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Return to: <http://www.abanet.org/legalservices/probono/reportingguide.html>

## Policies - Guide on Pro Bono Reporting

ABA Model Rule 6.1    Table of State Ethics Rules    Standards for Pro Bono Programs    Emeritus Attorney Rules    Pro Bono Reporting    CLE Credit for Doing Pro Bono

### Resources on Reporting Policies

[State-by-State](#)

[Guide for Bar Leaders and Others](#)

[Arguments in Favor and Against](#)

**August, 1999**

### State Pro Bono Reporting: A Guide for Bar Leaders and Others Considering Strategies for Expanding Pro Bono

*This paper has been prepared by the ABA Standing Committee on Pro Bono and Public Service to assist bar leaders, judges and other key stakeholders in a state as they plan for and build the most successful legal services delivery system possible. It reviews pro bono reporting approaches, the key components to consider and particular models.*

#### INTRODUCTION

The gap between the legal needs of the poor and the resources available to meet those needs is growing dramatically. By necessity, people have been increasingly emphasizing expansion of pro bono legal services through various policy and delivery options. Pro bono reporting is one such option available. Pro bono reporting systems and the data collected through them can be used to promote and encourage pro bono participation.

Over the years, a number of states have developed different types of pro bono reporting systems. Currently, thirteen states utilize some type of pro bono reporting mechanism, while seven others have taken the matter under consideration. The remaining thirty-one states do not have pro bono reporting systems in place, nor are they considering the possibility of establishing them.

By setting up a reporting system, a state can effect increases in pro bono participation; recognition of pro bono service as part of a lawyer's professional responsibility; and financial contributions to pro bono and legal services programs. Such systems can help assess the quantity and nature of lawyers' pro bono activities and can contribute toward improving coordination of statewide pro bono delivery strategies.

Two models of state pro bono reporting systems have been developed: rules requiring attorneys to report their pro bono activity (mandatory reporting) and rules suggesting that attorneys volunteer such information (voluntary reporting). Each method has strengths and weaknesses in terms of effectiveness and each presents challenges for adoption and implementation. One should consider the pros and cons of each method to determine which policy might be most effective in a given state.

One should also consider whether reporting is the best strategy to undertake. After evaluating reporting, one might conclude that a different strategy to increase pro bono participation would be a wiser expenditure of energy. Other, perhaps more appropriate strategies for promoting pro bono participation may be worthy of consideration. Some state experiences show that significant negative consequences can result when pro bono reporting policies are advocated publicly then rejected. For example, if a pro bono reporting campaign generates controversy and a controlling body then refuses to adopt the policy, the legal community and the public might resist all future statewide policies related to pro bono. Negative sentiment may also arise if a state adopts a pro bono reporting system that proves to be inefficient and useless. Thus, the potential benefits of

establishing a pro bono reporting system may not outweigh the risks of doing so.

*Attached to this paper are lists of arguments for and against mandatory and voluntary pro bono reporting systems and other various materials, including rules and reporting forms about pro bono reporting systems currently in place around the country, those considered in the past and those currently under consideration.*

## **BACKGROUND**

### **ABA House of Delegates Resolution**

In 1995, the ABA passed a resolution calling on national, state and local bar associations to make the expansion of pro bono legal services a critical priority. The resolution urges bar associations to develop effective and innovative strategies to promote pro bono service; to allocate sufficient bar resources for effective implementation; and to coordinate development of these strategies with legal services providers and pro bono programs. It also suggests consideration of a number of specific strategies, such as mandatory or voluntary pro bono reporting. In effect, the resolution serves as a starting point for states evaluating reporting as a possible strategy for promoting pro bono service.

### **Pro Bono Reporting as a Strategy**

A pro bono reporting system makes attorneys aware of and accountable for fulfilling their professional responsibility to provide legal services and to make financial contributions to the poor. It focuses attention on Model Rule 6.1 of the ABA Rules of Professional Conduct and adds incentive for compliance with that rule. The data collected through pro bono reporting can reveal the number of attorneys performing pro bono service during a given time period, the number of hours served and details about financial contributions made to pro bono and legal services programs. The information can also facilitate recognition of contributing attorneys, enhance the public image of the legal profession and improve the coordination of statewide pro bono delivery efforts.

## **CHOOSING A PRO BONO REPORTING SYSTEM**

Before embracing pro bono reporting as a policy your state should adopt, you should first address the issue of whether or not reporting is a suitable strategy. How great is your state's need to know more information about pro bono service? Will data on individual pro bono service facilitate the promotion and encouragement of pro bono in your state? Should strategies other than reporting be examined more closely? Would a different strategy be a more worthwhile expenditure of time, money and energy?

If you decide that pro bono reporting is appropriate for your state, then as you proceed, you should keep in mind the particular objectives sought. The considerations proposed herein and the arguments set forth in the attachments will prove useful if viewed in light of your state's needs, limitations and philosophies. Which reporting system will best raise awareness in your state of lawyers' pro bono responsibility? Will a low percentage response rate have value? What political challenges will the adoption process present? Is there a state entity capable of collecting and processing data?

By evaluating state models of pro bono reporting systems in place, under consideration and those rejected, you should be able to determine which system, if any, would be best for your state. The models may help you tailor a pro bono reporting system that satisfies your state's unique criteria or they may lead you to consider other options for expansion instead.

## **MANDATORY REPORTING**

### **The Florida Model**

Florida is the only state that mandates pro bono reporting and it does so by way of a rule developed, promoted and adopted by the Florida Supreme Court. Rule 4-6.1(d) of the Florida Rules of Professional Conduct states that attorneys must complete a portion of the annual

membership dues statement by reporting the number of hours of pro bono legal services performed during the year. Reporting zero hours constitutes compliance. Failure to report at all constitutes a disciplinary offense, although the form of discipline has not been defined, nor has any such action been taken to date. The Comment to the Rule states that the reporting requirement is designed "to provide a sound basis for evaluating the results achieved by this rule, reveal the strengths and weaknesses of the pro bono plan and to remind lawyers of their professional responsibility."

Florida's reporting system was implemented in 1993, over much opposition from the Florida State Bar. In 1997, the Florida Supreme Court affirmed its prior decision. The system elicited a 90% response rate in 1997 and has brought about significant increases in conjunction with Florida's circuit court pro bono committee system: 35% in participation; 30% in the number of volunteer hours; and 65% in monetary contributions. The committee system creates local responsibility for using the data acquired through reporting to develop specific plans and new projects as needed in each circuit.

The cost for Florida's reporting system has totaled approximately \$10,000 per year for collecting and evaluating data, modifying the annual membership fees form, distributing information to committees and answering questions. Eventually, a full-time statewide pro bono director and staff will be hired to work with the committees on improving pro bono programs statewide. They will analyze the data collected through reporting, thereby enhancing the data's utility and revealing more probative evidence of the system's efficacy. The director and staff will cost \$150,000 per year for two years, but this cost should not necessarily be considered an expense of implementing the mandatory reporting rule, since it is a measure consistent with that taken in the other 23 states with statewide pro bono support providers.

### **Considerations**

As shown by the Florida model, mandatory reporting can render high rates of reporting and can be an effective way to promote pro bono service both directly and indirectly. It can be inexpensive, simple and can render accurate, consistent and credible information about pro bono activities. It can also instill a peer pressure that can be viewed as a positive influence. It can also increase the likelihood that more attorneys will participate in pro bono activities and make financial contributions, since they become answerable to a public entity. The data acquired through this method can be useful to individual pro bono programs as well as to circuit court pro bono committees, bar associations and legislatures.

Mandatory pro bono reporting data can also help improve relationships between the media and state and local bars because the data collected holds credibility it would not otherwise hold. The data, being concrete evidence of attorneys' effort, can give weight to a bar's stance in political debates about funding for legal services. It also can be used to pinpoint nonparticipation and devise strategies for increasing participation.

The downside to mandatory reporting is that it will most likely persist as a hot button issue because it raises questions and invites controversy about a state's authority to mandate lawyer conduct related to pro bono activities. In Florida, such controversy has persisted despite the Supreme Court's affirmation of the pro bono reporting rule.

### **States Considering Mandatory Pro Bono Reporting Systems**

#### **Minnesota**

*Minnesota:* In July 1999, Minnesota State Bar Association's (MSBA) Board of Governors and General Assembly approved a recommendation by the Legal Assistance to the Disadvantaged Committee that the Bar petition the Minnesota Supreme Court for "required reporting" of pro bono services rendered and financial contributions made in compliance with Rule 6.1 of the Minnesota Rules of Professional Conduct. The MSBA's petition will propose that each attorney be required to fill out a separate, anonymous reporting form included with the annual license renewal form and certify that he or she filled out the form. The committee deliberately avoided using the label "mandatory reporting" so as to avoid the negative implications often associated the word "mandatory."

## **States That Considered then Rejected Mandatory Pro Bono Reporting Systems**

### ***Colorado, Indiana, Massachusetts, Nevada, New York and Utah***

*Colorado:* In May, 1999 the Colorado Supreme Court rejected a mandatory pro bono reporting policy recommendation made by its Judicial Advisory Council (JAC), on the basis that it is a step toward the imposition of mandatory pro bono service. The JAC had earlier rejected a mandatory pro bono service proposal made by one of its subcommittees under which lawyers would have been required to donate 25 hours of pro bono work per year.

The JAC's reporting recommendation sought to establish a central collecting mechanism for obtaining complete information on the number of hours of pro bono work performed by Colorado attorneys; a means of recognizing contributing lawyers; and a means of improving the reputation of lawyers and the legal system. The JAC was impressed by Florida's actual increase in pro bono participation.

*Indiana:* Indiana adopted Rule 6.5 in 1997, which focuses on creating locally-driven pro bono projects through committees in its fourteen judicial districts. Mandatory pro bono reporting was considered and not made a part of that rule, nor has reporting been considered an option in Indiana since that time.

*Massachusetts:* In a March 1998 preliminary report, the Pro Bono Committee of the Supreme Judicial Court of Massachusetts proposed a rule that included an aspirational goal of 25 pro bono service hours and mandatory pro bono reporting. The reporting provision was eliminated from the final report submitted in November 1998 after generating much controversy. Supporters of it focused on the uniqueness of the legal profession and the reasonableness of the response to a growing problem. Opponents attacked the recommendation as "coerced counsel," "an insult" and "involuntary servitude," among other things. The reporting proposal was ultimately rejected in part due to the debate stirred, but mainly because the Board of Bar Overseers did not have the capability to collect reported data.

*Nevada:* In Nevada, aspirational goals and a committee system (Statewide Access to Justice Committee and the Local Pro Bono Committees) were established in 1996, when a new Supreme Court Rule 191 was enacted. Thereafter, a voluntary reporting system was considered, for the purpose of collecting data to gauge the effectiveness of the new rule. However, in October 1998, the State Bar's Board of Governors rejected the proposed system because it did not want the State Bar involved in the task of data collection.

*New York:* New York also considered implementing mandatory pro bono reporting but ultimately rejected it and as a result of the debate stirred, rejected reporting altogether. It concluded that mandatory pro bono reporting would be the first step toward mandatory pro bono service and consequently, the word "mandatory" now carries with it strong negative implications in New York. By way of practical comparison, the Florida experience reveals that the success of its mandatory pro bono reporting system has actually made the threat of mandatory pro bono service virtually a non-issue there.

*Utah:* Utah nearly became the second state to implement a mandatory reporting system based on the Florida model. However, the Bar Commission's proposal sparked a heated debate that resulted in the Utah Supreme Court's rejection of the proposed system in August 1998. The proposed rule differed from the Florida rule in that it did not pose a disciplinary threat, but instead precluded license renewal for noncompliance. In addition, it did not include exemptions for certain members of the profession as Florida's rule does.

The proposed reporting form for Utah would have been made a part of the annual dues statement form. Each bar member would have been required to provide information in response to one of the following three options:

- (1) the number of hours of pro bono legal services personally provided;
- (2) (i) the amount of money being submitted to the Utah Access to Justice Foundation; or

(ii) the amount of contributions to direct services organizations; or

(3) the number of hours of pro bono legal services carried forward from the previous reporting year.

**VOLUNTARY REPORTING**

Voluntary reporting is the more popular of the two reporting strategies because of its optional nature. It does not impose an obligation, nor is it likely to be interpreted as a threat to an attorney's autonomy and therefore, it tends to stir less controversy than mandatory reporting. If an attorney does not want to report the number of pro bono hours served, then he or she need not do so.

**Voluntary Reporting Models**

***Arizona, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Mexico, Texas and Utah***

Kentucky and Texas have had voluntary reporting systems in place since 1992. Arizona and Maryland implemented their systems in 1994; Hawaii in 1995; New Mexico in 1996; Georgia, Illinois and Missouri in 1997; and Louisiana, Mississippi and Utah in 1998.

The voluntary reporting systems in place have not generated high response rates. Some available response rates are as follows:

<b>1996</b>		<b>1997</b>	
Arizona	35%	Georgia	8%
Hawaii	33%	Hawaii	33.5%
Kentucky	12%	Illinois	3-5%
Maryland	7-8%	Louisiana	8-9%
New Mexico	32%	New Mexico	33%
Texas (1996/97)	34.7%	Texas (1997/98)	27%

The response rates in the states with voluntary reporting systems are far lower than the 90% compliance seen in Florida under its mandatory system. Although actual pro bono participation could be high and simply unreported in the states with voluntary systems, that information is unknown and unknowable. Further, it is possible that voluntary reporting systems do increase awareness amongst attorneys of their pro bono responsibility and that the increased awareness leads to increased participation. No matter what effect the voluntary forms actually have, the high percentage of attorneys who choose to disregard them limits the conclusions that can be drawn.

A 4% increase in the response rate in Arizona from 1995 to 1996 was attributed to the larger amount of space devoted to pro bono reporting on the dues statement and the larger size of the wording. New Mexico's relatively high rate of reporting could be attributed to the reporting form's three-inch size and its position in the middle of the annual dues statement. Ever since Hawaii

added a signature line to its reporting form, the response rate there has remained relatively high.

Texas State Bar representatives attribute falling response rates to placement on forms. The reporting section on the 1995/96 dues statement was located between mandatory response sections, whereas on the 1996/97 form, it was placed farther away from mandatory items, at the bottom of the last page. The 1997/98 decline may have resulted from the pro bono reporting section not being a part of the dues statement at all.

In Maryland, attorneys report their pro bono activity on a separate half-sheet form sent along with the annual dues statement. This format could account for the markedly low response rate, since the half-sheet form can easily get lost or discarded by attorneys or accounting departments processing the dues statements. In Georgia, another state with a markedly low response rate, the pro bono reporting inquiry has been included on the Continuing Legal Education form.

### **States Considering Voluntary Pro Bono Reporting Systems**

#### ***Michigan, New Hampshire, New Jersey, Vermont and Virginia***

Although these states have not begun formal efforts to adopt voluntary pro bono reporting policies, they are keeping the possibility open and under discussion.

### **Considerations**

The adoption process for a voluntary pro bono reporting system can be easy, as evidenced by the number of states currently utilizing some version of a voluntary reporting system (twelve). Further, the number of states considering voluntary reporting (five) implies that the presumably uncomplicated adoption process is attractive. By comparison, the adoption process for a mandatory reporting system is more difficult, as shown by the Florida and Utah experiences, as well as the number of states considering adoption of a mandatory pro bono reporting system (two).

Voluntary pro bono reporting can be inexpensive, since the form can be incorporated into the annual dues collection procedure. The collected data needs to be processed and depending on the manner in which the data is collected, this can be accomplished without significant added burden. When the reporting form is incorporated into the dues statement, management of the inquiry can be a simple matter for both the attorneys and the collecting entity.

With a voluntary system, formatting takes on a critical role because the usefulness and effectiveness of a particular system will depend on whether or not it is laid out in an eye-catching, inviting and clear manner. The terminology used to convey the request for information can also play a critical role because an attorney might choose to respond to or ignore the request depending on how the matter is presented. An effective style would include direct wording, a simple layout and prominent positioning.

A downside of voluntary pro bono reporting is that the voluntary nature of the system leads to low reporting rates. The data collected is generally not comprehensive and therefore somewhat limited in value. If a state adopts voluntary reporting as a means of expanding pro bono and then gathers only a meager amount of data, increased participation as a result of the system would be virtually undetectable. The reporting system could have contributed to the goal of expansion, but the low response rate would preclude that determination.

Despite relatively low response rates, some states view voluntary pro bono reporting as an effective way to obtain quality information at a nominal cost. The Bar Foundation of Arizona reports that more pro bono involvement has occurred as a result of its reporting system and awareness of pro bono has been raised, as evidenced by the high number of telephone inquiries received on the subject.

On the other hand, voluntary systems have created controversy in some states. For example, in Texas, re-evaluations of their system have led to an extended debate over the definition of pro bono and the exact nature of reporting-eligible services. Should the definition of pro bono be expanded to include not only legal services that benefit the poor, but also volunteer legal and non-legal services that benefit the community? A compromise has left the current definition of pro bono

intact and the reporting form expanded to include two additional categories of public service: 1) volunteer legal services benefiting the public (i.e. not the poor); and 2) non-legal community services. The expanded form has diminished the impact of reporting as a strategy to promote pro bono in Texas.

## THE BEST REPORTING SYSTEM FOR YOUR STATE

The best reporting system for your state may not look exactly like one of the reporting models described herein. It might incorporate bits and pieces of various tried systems and add new, untested features. The success of the system will depend on how well it meets the particular needs of your state, how precisely its components embrace the unique characteristics of your state's people, its legal community and its resources. Thus, flexibility and creativity make up a critical part of the process. If a state makes a true commitment to maximizing the validity of the data collected, using it to improve access to legal services and not misusing it (e.g. with news media representatives), then reporting will be worth the effort and resources invested.

As proponents of a given system, you will need to anticipate difficulties and be willing to devise creative responses thereto. You will need to determine how to continue molding many aspects of your state's reporting system to fit your state's needs not only at the outset, but also later, throughout the system's evolution. Various states have shown that the tailoring of an appropriate system is an ongoing process. For example, a reporting form on a dues statement may have to undergo repeated repositioning before the response rate might rise to a useful level or indicate that awareness amongst lawyers has been heightened.

You should take a flexible approach and anticipate modification of any reporting system established. For example, terminology may have to be altered if chosen terminology or explanations bring about confusion or backlash from bar members. Methods of conveying the collected data to the public may have to be modified if certain results are not achieved or if miscommunications result.

Many aspects should be considered as you attempt to develop the best reporting system for your state. You should include the following queries in your considerations:

- ✦ What should the reporting system be **labeled**?  
*(e.g. If a mandatory reporting policy is sought, perhaps avoid calling the system "Mandatory Pro Bono Reporting" and instead refer to it as "Pro Bono Reporting" or "Pro Bono Survey" to avoid the negative implications of the word "mandatory.")*
- ✦ Should your state adopt **circuit court pro bono committees**?  
*(e.g. Florida, Indiana, Nevada.)*
- ✦ Should certain lawyers be **exempt** from reporting?  
*(e.g. judiciary and staff; government employees; retired; inactive; suspended; incapacitated; out-of-state.)*
- ✦ Should lawyers be **recognized or rewarded** for the pro bono activity they report?  
If so, how?
- ✦ Should the system include **sanctions** for non-reporting or misreporting? If so, should the sanctions sound in discipline or licensing or other?  
*(e.g. fine or suspension.)*
- ✦ Should a **protection of privacy** be built into the system?  
*(e.g. anonymity and release records of individual attorneys or statistical information.)*
- ✦ What type of **format** should be used?  
*(e.g. part of dues statement or separate form.)*

- ⌘ What **definition of "pro bono"** should be used?  
(e.g. *ABA Model Rule 6.1 definition or other.*)
- ⌘ Should **carryover** apply?
- ⌘ Should **law students** be asked to comply?
- ⌘ Should certain lawyers be allowed to **opt out** of reporting altogether?
- ⌘ Should an **estimate** be considered a compliant response?

## CONCLUSION

Pro bono reporting can be an effective strategy for effectuating increases in pro bono participation. By taking into consideration the different aspects of mandatory and voluntary pro bono reporting systems and by examining state systems in place and rejected, you should be able to determine which system would have the greatest chance of success in your state. You should also be able to determine whether or not a pro bono reporting system is a worthwhile strategy to undertake given the circumstances in your state. Perhaps your considerations will lead you away from pro bono reporting and point you toward another strategy for expanding pro bono legal services that would be more promising and a better use of resources.

The success of a reporting system can be measured by the degree to which it promotes pro bono service. Are lawyers indicating greater participation? Are they indicating that they have been encouraged by the system? Has pro bono participation increased? To obtain positive responses to these questions, advocates must remain focused on the ultimate goal of pro bono reporting, i.e. to promote pro bono service.

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## Attachments to ***State Pro Bono Reporting: A Guide for Bar Leaders and Others Considering Strategies for Expanding Pro Bono***

### A. [Arguments In Favor and Against Pro Bono Reporting](#)

1. Mandatory Pro Bono Reporting
2. Voluntary Pro Bono Reporting

### B. Table: [State Pro Bono Reporting Systems](#)

### C. Rules, Resolutions and Proposed Rules

1. Florida Rules of Professional Conduct: Rule 4-6.1
2. Georgia Supreme Court Ethical Consideration 2-25, Revised February 11, 1993
3. Indiana Rules of Professional Conduct: Rule 6.5
4. Maryland Rules of Professional Conduct: Proposed Modification of Rule 6.1(B)
5. Massachusetts Rules of Professional Conduct: Proposed Rule 6.1
6. Nevada Supreme Court Rules: Rule 191
7. New York Administrative Board of the Courts: 1997 Resolution
8. Texas State Bar Board of Directors: Resolution, Adopted April 17, 1998
9. Utah Rules of Professional Conduct: Proposed Rule 6.1
10. Utah Rules of Professional Conduct: Rule 6.1, Adopted August 1998

### D. Pro Bono Reporting and Survey Forms

1. Arizona Dues Statement
2. Chicago Bar Association Voluntary Pro Bono Activity Report
3. Florida Bar Statement of Annual Fees 1994
4. Florida Bar Annual Membership Fees 1998-1999
5. Georgia Bar Voluntary Pro Bono Reporting Form 1997
6. Hawaii State Bar Association Attorney Registration Statement 1997
7. Illinois State Bar Association Dues Invoice
8. Kentucky Bar Association Annual Dues Notice 1997-1998
9. Louisiana State Bar Association Telephone Survey 1997
10. Louisiana State Bar Voluntary Pro Bono Reporting Form 1998
11. Maryland Annual Pro Bono Reporting Form
12. New Mexico State Bar Licensing Form 1999
13. New York Bar Survey of Pro Bono Activities of Members 1997
14. Texas Supreme Court Annual Pro Bono Reporting Form 1995
15. Texas Supreme Court Annual Pro Bono Reporting Form 1996
16. Texas Supreme Court Annual Pro Bono Reporting Form 1998

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