

STATE BAR OF TEXAS
PRO BONO POLICY – FAQ
2007

The State Bar of Texas Board of Directors adopted a revised Pro Bono Policy on September 22, 2000, which establishes an aspirational goal of 50 hours of pro bono legal services to the poor each year for each Texas attorney. The policy also establishes an annual reporting system so that each Texas attorney can report the pro bono legal services provided each year.

An estimated 75 percent of the legal needs of the poor are not being met. The State Bar Board intends for the pro bono policy to encourage attorneys to do more to try to close this gap between the need for legal services to the poor and available services. However, the State Bar Board recognizes that pro bono efforts alone will not adequately address the gap. Therefore, the State Bar Board continues to take additional actions such as working to emphasize that this is a societal issue that attorneys cannot address alone.

The definition of pro bono, examples of qualifying service, and answers to frequently asked questions about the policy are found below. (Qualifying services are not limited to the examples provided.)

1. What is the definition of pro bono services and what are examples of services that qualify under each component of the pro bono definition?

(a) *The direct provision of legal services to the poor without an expectation of compensation, or at a substantially reduced fee, whether civil or criminal;*

Examples include:

1. representing a low-income client who comes to the attorney's office seeking help with a family law matter
2. representing a disabled client referred by a local pro bono project in a Social Security appeal
3. providing legal advice to a low-income client at a neighborhood legal clinic

(b) *Services without a fee, or at a substantially reduced fee, related to simplifying the legal process for, or increasing the availability and quality of, legal services to poor persons;*

Examples include:

1. developing an ADR program specifically designed for and accessible to low-income individuals
2. training or mentoring non-family law attorneys to handle family law cases for low-income clients
3. recruiting attorneys or raising money for the local pro bono program
4. providing services as a member of the board of directors of a legal services program

(c) *Legal services without a fee, or at a substantially reduced fee, rendered to charitable, public interest organizations*

with respect to matters or projects designed predominantly to address the needs of poor persons;

Examples include:

1. preparing incorporation documents for a new nonprofit health care clinic for low-income persons
2. providing the legal services necessary for a nonprofit community group to develop a low-income housing project
3. assisting a church in acquiring a zoning variance for a homeless shelter

(d) *Legislative, administrative or systems advocacy services without a fee, or at a substantially reduced fee, provided on behalf of poor persons;*

Examples include:

1. representing low-income elderly persons before the Public Utility Commission regarding a need for lifeline utility services
2. lobbying the Texas legislature for comprehensive health care services for low-income Texans

(e) *Unsolicited, involuntary appointed representation of indigents in criminal and civil matters.* (superseded by the Fair Defense Act regarding appointment in criminal matters, since appointments are no longer involuntary. However, such appointments may count as “substantially reduced fee” work)

Example:

Representing an indigent parent in a termination of parental rights suit filed by the Department of Human Services as a result of an unsolicited, involuntary court appointment

2. What is the definition of "poor"?

The pro bono policy does not specifically define "poor". That decision is left to the individual program or attorneys. Many programs, such as those funded by the Legal Services Corporation or the Texas Equal Access to Justice Foundation (IOLTA), define "poor" to be 125% of federal poverty guidelines. (E.g., in 2005 \$24,188 gross for a family of four, and \$11,963 for an individual) Clients referred by an organized pro bono project generally have been screened for income eligibility according to the local guidelines. Attorneys accepting independent pro bono cases are encouraged to use the poverty guidelines, but they may also use their own judgment regarding who is "poor."

3. Do legal aid staff attorneys, public defenders, and prosecutors count their work time as pro bono, since they provide free legal services to the poor?

No. Although the services are free to the clients, the attorneys are paid for their work at salaries they have accepted. However, if these attorneys provide volunteer legal assistance to the poor outside their regular work, they may report those hours as pro bono service.

4. Do legal services to the poor have to be provided through an organized pro bono project to qualify?

Services do not have to be provided through an organized pro bono project to qualify. Many attorneys provide substantial amounts of qualifying pro bono legal services to the poor on an independent basis.

5. How did the State Bar select the standard of 50 hours?

The 50-hour goal is based on the pro bono standard established by the American Bar Association in 1988.

6. What happens if an attorney does not satisfy the 50-hour expectation?

While each Texas attorney is strongly encouraged by the State Bar Board of Directors to provide 50 hours of qualifying services each year, no attorney will be disciplined for failure to comply.

7. Are attorneys expected to report their pro bono hours to the State Bar and, if so, how do they do that?

The State Bar has instituted an annual voluntary pro bono reporting system and each attorney is encouraged to report qualifying hours. Attorneys are asked to report their pro bono service and financial contributions on-line.

8. If substantially reduced fees are received for appointments in criminal or civil matters, do the services provided still qualify under the pro bono policy?

Yes, since 2000, substantially reduced fee work for poor people has been included in the definition of legal services to the poor, whether or not it involves a court-appointment. Free and reduced fee services are separated for reporting purposes.

9. What is the definition of "substantially reduced fee"?

The pro bono policy does not specifically define "substantially reduced fee." However, Lawyer Referral Services that offer reduced fee panels for low-income people, often use \$50/hour as the maximum that panel lawyers may charge. Lawyers doing reduced fee work may use that fee or may use their own judgment in setting the fee.

10. Are there services in addition to representing a criminal defendant for free or for a substantially reduced fee that criminal law attorneys may count as pro bono?

Yes, criminal law attorneys can play an important role in "preventive law." Many pre-teens, juveniles and their families are unfamiliar with the juvenile justice system until they are involved in the system. Community education, e.g., speaking at schools, community centers, etc., about the juvenile justice system counts as pro bono, so long as the audience is predominately poor.

11. What if I accept a client on a fee-paying basis and later determine that, due to the client's low-income status, services should be provided on a pro bono basis?

The definition includes legal services provided "without an expectation of

compensation.” Attorneys must use their discretion to determine what services are provided “without an expectation of compensation.”

12. What if my employer prohibits outside practice of law?

While some employers still prohibit the outside practice of law in pro bono matters, many employers, such as various government employers, are relaxing such restrictions. The State Bar attempts to work with those who have such restrictions to encourage them to remove or modify them. However, for those attorneys whose employers currently prohibit the outside practice of law, the State Bar encourages them to try to participate in the kinds of services that qualify that do not constitute the practice of law, such as those included under part (b) of the definition. No attorney is expected to comply with this policy if absolutely prohibited by the employer. But in some circumstances such as the statutory prohibitions against outside practice by some prosecutors, “outside practice of law” has been defined to exclude pro bono legal services to the poor.

13. Transactional attorneys often provide legal assistance to non-profit organizations such as schools, churches, and social service agencies by doing such things as drafting by-laws, handling contract negotiations, and providing legal advice. Do these services count under the definition?

Yes, where the population benefiting from or comprising the non-profit organization is predominately poor, as in a church or school located in an inner-city neighborhood or a provider of social services to the homeless, the legal services provided to the organization qualifies as pro bono services to the poor under (c) of the definition.

14. Are there any other non-litigation services that transactional and other attorneys can provide that count as pro bono under the definition?

Yes. There are many kinds of pro bono opportunities that do not involve litigation or court work that would qualify as direct legal services to the poor. Included are various real estate transactions (such as assistance with clearing title), explaining the terms of a

contract, negotiating a lease or repayment agreement, drafting a will or other estate planning documents, probating a will, advising on tax matters, appealing the denial of SSI or other public benefits, and negotiating with an insurance company.

Most pro bono programs provide volunteer attorneys with specialized training, materials and mentors to help guide volunteer attorneys through simple family law matters. Participation in a legal clinic or free legal seminar for the public, such as a legal awareness for the elderly clinic, also qualifies as pro bono so long as the audience is primarily poor. Simply providing free legal advice over the phone to a poor person qualifies, as does conducting intake interviews through organized pro bono programs.

15. Legal services provided to other kinds of non-profit organizations and non-legal volunteer services provided to a non-profit organization or a low-income person are not included in the definition. Why not?

Texas attorneys provide countless hours of civil services in various kinds of community activities. The legal profession should be commended for its voluntary contributions to society. However, in establishing this pro bono policy, the State Bar Board of Directors recognized that lawyers have a special talent and license to provide a unique service that non-lawyers are prohibited from providing. The Board also recognized that the legal needs of the poor only minimally are being met and that it is an attorney's responsibility to provide equal access to justice to even our poorest citizens or residents. Additionally, the Board recognized that the Texas Disciplinary Rules of Professional Conduct and the Texas Lawyer's Creed both establish an ethical obligation of Texas attorneys to provide legal services to the poor.

16. Bar associations often respond to a natural disaster by organizing pro bono legal services for victims. If an attorney provides free legal assistance to these victims, does that count as pro bono services, even if the disaster victim would not generally qualify as poor?

In situations where the federal or state government(s) has declared a disaster or crisis, the victims of that disaster or crisis are determined by the government to be indigent,

even if only temporarily, as a result of that disaster. Legal assistance rendered to these victims without an expectation of compensation, as part of a Bar-sponsored activity, qualifies as pro bono services to the poor under (a) of the definition.

17. Do mediation services provided by an attorney count under the pro bono policy?

Mediation services provided at no cost when at least one party is low-income qualify under part (b) of the pro bono policy definition.

18. Can an attorney contribute money to a legal services program in lieu of providing 50 hours of pro bono legal services to the poor?

Since 2000, the pro bono policy has included the option of making financial contributions to legal services programs in lieu of providing pro bono service. The policy states “each Texas attorney should aspire to render at least 50 hours of legal services to the poor each year, or make an *equivalent financial contribution to an organization that provides direct legal services to the poor.*” (emphasis added.) Financial contributions to other nonprofit organizations do not qualify. Financial contributions are reported separately from free legal services and substantially reduced fee legal services.

19. What if an attorney volunteers to handle ad litem appointments in fee generating cases with the understanding that the ad litem attorney fees will be donated to charity?

If the volunteer ad litem fees are donated to a 501(c)(3) charity that provides direct legal services to the poor, the hours may be counted as pro bono activity.

20. Where a volunteer attorney acts as ad litem for a no-show defendant in a case where the plaintiff is the one benefiting from the ad litem's presence, can this be considered pro bono services?

If, at the request of a pro bono program or indigent individual, an attorney serves as ad litem with no expectation of fee and agrees at the beginning that the fee will be waived or donated to a pro bono program, then the work of the ad litem will qualify as pro bono hours under the definition.

21. Do law related lectures/education to the public count as pro bono activity?

When the law related lecture/education is provided to an audience of poor people, then it may be considered pro bono activity under State Bar definition.

22. When pro bono work is done by one attorney at the request or direction of another, who may count the hours?

In the case of a subordinate attorney doing pro bono work as part of his/her job, at the direction of a supervising attorney, either attorney may count the hours, as long as the work does not get reported twice. In the case of a law firm system whereby designated attorneys do all the firm's pro bono work as part of their job, then the firm may equitably allocate the reportable hours amongst firm attorneys, making sure not to count such services twice. Supervising attorneys should be discouraged from taking full credit in either situation. If one attorney pays another attorney to perform legal services to the poor and assures that the work is done competently, the referring attorney may claim the pro bono hours. Of course, the paid attorney may not.

23. What if an attorney provides more than 50 hours of pro bono legal services?

Many Texas attorneys do provide more than 50 hours of pro bono legal services each year. The State Bar commends those attorneys for their outstanding efforts. An attorney who provides more than 75 hours in a year to pro bono legal services to the poor may be eligible for admission into the Pro Bono College of the State Bar.

24. How can an attorney find out about local pro bono opportunities?

Most communities in the state of Texas have at least one organized pro bono project that can assist attorneys in identifying clients that need their services. Any attorney who cannot locate such a program or needs assistance in identifying an appropriate program may visit www.texasbar.com/volunteer for a county-by-county listing, or contact the local bar association, or Texas Lawyers Care at 1-800-204-2222, ext. 1855, or in Austin 512-427-1855.

25. Do other states have pro bono policies?

Many states now have aspirational pro bono standards for their attorneys with varied amounts and definitions. So far no state has adopted a mandatory pro bono system, although it is being or has been considered in several states. Some states like Florida, Maryland and Nevada have mandatory *reporting* of pro bono service.

26. Where can an attorney find out more about the pro bono policy?

Copies of the policy and additional information are available from Texas Lawyers Care, the pro bono activation and support project of the State Bar. Contact Texas Lawyers Care at tlcmail@texasbar.com or 1-800-204-2222, ext. 1855 (in Austin 427-1855) or P.O. Box 12487, Austin, Texas, 78711.