

Why Do Pro Bono Work?

I. Professional Obligation

It is our ethical obligation as attorneys in Illinois to provide pro bono assistance to persons in need of legal services who cannot afford them.

The preamble to the Supreme Court of Illinois Rules of Professional Conduct provides, in pertinent part, as follows:

It is the responsibility of those licensed as officers of the court to use their training, experience and skills to provide services in the public interest for which compensation may not be available. An individual lawyer's efforts in these areas is evidence of the lawyer's good character and fitness to practice law.

Further, the American Bar Association Model Rules of Professional Conduct Rule 6.1 on voluntary pro bono publico service states that attorneys should contribute 50 hours of pro bono legal services per year.

II. Unmet Legal Needs

The most obvious and compelling reason to perform pro bono work is the need to address the gap between the millions of persons who need assistance but cannot afford or obtain it, and the limited resources available to meet those needs through legal aid organizations. The assistance provided by volunteer attorneys is critical, as there are just around 350 legal aid attorneys to serve all of Illinois.

III. Recruiting and Retention; Morale

Competition for hiring good legal talent can be intense. Law firms and corporate legal departments with active pro bono programs enjoy a competitive advantage, particularly when a new attorney may be deciding between opportunities with substantially similar or even identical compensation and benefit structures.

In today's environment, attorneys are more mobile than at any time in the past. The costs of replacing departing attorneys are high (often involving recruitment fees and training expenses) and the time involved in transitioning a new attorney is substantial. A strong pro bono culture can contribute to a positive office environment and, in turn, strengthen attorney loyalty to the firm or corporate legal department.

Finally, a successful pro bono program can provide opportunities for lawyers from different practice areas, along with non-lawyer staff, to work together as a team. Pro bono victories and awards can be shared with the entire office, fostering a sense of pride and accomplishment among attorneys and staff.

IV. Firm Marketing

Pro bono is an effective marketing tool that can provide a firm or corporation with positive publicity, heightened visibility, improved client relationships, and evidence of good corporate citizenship. Several local and national organizations such as PILI, the Pro Bono Institute, *American Lawyer* Magazine and the ABA Center for Pro Bono set pro bono goals and recognize those law firms and individual attorneys who meet or exceed those goals.

V. Training and Professional Development

Pro bono projects can be used as training vehicles to provide a wide variety of high quality skills training in current and new practice areas as well as across disciplines. Through pro bono work, junior attorneys have the opportunity to expand their expertise by trying cases and gaining substantial client contact earlier in their career. With adequate supervision, junior attorneys can be afforded greater autonomy in a pro bono matter, gaining meaningful work experience and accelerated professional development opportunities that benefit both the individual attorney and the employer.

What Constitutes Pro Bono Work?

I. Official Definition

While there are various definitions throughout the country of what constitutes pro bono, the Illinois Supreme Court has adopted a reporting requirement for pro bono legal services and qualified monetary contributions in which the Court has defined pro bono for purposes of this Rule.

Illinois Supreme Court Rule 756(f) defines pro bono as: legal services without charge or expectation of a fee to persons of limited means; legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means; legal services to charitable, religious, civic or community organizations in furtherance of their organizational purpose; or training intended to benefit legal aid organizations or lawyers who provide pro bono services. According to Rule 756(f), **“persons of limited means” are not only those persons with household incomes below the federal poverty standard but also those persons frequently referred to as the “working poor.”**

II. Examples of Pro Bono Work

The types of engagements that qualify as bona fide pro bono work are varied and countless. Examples include:

- Representing an indigent client in a landlord-tenant dispute;
- Developing advanced directives for a senior citizen;
- Counseling a not-for-profit organization on tax matters;
- Developing and presenting a training session on a substantive law topic for pro bono attorneys; and
- Making financial contributions to help fund the operations of a legal clinic which serves persons of limited means.

III. Activities that Do Not Qualify as Pro Bono Work

Not all charitable activities qualify as pro bono work. Examples of activities that do not constitute pro bono work include:

- Serving on the board of a school district where the lawyer does not act as the district’s pro bono legal counsel;
- Offering discounted fees to clients;
- Attending continuing education seminars; and
- Fundraising for organizations.

IV. Dispelling Myths about Pro Bono Opportunities

Some people think that pro bono work only means representing a poor person in a litigation matter. However, many attorneys regularly engage in pro bono services on transactional matters as well. Examples include legal representation on issues such as business, consumer, housing, and wills; non-litigation activities, such as brief advice and referral clinics or hotlines; and counseling a nonprofit organization on tax matters, by-laws and articles of incorporation. Also, most legal aid programs provide training, support and malpractice coverage to attorneys handling pro bono through their programs.

Illinois Supreme Court Pro Bono Reporting Rule

I. Background

In 2006, the Illinois Attorney Registration and Disciplinary Commission (ARDC) implemented a pro bono reporting requirement for attorneys licensed in Illinois. According to the Committee Comments to the amended Rule 756(f), the report is intended to serve as an annual reminder to Illinois lawyers that pro bono legal service is an integral part of a lawyer's professionalism. Excerpts from the Rule follow this article.

II. Summary of the Rule

Rule 756(f) requires all attorneys licensed in Illinois to report, in connection with the attorney's annual ARDC registration, **pro bono legal services provided and qualified monetary contributions made during the preceding 12 months.**

Pro bono legal services include legal services without charge or expectation of a fee (a) to a person of limited means; (b) to an organization designed to address the needs of persons of limited means; (c) to certain charitable, religious, civic, or community organizations; and (d) pro bono training **intended to benefit legal service organizations or lawyers who provide pro bono services.** According to Rule 756(f), **"persons of limited means" are not only those persons with household incomes below the federal poverty standard but also those persons frequently referred to as the "working poor."**

The Rule also encourages attorneys to make monetary contributions to an organization that provides legal services to persons of limited means or that contributes financial support to such an organization.

III. Compliance with Rule 756(f)

The new reporting requirement consists of two questions that have been added to the annual Illinois ARDC registration form. All attorneys must respond to both questions, even if they did not perform any pro bono work or make a qualified monetary contribution in the preceding 12 months.

Question 1: Pro Bono Legal Services.

- Attorneys who did *not* perform any pro bono work in the preceding 12 months should check the "No" box on Question 1 and state whether the attorney is prohibited from providing legal services because of his or her employment.
- Attorneys who did perform pro bono work in the preceding 12 months should check the "Yes" box on Question 1 and identify the number of hours within each category of legal services listed.

Question 2: Monetary Contributions.

- Attorneys who did *not* make a monetary contribution to an organization that provides legal services to persons of limited means or that contributes money to such an organization should check the "No" box on Question 2.
- Attorneys who did make a monetary contribution within the preceding 12 months should check the "Yes" box and identify the approximate amount of the contribution.

IV. Penalty for Noncompliance

An attorney's failure to report the required information will result in an attorney's name being removed from the master roll of licensed attorneys in Illinois.

The Pro Bono Landscape in Illinois

The Illinois Access to Justice Commission reported in 2013 that there are 2.2 million people in Illinois who are low-income, and that at least half of those individuals have civil legal problems each year, involving issues such as domestic violence, divorce, child custody, evictions, mortgage foreclosures or the physical and financial abuse of the elderly. With the equivalent of 350 full-time legal aid staff attorneys in Illinois, in most of those cases, individuals and families face their legal problems without legal assistance.

A network of nearly 70 legal aid and public interest law organizations provides critical legal assistance to thousands of low-income and vulnerable residents of Illinois. These organizations range in size from several larger organizations that collectively serve tens of thousands of residents on a wide range of issues throughout Illinois to a number of organizations that serve more modest numbers of clients and target their services to particular legal issues or communities. Some organizations use only staff to deliver legal services, but most other organizations use pro bono attorneys to deliver services.

Most of the Illinois' legal aid organizations that do have pro bono programs are listed on www.IllinoisProBono.org. This website is a good place to find a description of each of the legal services organizations and a listing of the pro bono opportunities available through them.

There are a number of significant sources of funding for these organizations, including:

- In Chicago, the Chicago Bar Foundation provides nearly \$5 million in funding and support for the network of legal aid and public interest law organizations serving the Chicago area.
- The largest statewide funder of legal services is the Lawyers Trust Fund of Illinois (funded by the pooled interest on lawyers trust accounts and a \$95 per lawyer add-on to ARDC dues), which provides approximately \$4.5 million in funds for Cook County legal aid organizations and about \$3.7 million statewide.
- The federal Legal Services Corporation also provides about \$11 million statewide, including LAF in Chicago, Prairie State Legal Services serving 36 counties in northern and central Illinois and Land of Lincoln Legal Assistance Foundation serving 65 counties in central and southern Illinois.
- The Illinois Equal Justice Foundation (which distributes state appropriated funds) provides about \$1.3 million in grants statewide.
- There are several other charitable organizations that also make contributions to legal aid agencies including: the Polk Bros. Foundation, the United Way, the Public Interest Law Initiative (which provides more than \$215,000 per year to Illinois legal aid programs for Law Student Internships), the Chicago Area Foundation for Legal Services (with which the CBF now partners for grants), the Chicago Community Trust, and the Illinois Bar Foundation (which provides over \$300,000 per year to Illinois legal aid programs).
- There are also a number of other governmental programs that, on a highly restricted basis, provide significant funding for legal aid and related justice issues.

There are a wide range of pro bono opportunities available through these organizations, including:

- traditional poverty law cases
- general civil litigation, e.g. family law, housing, creditor issues
- criminal defense and prisoner's rights cases
- immigrant/refugee rights
- impact/issue litigation
- policy and legislative advocacy
- community legal education
- advice and referral hotlines
- legal clinics and self-help desks
- transactional matters, e.g. wills, real estate closings, not for profit formation/governance, contract, Intellectual Property
- mediation

Many of the legal aid organizations also provide their services to specific target populations, such as:

- elderly
- Veterans
- artists
- disabled
- children
- victims of domestic violence

Organizations that post pro bono opportunities with www.IllinoisProBono.org provide a variety of pertinent information about their opportunities, including:

- Typical time commitment involved with the case type;
- Whether the agency provides malpractice insurance;
- Whether the agency provides training materials relating to the opportunity;
- Whether the agency has attorneys on staff to provide support for pro bono attorneys; and
- Skills needed and skills acquired through the pro bono opportunity.

The types of opportunities you choose for your attorneys will determine the necessary time commitment. There are some opportunities that can be completed in less than four hours, others that are available in the evening or on weekends, and many that are limited to the business day.

Considerations for Individual Attorneys Before Handling a Pro Bono Matter

In addition to the firm’s needs and desires in an agency partner, the individual attorneys should also carefully consider whether the agency partner is the right match for them. Many of the considerations are the same, but there are some differences. Before committing to handle a pro bono case, an individual attorney should (1) understand the pro bono program’s expectations and (2) receive any needed training and support. Attorneys should also ask the following questions of the program staff:

What specifically will be expected of me?

Before accepting a pro bono case, make sure the agency partner provides a full explanation of the expected scope and extent of the representation. This should include a description of the possible stages of the case, an estimate of the time commitment required for each stage and a clear understanding of any ongoing commitment expectation.

Does the program thoroughly screen clients?

Before referring a case to a pro bono attorney, the program should, at a minimum, complete a comprehensive screening of clients. The program should provide a volunteer lawyer with a thorough statement of the facts of the case and an assessment of its nature at the time of referral.

Does the program’s intake system ensure that I will receive a meritorious case or project?

By providing thorough intake and screening procedures, a program can provide you with assurance that you are receiving a meritorious case involving an eligible (financially and otherwise) pro bono client.

Will the program assign me with a case which matches my expertise, interests, and timing restraints?

By providing thorough intake and screening procedures, a program can provide you with assurance that the case is within the parameters of the type of work for which you volunteered.

What types of training and support does the program offer to its volunteers?

The program should offer a variety of support mechanisms and training to its pro bono attorneys. Programs may offer all or some of the following support to its volunteers:

| <i>Legal Support</i> | <i>Time Management Support</i> | <i>Training Specific to the Agency and Its Clientele</i> | <i>Malpractice Insurance & Administrative/Logistical Assistance</i> |
|--|--|--|---|
| <ul style="list-style-type: none"> ● substantive law and procedural training ● legal manuals (containing compiled legal research) ● form pleadings ● mentors (program staff or more experienced volunteer lawyers) | <ul style="list-style-type: none"> ● co-counseling arrangements ● program staff attorneys to cover in emergencies ● agreement to take the case back if it becomes too onerous for a volunteer | <ul style="list-style-type: none"> ● handbooks with program policies and staff contact information ● information concerning clientele of the agency ● client sensitivity training | <ul style="list-style-type: none"> ● malpractice insurance, office space for client interviewing and meetings ● administrative assistant legal support (through volunteer paralegals, law students) |

For which expenses, if any, will I be responsible?

Some pro bono programs require that the clients pay for out-of-pocket expenses such as court costs, filing fees, etc. Others maintain a fund to cover the same, while others allow the volunteer to pay these expenses.

Will I be covered by the program's malpractice insurance?

Most pro bono programs in Illinois have malpractice insurance available for volunteers.

What is my relationship with my pro bono client and the pro bono program?

A pro bono program should clearly communicate the nature of the relationship it is establishing between the program, a client and a volunteer, and should delineate each party's rights and responsibilities through a written retainer agreement. A volunteer lawyer should discuss with the pro bono client the extent of the representation the volunteer agrees to undertake on the client's behalf. A retainer agreement should clearly reflect the agreement reached by a volunteer and a client.

Often clients may have more than one legal problem. How can I ensure that the client understands that I am agreeing to provide representation only in a specific matter?

A retainer agreement should clearly state that the pro bono attorney is providing representation only in the matter referred. A program should assure volunteers that they are not expected to provide representation in other matters, and instruct them to refer clients back to the program if the need arises. In those cases where a volunteer is willing to assist the client in additional legal matters, programs can provide technical assistance and advice as needed to the volunteer.

Once I accept a case, will the program keep in touch with me?

A pro bono program should maintain regular communications with its program volunteers through periodic follow-ups via fax, telephone or email as part of the program's comprehensive tracking system. A tracking system provides a mechanism for determining that volunteers are progressing on cases the program has placed with them and that the program is providing effective and high quality legal services to the client.

Once I accept a case, what are my responsibilities to the pro bono program?

Generally pro bono programs ask that the pro bono attorneys keep the program apprised of the status of the case on a regular basis (for example, every 60 to 90 days); seek support and mentoring when needed; advise the program of any problems or issues that arise; advise the program when the case is closed, the disposition thereof, and the numbers of hours you spent on the case; and complete any evaluation forms.

What if the case becomes too much for me to handle?

Many pro bono programs can facilitate co-counseling arrangements with program staff attorneys or with other pro bono attorneys. Programs also may offer training opportunities and/or experienced mentors who can assist you with the case. In some instances, the program may agree to take the case back if it becomes too onerous for a volunteer.

Pro Bono for Retired, Inactive, In-House Counsel Status and Out of State Attorneys

Amendments to Illinois Supreme Court Rules 716 and 756 went into effect that give retired and inactive attorneys as well as in-house counsel with limited admission status the ability to provide pro bono legal assistance to vulnerable and disadvantaged people who would otherwise be shut out of the justice system. The amendments grew out of a desire of retired, inactive and in-house counsel across the state that wanted to help meet the legal needs of the most vulnerable in Illinois, but were previously barred from doing so. The Rules were again amended to include those attorneys not licensed in Illinois, but licensed in another state to also perform pro bono legal services with certain restrictions.

Illinois Supreme Court Rule 756(k) (formerly 756(j)) allows retired, inactive, and out-of-state attorneys to perform pro bono services through a not-for-profit legal services organization, governmental entity, law school clinical program, or bar association sponsoring entity. The Rule requires the pro bono attorney and sponsoring entity file a pro bono authorization form with the ARDC; the pro bono attorney to complete any training the sponsoring entity requires; and the pro bono attorney and sponsoring entity to annually file a pro bono renewal form with the ARDC.

House counsel admitted pursuant to Illinois Supreme Court Rule 716, are authorized to provide pro bono legal assistance in Illinois without the need for any further registration and those admitted under this Rule do not need to perform their pro bono services through a sponsoring entity.

Limited Scope Pro Bono Representation

Limited scope representation is an approach to providing legal services in which a lawyer provides legal assistance in a specific, discrete aspect of a matter and the client self-represents in the remainder. Rule 1.2(c) of the Illinois Rules of Professional Conduct, which became effective on January 1, 2010, allows a lawyer to undertake this short-term, limited scope pro bono representation so long as the lawyer is unaware of any conflicts of interest and the other requirements of the Rule are met. This Rule enables corporate pro bono programs to develop short-duration litigation opportunities for volunteer lawyers.

I. Illinois Rules of Professional Conduct Rule 1.2(c)

Under Rule 1.2(c), “a lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

Although the Rule applies to short-term engagements that are limited in scope, the Rule does not prevent a client from seeking, or a lawyer from agreeing to provide additional assistance later. However, a normal conflicts check will be required if a representation goes beyond a short-term, limited engagement.

II. Limited Scope Representation Amendments

Amendments to Rule 13 and Rule 137, adopted by the Illinois Supreme Court effective July 1, 2013 allow lawyers to make limited scope appearances in civil matters, and to provide assistance with drafting pleadings and other documents filed by pro se litigants. These new rules enable corporate pro bono programs to develop short-duration litigation opportunities for volunteer lawyers.

It is required that a written Limited Scope Representation Agreement be executed between the attorney and client in these types of matters, disclosing the limited nature of the relationship. Sample Limited Scope Representation Agreements are available in the Forms section at www.IllinoisLegalAdvocate.org.