts. Participation in a program~~ Permission to appear pursuant to this paragraph by a law graduate who has not passed the New Jersey bar examination shall terminate upon the graduate's failure to pass the bar examination for the third time, or after two years of employment following graduation, whichever is sooner.

**(c) Permission for Out-of-State Attorneys to Practice in This State.** A graduate of an approved law school who is a member of the bar of another state or of the District of Columbia and is employed by, associated with, or serving as a volunteer pro bono attorney with an organization described in R. 1:21-1(e) and approved by the Supreme Court a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), shall be permitted to practice, under the supervision of a member of the bar of the State, before all courts of this State in all causes ~~in which the attorney is associated or serving pro bono with~~ on behalf of such entities, legal services program, subject to the following conditions:

**(1)** Permission for an out-of-state attorney to practice under this rule shall become effective on filing with the ~~Clerk of the Supreme Court~~ Administrative Director of the Courts evidence of graduation from an approved law school, a certificate of any court of last resort certifying that the out-of-state attorney is a member in good standing of the bar of another state or of the District of Columbia, and, ~~(a) in the case of attorneys employed by or associated with, an approved R. 1:21-1(e) organization, a statement signed by the President, Legal Services of New Jersey, that the out-of-state attorney is currently employed by, or associated with, such organization; or (b) in the case of a pro bono attorney with an approved R. 1:21-1(e) organization, on the filing of a statement by the executive director of that organization certifying that the attorney is or serving on a voluntary pro bono basis with~~ a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), which statement shall be signed by the entity's lead attorney who practices law in New Jersey;

**(2)** Permission to practice under this rule shall ~~cease whenever~~ apply only in matters in which the out-of-state attorney ~~ceases to be~~ is employed by, associated with, or serving as a volunteer pro bono attorney with a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3); an approved R. 1:21-1(e) organization in this State;

**(3)** Notice of said cessation shall be filed with the Clerk of the Supreme Court by the ~~President, Legal Services of New Jersey, within five days after being notified of the cessation of the out-of-state attorney's employment or association; or by the executive director of the organization, in the case of a volunteer pro bono attorney;~~

**(4)** ~~Permission to practice in this State under this rule shall remain in effect no longer than 2 1/2 years, except that there is no time limit on volunteer pro bono service with an approved R. 1:21-1(e) organization;~~

**(53)** ~~Permission to practice in this State~~ under this rule may be revoked or suspended by the Supreme Court, in its discretion, at any time either by written notice to the out-of-state attorney or by amendment or deletion of this rule; and

**(64)** Out-of-state attorneys permitted to practice under this rule are not, and shall not represent themselves to be, members of the bar of this State.

**Rule 1:21-10** shall be amended as follows:

**1:21-10. Provision of Legal Services Following Determination of Major Disaster**

**(a) Determination of Existence of Major Disaster.** Solely for purposes of this Rule, the Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster has occurred:

**(1)** in New Jersey and whether the emergency caused by the major disaster affects all or only a part of the State, or

**(2)** in another jurisdiction, but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in New Jersey pursuant to paragraph (c) of this Rule shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

**(b) Temporary Practice in New Jersey Following Major Disaster.** Following the determination of an emergency affecting the justice system in New Jersey pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in New Jersey are in need of pro bono services and the assistance of lawyers from outside of New Jersey is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through ~~an established not-for-profit bar association, pro bono program or legal services program~~ a legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), or through such organization(s) specifically designated by the Court.

**(c) Temporary Practice in New Jersey Following Major Disaster in Another Jurisdiction.** Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in New Jersey on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

**(d) Duration of Authority for Temporary Practice.**

**(1)** The authority to practice law in New Jersey granted by paragraph (b) of this Rule shall end when the Supreme Court determines that the conditions caused by the major disaster in New Jersey have ended, except that a lawyer then representing clients in New Jersey pursuant to paragraph (b) of this Rule is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients.

**(2)** The authority to practice law in New Jersey granted by paragraph (c) of this Rule shall end 60 days after the Supreme Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

**(e) Court Appearances.** The authority granted by this Rule does not include appearances in court except:

**(1)** pursuant to R. 1:21-2 (appearances pro hac vice) and, if such admission is granted, the fees for such admission shall be waived; or

**(2)** if the Supreme Court, in any determination made under paragraph (a) of this Rule, grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b) of this Rule. If such permission is granted, any pro hac vice admission fees shall be waived.

**(f) Disciplinary Authority, Registration, Lawful Practice of Law.** Lawyers providing legal services in New Jersey pursuant to this Rule:

**(1)** are subject to the Supreme Court's disciplinary authority and the Rules of Professional Conduct;

**(2)** shall, within 30 days from the commencement of the provision of legal services in New Jersey, file a registration statement with the Clerk of the Supreme Court. The registration statement shall be in a form prescribed by the Supreme Court;

**(3)** shall not be considered to be engaged in the unlawful practice of law in New Jersey; and

**(4)** shall not be required to comply with R. 1:20-1(b) or (c), R. 1:28-2 or R. 1:28B-1 (payment of annual assessments and filing of annual registration statement with New Jersey Lawyers' Fund for Client Protection).

**(g) Notification to Clients.** Lawyers who provide legal services pursuant to this Rule shall inform clients in New Jersey of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in New Jersey except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in New Jersey.

**Rule 1:27-2** shall be amended as follows:

**1:27-2. Limited License; In-House Counsel**

To be eligible to practice law in New Jersey as an in-house counsel, a lawyer must comply with the provisions of this Rule. A limited license issued by the Supreme Court pursuant to this Rule shall authorize the lawyer to practice solely for the designated employer in New Jersey. Except as specifically limited herein, the rules, rights and privileges governing the practice of law in this State shall be applicable to a lawyer admitted under this Rule.

**(a) In-House Counsel Defined.** In-House Counsel is a lawyer who is employed in New Jersey for a corporation, a partnership, association, or other legal entity (taken together with its respective parents, subsidiaries, and affiliates) authorized to transact business in this State that is not itself engaged in the practice of law or the rendering of legal services outside such organization, whether for a fee or otherwise, and does not charge or collect a fee for the representation or advice other than to entities comprising such organization.

**(b) Requirements.** All applications under this Rule are to be submitted to the Secretary to the Board of Bar Examiners. An in-house counsel who is admitted to practice law before the highest court of any other state, territory of the United States, Puerto Rico, or the District of Columbia (hereinafter a United States jurisdiction) may receive a limited license to practice law in this State under the following conditions:

**(i)** The applicant certifies that he or she is a member in good standing of the bar of the highest court of each United States jurisdiction in which the applicant is licensed to practice law and provides a certificate of good standing from each United States jurisdiction in which the applicant is admitted;

**(ii)** The applicant certifies that: (a) no disciplinary proceedings are pending against the applicant and that no discipline has previously been imposed on the applicant in any jurisdiction; or (b) if discipline has been previously imposed, the certification shall state the date, jurisdiction, nature of the violation, and the sanction imposed. If proceedings are pending, the certification shall specify the jurisdiction, the charges, and the likely time of their disposition. A lawyer admitted under this Rule shall have the continuing obligation during the period of such admission promptly to inform the Director of the Office of Attorney Ethics pursuant to Rule 1:20-14(a) of a disposition made of disciplinary proceedings. Any questions concerning the character or fitness of a lawyer may be referred to the Supreme Court Committee on Character for review and recommendation (Rule 1:25). The submission of an application for an In-House Limited License shall be a consent to such investigation as the Committee on Character deems appropriate;

**(iii)** Except as provided in (g), tThe applicant certifies that he or she performs legal services in this State solely for the identified employer, or that he or she performs legal services in this State solely for the identified employer and its constituents (employees, directors, officers, members, partners, shareholders) in respect or the same proceeding of claim as the employer, provided that the performance of such services is consistent with RPC 1.13 and RPC 1.7; and

**(iv)** The employer certifies through an officer, director or general counsel that the applicant is employed as a lawyer for said employer, that the applicant is of good moral

character, and that the nature of the employment conforms to the requirements of this Rule.

**(c) Compliance.** A lawyer admitted pursuant to this Rule shall comply with the annual assessments pursuant to R. 1:20-1(b) (Disciplinary Oversight Committee), R. 1:28-2 (New Jersey Lawyers' Fund for Client Protection), and R.1:28B-1(e) (Lawyers Assistance Program).

**(d) Limitation.** In-house counsel shall not appear as Attorney of Record for his or her employer, its parent, subsidiary, affiliated entities or any of their constituents in any case or matter pending before the courts of this State, except pursuant to R. 1:21-1(c) and R. 1:21-2.

**(e) Duration.** The limited license to practice law in this State shall expire if such lawyer is admitted to the Bar of this State under any other rule of this Court, or if such lawyer ceases to be an employee for the employer or its parent, subsidiary, or affiliated entities, listed on such lawyer's application, whichever shall first occur; provided, however, that if such lawyer, within ninety days of ceasing to be an employee for the employer or its parent, subsidiary, or affiliated entities listed on such lawyer's application, becomes employed by another employer for which such lawyer shall perform legal services as in-house counsel, such lawyer may maintain his or her admission under this Rule by promptly filing with the Secretary to the Board of Bar Examiners a certification to such effect, stating the date on which his or her prior employment ceased and his/her new employment commenced, identifying his or her new employer and reaffirming that he or she shall not provide legal services, in this State, to any individual or entity other than as described in (b)(iii) or (g). The lawyer shall also file a certification of the new employer as described in (b)(iv). In the event that the employment of a lawyer admitted under this Rule shall cease with no subsequent employment by a successor employer within ninety days, such lawyer shall promptly file with the Secretary to the Board of Bar Examiners a statement to such effect, stating the date that such employment ceased.

**(f) Fee.** Each applicant for a limited license shall pay the required fees as established by the Board of Bar Examiners and approved by the Supreme Court.

**(g) Pro Bono.** A lawyer with a limited license to practice pursuant to this rule is exempt from court-appointed pro bono service under Madden v. Delran, 126 N.J. 591 (1992). Such lawyer may nevertheless serve as a volunteer pro bono attorney with an entity certified under R. 1:21-XX(b)(1) or (3), provided that such pro bono service shall cease upon expiration of the limited license to practice in this State as described in (e).

**(h) Not Admitted.** Lawyers with a limited license to practice pursuant to this rule are not, and should not represent themselves to be, members of the bar of this State.

**RPC 1.8** shall be amended as follows:

**RPC 1.8 Conflict of Interest: Current Clients: Specific Rules**

**(a)** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

**(b)** Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent.

**(c)** A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

**(d)** Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

**(e)** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) ~~A non-profit~~ a legal services or public interest organization, a law school clinical or pro bono program, or an attorney providing qualifying pro bono service as defined in R. 1:21-XX(a), authorized under R. 1:21-1(e) may provide financial assistance to indigent clients whom ~~it~~ the organization, program, or attorney is representing without fee.

**(f)** A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and

(3) information relating to representation of a client is protected as required by RPC 1.6.

**(g)** A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or no contest pleas, unless each client gives informed consent after a consultation that shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

**(h)** A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client fails to act in accordance with the lawyer's advice and the lawyer nevertheless continues to represent the client at the client's request.

Notwithstanding the existence of those two conditions, the lawyer shall not make such an agreement unless permitted by law and the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

**(i)** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien granted by law to secure the lawyer's fee or expenses, (2) contract with a client for a reasonable contingent fee in a civil case.

**(j)** While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

**(k)** A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.

**(l)** A public entity cannot consent to a representation otherwise prohibited by this Rule.

## APPENDIX C

**CLE Credit for Pro Bono Service.** An attorney may receive CLE credit for qualifying pro bono service as defined in *R. 1:21-XX(a)(1)*. CLE credit may be earned at a rate of one hour of CLE credit for every six hours of qualifying pro bono service. An attorney may receive no more than six CLE credit hours pursuant to this Rule in any biennial reporting period. An attorney seeking CLE credit for qualifying pro bono service must retain for three years from the certificate date a certificate showing the number of qualifying pro bono hours the attorney performed. This certificate must come from a legal services or public interest organization or law school clinical or pro bono program certified under *R. 1:21-XX(b)(1)* or (3).

**APPENDIX D**

**CERTIFICATION OF RETIREMENT  
(LEGAL SERVICES VOLUNTEER)  
FOR THE CALENDAR YEAR \_\_\_\_\_**

The retired exemption from payment is as defined, without alteration. We cannot grant the exemption if the language of this certification is altered or if "January 31" is deleted and a later date substituted.

I, \_\_\_\_\_, Esq., of full age, say:  
Printed Name

1. I am an attorney at law licensed to practice in the State of New Jersey;
2. I hereby request exemption from payment to the New Jersey Lawyers' Fund for Client Protection for the calendar year(s) indicated pursuant to *Rule* 1:28-2 because I am "retired completely from the practice of law" in every jurisdiction. I understand that attorneys are not exempt from payment solely by virtue of being out-of-state or exempt from *pro bono* assignment;
3. My only participation in any aspect of legal practice is as a *pro bono* volunteer for Legal Services of New Jersey or its regional programs, or any other legal services or public interest organization or law school clinical or pro bono program certified under R. 1:21-XX(b)(1) or (3), or for an organization identified in R. 1:21-1(e) that engages in the volunteer public interest legal services described in RPC 6.1, for which practice I receive no remuneration.
4. Other than as stated in paragraph 3, I am either unemployed or the employment in which I engage is not in any way related to the practice of law. I do not draft or review legal documents, render advice on the law or legal assistance, teach law, or serve in a court system in any capacity, **in any jurisdiction**. This is an accurate description of my activities at least since January 31 of the year for which exemption is sought;
5. I understand that I have an ongoing duty to immediately inform the Fund if I no longer qualify for the exemption granted;
6. I understand that I will remain officially retired until I inform the Fund otherwise;
7. I understand that it is my obligation to keep my address current with the Fund and to respond to the Annual Attorney Registration and Billing Form.

I hereby certify that these statements regarding my entitlement to the exemption are true and correct. If such statements are willfully false, I am subject to punishment.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_