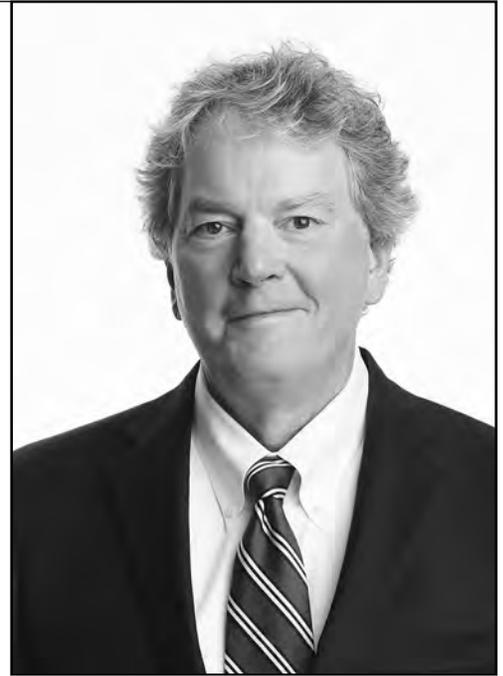


Pro Bono Service: Offering your Time and Talent, or Treasure



J. Scott Paul

For many of us, the decision to become a lawyer arose out of a desire to help people and pursue justice. However, the burden of substantial debt from college and law school loans can take a toll on such idealistic goals. Instead, after having existed for three years on macaroni and cheese, frozen pizza and cheap beer, many of us became motivated by our new-found employment. As a result, it was easy to put our intentions to help those in need of legal services on the back burner. Our altruistic intentions became less of a priority given our focus on our jobs and careers.

Upon passing the bar, we became regulated by the Nebraska Rules of Professional Conduct (“Rules”) which codified our special responsibility to help people of limited means. Although pro bono service is aspirational, we are encouraged through that responsibility to perform pro bono service. Even though the responsibility set forth in Rule 3-506.1 is “not intended to be enforced through the disciplinary process.” Comment 9 to Rule 3-506.1.

Comment 1 to that Rule refers to pro bono service by stating in part:

Every lawyer, regardless of professional prominence or professional work load, has the responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. (emphasis added)

It is interesting that the drafters of this Comment found it necessary to couple the statement of our professional duty with the qualitative declaration that pro bono service constitutes a rewarding experience. Apparently, just making it our “respon-

sibility” wasn’t enough. By including that language, it was as if the drafters felt lawyers needed to be reminded of the value of pro bono service and the factors that motivated us to become lawyers in the first place. Perhaps such a reminder is necessary. More on that below.

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I was surprised to note that the language in Comment 6 to Rule 3-506.1 permits lawyers to satisfy their pro bono service responsibility without actually spending the time representing an indigent client. Comment 6 to Rule 3-506.1 states:

Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. A lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of hours of service that would have been otherwise provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as a firm’s aggregate pro bono activities. (emphasis added)

As shown by this Comment, monetary contributions to organizations that provide legal services to those of limited means allow lawyers to avoid the time and effort of actually performing pro bono services. In those situations where it is not feasible to engage in pro bono services, our checkbooks serve as a “buy-out” of our service responsibility.



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Nebraska is not alone in providing this feasibility option. For example, Virginia's Rule 6.1 says a lawyer "should render at least 2% per year of the lawyer's professional time to pro bono publico legal service." However, Virginia also approves "direct financial support of programs that provide direct delivery of legal services to meet the need described as an alternative method for fulfilling a lawyer's [pro bono service] responsibility." Similarly, Wyoming's version of Rule 6.1 largely follows the ABA Model Rule stating "a lawyer should aspire to tender at least fifty (50) hours of pro bono legal services per year." However, Wyoming also states: "In the alternative, a lawyer should voluntarily contribute \$500 per year to any existing non-profit organization which provides direct legal assistance to persons of limited

means. . ." Finally, New Mexico's version of Rule 6.1 conforms to the ABA Model Rule 6.1 and is similar to Wyoming's version in that a lawyer may fulfill this aspiration by contributing financial support to organizations that provide legal services to persons of limited means in the amount of \$500 per year.

It should be noted some of those who place a high value on lawyers actually providing pro bono services take a dim view of financial contributions in lieu of volunteer service based on the belief that pro bono service is a responsibility that should require a lawyer to actually expend his or her time in representing a client of limited means. The reasoning is that lawyers, "should personally engage in this pro bono service not only to help clients, but to understand, first hand, the legal problems of



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the poor.” *Legal Ethics: The Lawyer’s Desk Book on Professional Responsibility* (2018-2019 ed. p. 1212). However, in his treatise, *Legal Ethics*, Ronald Rotunda noted that personal pro bono service may not always be the most viable option, stating:

“If lawyers, personally, must engage in pro bono representation, that would mean that even in a very large firm, the senior partner in charge of securities law could not assign to the junior partner or associate in the family law section of the law firm the duty of handling a no fault divorce for a poor person, even though the younger lawyer might be more efficient in performing this type of work. Granted, ‘many legal aid programs have found that, with relatively modest amounts of training, even bond indenture lawyers can re-emerge from their specialist shells.’ *Thomas Ehrlich, Rationing Justice, 34 Record of the Association of the Bar of the City of New York 729, 744 (Dec. 1979)*. Yet, opponents of this view argue that, if the real purpose of pro bono work is to help the poor, the poor would be more efficiently helped by a legal service lawyer specializing in their problems rather than a municipal bond lawyer who was forced to learn about the law of evictions.”

Id. at p. 1212.

Therefore, it is helpful that Rule 3-506.1 and its Comments provide the necessary flexibility in the manner in which our pro bono responsibility can be satisfied.

On the one hand, the individual pro bono service contemplated by the Rules can be accomplished through NSBA programs such as the Volunteer Lawyers Project, Nebraska Free Legal Answers and the Self-Help Desk. On the other hand, the “feasibility” option is often overlooked by lawyers as an alternative to satisfy our pro bono responsibility. Tax deductible contributions intended to satisfy the pro bono feasibility option can be directed to the Nebraska Lawyers Foundation, the NSBA’s charitable 501(c)(3) corporation, directed specifically to the Volunteer Lawyers Project (“VLP”). This facilitates provision of services to those in need of legal services and access to justice by providing funding for case placement, online services and funding for the Self-Help Desk. These NSBA programs lie at the heart of our special

responsibility as public citizens. These programs serve the dual purpose of providing a vehicle through which you can volunteer to provide legal services while also providing an option whereby lawyers can make financial contributions to satisfy the pro bono service responsibility.

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Several years ago, my service at the NSBA Douglas County Self Help Center reminded me of the phrase in Comment 1 to Section 3-506.1 that characterized pro bono service as being “one of the most rewarding experiences in the life of a lawyer.” When I started at the Self Help Center, I felt uncomfortable. I wondered, “What was a lawyer like me, an insurance defense lawyer, doing trying to answer questions about family law, landlord-tenant matters or debt collection cases?” It seemed like the people seeking assistance knew more about the legal aspects of their problem than I did. In fact, quite a few of them did. Nevertheless, I kept going back month after month, and with each visit, I became more comfortable answering questions and providing assistance as to how people could help themselves with their legal problems. Of particular help was the website of the Nebraska Supreme Court that provides legal resources to assist lawyers providing pro bono services. See <http://supremecourt.nebraska.gov/self-help>. After a while, I began to look forward to my scheduled time at the Self Help Center. It made me realize pro bono service was indeed the rewarding experience noted in the Comment.

I encourage you to consider pro bono service. Let this article serve as a reminder there is something uniquely satisfying about taking the time to help persons of limited means. It rekindles those altruistic intentions that made you want to become a lawyer in the first place. However, if pro bono service is truly not feasible for you, please consider making a tax deductible contribution to the Nebraska Lawyers Foundation directed to the Volunteer Lawyers Project in order to comply with your pro bono responsibility under the Rules. 



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