

The Pinnacle of Judicial Involvement: Judicial Participation in Pro Bono

Honorable Karla Gray

Chief Justice
Montana Supreme Court
406- 444-5490
kgray@mt.gov

Honorable Jay C. Zainey

U. S. District Judge
U.S. District Court
Eastern District of Louisiana
(504) 589-7590
Jay_Zainey@laed.uscourts.gov

Honorable Cynthia Stephens

Circuit Judge
Third Judicial Circuit of Michigan
Civil Division
313 224-2451
judgecyn@yahoo.com

Brief Description:

Judicial support of and participation in pro bono is a critical to a sound culture of pro bono. What may judges do? Panelists will discuss various examples of judges energizing pro bono at the local level, report on particular state judicial conduct rules with commentary favorable to pro bono and the changes to the ABA Model Code of Judicial Conduct that provides significant positive guidance and direction.

Objectives include learning about: 1) Policies that encourage and support judicial participation in pro bono; 2) Strategies for judicial involvement in pro bono and its promotion.

Topical Outline:

- I. ABA's New Model Code of Judicial Conduct – Rule 3.7**
Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

- a. Rule 3.7(A) – a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice...
 - i. Rule 3.7 (A)(1) – can assist a legal organization in planning related to fundraising
 - ii. Rule 3.7(A)(3) – can solicit membership for a legal organization or entity
 - iii. Rule 3.7(A)(4) – can appear or speak at an event of an organization even if the event has a fund-raising purpose (assuming the event concerns the law)

- b. Rule 3.7 (B) – A judge may encourage lawyers to provide pro bono legal services
 - i. providing lists of available programs
 - ii. training lawyers to do pro bono
 - iii. participating in events recognizing lawyers who do pro bono work

II. State Model Codes of Judicial Conduct – Rules that Pertain to Pro Bono

- a. Indiana - Canon 4(C)(3)(b)(v) - a judge . . . may engage in activities intended to encourage attorneys to perform pro bono services
 - i recruiting attorneys to do pro bono work
 - ii. participating in recognition events
 - iii. establishing general procedural or scheduling accommodations for pro bono attorneys as feasible
 - iv. acting in an advisory capacity to pro bono programs.

- b. Florida – Canon 4(B) – Commentary - a judge may engage in activities intended to encourage attorneys to perform pro bono services
 - i participating in recognition events
 - ii establishing general procedural or scheduling accommodations for pro bono attorneys as feasible
 - iii. acting in an advisory capacity to pro bono programs

- c. Nevada – Canon 4(C)(3)(b)’s Commentary
 - i recruitment of attorneys or law firms to provide pro bono legal services . . . is not membership solicitation.
 - ii. a judge may provide an organization with general endorsement or solicitation material for use in the organization’s recruitment materials.
 - iii. a judge can request an attorney to accept pro bono representation of a party in a proceeding pending before the judge.
 - iv. a judge may be a speaker or guest of honor at such an organization’s fund-raising event.

- c. Colorado – Canon 4 – *A judge is encouraged to engage in quasi-judicial activities to improve the law, the legal system, and the administration of justice.* Commentary – a judge may engage in activities intended to encourage attorneys to perform pro bono service:
 - i. participating in recognition events
 - ii. establishing general procedural or scheduling accommodations for pro bono attorneys as feasible
 - iii. acting in an advisory capacity to pro bono programs

III. Judicial Efforts to Encourage Pro Bono in Montana

- a. Development of a Judge’s Guide to Pro Bono Participation
 - i. authorities regarding judicial ethics
 - ii. existing programs with judicial participation
 - iii. implementation steps with sample letters and forms
 - iv. list of resources including FAQs
- b. Personal outreach to trial judges about judicial involvement in pro bono programs
- c. Recruitment letters
- d. Presentation of local judicial district pro bono awards
- e. Special Emeritus attorney classification for retired attorneys doing pro bono
- f. Montana’s state bar strategic plan priorities
- g. State policy support
- h. Encouraging firms to adopt a law firm pro bono policy
 - i. everyone participates
 - ii. one pro bono case OR
 - iii. donates \$2500

IV. Ethical Rules Pertaining to Pro Bono in Federal Court and Engaging Judges

- a. Federal Judicial Canon of Ethics Canon 4 entitled: "A Judge May Engage in Extra-judicial Activities to Improve the Law, the Legal System, and the Administration of Justice"
- b. How my involvement in pro bono began
- c. Involving colleagues who may be skeptical
- d. How lawyers can best engage judges to participate in pro bono activities

V. Example of Judicial Involvement in Pro Bono - Starting a Homeless Experience Legal Protection (HELP) Program:

- a. Identifying a responsible director of a homeless shelter or center in a particular city.
 - i. explaining the program to that person
 - ii. determining the need
 - iii. assuring organization and the ability to accommodate volunteer attorneys.
- b. Scheduling a recruitment meeting at a local law firm's office.
- c. Trying to identify and contact people from each major law firm (through either the local bar association or local pro bono organization) and ask that they attend the recruitment meeting
- e. Scheduling conference calls to ensure everyone is on the same page
- f. Attending the recruitment meeting, explaining the program, and signing lawyers up as volunteers
- g. Involving the executive director of the local bar association who will usually take over the scheduling duties once the program is off and running.
- h. Involving law students in assisting the homeless apply for Social Security benefits.
 - i. the law students meet the homeless at the centers and assist them apply for Social Security benefits.
 - obtain medical records
 - meet with client and social security representative
 - present the completed application, with medical records, to the representative
 - ii. advantage – speeds up application for homeless individual

**VI. Judicial Involvement in Pro Bono from a Trial Judge's Perspective
(* materials to be distributed as a separate document at the Conference)**

Bibliography & Website Links:

1. Access to Justice: An Outline of the Problem (Montana)
2. A Judge's Guide to Pro Bono Participation – Title Page (Montana)
3. Attorney Recruitment Letters – Opt-In and Opt-Out (Montana)

4. Colorado Code of Judicial Conduct:

https://www.courts.state.co.us/supct/rules/2000/2000_2.pdf

5. Florida Code of Judicial Conduct

<http://www.floridasupremecourt.org/decisions/ethics/index.shtml>

Click on link to Canon 4

6. Indiana Code of Judicial Conduct – Canon 4:

http://www.in.gov/judiciary/rules/jud_conduct/#c4

7. Nevada Code of Judicial Conduct

http://www.leg.state.nv.us/CourtRules/SCR_CJC.html

8. October 2006 report pertaining to new ABA Model Rule of Judicial Conduct:

<http://www.abanet.org/judicialethics/report.pdf>, and the relevant sections are as follows:

- 1) On page 106, read Rule 3.7 (B) and Comment 4.
- 2) On page 107, read 3.7 “Reporters Explanation of Changes”
- 3) On page 109, read #8 – Explanation of Black Letter
- 4) On page 110, read #4 – Explanation of Comments

9. <http://www.abanet.org/legalservices/probono/judiciary.html>