



2022 Access to Justice Commission Pro Bono Report

Recommendations on Pro Bono Reporting in Colorado

Table of Contents:

Executive Summary	Page 1
I. Preface	Page 3
II. Summary	Page 7
III. Stipulation	Page 7
IV. Purpose	Page 8
V. Recommendation	Page 9
VI. Working Group Data Accumulation	Page 10
VII. Other Reports and Relevant ABA Reporting	Page 11
VIII. Conclusion	Page 16

Executive Summary

As the late Colorado Supreme Court Justice Greg Hobbs has written, “Access to Justice is the single most compelling reason for a legal profession.”¹ Since 2003, the Colorado Access to Justice Commission (Commission) has strived to increase access to justice for poor and modest means Coloradans. The Commission has sought to do so in a variety of ways, including increasing funding for Colorado Legal Services, promoting pro bono service, holding statewide listen and learn sessions throughout the state in 2021, and encouraging access to justice initiatives through local access to justice committees.

No one project will enable us to achieve complete access to justice, and the Commission continues to address access to justice challenges in these and other areas. One area that stands out is the need to encourage more lawyers to provide pro bono service, pursuant to both Rule 6.1 of the Colorado Rules of Professional Conduct and the Oath of Admission taken by all Colorado lawyers.

We do not know how many Colorado lawyers provide pro bono service, how many hours of service they provide, or how much they contribute to organizations that provide assistance to low-income Coloradans. After extensive research and

¹ Justice Gregory J. Hobbs, Jr., *Judicial Support for Pro Bono Legal Services*, Denver Univ. L. Rev. 851 (2012).

discussion, the Commission unanimously recommends that the Colorado Bar Association (CBA), local bar organizations, and diversity bar organizations support its proposal to require Colorado lawyers to report this information as part of their annual attorney registration information.

The ATJC's Delivery Committee began researching this issue in 2020 by contacting the nine (now ten) states that require reporting of pro bono information and the thirteen states that provide for voluntary reporting. Because of the pandemic, the Committee's Working Group was only able to obtain information from about ten states. However, those states provided extensive information regarding the operation of their states' programs. After considering this information, the Committee was persuaded that requiring lawyers to report their pro bono service and financial contributions was preferable to a voluntary reporting rule. In most states with voluntary reporting rules, the percentage of lawyers reporting their pro bono service and financial contributions is fairly low, thereby reducing the utility of the reported information.

Although the CBA and later the Colorado Supreme Court rejected a 1998 proposal by the Supreme Court's Judicial Advisory Council to require pro bono reporting, the Commission believes that this issue warrants reconsideration now. When the 1998 proposal was made, only one state required pro bono reporting; now ten states do. In 1998, the Supreme Court and some Colorado lawyers feared that a pro bono reporting requirement would invariably lead to a mandatory pro bono requirement. However, time has proved those concerns to be unfounded. No state that requires pro bono reporting has extended its rules or registration requirements to require lawyers to provide pro bono service.

Significantly, the Commission's proposal differs from the earlier proposal because it would provide for only aggregate reporting of information. Thus, a lawyer's individual reports would not be available to the public or bar members.

The Commission believes that the benefits of obtaining this information would greatly outweigh the costs. The provision of this information by Colorado lawyers would provide a baseline to know how many lawyers are providing pro bono service, how many hours they provide, and how much they contribute to organizations that provide legal assistance to low-income individuals. This information could be used to assess measures that could be taken to increase pro bono participation and financial contributions. Such information would be especially important, given recent research suggesting that the number of lawyers providing pro bono service, both in Colorado and nationally, has decreased in recent years, both before and after the pandemic. The information will also be valuable to determine the extent to which Colorado lawyers are fulfilling their responsibility under Rule 6.1 of the Colorado Rules of Professional Conduct to provide pro bono service and financial contributions to organizations assisting low-income Coloradans.

The utility of collecting this information can be seen from information we have gathered from other states that require pro bono reporting. In Illinois, for example, the bar association believes that pro bono information enhances confidence in Illinois lawyers and the image of the state’s legal profession. In Nevada, the pro bono information serves a variety of purposes, including promoting the good work of lawyers giving back to the community and promoting donations in lieu of pro bono.

The Commission recognizes the costs associated with our proposal. One cost is revising the attorney registration form to obtain this information. A related cost is compiling this information and preparing annual reports summarizing it. An additional “cost” is recognizing that the information provided will still be incomplete because some lawyers may choose to report no pro bono service or contributions even when they provided pro bono service or made financial contributions.

On balance, however, the Commission strongly believes that the benefits of our proposal outweigh the costs.

The Commission also recognizes that the implementation of our proposal will generate questions by Colorado lawyers. Accordingly, the Commission recommends that the Supreme Court prepare a list of frequently asked questions (FAQs), as has been done in other states.²

Accordingly, the Commission recommends that the attorney registration rule, specifically, C.R.C.P. 227(A)(1)(b)(2)(a)(4), be amended to implement its recommendations.

To maximize the likelihood that the Colorado Supreme Court will approve these recommendations, the Commission urges judges and lawyers throughout the state to support them.

I. Preface:

The Commission has worked to promote access to justice since its founding in 2003. It has made significant accomplishments, including increasing state funding for Colorado Legal Services (CLS) and other programs, hosting legal resource days through local access to justice committees, and encouraging lawyers to provide pro bono public service. Colorado’s ethics rules and the attorney’s Oath of Admission stress the importance of pro bono service. Rule 6.1 of the Colorado Rules of Professional Conduct states, “Each lawyer has a professional responsibility to provide legal services for those unable to pay.” Similarly, lawyers taking the Oath of Admission swear or affirm, “I will

² FAQ examples are attached as Exhibits B and E. Exhibit E also contains the executive summary from Maryland’s latest Pro Bono annual report (the full report is available at <https://www.courts.state.md.us/sites/default/files/import/probono/pdfs/probonoreportfy2020.pdf>).

never reject, for any consideration personal to myself, the cause of the defenseless or oppressed.”

Nevertheless, poor people in Colorado are in distress. The pro bono recommendations made in this report come 23 years after Colorado’s last attempt to implement pro bono reporting requirements. In those two decades, numerous other states have created helpful and unobtrusive requirements to gather information regarding the pro bono work their lawyers are doing. (The ABA’s list of states is included in Section VIII of this Report). Why is Colorado behind? **There is no good reason.**

The need for attorneys representing poor people far exceeds the capacity of Colorado Legal Services and other providers of legal services for the poor. For example, while Colorado has 28,014 active registered attorneys,³ or one for every 206 Colorado residents, a recent study of the Colorado Center on Law and Policy discovered that Colorado has less than one CLS lawyer for every 30,000 people living in poverty.⁴

Similarly, CLS’s 2022 Private Attorney Involvement Plan stated that there are over 750,000 eligible low-income Coloradans, and that 1,395,332 Coloradans have incomes under 200% of the federal poverty level. Dividing the latter figure by CLS’s 75 attorneys yields a figure of one CLS lawyer for every 18,604 Coloradans with incomes at 200% or less of the federal poverty level.⁵

The need for increased pro bono service and funding for organizations providing civil legal aid for the poor can also be seen by contrasting the 575 state public defenders with the 75 CLS attorneys. Although, of course, there is not necessarily an equivalent need for criminal defense lawyers and civil legal aid lawyers to represent poor people, the numerical disparity illustrates the unmet need for pro bono service and increased contributions for civil legal aid programs.⁶

According to the Legal Aid Foundation of Colorado’s 2020-2021 report, CLS handled 9,185 cases benefiting 18,412 individuals in 2020.⁷ In contrast, United States Census Bureau data from a few years ago showed that 823,484 Coloradans qualified for free legal services because their incomes were at 125% or less than the federal poverty level—\$15,613 for an individual and \$32,188 for a family of four.⁸ Furthermore, it is reported that 71% of these poor people may have experienced a legal problem.⁹ CLS cannot meet the state’s legal needs alone; the access to justice gap can only be narrowed through the pro bono efforts of every Colorado lawyer in conjunction with CLS’s important work.

³ See 2020 Annual Report of the Office of Attorney Regulation, p.1. While 13.3% of those attorneys live outside the state, they are subject to Colorado’s rules.

⁴ See Donna Bryson, *Getting Legal Help Can Be a Barrier for Low-Income Colorado Families Who Need Safe, Clean Housing*, DENVERITE (May 28, 2019), <https://denverite.com/2019/05/28/getting-legal-help-can-be-a-barrier-for-low-income-colorado-families-who-need-safe-clean-housing/>.

⁵ See Private Attorney Involvement Plan 2022, pp. 3-4.

⁶ See Appendix D, *infra*.

⁷ See Legal Aid Found. Colo., *Commitment + Action: Annual Report 2020-2021* at 2 (2021).

⁸ See Daniel M. Taubman, *Has the Time Come to Revise Our Pro Bono Rules?*, 97 University of DENVER LAW REVIEW 395, 405-09 (2020); United States Census Bureau, 2013-17, American Community Survey 5-year Estimates, Table C17002. 125% of the 2021 federal poverty levels are \$16,100 for a single person and \$33,125 for a family of four. 86 Fed. Reg. 7732, 7734.

⁹ See *id.*

If one were to fill Petco Park [a 42,445-seat baseball park] to capacity with low-income people who were unable to afford an attorney, there would be just two lawyers to serve them all each year.

- Justice Goodwin Liu,
California Supreme Court

Statistics from the Colorado Judicial Branch regarding pro se litigants have consistently shown that about 75% of all litigants in domestic relations cases do not have a lawyer. Further, 98% of defendants in county court civil cases, and nearly 40% of district court civil litigants in cases outside of family law do not have lawyers. Most pro se litigants do not have lawyers because they cannot afford one and cannot obtain representation from a legal services or pro bono lawyer. In addition, the Colorado Supreme Court's recent approval of a program to establish licensed legal paraprofessionals in family law cases is more likely to benefit modest means litigants who can afford to pay some legal fees rather than low-income Coloradans. (That program has not yet been implemented.)

Despite that unmet need, we do not know for certain the number of pro bono hours and financial contributions that Colorado lawyers perform. According to information provided to the Delivery Committee in April 2021, only 225 out of approximately 10,000 available lawyers provided pro bono representation through Metro Volunteer Lawyers and the Denver Bar Association in 2020 and only 216 in 2021. Similarly, only about 100 of between 1500 and 2000 lawyers in the Pikes Peak area provided pro bono service through the Justice Project in Colorado Springs. In addition, the number of law firms participating in the Colorado Supreme Court's Pro Bono Recognition Program is more than 100 fewer than the number of participating firms a few years ago. While some additional information is available, there is no comprehensive information available of pro bono service and financial contributions in Colorado. **We can do better.**

Since 1998, nine states have adopted required pro bono reporting rules (10 by 2022), which appear to have not only provided these states with valuable data that can be used to target efforts to increase access to justice, but have also increased the number of pro bono hours and financial contributions to pro bono organizations¹⁰ (though, as discussed further below, the impact is not as substantial in voluntary reporting states). Those states requiring reporting of pro bono service include both liberal and conservative states. Requiring lawyers to report their pro bono service will also facilitate needs assessments by pro bono programs, which, in turn, will assist them in obtaining grants. Those who hold the position that implementing a pro bono reporting requirement goes against the very nature of the term, *pro bono*, are mistaken. The error of this position is apparent from the plain meaning of the term "pro bono," which is to provide legal services without fee or expectation of fee to persons of limited means. That plain meaning does not in any way support an argument against **reporting**. There is no other way to reliably collect how much pro bono work and financial contributions are accomplished each year.

In fact, recent articles, including the American Bar Association's 2018 report on pro bono service, note an apparent national decrease in pro bono services. It is important to mention that little

¹⁰ During this time frame, thirteen other states have adopted voluntary reporting rules. The different impact in states that have adopted required pro bono reporting versus those that have adopted voluntary pro bono reporting is discussed below.

data has been gathered on these subjects since COVID-19 impacted the economy (in Colorado or otherwise). It can reasonably be inferred that with less businesses in the economy and fewer jobs being available, there are now, and will be more people of limited means in need of legal services than there were even one year ago.

In 1998, the Judicial Advisory Council of the Colorado Supreme Court proposed a very similar recommendation as the Delivery Committee proposes here. The Council recommended the adoption of required reporting of pro bono work on an annual basis; however, it did not recommend that information be published on a statewide aggregate basis only—as the Delivery Committee does here. The 1998 recommendation was rejected, due to concerns that: (1) adopting required pro bono reporting would be tantamount to requiring lawyers to be subjected to “indentured servitude”; (2) if pro bono reporting became required it would inevitably lead to the statewide implementation of a requirement that lawyers complete a certain amount of pro bono hours (as opposed to the current aspirational goal of 50 hours); and (3) that implementing a required pro bono reporting requirement goes against the very nature of the term *pro bono*, and hence, negates its stated purpose. We address these concerns below and conclude that the advantages of implementing a required reporting requirement substantially outweigh any of its purported shortcomings.

There are several different approaches to the fair enforcement of required pro bono reporting. For seven of the nine states which require pro bono and financial contribution reporting, the reporting rule is in the state’s ethics rules. For two states (Florida and Indiana), it is unclear how the rule is enforced. New York expressly enforces its reporting rule via its ethics rules. Nevada imposes a \$100 fine for failure to comply with its reporting rule. Mississippi and New Mexico treat the failure to comply with the reporting rule the same as a failure to pay annual bar dues or a failure to comply with CLE requirements. Hawaii, Illinois, and Maryland may suspend attorneys who fail to comply with their rules.

Further, Florida and New York make reporting financial contributions voluntary. Hawaii, Mississippi, and New Mexico require reporting of financial contributions if lawyers have satisfied their pro bono goal through financial contributions instead of through pro bono service. Nevada, Illinois, Maryland, and Indiana require the reporting of any financial contributions. Two states, Illinois¹¹ and Hawaii¹², have ethical or court rules which specifically allow the presentation of the pro bono data on an aggregate basis. While their rules do not mention it, Indiana¹³ and Maryland¹⁴ both publish the data they gather only on an aggregate basis.

The Delivery Committee considered whether it should recommend voluntary pro bono reporting instead of required reporting. This alternative was rejected because information from voluntary reporting states indicates that voluntary pro bono reporting has not had a significant impact, while required reporting does. States which have implemented a voluntary pro bono reporting provision

¹¹ See <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/fc6a5c0d-8160-4132-9a40-28f702dc0a55/Rule%20756.pdf>.

¹² See https://www.courts.state.hi.us/docs/court_rules/rules/rsch.htm#Rule%2017.

¹³ See <https://www.theindianalawyer.com/articles/pro-bono-matters-indianas-pro-bono-reporting-system-reflects-growing-participation>.

¹⁴ See <https://www.courts.state.md.us/probono/reportsinfopackets>.

note that a relatively small percentage of lawyers report their pro bono hours. So, adopting voluntary reporting would not accomplish the goals of improving the data available or encouraging the performance of pro bono work and contributions.

II. Summary of the Report

- (1) The Commission recommends that Colorado should aggregately track its lawyers' (a) pro bono work hours, (b) track funds contributed by Colorado lawyers to organizations that provide legal services to persons of limited means, and (c) track the names of the organizations to which those funds are directed.
- (2) This report includes the information gathered by the Working Group and the Delivery Committee regarding required and voluntary pro bono reporting requirements in the United States.

III. Stipulation:

The following Report provides information gathered by the **Working Group Subcommittee**¹⁵ (also referred to herein as the "Working Group") and thereafter adopted by the **Delivery Committee**¹⁶ and **unanimously by the Commission on March 11, 2022.**

The Commission does not seek to require performance of any pro bono work or the contribution of any funds to legal services organizations. Rather, this Report sets forth the Commission's recommendation for pro bono reporting with supporting evidence we have gathered.

IV. Purpose:

The Working Group was appointed by the Commission's Delivery Committee. The Delivery Committee's purpose is to promote the delivery of legal services, including pro bono representation, alternate providers, affordable representation, local ATJ committees, and rural legal services. The Working Group's goal is to provide information and a recommendation to the Delivery Committee as to whether Colorado should alter its present pro bono requirements to require lawyers to report their pro bono hours and report any amount contributed to any organization that provides legal services to persons of limited means.

¹⁵ The **Working Group Subcommittee** is chaired by Senior Judge Daniel Taubman, and its other members are Jared McLuskey, Ed Gassman, and Noah Patterson.

¹⁶ The **Colorado Access to Justice Commission's Delivery Committee** is chaired by David Stark, and its other members are (*alphabetized*) Jon Asher, Kimi Dement Dean, Katy Donnelly, Judge Adam Espinosa, Aaron Garber, Ed Gassman, Carol Haller, Wes Hassler, Sandra Hershiser, Erika Holmes, Liz Krupa, Judge O. John Kuenhold (ret.), Lauren Lester, Judge Lino Lipinsky, Jackie Marro, Jared McLuskey, Judge Gale Miller (ret.), Magistrate Judge Kristen Mix, Ric Morgan, Toni-Anne Nunez, Noah Patterson, Ryann Peyton, Carolyn Powell, Troy Rackham, Carlos Romo, Andrew Rottman, Kathleen Schoen, Judge Jonathan Shamis, Senior Judge Daniel Taubman, and Jennifer Wherry.

The Working Group analyzed provisions from other states concerning required/voluntary pro bono reporting and their failures and successes. It analyzed Colorado's past attempts at changing its pro bono rules. The Working Group evaluated those viewpoints in consideration of the likelihood that the Colorado Supreme Court would adopt new pro bono reporting requirements given the more recent changes in pro bono reporting rules which have been made throughout the country since the Colorado Supreme Court last considered this issue 23 years ago.

The Working Group sought to find practical ways to implement meaningful changes in Colorado's pro bono effectiveness data collection consistent with providing Coloradans of limited means fair and full access to justice. However, the Working Group also considered the reasonableness and the likelihood that any recommended rule change would be approved by numerous bar associations and committees, including the Supreme Court's Civil Rules Committee. The Working Group and the Delivery Committee have analyzed Colorado's pro bono data and history pragmatically and have contemplated similar recommendations regarding the successes and failures of pro bono rules in Colorado's past including, of course, whether *any* new proposal is likely to be adopted.

The information and recommendations in this Report were originally intended to be reviewed by the Delivery Committee and the Commission. The Commission hopes that the CBA, other bar associations, and other necessary committees approve them.

The Working Group was charged with researching and recommending whether the Colorado Supreme Court should adopt a version of one of the following, on an annual basis:

- a. That it shall be *required* for Colorado lawyers to report their *voluntary* pro bono work hours and *voluntary* legal services contributions;
- b. That it shall be *voluntary* for Colorado lawyers to report their *voluntary* pro bono workhours and/or *voluntary* legal service contributions;
- c. That it shall be *required* for Colorado lawyers to report a *required* amount of pro bono work hours and/or legal services contributions;
- d. To make no changes to the status quo regarding a Colorado lawyer's annual pro bono hours and legal services contributions.

Discussions involving Colorado's pro bono ethics rule have provoked significant criticism in the past. For example, in 1998, the CBA's Board of Governors overwhelmingly rejected a recommendation of the Supreme Court's Judicial Advisory Council that lawyers be required to report their pro bono service hours. The Colorado Supreme Court then issued an opinion rejecting the Judicial Advisory Council's proposal. At that time, some who opposed reporting requirements went so far as to say that requiring the completion or the reporting of pro bono hours was tantamount to involuntary servitude. The Commission recognizes this history and provides its recommendation consistent with and proportionate to such past concerns.

V. Recommendation:

Based on the Working Group's research and the Delivery Committee's investigation, it appears that significant numbers of Colorado lawyers appear to not be providing the aspirational 50 annual

hours of pro bono work or making financial contributions to legal service organizations as set forth in Rule 6.1 of the Colorado Rules of Professional Conduct.¹⁷ However, no Colorado committee or organization can definitively say how much pro bono services and donations are being provided. **Colorado needs a method of collecting this data so it may better determine** the extent to which pro bono service and financial contributions are made. Right now, no one knows.

The Commission endorses the required reporting of all voluntary pro bono activity and the reporting of any charitable contributions to qualifying legal service organizations on **a cumulative and confidential basis only**. The collection of such data will enable the Colorado Supreme Court and access to justice organizations to better plan and target their efforts to encourage pro bono work and contributions. For example, local bar associations, pro bono programs, and access to justice committees could use information from a particular county to encourage greater pro bono participation and financial contributions to legal services organizations. This information may also be useful in increasing legal assistance in those parts of the state with few attorneys, commonly called “legal deserts.” Accordingly, required reporting of voluntary pro bono efforts is likely to increase the amount of pro bono work performed and the amount of money contributed to civil legal services programs in Colorado. Moreover, the Commission believes that such reporting may significantly improve the lives of a tremendous number of individuals who are unable to afford legal representation.

The Commission recommends further that the Colorado Supreme Court limit the disclosure of such information to aggregate statistics only, and that all individual information be kept private. The information need only be made available as a total number to any committee, organization, and/or association designated to make use of the information. Accordingly, the Commission endorses the Delivery Committee’s endorsement recommendation that Colorado become a state which requires reporting of any voluntary pro bono work as defined in Rule 6.1 and contributions to legal services organizations. In other words, lawyers are free to do as much pro bono work (or zero) and donate as much (or zero) dollars to legal service programs as they choose but they must report their totals of each. If zero is the number, then zero should be reported.

Colorado Rule of Civil Procedure 227(A)(1)(b)(2)(a)(4) provides the contents of the Colorado attorney registration statement. It states that attorneys and attorney judges must provide information regarding child support, COLTAF, and malpractice insurance. The Commission proposes this rule should be amended to require that attorneys report the number of pro bono service hours and financial contributions to pro bono organizations. (an example of such language has been provided in this Report under Exhibit A and Appendix E).

As stated above, to preserve the privacy of individual lawyers, the Commission opposes any public disclosure of this information on anything other than an aggregate basis. It is further recommended that the Colorado Supreme Court appoint a committee (whether standing or newly created) to review the aggregate data gathered after three years of the implementation of the new rule. That committee would analyze such information and work together with the Supreme Court to review and tailor efforts to promote pro bono work accordingly.

¹⁷ See, the “Unmet Need”, Volume 97:2, Daniel M. Taubman, UNIVERSITY OF DENVER LAW REVIEW, *Has the Time Come to Revise Our Pro Bono Rules, The “Unmet Need”*, p. 405-407(D), (2020).

VI. Working Group Data Accumulation:

The Working Group attempted to contact people in all twenty-two states with pro bono reporting rules to discuss their experience. Because of the coronavirus pandemic, the Working Group ran into difficulties obtaining responses from many states. As the Working Group set out to locate each state's respective contact, COVID-19 had just become widespread, shutting down and disrupting many businesses and law firms. The Working Group attempted to obtain responses to questions from each state that had adopted some form of pro bono reporting (required or voluntary). The people who responded to the Working Group's requests for information were pro bono committee members, nonprofit legal service organization leaders, or other similarly situated lawyers involved in their respective states' pro bono community. The Working Group explained to those individuals its task to investigate the impact of pro bono reporting in other states. The Group's inquiries included answers to five questions about their respective pro bono reporting system:

1. How long has your pro bono reporting rule been in effect?
2. What percentage of the lawyers in your state report their pro bono service?
3. Does your reporting form define pro bono service?
4. Does the reporting form ask lawyers to break down their pro bono service into categories, such as representing indigent people without charge, reduced fee representation, or representation of organizations?
5. Has your reporting rule increased the amount of pro bono service or the number of lawyers providing pro bono service?

Answers were provided in the form of simple responses and the provision of references to helpful materials and data. Unfortunately, due to the many difficulties of COVID-19, the Working Group received no response at all in some cases. Nonetheless, it obtained helpful replies from New York, New Mexico, Indiana, Nevada, Tennessee, Illinois, Georgia and Missouri. Other states replied without a full response to the five questions and some only responded via telephone discussion. It should also be noted that some answers to its questions were discovered through a specific state-tailored internet search.

States' written replies have been provided in Appendix A to this Report. Florida, New York, Tennessee, and other states have noted an increase in pro bono service and benefits **due to the implementation of rules concerning the annual reporting of pro bono work**. Florida and New York are both required reporting states while Tennessee is a voluntary reporting state. Since Florida began to require the reporting of pro bono efforts in 1993, it has experienced a steady increase in pro bono charitable contributions, and a noticeable increase of pro bono hours over the timeline. Notably, Florida went from documenting 800,000 pro bono hours to documenting 1.3 million pro bono hours since 1993. It went from having just less than \$1.5 million in donations to just over \$6.3 million donated towards pro bono efforts.

The Working Group sent a second round of questions to required reporting States and those responses are attached as Appendix F.

VII. Other Reports and Relevant American Bar Association Reporting:

The ABA has provided its own report based on its research of states' pro bono

requirements. Some of the information from that report is included below, and the actual report is attached as *Exhibit D*.

As set forth in the ABA's Policy Article on Pro Bono Reporting, (2021),¹⁸ **required** pro bono reporting rules exist in the following nine ***but beginning in 2022, 10***, states:

1. **Florida**

Rule 4-6.1 of the *Florida Rules of Professional Conduct*

Florida implemented mandatory pro bono reporting in 1993 and was the first state to do so. Hours are reported with annual membership dues.

2. **Hawaii**

Hawaii Rules of Professional Conduct, Rule 17(d)(1)(B).

Hawaii implemented mandatory pro bono reporting in 2007. Pro bono hours are reported in the annual attorney registration.

3. **Illinois**

Illinois Supreme Court Rule 756(f)

Illinois adopted the reporting requirement in 2006. Pro bono hours are reported with annual attorney registration.

4. **Indiana**

Indiana Rules of Professional Conduct Rule 6.7.

Mandatory reporting was implemented in 2016. Pro bono hours are reported during the annual attorney registration.

5. **Maryland**

Maryland Rules of Professional Conduct Rule 19-503. Mandatory reporting began in 2002.

Pro bono hours are reported annually with Interest on Lawyers' Trust Account(IOLTA) compliance.

6. **Mississippi**

Mississippi Rules of Professional Conduct Rule 6.1I. Adopted in 2005. Pro bono hours are reported in the annual membership fees statement.

7. **Nevada**

Nevada Rules of Professional Conduct Rule 6.1(b). Added in 2006. Pro bono hours are reported annually as part of the annual membership fees statement.

8. **New Mexico**

New Mexico Rules of Professional Conduct Rule 24-108. Implemented in 2008. Pro bono hours are reported through annual membership renewal.

9. **New York**

¹⁸ AM. BAR ASS'N, *Pro Bono Reporting*,
https://www.americanbar.org/groups/probono_public_service/policy/arguments/.

22 NYCRR & 118.1(e)(14). Implemented in 1994. Pro bono hours are reported in the biennial registration process.

10. Minnesota *Beginning in 2022

The Minnesota Supreme Court has issued an order granting the MSBA's petition requesting changes to the Rules of Lawyer Registration, effective January 2022. The petition asked that attorneys be required to report the number of pro bono hours they complete each year, and whether they made any financial contributions to a legal services program serving low-income people. These questions will be part of the form attorneys complete when they renew their licenses.

Voluntary pro bono reporting provisions exist in the following thirteen states:

1. Arizona

Implemented in 1994. Attorneys are asked to report on their annual dues statement.

2. Connecticut

Adopted in 2012. Attorneys are asked to report as part of the annual electronic registration.

3. Georgia

Implemented in 2000. Lawyers only answer whether they have met the aspirational goal of 50 hours of pro bono work as part of the annual attorney dues and registration statement.

4. Kentucky

Implemented in 2005. Attorneys are asked to report with the annual dues statement. Lawyers rendering fifty hours of donated legal services receive a recognition award from the Kentucky Bar Association.

5. Louisiana

Began in 1998. Attorneys are asked to report their pro bono activity annually as part of the dues renewal process.

6. Montana

Implemented in 2003. Pro bono reporting is coupled with the annual mandatory IOLTA reporting. This has resulted in a high response rate for Montana attorneys.

7. North Carolina

Began in 2017. North Carolina has a stand-alone process that is not coupled with the licensure renewal or CLE reporting. Reporting is coordinated by the North Carolina Pro Bono Resource Center.

8. Ohio

Implemented in 2007. The Ohio Supreme Court partners with the Ohio Legal Assistance Foundation (OLAF) to collect data online. OLAF files an annual report of aggregate data with the Ohio Supreme Court.

9. Oregon

Implemented in 2002. Attorneys are encouraged to report their pro bono time voluntarily as

part of the “Pro Bono Roll Call.” Reporting is via the Oregon State Bar website.

10. Tennessee

Implemented in 2009. Tennessee adopted a rule requesting that attorneys who are required to file an Annual Registration voluntarily file a statement reporting pro bono service and activity.

11. Texas

Implemented in 2005. The State began conducting random phone surveys of 500 attorneys about pro bono work. Pro bono hours can also be reported through the State Bar of Texas website.

12. Virginia

Implemented in 2017. Active Virginia attorneys are asked to report as part of the annual dues renewal process, which can be done online or by mail.

13. Washington

Implemented in 2003. Information is collected as part of the annual licensing process.

The ABA has reported numerous reasons to implement mandatory pro bono reporting¹⁹, such as:

1. It is a simple mechanism for attempting to increase delivery of legal services to the poor (e.g. actual increase in Florida) and level of service to community;
2. It is an effective mechanism for collecting reliable, accurate, and consistent data to evaluate delivery of pro bono legal services to the poor;
3. It provides data essential for design of successful programs;
4. It may increase monetary contributions;
5. It creates positive peer pressure;
6. It promotes increased access to justice/courts;
7. It promotes involvement in pro bono;
8. It promises high rates of reporting;
9. Data collected can send a message to the non-legal community about its responsibility to fund legal services for the poor;
10. It enables recognition of contributing lawyers;
11. It can be inexpensive;
12. It engenders confidence in the bar;
13. It may make demographics collectible;
14. The data can be used to enhance the image of lawyers;
15. It encourages fulfillment of professional responsibility;
16. It may raise consciousness about the professional responsibility to provide pro bono legal services;
17. It may raise awareness of the need for free or reduced fee legal services;
18. It may raise awareness of opportunities for pro bono involvement; and
19. It may avoid a mandatory pro bono service controversy.

¹⁹ https://www.americanbar.org/groups/probono_public_service/policy/arguments/.

A list of reasons the ABA cites in opposition to adding a mandatory pro bono reporting requirement appears below, together with our responses in Colorado Rockies' purple:

1. Mandatory reporting violates the constitutional right to privacy because it publicizes private acts of charity and divulges names of recipients;
This would not be a concern under the Working Group's proposal as it would only provide aggregate statistics each year. The data disclosed will not provide any names or personal information.
2. Reporting violates the right to be free from involuntary servitude;
This Report recommends that any pro bono hours or contributions (zero or otherwise) must be recorded and not that there is a mandatory number of hours to perform or amount to be donated.
3. Reporting is a step toward mandatory pro bono;
This is an unfounded fear. No jurisdiction with a mandatory reporting rule has adopted a mandatory pro bono requirement. The Working Group's research and experience, coupled with its deliberations with representatives of similar pro bono committees in other states, provide support for the recommendation that it should be required to report one's pro bono work and donations even though the requirement has been in place in New York for 27 years and in at least 6 other states for more than a decade. In Colorado, disclosure requirements have not led to mandatory behavior. For some time, Colorado has required lawyers to disclose whether they have and intend to keep malpractice insurance coverage so long as they engage in private practice. Nevertheless, the Supreme Court has not adopted any rule requiring registered attorneys to carry such coverage. Further, Colorado law prohibits any state governmental body from requiring any person practicing a licensed profession to provide professional services without compensation. *Section 12-1.5-101(1), C.R.S. 2021.* Thus, there is no basis in actual experience nationally or in Colorado or in law to assume or expect that requiring confidential, aggregate reporting of pro bono information will lead to mandated pro bono services.
4. Implementing reporting invites political opposition to pro bono;
This would not be a concern under the Working Group's proposal as it would only provide aggregate statistics each year. The data disclosed will not provide any names or personal information.
5. It may be difficult to find support;
Access to justice advocates believe a rule requiring pro bono reporting will promote pro bono service. If the information is reported on an aggregate basis, opponents' concerns will be minimized.
6. It may be unnecessary;
It is too early to tell. If after three years of required reporting a committee appointed by the Supreme Court decides that such reporting is unnecessary, then such can be concluded at that

time. Colorado does not have enough lawyer-obtained data—yet—to declare that a required reporting rule is unnecessary.

7. It may be counterproductive to the goal of increasing the delivery of direct legal services to the poor;

This contention is unfounded. In fact, the data currently compiled supports the opposite view: that a mandatory reporting rule will increase pro bono hours. The data compiled after three years of implementation of the proposed reporting rule will provide the requisite insight necessary to decide if it was counterproductive.

8. The administrative costs involved in collecting and processing information, as well as in taking disciplinary action or imposing sanctions, may be prohibitive;

The administrative costs in states with mandatory pro bono reporting rules have not been prohibitive. The hours or money spent on pro bono efforts should be disclosed, simply, and annually, each year on the same form Colorado attorneys use to register to practice law.

9. It may engender negative peer pressure;

This does not seem to be a reality given the disclosure of such information would be done on an aggregate basis only. Under this proposal, personal information would not be reported.

10. It creates a difficult responsibility for attorneys;

Many attorneys are already responsible to account for the number of hours and the amount of money spent on a given matter. The likely benefits which stem from gathering Colorado's cumulative pro bono hours and financial contributions to pro bono organizations substantially outweighs any burden imposed on attorneys.

11. The public and press can use the information to criticize the bar;

The likely benefits which stem from gathering Colorado's cumulative pro bono hours and proceeds substantially outweighs any negative impact. Lawyers are leaders, protectors, and guardians. The statistics about pro bono service and financial contributions to legal services organizations may in fact enhance the reputation of Colorado lawyers.

12. It is for the legislature and not the judiciary to decide to require pro bono reporting or to encourage charitable activities;

Colorado's legal profession is self-governing. Just like the annual attorney registration process and a lawyer's duty to report various information (e.g., whether an attorney has outstanding child support obligations), the collection of this data is the responsibility of the judicial branch, not the legislature.

13. Reporting does not serve the public interest;

The research gathered in preparing this report supports the opposite conclusion.

14. It is difficult to determine what type of discipline is appropriate for failure to report and burdens the state with the need to devise collection methods and penalties for

noncompliance with the rule;

The Delivery Committee recommends that this rule be enforced in the same manner as the other information collected on the annual attorney registration form. The Committee does not recommend that any penalty or sanction be applied for failure to comply.

15. The true motive is to persuade or shame lawyers into doing pro bono work;

This is not a concern given the Report's recommendation only to disclose annual pro bono hours and donated amounts on an aggregate cumulative basis. Assuring anonymity will prevent shaming.

16. Judicial aspirants could be affected by information provided in past years;

This is no longer a concern given the Report's recommendation only to disclose annual pro bono hours and donated amounts on an aggregate cumulative basis.

17. It imposes a financial burden on the state;

Other states already comply with the recommendations outlined in this Report, numerous committees already in place are able to aid in such endeavors, and the benefits of implementing the report's recommendation substantially outweigh any small financial burden.

VIII. CONCLUSION

There are numerous arguments in favor of implementing required pro bono reporting requirements in Colorado. The Commission unanimously believes that required disclosure of Colorado lawyers' hourly work and financial contributions—even though such work and contributions themselves are not mandatory—will improve the delivery of legal services to those who need them. Implementing a pro bono reporting requirement is the most effective way to collect accurate data which could be used to assess the current state of pro bono work in Colorado and develop more efficient ways of securing legal services to people of limited means.

The aggregate data may have the secondary effect of causing attorneys to annually reflect upon their responsibilities under Rule 6.1 and their duties to their fellow Coloradans to provide legal services and aid to persons of limited means; such thoughtful reflections may cause lawyers to involve themselves in their firm's pro bono activities or to get more involved with organizations which stand to do the same. The aggregate reported results might also promote confidence and respect towards members of our state's bar. The Commission believes implementing required pro bono reporting will raise awareness of the "unmet need"²⁰ for free or reduced-fee legal services, and that over time, it may increase opportunities for pro bono involvement to a point where providing pro bono service or financial contributions to pro bono organizations becomes part of Colorado's legal culture.

The Commission and the Delivery Committee also tackled the arguments against the implementation of required reporting. As lawyers too, members of the Commission and the Delivery Committee recognize the right to privacy and to be free from involuntary servitude. The

²⁰ See *Revise Our Pro Bono Rules?*, *supra* note 5.

Commission's recommendation, that **all** collected data be confidential and only publicly shared on an aggregate cumulative, rather than an individual basis, proportionately addresses those competing interests most fully and fairly.

Now, more than ever, we must confront the "unmet need" by collecting data and encouraging increased pro bono efforts. We urge the CBA, local bar associations, diversity bar associations, and other entities to support the Commission's recommendations and encourage the Colorado Supreme Court to adopt them.

APPENDIX A

The following states have supplied written responses to the Working Group:

1. **New York's Response:** Effective May 1, 2015, all New York attorneys must report law-related pro bono services and charitable contributions on their biennial registrations.
 1. Pro Bono Reporting Requirements — Attorney Registration: <http://ww2.nycourts.gov/attorneys/probono/reportingreqs-intro.shtml>.
 2. Instructions on completing the biennial registration pro bono form: <http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/AnonProBono.pdf>
 3. FAQs — Pro Bono Reporting Requirements — Attorney Registration: <http://ww2.nycourts.gov/attorneys/probono/reportingreq-faqs.shtml>
 4. See question 10 of the FAQ – **10. How do I list my various pro bono services and contributions on the new Anonymous Report?** The new Anonymous Report has three separate sections—IV, V and VI—for reporting pro bono efforts. Section IV is mandatory for all attorneys, except those who are exempt; sections V and VI are voluntary for all attorneys.
 5. **Section IV, Rule 6.1 Pro Bono Legal Services and Charitable Contributions** All attorneys, *except those who are exempt*, must, in this section, report the number of hours of unpaid legal services performed and funds contributed to legal services organizations, in accordance with Rule 6.1 of the Rules of Professional Conduct. In accordance with Rule 6.1I, appropriate organizations for financial contributions are:
 - (1) organizations primarily engaged in the provision of legal services to the poor; and
 - (2) organizations substantially engaged in the provision of legal services to the poor, provided that the donated funds are to be used for the provision of such legal services.

Note: If you are employed by such an organization, **do not** report any hours of your paid employment.

This is the same information that was required to be reported prior to the May 1, 2015 revision. Rule 6.1, Voluntary Pro Bono Service, remains unchanged as the New York State Bar Association is a voluntary bar association and plays no direct role in the admission or regulation of attorneys or the administration of the NYS Bar Exam. The NYS Unified Court System's Office of Court Administration would be your best resource for specific questions on the efficacy of mandatory pro bono reporting. See <http://ww2.nycourts.gov/attorneys/probono/index.shtml>
2. **New Mexico's Response:** provided the Working Group with its Pro Bono Publico attorney reporting sheet for reference. *That is herein attached as Exhibit A.*
3. **Indiana's Response:**

1. How long has your state's rule been in effect? **The rule was first adopted January 1, 2015 and was subsequently amended April 30, 2015.**
2. What percentage of your state's lawyers report their pro bono service? **Data pulled from 2017 reporting indicates that approximately 55% of non-exempt attorneys contributed time and/or money toward *pro bono* services. (Reporting for 2018 began October 2019. This data will be forthcoming).**
3. Does the reporting form define pro bono service? **Yes. The rule describes *pro bono* services as "volunteer legal services provided directly to individuals of limited means." The FAQ further describes what is not covered by the rule, and therefore not considered "reportable *pro bono* legal services." (See attached FAQ)**
4. Does the reporting form ask lawyers to break down their pro bono service, such as representing poor people without charge, reduced fee representation, or representation of organizations? **Yes, the rule breaks down hours reported for "nocompensation" and "substantially reduced compensation" (less than 50% of an attorney's normal rate). The reporting rule pertains to legal services provided to *individuals*, therefore legal services to organizations are not reportable *pro bono* legal services.**
5. Has your rule increased the amount of pro bono service or the number of lawyers providing pro bono service? **The amount of *pro bono* services from 2015-2017 averages to about 50%, while the number of attorneys providing *pro bono* services has remained in the 15,000s.**
6. *A provided and helpful FAQ has been herein attached at Exhibit B.*

4. Nevada's Response:

1. How long has your pro bono reporting rule been in effect? **This rule was last amended in 2006.**
2. What percentage of the lawyers in your state report their pro bono service? **Attorneys are required to report *whether or not* they performed pro bono work. We have an extremely high rate of reporting that they either did or did not perform pro bono. We have about 99% who actually submit reports.**
3. Does the reporting form define pro bono service? **The form does not define pro bono service (attached is the disclosure form). We do point them to the Supreme Court Rule, however (see below).**
4. Does the reporting form ask lawyers to break down their pro bono service into categories, such as representing poor people without charge, reduced fee representation, or representation of organizations? **Yes however, it is not mandatory to provide the breakdown.**
5. Has your reporting rule increased the amount of pro bono service or the number of lawyers providing pro bono service? **The reporting rule has not increased the number of lawyers providing pro bono service. In certain years we have seen an increase in donations to pro bono in lieu of pro bono service. I think this primarily depends on how the state bar promotes what we call the dues check-off (see form).**
6. *Pro Bono Reporting Form Herein Attached as Exhibit C.*

5. Tennessee's Response:

1. How long has your pro bono reporting rule (if any) been in effect? **The Order adopting voluntary pro bono reporting was entered on October 30, 2009. The first set of data was for pro bono work done in calendar year 2009 and voluntarily reported in 2010.**
2. What percentage of the lawyers in your state report their pro bono service? **52.78 percent of Tennessee Attorneys reported pro bono. Our most recent Pro Bono Report is the 2018 report and covers pro bono work reported in 2018. Therefore, the pro bono work was performed in 2017. Available at <http://www.tncourts.gov/press/2020/02/26/pro-bono-reports-shows-highest-number-percentage-attorneys-reporting-pro-bono>**
3. Does the reporting form define pro bono service? **The form refers to Tenn. Sup.Ct. R. 8, RPC 6.1 which defines what qualifies as pro bono work in TN.**
4. Does the reporting form ask lawyers to break down their pro bono service into categories, such as representing poor people without charge, reduced fee representation, or representation of organizations? **Yes. Originally the form tracked RPC 6.1 verbatim but was modified after 2-3 years to be more streamlined and shorter to encourage more attorneys to report. The current categories are: Hours Providing Legal Services to Persons of Limited Means Without a Fee or at a Substantially Reduced Fee; Hours Providing Legal Services to Non-Profit Organizations Serving Persons of Limited Means Without a Fee; Hours Providing Legal Services to Groups or Organizations at a Reduced Fee when Payment of Standard Fees would create a Financial Hardship; Hours Providing Legal Services to Improve the Law, the Legal System, or the Legal Profession.**
5. Has your reporting rule (if any) increased the amount of pro bono service or the number of lawyers providing pro bono service? **Anecdotally, yes, we believe that the rule has increased the service or number of lawyers providing service. The overall trend has been that the number of hours reported, and number of attorneys reporting have risen through the years. We only track what is reported and are very clear that we use the reported figures as our metric.**

6. Illinois's Response:

1. How long has your pro bono reporting rule (if any) been in effect? **Illinois has had a mandatory pro bono reporting rule in effect since 2006. In addition to pro bono hours, our rule also asks attorneys to disclose the dollar amount of monetary contributions made to legal aid and pro bono organizations.**
2. What percentage of the lawyers in your state report their pro bono service? **We have mandatory reporting, so 100%! It is a required question as part of the annual lawyer registration process.**
3. Does the reporting form define pro bono service? **Yes, the reporting form uses the Supreme Court definition outlined in Rule 756(f). The definition is below:**
 - (1) ***Pro bono* legal service includes the delivery of legal services or the provision of training without charge or expectation of a fee, as defined in the following subparagraphs:**
 - (2) **legal services rendered to a person of limited means;**

(3) legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(4) legal services to charitable, religious, civic, or community organizations in matters in furtherance of their organizational purposes; and

(d) training intended to benefit legal service organizations or lawyers who provide *pro bono* services.

- In a fee case, a lawyer's billable hours may be deemed *pro bono* when the client and lawyer agree that further services will be provided voluntarily. Legal services for which payment was expected, but is uncollectible, do not qualify as *pro bono* legal service.

(2) *Pro bono* legal service to persons of limited means refers not only to those persons whose household incomes are below the federal poverty standard, but also to those persons frequently referred to as the "working poor." Lawyers providing *pro bono* legal service need not undertake an investigation to determine client eligibility. Rather, a good-faith determination by the lawyer of client eligibility is sufficient.

4. Does the reporting form ask lawyers to break down their *pro bono* service into categories, such as representing poor people without charge, reduced fee representation, or representation of organizations? **Our state definition does not consider reduced fee representation to be qualifying *pro bono* service. The question does ask for a breakdown of hours in the four categories of *pro bono* service that are included in our state definition. The question is worded as follows: Identify the approximate number of hours provided in each of the following categories where the service was provided without charge or expectation of a fee:**

(5) hours of legal services to a person/persons of limited means;

(6) hours of legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(7) hours of legal services to charitable, religious, civic or community organizations in furtherance of their organizational purposes; and

(8) hours providing training intended to benefit legal service organizations or lawyers who provide *pro bono* services.

5. Has your reporting rule (if any) increased the amount of *pro bono* service or the number of lawyers providing *pro bono* service? **In the early years, there were some increases in the amount of *pro bono* service reported, but that has leveled off over time.**

7. **Georgia's Response:** The State Bar rescinded voluntary reporting about 18 years ago. Sorry, I can't be more helpful. I think this pandemic, however, is revealing a number of weaknesses that might bring the subject back up.

8. Missouri's Response:

1. How long has your voluntary pro bono reporting rule been in effect? **Since 2011.**
2. What percentage of the lawyers in your state report their pro bono service? Very small percentage – generally a couple a hundred. **Have experienced some resistance that the voluntary could turn into a mandatory rule, although no indication that this would be contemplated.**
3. Does the reporting form define pro bono service? **Yes. It follows the rule outlining the types of work that qualifies as pro bono from providing services to low-income people for no fee to providing help in volunteering on a board with the bar.**
4. Does the reporting form ask lawyers to break down their pro bono service into categories, such as representing indigent people without charge, reduced fee representation, or representation of organizations? **Yes. See above.**
5. Has your reporting rule increased the amount of pro bono service or the number of lawyers providing pro bono service? **Not certain we can answer fully, other than stating it has not generated the spike we hoped for.**

APPENDIX B

Differences Between Colo. RPC 6.1 and ABA Model Rule 6.1:

Colo. RPC 6.1 contains five provisions not found in ABA Model Rule 6.1, each of which is intended to emphasize the importance of pro bono service. First, at the end of the rule, Colo. RPC 6.1 provides that “[w]here constitutional, statutory or regulatory restrictions prohibit government and public sector lawyers or judges from performing the pro bono services outlined in [the first tier], those individuals should fulfill their pro bono publico responsibility by performing services or participating in activities outlined in [the second tier].” Thus, this language recognizes that some government lawyers, public sector lawyers, and judges may not be permitted to provide direct representation to indigent clients or organizations that support them. Nevertheless, they are urged to satisfy their pro bono responsibility by engaging in activities such as providing continuing legal education presentations or participating in bar association and local access to justice committee’s activities.

Second, Comment [1] cites the Colorado lawyers’ oath, which attorneys take when admitted to the bar, as an added reason for providing pro bono service. Although the language is somewhat antiquated, it states that “a lawyer will never ‘reject, from any consideration personal to myself, the cause of the defenseless or oppressed.’”

Third, Comment [8A] encourages government lawyers to engage in pro bono service to the extent they can do so, consistent with their organizations’ internal rules and policies. The rule refers to the “Colorado Bar Association[’s] [(CBA’s)] Voluntary Pro Bono Public Service Policy for Government Attorneys, Suggested Program Guidelines, 29 Colorado Lawyer 79 (July 2000).” Those guidelines recognize the constraints that often prohibit or restrict government attorneys from engaging in pro bono service. For example, even when government

attorneys can provide pro bono service, they may not be able to use office resources or appear in court during working hours. However, such limitations would not apply to private attorneys providing pro bono service. Nevertheless, some government organizations, including the Colorado Attorney General's Office, maintain pro bono programs.

Fourth, while Comment [9] notes that meeting the pro bono responsibility is the ethical commitment of each lawyer, it adds that "in special circumstances, such as death penalty cases and class action cases, it is appropriate to allow collective satisfaction by [the] law firm of the pro bono responsibility." Comment [9] recognizes that, in some circumstances, lawyers, frequently those in large firms, may provide hundreds of pro bono hours on death penalty, class actions, or other complex litigation.²¹ In those situations, it makes sense to average the pro bono hours of a firm's lawyers.

Fifth, following the comments, Colo. RPC 6.1 contains a feature not present in the model rules or in other states' pro bono rules—detailed, recommended model pro bono policies for Colorado lawyers, law firms, and in-house counsel. These detailed model policies are intended to illustrate how a large firm, small firm, or an in-house counsel department can establish a pro bono program, including with the appointment of a pro bono committee or coordinator. The policies also note that law firms and inhouse counsel pro bono policies should recognize and encourage pro bono service, including having law firms positively consider pro bono service in evaluation and compensation decisions.

In sum, these Colorado variations from ABA Model Rule 6.1 emphasize the Colorado Supreme Court's recognition of the importance of pro bono service.²²

²¹ Although the death penalty no longer exists in Colorado, some lawyers may provide pro bono service for death penalty inmates in other states.

²² Entire passage is quoted from *The Unmet Need*, *supra* note 3 at 402-03.

APPENDIX C

A comparison of the American Bar Association's and the Colorado Rules of Professional Conduct:

The American Bar Association's expectations are clear regarding what each lawyer is responsible for providing to the public.

The Model Rules of Professional Conduct, Rule 6.1, Voluntary Pro Bono Publico Service (American Bar Association, 2020) declares:

[That] [e]very lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to

organizations that provide legal services to persons of limited means.”²³

However, the Colorado Rules of Professional Conduct, Rule 6.1, Voluntary Pro Bono Publico Service (Colorado Bar Association, 2019), sets forth its own policy:

[That] [e]very lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the fifty hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional legal or public services through:
 - (9) delivery of legal services at no fee or a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;
 - (10) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (11) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means...”²⁰

The extensive comments in both rules describe a lawyers’ responsibility to people who cannot afford counsel as a true ethical commitment, and although Colorado’s rule does not make pro bono service mandatory, it very clearly supports pro bono work and financial contributions to pro bono organizations.

²³ Model Rules of Professional Conduct, Rule 6.1, (American Bar Association, 2020), https://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1/.

APPENDIX D

Rule 6.1, Colorado vs. ABA Model Rule; the “Unmet Need” as investigated and authored by Judge Daniel Taubman:

The following is an excerpt from: Volume 97:2, Daniel M. Taubman, *Denver Law Review, Has the Time Come to Revise Our Pro Bono Rules?*, 395, 405-409 (2020):

To understand the importance of pro bono service and financial contributions to programs that provide legal services to the indigent, it is necessary to understand the unmet need for legal services for the poor. This unmet need, commonly referred to by the bar as “the justice gap,” demonstrates the woeful inadequacies of current efforts to address the legal needs of poor people.

²⁰ Colorado Rules of Professional Conduct, Rule 6.1, Voluntary Pro Bono Publico Service (Colorado Bar Association, 2019), <https://www.cobar.org/For-Members/Opinions-Rules-Statutes/Rules-of-Professional-Conduct/Rule-61-Voluntary-Pro-Bono-Publico>.

In 2005, the Legal Services Corporation (LSC) issued a report, “Documenting the Justice Gap in America,” noting that the legal needs of the poor were substantially higher than reported in a 1994 national study. To keep pace with inflation between 1980 and 2006, federal LSC funding would have needed to increase to \$717 million, rather than its actual level of \$327 million.

The LSC’s 2017 report, “The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans,” found that, in 2016, “low-income Americans in the past year received inadequate or no legal help” for eighty-six percent of their civil legal problems. The report also found that “[i]n the past year, [seventy-one percent] of low[-]income households experienced at least one civil legal problem, including problems [in the areas of] domestic violence, veterans’ benefits, disability access, housing conditions, and health care.” According to the study, seventy percent of “low-income Americans with [a] recent personal experience of a civil legal problem say the problem has significantly affected their lives.”

A recent article in the San Antonio Express-News noted that, although some fifty percent of Texas’s 100,000 licensed lawyers provide pro bono services, “only [ten] percent of the need is being met.” On a national level, California Supreme Court Justice Goodwin Liu noted that legal aid lawyers are estimated to provide only one percent of the total legal needs of poor people in civil cases each year. This is supplemented by pro bono lawyers, who meet another two percent of the civil legal needs of low income people each year, by providing an average of thirty hours of pro bono work annually. Nevertheless, he added, “Even if we asked every lawyer in America to do 100 more hours of pro bono work a year, all of that additional work would be enough to secure only 30 minutes per problem per household in America.”

Describing the unmet need another way, Justice Liu explained, “If you were to fill Petco Park [the 42,445-seat baseball park in San Diego] to capacity with low-income people, there would be just two lawyers to serve them all.”

Significantly, legal services programs, such as Colorado Legal Services (CLS), are able to address less than half of the civil legal needs they are asked to resolve. As Ric Morgan, a longtime board member of MVL, has written, “Because of limited government funding, for every Coloradoan receiving legal aid, another qualifying individual is turned away.” However, this unmet need proves to be much greater than the more than fifty percent turned away by CLS. According to the LSC report, only twenty percent of “[l]ow-income Americans seek professional legal help for the civil legal problems they face.” This is so because of uncertainty about whether their problem is legal, not knowing where to look for legal assistance, and trying to address a legal problem on their own. Further, even more people would be turned away from CLS offices if they were aware of the program’s services. Because CLS already turns away at least one of out of every two applicants, it does not widely advertise its services. Therefore, many low-income Coloradans do not know CLS is an option.

According to a recent study by the Colorado Center on Law and Policy, Colorado has less than one legal aid lawyer for every 30,000 people living in poverty.⁷³ This finding ranks Colorado among the bottom five states in the country.

CLS statistics demonstrate the unmet need in stark terms. According to the Legal Aid Foundation of Colorado’s 2017-2018 report, CLS closed 7,078 cases benefiting 17,389 individuals in 2017.⁷⁵ In contrast, Ric Morgan noted that, in the same year, United States Census Bureau data showed that 377,014 residents in the six-county Denver metropolitan area qualified for free legal services because their incomes were at 125% or less than the federal poverty level—\$15,613 for an individual and \$32,188 for a family of four. Under the Justice Gap study above, 71% of those poor people, or 267,680 individuals, may have experienced a legal problem.

The unmet need is further illustrated by statistics from the Colorado Judicial Branch regarding pro se litigants. Those statistics have consistently shown that about 75% of all litigants in domestic relations cases do not have a lawyer. In addition, 98% of defendants in county court civil cases do not have lawyers, and about 40% of district court civil litigants in other than family law cases do not have lawyers. Studies have shown consistently that, while some pro se litigants proceed without lawyers because they believe they can represent themselves competently, most pro se litigants do not have lawyers because they either cannot afford one or cannot obtain representation from a legal services or pro bono lawyer.

Yet another measure of the unmet need for legal services is the disparity between the number of CLS lawyers—57—and the number of public defenders, 535, in Colorado. Of course, the number of public defenders is a function of the constitutional requirement for counsel in cases of possible incarceration, as

required by the *U.S. Supreme Court in Gideon v. Wainwright* and *Argersinger v. Hamlin*. While there is not necessarily an equivalence between the need for counsel in civil and criminal legal matters, this tremendous disparity further explains the need for both greater pro bono service and increased financial contributions to organizations that represent poor people.

The unmet legal needs of modest means clients are substantial but difficult, if not impossible, to measure. First, there is no accepted definition of the term “modest means,” other than those whose income makes them ineligible for free legal services (125% of the federal poverty level or up to 200% for senior citizens). Second, as noted above, the term “persons of limited means” is not defined in either Colo. RPC 6.1 or ABA Model Rule 6.1. Third, as noted in the CBA Modest Means Task Force 2013 Report, the number of people in poverty and the number of modest means individuals are fluid. For example, a woman in an intact family of modest means may experience domestic violence, file for divorce, and subsequently become an indigent single mother. However, this woman may again become a modest means individual because a new relationship would likely increase stability and potential resources available to meet her legal needs.

Some lawyers serve modest means clients by charging a substantially reduced fee, as provided in the second tier of the pro bono rules. Others make legal services more affordable by providing limited scope representation. According to the CBA’s 2017 Economic Survey, ten percent of private attorneys include unbundling as part of their practice.

It is reasonable to conclude that Colorado’s *unmet need* shall only continue to grow. It should be met, head on, especially given the recent shift in Colorado’s circumstances due to COVID-19 and its negative impact upon Colorado’s businesses and families

APPENDIX E

The following is merely a suggestion or example of the questions which may be provided in the form:

- a. During calendar year 20__, I provided _____ hours of unpaid legal services to persons of limited means, as described in Rule 6.1(a) of the Colorado Rules of Professional Conduct.
- b. During calendar year 20__, I provided _____ additional hours of unpaid legal or public services or of legal services for persons of limited means at rates substantially below my normal billing rate, as described in Rule 6.1(b) of the Colorado Rules of Professional Conduct.
- c. During calendar year 20__, I contributed \$_____ to organizations that provide legal services to persons of limited means, as described in Rule 6.1 of the Colorado Rules of Professional Conduct, or that provide funds to such organizations. [I added the clause at the end because the literal language of the Rule would not include the Legal Aid Foundation, which does not itself provide legal services to anyone; it merely makes grants to organizations that do provide such services to persons of limited means.]

The language may be improved upon, and the format may clearly be changed based on advice of necessary committee's and from the IT department at the Office of Attorney Regulation.

APPENDIX F

The following questions were asked of each required reporting state (although not all responded):

1. How has your state or the bar used the information you have obtained from pro bono reporting?

- **Illinois's Response:** We report the data we get on pro bono work and contributions in our public Annual Reports and often reference it in presentations and articles. It is hoped that this enhances confidence in Illinois lawyers and the image of the state's legal profession. Additionally, it is our understanding that access to justice initiatives factor in the data we collect and report in evaluating needs relating to the delivery of legal services to the financially disadvantaged.
- **Minnesota's Response:** We haven't started the collection yet, as the question will be first asked next year when the first group of MN attorneys renew their registration. We anticipate using the data to make policy decisions for funding legal services, identify "pro bono legal deserts" in addition to our current knowledge of general legal deserts, and to encourage more attorneys to participate in pro bono.
- **Florida's Response:** Every year after we collect the fee statements we produce a Pro Bono Summary Report based on the answers provided on the fee statement. Attached is the most current report. We share this information with legal aid organizations and others. We also post some of the data on this page: <https://www.floridabar.org/public/probono/probono002/>, scroll down to the bottom of the page. If the attorney submits a paper fee statement and the section on pro bono is not filled out, we send them a reminder letter.
- **New York's Response:** We have used it for our own internal analyses, and we have shared some data with the New York State Bar Association and their pro bono committee.
- **Mississippi's Response:** The Mississippi Bar provides an annual report to the Supreme Court of Mississippi for accountability purposes
- **Nevada's Response:** We use the information to track pro bono with an eye toward increasing pro bono, answer inquiries/promote the good lawyers give back to the community, find the ratio of "I do pro bono" to the hours reported through legal aid, promote donations in lieu of pro bono, target firm types most and least able to assist for customized outreach, and offer an opportunity to "accept one case" (for the pro bono "*The ONE Campaign – ONE Client. ONE Attorney. ONE Promise.*") The "will accept" list is shared with the legal aid provider based on where they practice.
- **Maryland's Response:** Data is aggregated by county and published. The latest report is available here: <https://www.courts.state.md.us/sites/default/files/import/probono/pdfs/probonoreportfy2020.pdf>.

2. What process was used to compile information, including answering questions from lawyers about whether certain work counts as pro bono service

- **Illinois's Response:** As you probably know, Illinois Supreme Court Rule 756(f), which provides for pro bono reporting, is very detailed. For convenience, you will find our rule here: Rule 76. When the rule was new, we spent time educating our staff on its provisions so that they would be in a position to answer questions. For the first registration cycle after the pro bono reporting requirement was approved by our Court, we included information about the requirement in the written registration notice sent to all lawyers. We also added explanatory information in the lawyer registration FAQs on our website.
- **Minnesota's Response:** The MSBA worked with Minnesota's lawyer registration office to create an FAQ page [can be found on our website].
- **Florida's Response:** The Florida Bar's electronic fee payment system does not allow the attorney to pay their annual dues until they answer the pro bono questions. This is a great way to capture the data from the membership.
- **New York's Response:** Registering attorneys fill out one additional page (anonymized) regarding their pro bono service in the preceding two calendar years. We have set up an email address, probonoreporting@nycourts.gov to answer questions from attorneys regarding the reporting requirement.
- **Mississippi's Response:** Rule 6.1 of the Mississippi Rules of Professional Conduct (MRPC) and the accompanying comments address this issue. While it is fairly straight forward, should a lawyer have a question, those calls usually are treated as ethics inquiries in the Office of General Counsel.
- **Nevada's Response:** See attached. We do not go into specifics about what counts, but there is language about "direct legal services" and organizational v. individual v. education.
- **Maryland's Response:** For the first 8-10 years of the program, the compilation of the data was outsourced to a data collection company. Then the data compilation was brought in-house to the court's administrative office.

3. What was the initial and subsequent annual costs in compiling the provided pro bono information?

- **Illinois's Response:** We do not have specific cost figures, but are confident that the cost to our organization has not been great. Pro bono reporting is one of many reporting requirements that are part of our annual registration process. While the incorporation of pro bono reporting into our online registration program took some time and effort, the basic structure was already in place. Staff has also had to spend time answering questions relating to pro bono reporting, but not to the extent that we needed to add staff.

- **Minnesota's Response:** My knowledge on initial costs is somewhat limited here, although it was mostly comprised of staff time from our organization and from the courts. The lawyer registration staff in the courts have absorbed the ongoing cost of collecting and maintaining the information.
- **Florida's Response:** You also asked what objections did the bar encounter: that information is not known since our rule was implemented back in 1992. [Rule 4-6](#). The comment section of the rule provides a lot information regarding guidance on what is pro bono and reporting.
- **New York's Response:** The only additional costs have been in additional staff time and resources. It has not been quantified.
- **Mississippi's Response:** unknown
- **Nevada's Response:** This is hard to quantify. Staff time plus added to conversion of all matters being converted to be handled electronically
- **Maryland's Response:** unknown

4. What objections did you encounter to the mandatory pro bono reporting proposal from the bar or your supreme court, and how did you respond to them?

- **Illinois's Response:** Objections tended to center around concerns that a reporting requirement would deceive lawyers into thinking they were required to do pro bono work and concerns relating to the public availability of reported information. To address these concerns, the ARDC focused on messaging that pro bono work, though encouraged, was not a requirement for Illinois lawyers, and our Court included a rule provision requiring us to treat as private and confidential all pro bono information collected during the annual registration process, while permitting us to report pro bono information in the aggregate.
- **Minnesota's Response:** The dissent – attached as [Exhibit A](#) - was quite long and I think adequately sums up the objections that have been raised.
- **Florida's Response:** As for the cost: it staff time in creating the report and generate the data (attached). The other cost your state will have is to create an online fee statement payment option that requires the attorney to answer pro bono questions before payment is accepted and of course the cost of sending out physical letters in the mail. The Florida Bar position regarding pro bono work is contained in the Rules Regulating The Florida Bar, Chapter 4 (Rules of Professional Conduct), section 6.1, which states: “Each member of The Florida Bar in good standing, as part of that member’s professional responsibility, should (1) render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor.” The rule further states: “The professional responsibility to provide pro bono legal service to the poor may be discharged by: annually providing at least 20 hours of pro bono legal service to the poor; or making an annual contribution of at least \$350 to a legal aid organization.” The responsibility to provide pro bono services is aspirational rather than mandatory. However, The Florida Bar was the first state to adopt a required reporting rule.

- **New York's Response:** The Bar has requested that the data collected be anonymized. That rule change was made by the Court of Appeals (our Supreme Court).
- **Mississippi's Response:** Rule 6.1, MRPC, was implemented in March 24, 2005. Once published there was an initial burst of activity with lawyers expressing concerns that they were now required to report their hours and many misunderstood the rule to read that they had to pay \$200 if they did not have 20 pro bono hours. Once they understood that it was simply a reporting requirement, it went
- **Nevada's Response:** This was before my time but I'm told we don't specifically get grief on this – but just folks aren't interested in filling out ANY disclosures. Technically we limit the mandatory portion to “yes” or “no” but you see the other information we collect and why we feel it's valuable.
- **Maryland's Response:** The primary objection they encountered was that required pro bono reporting would lead to mandatory pro bono. Some misunderstood and thought that pro bono reporting was the same as mandatory pro bono.

5. Was there a justice/judge who championed your cause, and, if so, who was it?

- **Illinois's Response:** No one justice was behind our rule. The Illinois Supreme Court appointed a Special Committee to study the concept and make recommendations.
- **Minnesota's Response:** Unfortunately, I don't have the answer to this question! Our ATJ Committee did a lot of work on the petition and this was not the first time we had attempted to require pro bono reporting.
- **New York's Response:** Chief Judge Jonathan Lippman (2009-2015) advocated for mandatory pro bono reporting.
- **Mississippi's Response:** Team effort between the Supreme Court of Mississippi, the Mississippi Bar and several legal service entities that provide legal services to the poor.
- **Nevada's Response:** No one seems to know this other than to say there definitely is a culture of pro bono on the Nevada Supreme Court.
- **Maryland's Response:** Former Chief Judge Bell (of the Maryland Court of Appeals)

EXHIBIT A

24-108. Pro bono publico service.

A. **Professional Responsibility.** In attempting to meet the professional responsibility established in Rule 16-601 NMRA of the Rules of Professional Conduct, a lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. The substantial majority of the fifty (50) hours of service should be provided as indicated in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 NMRA of the Rules of Professional Conduct. Additional services may be provided as indicated in Paragraphs B or C of Rule 16-601 NMRA of the Rules of Professional Conduct.

B. **Financial Contribution.** Alternatively or in addition to the service provided under Paragraph A of this rule, a lawyer may fulfill this professional responsibility by:

(1) contributing financial support to organizations that provide legal services to persons of limited means in New Mexico, in the amount of five hundred dollars (\$500) per year; or

(2) providing a combination of pro bono hours and a financial contribution as suggested in this table:

Pro Bono Hours	0	5	10	15	20	25	30	35	40	45	50+
Suggested Contribution	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	Attorney Discretion

C. **Pro Bono Certification.** Each lawyer of the bar shall annually certify whether the lawyer has satisfied the lawyer's professional responsibility to provide pro bono services to the poor. Each lawyer shall certify this information through a form that is made a part of the lawyer's annual membership fees statement that shall require the lawyer to report the following information:

(1) the number of hours the lawyer dedicated to pro bono legal services, and

(2) if the lawyer has satisfied the obligation by contribution or part contribution, the amount of that contribution.

[Approved by Supreme Court Order No. 08-8300-004, effective March 15, 2008.]

Committee commentary. — The provisions of Rule 24-108 NMRA of the Rules Governing the New Mexico Bar are an affirmation of the lawyer's professional responsibility, as provided in Rule 16-601 NMRA of the Rules of Professional Conduct and are not mandatory nor do they constitute a basis for discipline under the Rules Governing Discipline for the State Bar of New Mexico. However, the reporting requirements of Paragraph C of Rule 24-108 NMRA of the Rules Governing the New Mexico Bar are mandatory and the failure to report this information shall be treated in the same manner as failure to pay dues or comply with mandatory continuing legal education. The information provided pursuant to this rule is designed for statistical purposes only and shall be used by the State Bar of New Mexico and distributed only in statistical form. Individual attorney responses shall remain confidential.

While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 NMRA of the Rules of Professional Conduct, to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in the variety of ways as set forth in Paragraphs B, C and D of Rule 16-601 NMRA of the Rules of Professional Conduct. Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 NMRA of the Rules of Professional Conduct. Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in Paragraphs B, C and D of Rule 16-601 NMRA of the Rules of Professional Conduct.

Attorneys licensed in New Mexico who reside outside of New Mexico may fulfill their pro bono responsibilities in their own state or provide monetary contributions to organizations providing assistance in New Mexico.

To facilitate the goals of this rule the Supreme Court adopted an order on April 28, 2006, establishing district court pro bono committees in each judicial district. Under the Pro Bono Plan adopted by the Court, a local pro bono committee convened by the chief judge and comprised of local lawyers, judges, legal service providers and other interested participants shall establish a local pro bono plan. The time deadlines and content for local pro bono plans shall be recommended by the Supreme Court's Access to Justice Commission and established by further administrative order of the Supreme Court.

Lawyers give back

Pro bono contributions
by Indiana attorneys in 2020



8,171

attorneys contributed
time and/or money to
pro bono legal services



Return on investment

"An Indiana Economic Impact Study
showed that for every **one dollar**
invested in legal aid, nearly
seven dollars goes back into
the economy."

—Chief Justice Loretta Rush
2019 State of the Judiciary



of the **15,382** lawyers
who reported their
pro bono data for 2020,
7,211 attorneys
reported no
contributions of
money or hours



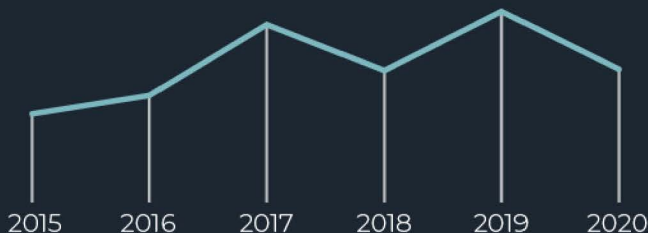
277,913

hours of legal work at no charge;
another **169,288** hours
offered at a reduced rate



\$1.1M

in monetary contributions



Monetary
contributions
over time

from about **\$775k** in 2015 to as high as **\$1.55M** in 2019



This data, current as of Jan. 4, 2022, was self-reported by **22,188 attorneys** licensed in Indiana during annual attorney registration. **6,806 attorneys were exempt** from reporting because—as judicial officers, government employees, or retired/inactive attorneys—they cannot provide pro bono services.

EXHIBIT B1



INDIANA STATE
BAR ASSOCIATION
Serving the legal profession and the public

Frequently Asked Questions

New Professional Rule 6.7: Requirement for Reporting of Direct Pro Bono Legal Services

[Adopted January 1, 2015 and amended April 30, 2015]

Q: Who Must Comply?

A: All Indiana attorneys but those in 4 exempted categories:

- 1) currently serving as a member of the judiciary or judicial staff,
- 2) a government lawyer prohibited by statute, rule, regulation, or agency policy from providing legal services outside his or her employment,
- 3) retired from the practice of law, or
- 4) inactive standing with the Clerk of the Indiana Supreme Court.

Q: What Must I Report?

A: "Reportable Pro Bono Hours" = legal services in Indiana or other states directly to individuals reasonably believed to be of limited means (1) without charge and without any fee expectation when the services were rendered or (2) at a charge of less than 50% of your normal rate and without expectation of any greater fee when the services were rendered.

Financial contributions and In-kind contributions of tangible property to eligible organizations:

- the Indiana Bar Foundation
- any of the local IRC 501(c)(3) pro bono districts listed at the Indiana Supreme Court website
- a legal service organization located in Indiana that is eligible for fee waiver under I.C. 33-37-3-2(b)

Q: Where Do I Report?

A: On your Online Attorney Registration

EXHIBIT B1

Q: When Do I Report?

A: Reporting begins October 2016 for calendar 2015

Q: What is not included in the term “reportable pro bono legal services”:

- Legal services “for the benefit” of poor people (amended from the original rule)
- Legal services to organizations
- Legal services written off as bad debts
- Legal services rendered to improve the law, the legal system, or the legal profession

Q: How do I know if my client is a person of limited means?

A: You are making a good faith approximation. Revised Rule 6.7 does not define “limited means” so it is a flexible concept that allows lawyers to measure their pro bono clients’ ability to pay against what it would otherwise cost them to pay for representation. A pro bono client may not be indigent in the absolute sense of the word, but might not have sufficient means to pay for legal representation. Still, if a lawyer represents a wealthy client for free because he believes in the cause, that is not reportable pro bono.

Q: Do my legal services qualify as pro bono legal services if I charge a reduced fee to a client who is unable to pay my general legal fees?

A: Yes, as long as you are making that determination at the time the services are provided.

Rule 6.7 acknowledges the laudable practice of lawyers who, rather than abandoning a client who can no longer pay for legal services, sticks with their client with no further expectation of being paid.

Q: May I approximate my financial contributions for pro bono reporting?

A: The original Rule 6.7 allowed for approximations of financial contributions. The amended rule requires reporting direct monetary support in actual, not estimated, dollars. Most lawyers already track these donations for tax purposes.

EXHIBIT B1

Q: What in-kind contributions may I report?

A: The amended Rule 6.7 clarified that in-kind contributions do not include the value of donated services, only “tangible property.” The valuation question was left deliberately vague by a reference to the donated property as “fairly valued.”

Q: What enforcement mechanisms are in place for compliance with Rule 6.7?

A: The amended Rule 6.7 does not discuss professional discipline for violation of the rule. Practically speaking, non-compliance is not an option. The Court’s online annual registration portal will require attorneys to answer the Rule 6.7 questions in order to complete their attorney registration renewal. If attorneys have no pro bono or financial contributions to report, they must insert “zero” in the form.

Q: What enforcement mechanisms are in place for compliance with Rule 6.7?

A: The amended Rule 6.7 does not discuss professional discipline for violation of the rule. Practically speaking, non-compliance is not an option. The Court’s online annual registration portal will require attorneys to answer the Rule 6.7 questions in order to complete their attorney registration renewal. If attorneys have no pro bono or financial contributions to report, they must insert “zero” in the form.

Q: Is reduced fee pro bono work delivered from January 1 – April 30, 2015 reportable in 2016?

A: The original Rule 6.7 (effective January 1, 2015) did not include reduced fee pro bono work in its reporting requirement. The amended Rule 6.7 (effective April 30, 2015) does include reporting of reduced fee pro bono. Given that the Court is asking for attorneys’ good faith approximations and there is no auditing mechanism, it is hard to imagine a scenario in which the Court would have a problem with attorneys looking at the amended rule as a guide for their reporting requirements throughout 2015.

Q: Can a legal representation that began as a fee-payment engagement be converted to a reportable pro bono representation?

A: Yes. Whether a representation is reportable pro bono is determined at the time the services were rendered; not at the outset of the representation.

AMENDED PROFESSIONAL CONDUCT RULE 6.7

Rule 6.7 Requirement for Reporting of Direct Pro Bono Legal Services

(a) Reporting Requirement. To assess the current and future extent of volunteer legal services provided directly to individuals of limited means and to encourage such services, an attorney must report as part of the attorney's annual registration the following information:

(1) Pro Bono Hours - no compensation. During the previous calendar year ending December 31 I have personally provided approximately _____ hours of legal services in Indiana or other states directly to individuals reasonably believed to be of limited means without charge and without any fee expectation when the services were rendered.

(2) Pro Bono Hours – substantially reduced compensation. During the previous calendar year ending December 31, I have personally provided approximately _____ hours of legal services directly to individuals reasonably believed to be of limited means at a charge of less than 50% of my normal rate and without expectation of any greater fee when the services were rendered.

(3) Financial Contribution. During the previous calendar year ending December 31, I have either (i) made monetary contributions of \$ _____ to the Indiana Bar Foundation, to any of the local IRC 501(c)(3) pro bono districts listed at the Indiana Supreme Court website, or to a legal service organization located in Indiana that is eligible for fee waiver under I.C. 33-37-3-2(b); or (ii) made an in-kind contribution of tangible property fairly valued at \$ _____ to one or more of the foregoing qualifying legal service organizations or pro bono districts.

(4) Exempt Persons. An attorney is exempt from reporting under this Rule who is exempt from the provision of pro bono legal services because he or she (i) is currently serving as a member of the judiciary or judicial staff, (ii) is a government lawyer prohibited by statute, rule, regulation, or agency policy from providing legal services outside his or her employment, (iii) is retired from the practice of law, or (iv) maintains inactive standing with the Clerk of the Indiana Supreme Court.

(b) Reporting Required. By requiring the affirmative reporting of pro bono legal services provided directly to an individual of limited means, this Rule 6.7 requires reporting only for a subset of the public interest legal service encouraged under Rule 6.1.

(c) Public Disclosure of Information Received. Information received pursuant to this Rule is declared confidential and shall not be publicly disclosed by the Indiana Supreme Court or any of its agencies, on an individual or firm-wide basis.



INDIANA STATE
BAR ASSOCIATION
Serving the legal profession and the public




EXHIBIT C**2020 State Bar of Nevada
LICENSE FEE INVOICE**September 17, 2019
License Fees due January 1, 2020

12777

This Space for Internal Use Only

Hammond, Richard Bar No. 10065

Part A Current Membership	Current Fees
Attorney Active 2020	\$450.00
LRIS Annual Registration Fee 2020	\$50.00
NVCLE Annual Fee	\$40.00
Total A	\$540.00

Part B Voluntary Donations	
 <i>(All contributions are appreciated.)</i>	
	I will contribute to the Nevada Bar Foundation, the State Bar of Nevada's 501(c)(3) charitable organization.
	I will support pro bono in Nevada by contributing to the One Campaign. <i>The aspirational contribution goal is \$500.</i>
Total B	

Part C Sections	2019 Member
Administrative Law Section	\$25.00
Alternative Dispute Resolution	\$25.00
Appellate Litigation	\$25.00
Bankruptcy Law Section	\$25.00
Business Law	\$25.00
Construction Law	\$30.00
Elder Law	\$25.00
Energy Utilities and Communication	\$25.00
Entertainment Law	\$30.00
Environmental and Natural Resources	\$25.00
Family Law	\$35.00
Gaming Law	\$25.00
Insurance and Health Law	\$25.00
Intellectual Property Law	\$25.00
International Law	\$25.00
Labor and Employment Law	\$30.00
LGBT	\$25.00
Litigation Law	\$30.00
Probate and Trust Law	\$25.00
Public Lawyers	\$25.00
Real Property Law	\$30.00
Solo and Small Practice	\$25.00
Tax Law	\$20.00
Young Lawyers	\$25.00
Total C	
Total A, B, C	\$540.00

Please pay online at www.nvbar.org
OrReturn this invoice with all payments to:
State Bar of Nevada
3100 W. Charleston Blvd., Suite 100
Las Vegas, NV 89102

INVOICE

Pro Bono Reporting

Share:

States have developed two different models of pro bono reporting systems: rules requiring attorneys to report their pro bono activity (mandatory pro bono reporting) and rules suggesting that attorneys volunteer such information (voluntary pro bono reporting).

Mandatory Pro Bono Reporting

Nine states currently require attorneys to report their pro bono hours.

Florida

[Rule 4-6.1](#) of the Florida Rules of Professional Conduct

Florida implemented mandatory pro bono in 1993 and was the first state to do so. Hours are reported with annual membership dues.

Hawaii

Hawaii Rules of Professional Conduct [Rule 17\(d\)\(1\)\(B\)](#).

Hawaii implemented mandatory pro bono reporting in 2007. Pro bono hours are reported in the annual attorney registration.

Illinois

[Illinois Supreme Court Rule 756\(f\)](#)

Illinois adopted the reporting requirement in 2006. Pro bono hours are reported with annual attorney registration.

Indiana

[Indiana Rules of Professional Conduct Rule 6.7](#).

Mandatory reporting implemented in 2016. Pro bono hours are reported during the annual attorney registration.

Maryland

[Maryland Rules of Professional Conduct Rule 19-503](#). Mandatory reporting began in 2002. Pro bono hours are reported annually with IOLTA compliance.

Mississippi

[Mississippi Rules of Professional Conduct Rule 6.1\(e\)](#). Adopted in 2005. Pro bono hours are reported in the annual membership fees statement.

Nevada

[Nevada Rules of Professional Conduct Rule 6.1\(b\)](#). Pro bono hours are reported annually as part of the annual membership fees statement.

New Mexico

[New Mexico Rules of Professional Conduct Rule 24-108](#). Implemented in 2008. Pro bono hours are reported through annual membership renewal.

EXHIBIT D

New York

[22 NYCRR &118.1\(e\)\(14\)](#). Pro bono hours are reported in the biennial registration process.

Reasons In Favor of Implementing Mandatory Pro Bono Reporting

- It is a simple mechanism for attempting to increase delivery of legal services to poor (e.g. actual increase in Florida) and level of service to community
- It is an effective mechanism for collecting reliable, accurate, consistent data to evaluate delivery of pro bono legal services to the poor
- It provides data essential for design of successful programs
- It may increase monetary contributions
- Reporting creates positive peer pressure
- It promotes increased access to justice/courts
- It promotes involvement in pro bono
- Requiring reporting promises high rates of reporting
- Data collected can send a message to non-legal community about their responsibility to fund legal services for poor
- It enables recognition of contributing lawyers
- It can be inexpensive
- It facilitates engendering confidence in the bar
- It may make demographics collectible
- The data can be used to enhance image of lawyers
- It encourages fulfillment of professional responsibility
- It may raise consciousness about the professional responsibility to provide pro bono legal services
- It may raise awareness of need for free or reduced fee legal services
- It may raise awareness of opportunities for pro bono involvement
- It may obviate mandatory pro bono service controversy

Reasons Against Implementing Mandatory Pro Bono Reporting

- Reporting violates constitutional right to privacy because publicizes private acts of charity and divulges names of recipients
- Reporting violates the right to be free from involuntary servitude
- Reporting is a step toward mandatory pro bono
- Implementing reporting invites political opposition to pro bono
- It may be difficult to find support
- It may be unnecessary
- It may be counterproductive to goal of increasing delivery of direct legal services to the poor
- The administrative costs involved in collecting and processing information, as well as in taking disciplinary action or imposing sanctions, may be prohibitive
- It may engender negative peer pressure
- It creates an onerous responsibility for attorneys
- The public and press can use the information to criticize the bar
- It is for the legislature, not the judiciary to decide (not judiciary's role to encourage charitable activities)
- Reporting does not serve the public interest
- It is difficult to determine what type of discipline is appropriate for failure to report
- The true motive is to persuade or shame lawyers into doing pro bono work

EXHIBIT D

- Judicial aspirants could be affected by information provided in past years
- It burdens the state with the need to devise collection methods and penalties for noncompliance with the rule
- It imposes a financial burden on the state
- Pro bono can become a negative rather than positive concept if bar members express opposition

Voluntary Pro Bono Reporting

Thirteen states have voluntary pro bono reporting systems in place.

Arizona

Implemented in 1994. Attorneys are asked to report on their annual dues statement.

Connecticut

Adopted in 2012. Attorneys are asked to report as part of the annual electronic registration.

Georgia

Implemented in 2000. Lawyers only answer whether they have met the aspirational goal of 50 hours of pro bono work as part of the annual attorney dues and registration statement.

Kentucky

Implemented in 2005. Attorneys are asked to report with the annual dues statement. Lawyers rendering fifty hours of donated legal services receive a recognition award from the Kentucky Bar Association.

Louisiana

Began in 1998. Attorneys are asked to report their pro bono activity annually as part of the dues renewal process.

Montana

Implemented in 2003. Pro bono reporting is coupled with the annual mandatory IOLTA reporting. This has resulted in a high response rate for Montana attorneys.

North Carolina

Began in 2017. North Carolina has a standalone process that is not coupled with the licensure renewal or CLE reporting. Reporting is coordinated by the North Carolina Pro Bono Resource Center.

Ohio

Implemented in 2007. The Supreme Court partners with the Ohio Legal Assistance Foundation to collect data online. OLAF files an annual report of aggregate data with the Supreme Court.

Oregon

Implemented in 2002. Attorneys are encouraged to report their pro bono time voluntarily as part of the "Pro Bono Roll Call". Reporting is via the Oregon State Bar website.

Tennessee

Implemented in 2009. Tennessee adopted a rule requesting that attorneys who are required to file an Annual Registration voluntarily file a statement reporting pro bono service and activity.

Texas

Implemented in 2005. The State began conducting random phone surveys of 500 attorneys about pro bono work. Pro bono hours can also be reported through the State Bar of Texas website.

Virginia

Implemented in 2017. Active Virginia attorneys are asked to report as part of the annual dues renewal process, which can be done online or by mail.

Washington

Implemented in 2003. Information is collected as part of the annual licensing process.

Reasons In Favor of Implementing Voluntary Pro Bono Reporting

- Voluntary reporting is less of a burden on attorneys because it is optional
- It is not a threat to constitutional rights
- There is no need to focus energies on discipline
- It is easy to implement
- Voluntary reporting may enable the collection of data
- Data can send a message to non-legal community about their responsibility to fund legal services for poor
- It enables recognition of contributing lawyers
- It can be inexpensive
- It facilitates engendering confidence in the bar
- It may make demographics collectible
- The data can be used to enhance the image of lawyers
- It may raise consciousness about the professional responsibility to provide pro bono legal services
- It may raise awareness of need for free or reduced fee legal services
- It may raise awareness of opportunities for pro bono involvement
- It may increase monetary contributions to providers of legal services

Reasons Against Implementing Voluntary Pro Bono Reporting

- Voluntary reporting has a low response rate
- It collects insufficient data to draw statistically valid conclusions
- If the reporting is on separate forms from bar dues/licensing renewal, it may get lost or discarded
- Trying to track activity may be burdensome due to low response rate
- Some activities not recognized or promoted (e.g. legal services rendered in rural communities or non-legal community service activities)
- If the form is not on a dues statement, a complete analysis of collected data impossible because inclusion of personal information optional
- It is ineffective
- It may not encourage or promote fulfillment of professional responsibility to provide access to justice
- It may not raise consciousness about pro bono or professional responsibility

Updated March 19, 2020