

Adopted by the Board of Trustees on November 18, 2015

LOS ANGELES COUNTY BAR ASSOCIATION (LACBA)
COMMENTARY TO PRO BONO POLICY

This commentary is intended to serve as background and amplification of the specific provisions of the Policy.

Commentary to Paragraph A: The minimum standard of 50 hours of pro bono service per year applies to all lawyers as individuals. A lawyer who practices within a law firm, corporate law department or government agency should not count, towards the fulfillment of his or her pro bono commitment, the pro bono service time spent by his or her colleagues. No lawyer should consider that he or she has met the minimum individual standard in any year unless he or she has, in fact, directly provided at least 50 hours of pro bono service.

The minimum of 50 hours of pro bono service per year is established in light of the large and ongoing justice gap between the legal needs of low-income members of our community and the legal resources available to meet those needs. It is the intent of the Association to encourage the Los Angeles legal profession to increase efforts to provide pro bono legal services. In addition, several other organizations and bar associations that have addressed the professional responsibility of pro bono service also have identified 50 hours, or 3% or 5% of billable hours, as an appropriate per year minimum commitment.

Commentary to Paragraphs B and E: The Association recognizes that every law firm¹ has a unique organization and management style and that firms will choose to implement the Policy in different ways. The Association believes that certain conditions within law firms discourage lawyers, and particularly younger lawyers, from undertaking pro bono work. Toward the end of assisting firms in meeting or exceeding their commitment under the Policy, the Association offers the following recommendations:

1. Pro bono needs to be visibly encouraged and supported by the management of the law firm. A perception that the senior lawyers in the firm do not encourage or support pro bono work is probably the single greatest deterrent to the provision of pro bono legal services by more junior lawyers. Support for pro bono work may be demonstrated in numerous ways, including promulgation of clear and express policies consistent with this Policy, provision of pro bono services by senior lawyers themselves, service by senior lawyers on the boards of legal services organizations and active recruitment of younger lawyers to do pro bono work. Senior lawyers also should be encouraged to supervise junior lawyers in the provision of pro bono legal services. It is crucial that younger lawyers be aware of the pro bono-related activities of their more senior colleagues so that they know that their own pro bono activities will be accorded the respect they merit.

¹ For simplicity of expression, the term “law firm” or “firm” is frequently used in this Commentary to refer to corporate law departments as well as law firms.

2. Each firm should create some mechanism to ensure communication between the firm and the various organizations that are sources of pro bono work. One mechanism would be to create a committee or designate a pro bono coordinator responsible for identifying those organizations, making contact with them and communicating with them on a regular basis.

3. Similarly, each firm is urged to create some mechanism to ensure communication within the firm regarding pro bono work. Lawyers should be kept informed of the types of pro bono legal services that are needed and specific matters that provide service opportunities. In addition, lawyers should be kept informed of the pro bono matters that have been undertaken by the firm.

4. An effort should be made to include as broad a range of lawyers as possible in the firm's pro bono efforts. Many lawyers mistakenly believe that pro bono work is for litigators only, when in fact many people of limited means and non-profit organizations are in need of non-litigation types of legal services.

5. Pro bono work should be considered in evaluating lawyers and determining the compensation of lawyers in the same manner as fee-generating work. This policy is particularly important with respect to associates in private law firms who will be deterred from performing pro bono services if they perceive that it will reduce or limit their compensation, standing and progress toward partnership.

6. Firms should encourage their lawyers to pursue pro bono work in those areas that most interest them and should support each lawyer's choices in that regard. While doing so, however, some firms may also wish to consider developing a firm-wide expertise in a particular area of pro bono work, so as to provide more efficient pro bono services.

A law firm may consider its commitment to have been met in any instance where the number of pro bono service hours provided by the firm's lawyers is equal to or greater than the firm's aggregate minimum hours commitment. Another firm may decide not to consider its commitment to have been met until each of its lawyers has met his or her own individual commitment. For example, a firm may meet its commitment in the aggregate by handling high impact pro bono matters by a small group of its lawyers. On the other hand, a firm that meets its collective commitment by calling upon each of its lawyers to fulfill his or her respective individual commitment will strengthen and enlarge the observation of an important professional responsibility.

Government law offices are urged to adopt an express pro bono policy which encourages pro bono work by its attorneys, explains the types of opportunities that are permitted, and assures that attorneys are not penalized for undertaking such work.

Commentary to Paragraphs C and D: The definition of pro bono for purposes of this Policy has been established with several important principles in mind. The primary objective of this Policy is to increase the availability of legal services to people of limited means. The Association recognizes, however, that many lawyers and law firms regard activities other than

direct legal representation of people of limited means as pro bono service. In an attempt to accommodate these views, the Association has utilized a broad definition of what constitutes pro bono service for purposes of the Policy. The Association has, however, limited the term to providing legal services to the specified individuals and groups. This is so for two reasons. First, the Policy is meant to encourage members of the Association to render pro bono service in their capacity as lawyers. It is thus appropriate to ask that members fulfill their commitment by performing legal services as opposed to some other form of public service, however valuable. Second, to the extent that the Policy is directed to firms, the definition of pro bono service is intended to underscore the fundamental importance of treating pro bono work in every respect as indistinguishable from commercial “billable” work. With pro bono work limited to legal services, the Association hopes that firms will be comfortable according billable hour credit for work fulfilling commitments under the Policy.

For purposes of this Policy, legal services “without expectation of a fee” does not include time written off as not collected or not collectable, services provided for business development or other commercial purposes, or contingency fee work. The potential availability of attorneys’ fee shifting statutes, however, typically will not disqualify legal service that otherwise qualifies as pro bono work.

The Association does not desire to establish a rigid or overly technical definition of persons of limited means or persons who do not have the means to pay standard legal fees. As a guide which may be helpful, many legal aid organizations use a percentage multiplier, such as 150% or 200%, of the federal poverty guidelines as an eligibility standard for free legal services. Firms are encouraged to develop their own standards with the primary objectives of this Policy in mind.

The Association encourages that a substantial majority of pro bono legal services consist of free legal services directly to persons of limited means or in certain matters that address the needs of persons of limited means. This includes matters referred through various legal services organizations, including any of LACBA’s pro bono projects.

The Association notes two areas in particular that should be encouraged and promoted in addition to pro bono services as defined in the Policy. The Association encourages the delivery of legal services at a substantially reduced fee to persons who do not have the means to pay standard legal fees in situations where the lawyer or law firm is unwilling or unable to provide its services for free or where free legal services would otherwise be inappropriate based on ability to pay or otherwise. In addition, lawyers, law firms and corporations are encouraged to voluntarily contribute financial support to nonprofit organizations that provide legal services to persons of limited means. Because of the critical and growing importance to complement pro bono efforts in these ways, these have been added expressly in paragraphs F and G of the Policy.

Commentary to Paragraph F: Many lawyers, law firms and corporations already provide some level of financial support to organizations that provide legal services free of charge to persons of limited means and to other nonprofit organizations that address the ongoing justice gap. Increased support, however, is needed. In addition to pro bono legal services, increased financial support of these organizations is essential to address the large and ongoing justice gap

between the legal needs of low-income members of our community and the legal resources available to meet those needs.

Without undermining the professional responsibility of every lawyer to provide pro bono legal services, and the need for increased financial support from all lawyers, law firms, and corporations at the highest level of their ability, the Association notes the heightened imperative of financial contributions, as noted in California Business and Professions Code Section 6073, from those lawyers, law firms, and corporate law departments that do not meet their minimum pro bono commitment each year.

Commentary to Paragraph G: The Policy recognizes that there are many people in our society who do not qualify for pro bono legal services for whom access to justice nevertheless may be practically unattainable due to their limited financial resources. Without undermining the professional responsibility of every lawyer to provide pro bono legal services, the Policy accordingly encourages attorneys and law firms to also provide reduced rates and charges for those who do not have the means to pay fully for legal services. It also encourages service to our profession and society through activities geared toward improvement of the law, our legal system and our profession.