

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts
Center for Families, Children & the Courts
Task Force on Self-Represented Litigants
Hon. Kathleen E. O’Leary, Chair
Bonnie Rose Hough, Managing Attorney, 415-865-7668,
bonnie.hough@jud.ca.gov

DATE: August 1, 2009

SUBJECT: National Pro Bono Week Celebration Resolution and Approval of
Dissemination of Pro Bono Toolkit (Action Required)

Issue Statement

The American Bar Association has designated the week of October 25–31, 2009, as the first National Pro Bono Week Celebration, and the State Bar of California also has endorsed the concept. The celebration offers an opportunity to recognize the valuable pro bono contributions made by lawyers throughout the year and to focus attention on the need to increase pro bono participation in order to help narrow the justice gap. In recognition of this event, the Judicial Council’s Task Force on Self-Represented Litigants, in consultation with the California Commission on Access to Justice, has prepared a Pro Bono Toolkit to help judges encourage pro bono service by California attorneys.

Recommendation

The Task Force on Self-Represented Litigants recommends that the Judicial Council adopt a resolution that recognizes the National Pro Bono Week Celebration. It also recommends that the council approve dissemination of a Pro Bono Toolkit that will provide guidance to judges on ways that they can encourage pro bono service by California attorneys.

The proposed resolution and toolkit materials are attached at pages 5–15.

Rationale for Recommendation

At its August 2008 Annual Meeting, the American Bar Association (ABA) designated the week of October 25–31, 2009, as the inaugural National Pro Bono Week Celebration. The State Bar of California adopted a similar resolution in May of this year. The celebration offers an opportunity to recognize the valuable pro bono contributions made by lawyers throughout the year and to focus attention on the need to increase pro bono participation in order to help narrow the justice gap. Lawyers across the country already donate more than 20 million hours of free legal services each year, yet 80 percent of the civil legal needs of America’s poor remain unmet.

Chief Justice Ronald M. George is serving as an honorary cochair of the national Pro Bono Week effort, and hundreds of events are being planned at the national, state, and local levels to highlight pro bono service during the last week of October. It is hoped that local bar associations, legal services programs, and other groups will commit to holding at least one event during the week of October 25–31. The ABA developed a Web site devoted to the celebration at www.celebrateprobono.org. The site provides information, resources, and support to groups interested in hosting events in their communities.

In California, a steering committee has been formed to coordinate events that will take place during the National Pro Bono Week Celebration, and the State Bar of California is providing staff support for this effort. A recognition of pro bono attorneys is scheduled to be held at the AOC’s conference center on October 29.

This effort is particularly critical this year as funding for legal services programs has dropped dramatically. Almost half of the revenue that the State Bar distributes to legal aid programs each year is from Interest on Lawyers’ Trust Accounts (IOLTA). The remaining funds are from the Equal Access Fund and the Justice Gap Fund. The economic crisis and resultant low interest rate has dramatically reduced revenue generated from lawyers’ trust accounts. Between January and May 2009, \$2.96 million in IOLTA revenue was collected, compared to \$9.61 million during the same period last year—a 69 percent drop.

Funding is also declining from private foundations. In a recent survey of State Bar–funded legal services nonprofit organizations, 43 percent of the respondents reported that they have already experienced decreased funding from private foundations, with losses ranging from \$25,000 to \$500,000. Almost 50 percent of the nonprofits surveyed predicted additional reductions in foundation funding over the next fiscal year, with several programs projecting losses as high as 60 percent of their previous support from foundations. California foundations that traditionally support legal services have experienced significant losses, and many have reduced or eliminated their grants supporting legal services programs.

Donations from private law firms and corporations also have decreased. Programs reported drops in law firm donations ranging from 15 to 70 percent less than in past years, and multiple programs project losses this year of \$75,000 to \$100,000. This year, the State Bar saw a 20 percent drop in lawyer contributions to its Justice Gap Fund when compared with last year.

While the federal Legal Services Corporation has seen an increase in its appropriation and some small amount of stimulus funding may be provided to legal services programs, particularly in the area of housing and foreclosures, legal services programs reported losses in other federal and state funding for the delivery of legal services. Several programs also reported the reduction or elimination of funding from their counties.

While the funding for legal services is decreasing, a growing number of low-income clients need assistance. More than 60 percent of programs reported eliminating staff positions and anticipate reducing staff in the future. Yet many more persons are calling for help, particularly in areas relating to finances, such as debt collection, bankruptcy, foreclosure, wage and hour issues, and evictions.

Now, more than ever, pro bono attorneys can provide critical legal services to meet the needs of low-income Californians and ensure that all Californians will have equal access to the courts and court proceedings.

Because judges can play an important role in recognizing and encouraging pro bono work, a Pro Bono Toolkit has been developed by the Judicial Council's Task Force on Self-Represented Litigants, in consultation with the California Commission on Access to Justice. The toolkit is designed to assist judges in encouraging pro bono service by California attorneys, and is being created in honor of Justice Paul Boland (Dec.), who was a founding member of the California Commission on Access to Justice and a strong proponent of pro bono work.

The toolkit will include suggestions of ways that judges can encourage pro bono service, talking points for presentations on the value of pro bono service to the bar, a sample letter that can be sent to bar members about pro bono service, and links to online resources for sample speeches and other resources that are developed throughout the country as part of the National Pro Bono Week Celebration. Toolkit resources will be placed on-line at the California Courts' website at <http://www.courtinfo.ca.gov/programs/equalaccess/probono.htm>.

Alternative Actions Considered

The Judicial Council could elect not to recognize Pro Bono Week. However, such recognition of would provide significant benefits without disadvantages or

significant costs. Similarly, the Judicial Council could elect not to approve dissemination of the Pro Bono Toolkit. However, the toolkit has already been developed through the assistance of volunteer lawyers and judges and can be a very helpful resource for judges. Therefore, it will provide significant benefits without disadvantages or significant costs, since most of it is available online.

Comments From Interested Parties

The resolution recognizing Pro Bono Week and the resolution approving dissemination of the Pro Bono Toolkit do not require circulation for comment.

Implementation Requirements and Costs

Judicial Council recognition of Pro Bono Week and approval of the dissemination of the Pro Bono Toolkit will not require any implementation action by the courts. Courts that elect to hold Pro Bono Week activities will spend time and may incur some expense in doing so. AOC staff will also spend time planning and promoting Pro Bono Week activities and disseminating information about the toolkit, but the AOC will not incur any significant new expenses as a result of the Judicial Council's recognition of Pro Bono Week or approval of dissemination of the toolkit.

Attachments

JUDICIAL COUNCIL OF CALIFORNIA
RESOLUTION

Recognizing October 25–31, 2009, as

Pro Bono Week

WHEREAS more than 6 million Californians live below 125 percent of the federal poverty level and there are fewer than 800 legal aid attorneys to serve them;

WHEREAS California attorneys donate thousands of hours of pro bono legal services and make annual financial contributions to the Justice Gap Fund and to legal services organizations to help address the huge unmet need for legal assistance for California’s poor;

WHEREAS the judicial branch’s operational plan calls for the expansion of the availability of legal assistance, advice, and representation for litigants with limited financial resources; and

WHEREAS the American Bar Association has designated October 25–31, 2009, as the first National Pro Bono Week Celebration to recognize the valuable pro bono contributions made by lawyers throughout the year and to increase pro bono participation across the country to narrow the justice gap;

NOW, THEREFORE, BE IT RESOLVED that the Judicial Council of California recognizes the week of October 25–31, 2009, as the first National Pro Bono Week Celebration, commends California attorneys for their ongoing pro bono contributions, and encourages judges to use the Pro Bono Toolkit to inspire attorneys to engage in pro bono work in order to make a significant difference in the lives of Californians who would not otherwise have access to the legal system.

In witness whereof, I have hereunto set my hand this 12th day of August, 2009.

Attest:

Ronald M. George
Chief Justice of California and
Chair of the Judicial Council of California

William C. Vickrey
Administrative Director of the Courts

Pro Bono Toolkit

A Few Key Things that Judicial Officers Can Do to Encourage Attorneys to Provide Pro Bono Services

- **Thank volunteer lawyers.** Make positive comments about pro bono service and how great it is to have attorneys who volunteer their services. Make it known that you understand that attorneys make a sacrifice by donating this time. Thank them for making that commitment.
 - Publicly recognize the contributions of pro bono attorneys at bar functions or social settings. Try to acknowledge his or her contributions in front of other people.
 - Attend award ceremonies recognizing pro bono attorneys. Most legal services organizations hold these ceremonies annually. It makes all the difference in the world if judges are available to congratulate and thank the honorees.
 - When attorneys handle pro bono cases in high-volume areas where they may not have as much expertise, make a special effort to thank them for taking on the cases. For example, recognize that while they may be skilled corporate attorneys, this may be their first family law case, and their extra efforts are appreciated.
 - In the court's annual report, when acknowledging volunteer hours given to the court by attorneys serving as temporary judges, and settlement attorneys, or helping in self-help centers, include a statement acknowledging the important contribution of attorneys who have handled cases pro bono.

- **Refer litigants needing pro bono assistance.** Let litigants know that they may get assistance from a legal aid program or a pro bono lawyer if they are unable to afford full representation, and send them to your court's self-help center or to the self-help Web site at www.courtinfo.ca.gov to get information about legal aid programs.

- **Help with training.** Be available for training for your local legal services agency for new pro bono attorneys. Often attorneys need training in family law, landlord/tenant, and other areas of law in which they don't practice but for which there is a large need. Your presence and information about how you run your court makes it clear to attorneys that you care about pro bono service and ensures that they are better prepared for court.

- **Encourage pro bono work publicly.** When speaking to lawyers, local bar association events, or the public, mention pro bono. Note how important it is to the profession and to access to justice. Sample speeches, quotes, and resolutions are available from the Equal Access Program at the AOC.
 - Get the local bar’s board of directors to pass a resolution in favor of the State Bar’s Pro Bono Resolution, which calls on all attorneys to donate at least 50 hours per year to indigent individuals or to nonprofit organizations that primarily serve the poor or disadvantaged or who work to increase access to justice. Have that resolution publicized in the local bar newsletter.
 - Encourage the heads of local government attorney offices, such as the District Attorney’s, Public Defender’s, and county counsel’s offices, to promote pro bono service among their staff attorneys and direct them to the State Bar Pro Bono Packet that identifies ways for government and corporate counsel to contribute pro bono services without creating potential conflicts of interest.
 - Discuss with your colleagues the importance of pro bono lawyers and the good works they are doing.
 - Co-author articles with legal services programs in local bar journals (county bar, specialty bars) on the importance of pro bono work.
 - Meet regularly with local legal services and pro bono leadership to better understand their services.

- **Support unbundling.** Encourage attorneys to consider providing pro bono help on an unbundled basis if they’re unwilling to take on a whole case. For ideas, see *20 Things Judicial Officers Can Do to Encourage Limited Scope Representation* (www.abanet.org/legal/services/sclaid/.../best_practices_7-08.pdf).

- **Award fees to attorneys.** Award attorney fees for pro bono services when appropriate. These fees are allowable under *In re Marriage of Ward* (1992) 3 Cal.App.4th 618, and *Do v. Superior Court* (2003) 109 Cal.App.4th 1210. It may be particularly helpful to also impose sanctions so that the other side doesn’t act in a manner that drives up costs.

- **Expedite pro bono lawyer calendaring.** Consider making special calendar arrangements for attorneys appearing on a pro bono basis. Some judges try to hear those matters at the beginning of a calendar. Others allow court clerks to grant docket time close to times that attorneys are appearing on other matters.

- **Review the on-line Pro Bono Toolkit.** Sample speeches, letters and other resources are available at www.courtinfo.ca.gov/equalaccess/probono.htm.

A few words of caution:

- Be careful when asking an attorney to take on a specific case pro bono. Ethics opinions indicate that this may be improper as you are asking for a solicitation of charity. Instead, have a list of legal services agencies in your community that coordinate pro bono assistance and refer litigants who need assistance to them. Help them recruit volunteers by signing generic letters encouraging them to join the pro bono panel.
- When referring self-represented litigants to a pro bono program, make sure they understand that the volunteer services of an attorney are not guaranteed and that there is no entitlement to pro bono services. It is important that people realize this is a gift of the lawyer's time, not a requirement on the part of the lawyer.
- Make sure it is clear that pro bono services are those given without any expectation of compensation, as opposed to those matters the attorney handles without pay because the client is unable to or refuses to pay the bill.

Lawyers and litigants look to you for guidance and approval, and they will pick up on subtle signals. By letting them know that you are aware of the practical problems they face and the commitment that they are making by volunteering their time, you create a climate where pro bono work is the norm.

Pro Bono Toolkit

Talking Points

These talking points are intended for judges to use when speaking to groups of attorneys at events such as swearing-in ceremonies, local bar meetings, and pro bono recognition gatherings. We hope they are helpful to you in preparing your remarks and tailoring them to your audience and available time. You also can find more information in the online Pro Bono Toolkit at www.courtinfo.ca.gov/equalaccess/probono.htm.

Introductory remarks

- As lawyers, you are members of an honorable profession, with a proud history of pro bono legal services. This professional commitment is embodied in legislation acknowledging the special role of lawyers. With the privilege of law practice comes the obligation to ensure that our system is accessible to the most vulnerable among us.
- By doing pro bono work, you are not only helping the vulnerable, you are also improving the administration of justice.

The title of professional requires that in daily practice, an attorney strive to transcend the demands of the moment to consider the greater good. Lawyers are not simply representatives or employees of their clients—they are officers of the court. That denomination reminds us that a lawyer’s obligations flow not only to the client but to the courts and to the system of justice of which they are an integral part.

—Chief Justice Ronald M. George (October 2001)

- Systems have been put in place across the state to facilitate pro bono service. These systems—offered by pro bono organizations, legal services programs, local bar associations, and court-based self-help centers—make it easy for you to volunteer by:
 - Offering training;
 - Connecting you with individuals in need who have already been interviewed to determine their legal issues and financial eligibility; and
 - Helping with the necessary follow-up to ensure quality services for that client.

Who needs help?

- More than 6.7 million low-income Californians qualify for legal aid, representing 1 out of 5 children in the state. Nearly one-third of these families are working families, and one-fifth of them are of limited English proficiency, making it difficult for them to navigate the court system on their own.
- Judges constantly see vulnerable low-income families and seniors attempting to handle their own serious legal matters. We are pleased that all of our superior courts now have self-help centers to help with serious family law matters. But the centers

are understaffed, and there will always be individuals who need a lawyer who can provide more than self-help assistance.

- Here's how your services can help our community:
 - Every time a pro bono lawyer is able to help a domestic violence victim, it can prevent serious injury, save lives, prevent costly county medical expenses, and alleviate already clogged courts and overworked law enforcement agencies.
 - When a pro bono lawyer helps keep a family in their home, it prevents them from becoming homeless and from creating an additional demand on shelters and other charitable and municipal services.
 - When a pro bono lawyer helps prevent workers from wrongfully losing their jobs or from being denied earned wages, it allows for individuals to put food on their tables and pay their rent or mortgage.
 - When a pro bono lawyer helps keep a child in school, truancy and juvenile crime are reduced, saving court time and reducing the costs of incarceration.
 - When a pro bono lawyer helps a senior remain in his or her home with supportive care, the much higher cost associated with full nursing home care is avoided.
 - When a pro bono lawyer helps create a guardianship, it achieves the result of protecting the child, without the child going through the dependency system, thus easing the burden on both the courts and the county.

Limited capacity of legal aid

- Legal aid agencies in California must turn away more than two-thirds of eligible prospective clients who need assistance each year. The one-third who do get assistance do not necessarily receive the level of service they require, and many get only brief advice and counsel.
- In California, there are approximately 800 legal aid attorneys out of a total of more than 164,000 active attorneys. That makes a ratio of over 8,300 eligible indigent clients per legal aid attorney.
- In 2004, more than 4.3 million court users in California were self-represented.
- The justice gap—the gap between total resources available and what it would take to truly meet the legal needs of California's low-income population—is estimated at \$394.1 million.

Pro bono service is a lawyer's duty

- “Providing pro bono service is an important responsibility and obligation that attaches to the privilege of being an attorney.”
—Chief Justice Ronald M. George (October 2001)
- The American Bar Association’s Model Rule 6.1 states, “Every lawyer has a professional responsibility to provide legal services to those unable to pay.” This model rule creates an aspirational goal of 50 hours per year.
- The State Bar Board of Governors Pro Bono Resolution also urges all attorneys to provide at least 50 hours of pro bono services per year to the poor or nonprofit organizations.
- Legislation enacted in 2006 provides:

The private bar, acting on its own, cannot and should not be called upon to provide full civil representation for California’s poor. Nonetheless, the legal profession should play a lead role in the effort to improve the justice system, and each lawyer has a personal obligation as a member of the profession to ensure that all persons have equal access to the courts for redress of grievances and access to lawyers when legal services are necessary, including through the provision of pro bono services and through financial support to nonprofit organizations that provide free legal services to the poor.

(Assem. Bill 2301; Stats. 2006, ch. 165 – now Business & Professions Code Section 603)

Pro bono work serves the administration of justice

- Pro bono ensures meaningful access to justice to millions who need legal representation but cannot afford it.
- It improves public perception of the legal profession.
- It helps the courts operate more efficiently and effectively.

Pro bono service makes business sense for attorneys, from large firms to small firms and solo practitioners

- Law firm corporate clients are interested in evidence of their lawyers’ corporate social responsibility.
- Annual law firm rankings in publications such as *The American Lawyer* have had a positive impact on firms’ pro bono practices.

- New lawyers, smaller firms, and solo practitioners can benefit from pro bono work by developing skills and expertise and creating contacts in the community.
- Pro bono providers offer Minimum Continuing Legal Education (MCLE) trainings for prospective volunteers at little or no cost, as well as opportunities to network with other lawyers.
- Pro bono programs often provide mentoring and malpractice coverage for their volunteers.

Many ways to do pro bono work

- Pro bono opportunities are available for litigators, transactional attorneys, and mediators—for both new and experienced attorneys.
- There are varying levels of time commitments and opportunities for limited scope representation.
- Pro bono opportunities exist in all areas of civil law:
 - Advice and counsel clinics and hotlines, and provision of legal information at court self-help centers;
 - Impact litigation and policy advocacy;
 - Community education and outreach;
 - Mediation of legal disputes; and
 - Transactional legal assistance to nonprofit organizations.

Get involved

- Join your local bar association’s pro bono program.
- Contact local legal aid and other legal services agencies.
- Work with your firm’s pro bono manager/partner.
- Contact your court’s self-help center.
- Visit CaliforniaProBono.org (www.probono.net/CA) to find opportunities in your location and areas of interest.

Closing remarks

Speaking for myself and my judicial colleagues, we thank you sincerely for your help. We know that you have incredible demands on your time, and your commitment to the profession and to the courts is truly appreciated.

Inspirational Quotations

“The title of professional requires that in daily practice, an attorney strive to transcend the demands of the moment to consider the greater good. Lawyers are not simply representatives or employees of their clients—they are officers of the court. That denomination reminds us that a lawyer’s obligations flow not only to the client but to the courts and to the system of justice of which they are an integral part.”

—Chief Justice Ronald M. George (October 2001)

“The pro bono contributions made by these attorneys—and thousands like them across California—beneficially affect not only the individuals they assist, but also the rule of law and the administration of justice in our state. . . .

“Something very different also threatens to undercut our court system’s ability to administer justice. We all recognize that our system must afford meaningful access to the courts to all those who need it. Such access necessarily includes the ability to participate effectively in the proceedings. And often that is dependent on whether one does or does not have legal representation.

“For many individuals, going ahead without counsel is unthinkable. Many things—language and cultural barriers, complex legal issues, unfamiliarity with legal proceedings—can serve as an insurmountable obstacle. But a major barrier, of course, is cost.”

—Chief Justice George, Pro Bono Awards, Bench/Bar/Judicial Administration Convention, Anaheim, California (September 28, 2007)

“We must act to increase the number of pro bono attorneys assisting indigent clients. . . . Many lawyers across the state and the nation have already heeded the call for pro bono services. Still, we need a larger pool of volunteer lawyers. This need is especially acute in California because of our growing diverse population of immigrants, low-wage workers, seniors, and other vulnerable groups who face enormous difficulties in accessing the justice system.” (emphasis in original)

—Chief Justice George, letter to California bar leaders (2004)

“Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever-increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made fulfilling the responsibilities of community service quite difficult. But public service marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure.”

—Justice Sandra Day O’Connor, 78 Or. L. Rev. 385, 391 (1999)

“Except for the few that legal services lawyers can represent, poor people have access to American courts in the same sense that the Christians had access to the lions when they were dragged, unarmed, into a Roman arena.”

—Justice Earl Johnson, Jr., quoted in Becker and Gibberman, *On Trial!* (1987)

“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”

—Justice Hugo L. Black, *Griffin v. Illinois* (1956) 351 U.S. 12, 19

“We are here on earth to do good to others. What the others are here for, I don’t know.”

—W. H. Auden

“Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob, and degrade them, neither persons nor property will be safe.”

—Fredrick Douglass, speech (April 1886)

“True peace is not merely the absence of tension; it is the presence of justice.”

—Dr. Martin Luther King, Jr.

“Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists . . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

—Justice Lewis F. Powell, Jr., U.S. Supreme Court Justice (Ret.), during his tenure as president of the American Bar Association

Examples of Pro Bono Cases

- Luis's mother died in a car crash, his father is not around and has never met Luis. The boy's grandparents must get guardianship of Luis in order to provide the care he needs. They are retired seniors and cannot afford an attorney.
- Malcolm and Tonya have two children and bought a house in 2006. Malcolm lost his job, and they can no longer afford the mortgage. They've received a foreclosure notice and have nowhere to go if they are evicted.
- Lucy has two young children and is pregnant. They all live with her boyfriend, who has been increasingly violent toward her. She has no family or friends, as he has succeeded in isolating her. She's afraid that if she leaves with the children, he'll come after them. She doesn't know where to go where she and the children will be safe.
- A car crash left an eight-year-old boy with severe brain damage. His school repeatedly failed to provide learning services and support as required by federal and state law. His parents are legal immigrants and do not understand the system, and their English proficiency is limited. They need an advocate to help the boy get transportation, physical therapy, and a classroom aide so that he can stay in school.