Informational Report on Mandatory Reporting of Pro Bono Work and of Contributions to Legal Services Organizations

The information and opinions contained in this Informational Report are solely those of the Association's President's Committee on Access to Justice and the Committee on Legal Aid. They do not constitute the position of the New York State Bar Association unless and until adopted by the Association's Executive Committee or House of Delegates.

Contents

Executive Summary

This informational report was prepared by a working group composed of representatives of the President's Committee on Access to Justice, the Committee on Legal Aid and the Pro Bono Coordinators Network of the New York State Bar Association.[1] The report has been adopted by a majority vote of the President's Committee on Access to Justice and the Committee on Legal Aid. The report also has the support of a majority of the Pro Bono Coordinators Network which is not, under NYSBA rules, able to issue reports. It addresses the rule initiated by Chief Judge Jonathan Lippman in 2013 requiring attorneys to report the number of hours they spend on pro bono activity that contributes to access to justice for the poor and the amount of money they donate to organizations that serve the legal needs of the poor.

The Working Group was charged by the three New York State Bar Association committees listed above with reviewing data and information from other states that have similar reporting requirements – regardless of whether that data supported continued imposition, repeal or modification of the rule – and was further charged with assessing New York's new rule in the broader context of the role that the legal profession plays in providing access to justice. The Working Group has done that and has come up with some concrete recommendations regarding modifications to the current rule that address many of the serious concerns expressed by members of the bar.[2] The report is intended to inform NYSBA's discussion as it considers its position with respect to the new rule. It does not address issues that have been raised regarding the process or authority for adoption of the rule as those matters are outside the Working Group's purview.

The new rule requiring collection and disclosure, on an individual basis, of the amount of pro bono work performed and the amount of money contributed to civil legal services organizations has engendered a significant amount of criticism. Objections to the rule have included concerns about the mandatory nature of the rule, the public disclosure of individual contributions of time and money, a narrow definition of the types of pro bono work that is reportable and the disproportionate burden that pro bono work may impose on certain types of practice or on particular individuals. It is important to remember, however, that the new rule does not require *performance* of any pro bono work or the contribution of any funds to legal services organizations. The rule only requires reporting. And lawyers remain free to perform – and report – little or no pro bono work without suffering the imposition of any discipline or sanction. *See*, Rule 6.1(d), New York Rules of Professional Conduct, as Amended (May 1, 2013).

While this report supports mandatory reporting of pro bono activity and charitable contributions, the recommendations set forth in this report do not wholeheartedly endorse the approach taken in the current rule. Based on an analysis of the experience of other states, the

[1] The working group was chaired by William Russell and Andrew Scherer. The members of the working group were: Eileen Buholtz, Saralyn Cohen, Sheila Gaddis, Bryan Hetherington, Susan Lindenauer, Hon. George Lowe, Lillian Moy, Deborah O'Shea, and Ronald Tabak. (Ms. Buholtz abstained from approval of the report.) Edwina Martin and Lewis Creekmore participated ex officio, and Gloria Arthur and Danielle Hille of NYSBA provided valuable assistance and support to the committee.

[2] Earlier versions of this report were circulated to the three committees and this version takes into account the comments of the members of those committees.

Working Group has concluded that mandatory reporting of 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 New York State and, in particular, will help to significantly ameliorate the "justice gap" represented by the tremendous number of individuals who are unable to afford legal counsel. The Working Group believes, however, that some modifications of the current rule can address objections to the rule without diminishing its beneficial effects.

In particular, the Working Group believes that it should be possible to obtain these benefits without requiring the collection and disclosure of the reported information on anything other than an aggregate basis where the information is only available as a total number by county or by judicial district – particularly if it is accompanied by proactive work by the NYSBA and others to promote pro bono work. Accordingly, the working group recommends that the NYSBA support the mandatory reporting of pro bono work and contributions to legal services organizations but, in order to preserve the privacy of individual lawyers, oppose the collection and public disclosure of this information on anything other than an aggregate basis. The Working Group further recommends that NYSBA work together with the Office of Court Administration ("OCA") to use the aggregate data to tailor efforts to promote pro bono work and gauge progress and that the aggregate approach be evaluated within three years after its implementation.

The Working Group's remaining recommendations and the Working Group's analysis of the role of the legal profession in providing access to justice and the experience of other states with pro bono reporting requirements are set forth in this report.

Report on Mandatory Reporting of Pro Bono Work and of Contributions to Legal Services Organizations

Report of the NYSBA President's Committee on Access to Justice, Committee on Legal Aid and Pro Bono Coordinators Network

I. INTRODUCTION

This report examines a rule initiated by Chief Judge Jonathan Lippman in May 2013 at the urging of the Task Force to Expand Access to Civil Legal Services in New York after the conclusion of a series of public hearings it conducted on the concerns surrounding the justice gap in New York State. This rule requires attorneys to report the number of hours they spend on pro bono activity that contributes to access to justice for the poor and the amount of money they donate to organizations that serve the legal needs of the poor. The intent of the rule, as is clear by its terms and expressed by Judge Lippman, is to expand pro bono activity and charitable donations to civil legal services programs and to gather data that will reflect the extent of that activity and those donations.

The New York State Bar Association has a long and rich tradition of playing an important leadership role in furthering access to justice in New York and in the United States by actively promoting pro bono service as well as sufficient funding for civil legal services programs in order to address the overwhelming need for legal assistance for people who do not have the financial wherewithal to pay for it. In 2006, NYSBA co-sponsored a groundbreaking resolution, unanimously passed by the ABA House of Delegates, that called for a right to counsel in civil matters "where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody." Similarly, NYSBA supported an ABA resolution, passed in 1995, that urged national, state and local bar associations to make the expansion of pro bono legal services a critical priority. That resolution encourages bar associations "to develop effective and innovative strategies to promote pro bono service and to allocate sufficient bar resources to ensure that these strategies can be effectively implemented" and urges consideration of five specific strategies, including adoption of mandatory or voluntary pro bono reporting. For decades, NYSBA has actively supported protection and expansion of civil legal services funding at the federal and state levels.

This report was drafted by a working group comprised of members of three of the NYSBA committees most directly involved with securing access to justice – the President's Committee on Access to Justice, the Committee on Legal Aid and the Pro Bono Coordinators Network. The report's primary focus is to assess the new rule in the broader context of the role that the legal profession plays in providing access to justice and to review data and information from jurisdictions that have similar provisions in order to determine whether there are adjustments that can be made to reduce the burdens imposed by the rule while still retaining the benefits it is expected to create. In addition, the report looks to other states to see whether there are best practices elsewhere that can enhance the effectiveness of New York's implementation of the rule. While the pro bono reporting requirement has generated substantial controversy in the

bar, this report focuses on the substance of the rule and does not address issues that have been raised regarding the process of or authority for adoption of the rule.

II. BACKGROUND

A. The Justice Gap in New York

The mandatory pro bono reporting system initiated by the Chief Judge is one among a number of steps that are being taken in New York to address the state's longstanding crisis in access to justice. It has long been the case that low-income people cannot afford to pay for legal representation, but that by virtue of their poverty and their life circumstances they need legal help far more often than others. Our courts are thus faced with adjudicating matters of utmost importance and fundamental human need – involving shelter, sustenance, health and well-being – where the party most directly affected has no counsel and is forced to navigate the legal system without representation. The free resources available to low-income people through civil legal services programs and existing pro bono efforts in New York have not come close to meeting the need for assistance.

While the crisis is longstanding, in recent years the Great Recession significantly exacerbated the gap in availability of counsel. The economic downturn hit low- and moderate-income people hardest of all, with high unemployment, foreclosures, and reductions in public benefits, housing subsidies and other programs intended to alleviate poverty. According to 2011 federal census data, 33.6 percent of all New Yorkers, 6,498,000 people, are living at or below 200 percent of the poverty level. In New York City, the percentage of residents living below 200 percent of the federal poverty level in 2011 is 41 percent. Despite the recent payroll job growth that New York State has been able to achieve, particularly in comparison to national job growth, the unemployment rate remains high at 8.9 percent.

These economic hardships have led to a growth in a wide range of legal problems while, at the same time, there was a significant decline in funding for civil legal aid. Federal Legal Services Corporation funds are down 15% over the past two years. IOLA revenue plummeted from $32 million in 2008 to only $7 million in 2012 as a result of the decline in interest rates. And funding from local government contracts, private donors, and other sources has declined as well.

This "perfect storm" has led to the crisis we face today: a dramatic increase in the unmet civil legal needs of low-income people and the enormous civil legal justice gap. The Task Force to Expand Access to Civil Legal Services in New York State found, in 2012, that at best only 20 percent of the legal needs of low-income New Yorkers are currently being met. This finding was unchanged from 2010, when a survey of the legal needs of low-income New Yorkers by Lake Research Partners, under the auspices of the Fund for Modern Courts, found that 47% of low income New Yorkers experience at least one legal problem each year and that, at best, only 20 percent of the need for civil legal services is being met.

The lack of sufficient resources to address the legal needs of low-income people is not only a travesty for those who face legal matters without legal help; it is a travesty for the

administration of justice in New York. More than 2.3 million litigants appear in New York courts without a lawyer each year. The vast majority of low-income litigants appear without counsel in eviction cases, consumer credit cases and child support matters. When New Yorkers appear in civil matters in court without representation, litigation and other costs are higher and it becomes far more difficult to resolve disputes. Judges have reported to the Task Force that, when substantial numbers of litigants appear in court unrepresented, the overall quality of justice for all litigants suffers because courts are less efficient, resources are diverted and results are less just.

The enormous justice gap in New York reflects a national trend. According to a 2009 study of the "justice gap" by the federal Legal Services Corporation, there is one lawyer for every 177 people above the poverty level in the United States. For people eligible for legal services, there is one lawyer for every 4,198 people. Since that study, the number of people being served has decreased. As in New York, comprehensive legal needs studies and public hearings to assess the impact of the recession on the delivery of legal services in other states have all confirmed the 2009 Legal Services Corporation Justice Gap Study's conclusion that fewer than one of five low-income individuals with serious legal problems are helped by legal services programs.

B. Historical and Professional Ethics Perspective on the Role of the Legal Profession in Advancing Access to Justice

The historical and professional ethics perspective on the role of the legal profession in advancing access to justice provides important background. It has long been recognized that lawyers have a professional duty and ethical obligation to do pro bono work. Attorneys, through the admission and licensing processes are given a monopoly to practice law. This grant to attorneys of an exclusive franchise to access the justice system in their role as "officers of the court" places a professional responsibility on attorneys to participate in making access to justice for all possible by representing low income individuals and qualifying nonprofit organizations with no means to secure access to justice. As editor of The Law Firm and the Public Good (The Brookings Institution/The Governance Institute, Washington, D.C., 1995) Chief Judge Robert A. Katzmann of the United States Court of Appeals for the Second Circuit wrote:

> …[T]he very reason the state conferred such a monopoly was so that justice could best be served – a notion that surely means that even those unable to pay…can expect legal representation. A lawyer's duty to serve those unable to pay is thus not an act of charity or benevolence, but rather one of professional responsibility…

In addition to their professional responsibility to engage in pro bono work, lawyers have an ethical obligation to do so. "The ethical obligation is central to the teachings of all religious and secular philosophies. To cite…the Bible: 'Justice, justice shall ye pursue all the days of your life.' (Deuteronomy)…[a]nd from the Koran 'Indeed! Allah commands justice, kindness…'" Pro Bono: A Professional and Ethical Obligation, William Dean, New York Law Journal Pro Bono Digest January 2, 2004. That professional and ethical obligation is set forth in both ABA and New York standards of professional ethics for attorneys.

1. *The American Bar Association Standard*

In 1983 the American Bar Association, at its annual meeting, adopted the Code of Professional Responsibility addressing, in part, lawyers' public interest service obligations. Section 6 of the American Bar Association Model Rules of Professional Conduct encompasses public service by lawyers. Rule 6.1 calls upon attorneys to provide pro bono publico service and reads as follows:

> ABA Model Rule 6.1
>
> Every 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.

The comments to the rule remind lawyers of their responsibilities. Comment 1 reads in part: "Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer…" Comment 9 to Rule 6.1 notes: "Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer…"

2. *The New York State Standard*

In New York State, the Rules of Professional Conduct (22 NYCRR Part 1200) include Rule 6.1, amended May 1, 2013:

Voluntary Pro Bono Service

Lawyers are strongly encouraged to provide pro bono legal services to benefit poor persons.
(a) Every lawyer should aspire to:

(1) Provide at least 50 hours of pro bono legal services each year to poor persons; and

(2) Contribute financially to organizations that provide legal services to poor persons. Lawyers in private practice or employed by a for-profit entity should aspire to contribute annually in an amount at least equivalent to (i) the amount typically billed by the lawyers (or the firm with which the lawyer is associated) for one hour of time; or (ii) if the lawyer's work is performed on a contingency basis, the amount typically billed by lawyers in the community for one hour of time; or (iii) the amount typically paid by the organization employing the lawyer for one hour of the lawyer's time; or (iv) if the lawyer is underemployed, an amount not to exceed one-tenth of one percent of the lawyer's income.

(b) Pro bono legal services that meet this goal are:

(1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;

(2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and

(3) professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons.

(c) 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.

(d) This rule is not intended to be enforced through the disciplinary process, and the failure to fulfill the aspirational goals contained herein should be without legal consequence.

The ABA rule and the New York State rule provide a framework for lawyers to meet their professional obligation to provide pro bono legal service and do their part in closing the justice gap.

C. The Need for Improved Data Collection

While various studies described above have been able to estimate the extent of the unmet civil legal needs of the poor and underserved in New York, there is no reliable data – statewide or otherwise – on the amount and nature of pro bono work currently being done to address these needs. The data are incomplete because there is no comprehensive record of all the hours of all individuals who do pro bono on behalf of low income clients. Existing data sources like pro bono programs or NYSBA's Empire State Counsel® program only capture a part of the picture. Since the pre-rule data fail to capture the magnitude of the amount of pro bono work performed annually or the amount of financial donations to civil legal services by New York attorneys, it makes it impossible to:

- measure progress in increasing pro bono work, and
- have thoughtful informed conversation about how to increase pro bono hours, because too little information is collected with respect to issues like practice setting, types of cases, and geographical differences for those providing pro bono services and the barriers to providing more pro bono services.

Any comprehensive plan to improve the extent and quality of legal services provided to these members of our community obviously needs to take this type of data into consideration. Collection of data regarding the amount of money contributed by members of the bar to legal services organizations is crucially important as no matter how much pro bono work is performed by members of the private bar, we will still not be able to come close to closing the justice gap without a well-funded and vibrant community of legal services organizations providing direct services to the poor and underserved. And while government funding must be the primary source of funding for legal services programs, private funding provides a critical supplement.

Any comprehensive plan to improve the extent and quality of legal services provided to the underserved members of our community must take this type of data into consideration. Collecting data on the amount of pro bono service and financial contributions will go a long way in quantifying the need for adequate government funding. Moreover, this type of data collection will allow the legal profession to more specifically identify areas of particular need and locations where more volunteers are needed, as well as areas where more funding would do the most good. For these reasons, any reasonable measures that increase the amount of pro bono work or amount of financial contributions should receive serious consideration.

III. THE CURRENT NEW YORK RULE

Section 118.1(e)(14) of the Rules of the Chief Administrator (22 NYCRR Part 118) requires that each attorney, as part of his or her biennial registration in New York, report (1) the number of hours that the registrant voluntarily spent providing legal services free of charge to poor and underserved clients, and (2) the amount of voluntary financial contributions the registrant made to organizations providing legal services to the poor and underserved during the previous biennial registration period. Other types of pro bono and public service and financial contributions to other types of organizations are not reportable.

The Chief Judge promulgated this requirement in May 2013 based largely on the work of the Task Force to Expand Access to Civil Legal Services in New York. After conducting a series of hearings concerning the justice gap in New York State, the Task Force included this recommendation, among others, in its November 2012 report to the Chief Judge. The new rule was adopted at the same time that Rule 6.1 of the Rules of Professional Conduct (22 NYCRR Part 1200) was amended to increase the amount of pro bono service that lawyers are strongly encouraged to provide each year from 20 hours to 50 hours. These changes represent a recognition of the fundamental ethical obligation of all lawyers to work to increase access to justice for all members of our community. According to the press release announcing the amendment, the new rule and the public availability of the information collected were intended to increase the amount of pro bono service to the poor and underserved performed by New York lawyers and the amount of financial support they contribute to legal services organizations in order to address the documented gap in meeting the legal needs of low-income New Yorkers described above. According to the press release, the collection of information was also designed to facilitate the evaluation of existing efforts to address this existing justice gap.

IV. THE EXPERIENCE OF OTHER STATES

Although New York has often been the first to adopt innovative measures to advance access to justice, a number of states have already adopted either mandatory or voluntary pro bono reporting systems. Thus, as part of its examination of this issue, the Working Group contacted representatives from other states that have adopted mandatory or voluntary pro bono reporting systems and reviewed other publicly available information in order to determine whether any conclusions can be drawn from their experiences. The systems vary widely from state to state, and none is identical to New York's. For example, in some states with mandatory bar association membership, the system is administered by the state bar association and not by the courts. A brief description of each state's system is included in Appendix A. Our research found that there are 33 states that have no reporting system or for which information was unavailable. While some of these states may have contemplated or are currently contemplating adoption of mandatory or voluntary pro bono reporting systems, the Working Group did not examine the experience of other states that do not have reporting systems since the focus of its inquiring was the impact of existing reporting systems.

The Working Group has compiled a list of best practices from states that have mandatory reporting or voluntary reporting – noting which of those states have unitary bars and which have no mandatory bar association membership requirement. Best practices are defined in the report as those practices that appear to have fostered increased pro bono work on behalf of poor clients and/or enhanced financial support for the organizations providing legal services to poor clients.

While the Working Group believes that the best practices list is a good starting point, it should not be viewed as a comprehensive list of all steps that could be taken to encourage greater pro bono participation. The Working Group has identified the following six best practices:

1. Court-based structure with local involvement and statewide oversight.

2. On-line reporting.

3. Aggregate data collection, preferably by a third party.

4. Reporting on both pro bono hours and financial contributions.

5. A definition of pro bono that emphasizes the legal needs of the poor.

6. Mandatory reporting.

1. Court-based structure with local involvement and statewide oversight

It is interesting to note that states with unitary bars, for example, Florida and Montana, and states with non-unitary bars, for example, Maryland and Tennessee, have adopted rules directed to promoting pro bono at the local level in connection with their efforts to set up plans to encourage pro bono work. Even where there is a unitary bar, representatives from other voluntary bar associations in the localities as well as from the legal services providers participate in the local oversight groups. This appears to aid in achieving buy-in for the goals.

2. On-line reporting

Making on-line reporting possible eases record keeping and appears to increase reporting. For example, in Maryland, where there is a reporting rate of more than 95 percent, 80 per cent of those reporting do so on-line. While Maryland is a state that mandates reporting of pro bono hours/financial support, states such as Montana which does not mandate reporting have also benefited from the ability to report on-line.

3. Aggregate data collection, preferably by a third party

There appears to be a recognition that data collection is a sensitive issue and that collecting and aggregating the data are less likely to create anxiety and hostility if these functions are handled by a neutral third party, such as, a university or a separate IT firm. For example, Maryland contracts with an IT firm to collect and aggregate the data.

4. Reporting on both pro bono hours and financial contributions

Whether the state requires reporting, like Florida and Maryland, or not, like Montana and Tennessee, almost all of the plans reviewed seek both pro bono hours and financial support information. The Working Group concluded that both types of reporting are essential. Civil legal services organizations remain in dire need of additional funds to support their staff efforts. Donations to those organizations by members of the bar can be an important supplement to public funding. Reporting those donations will make it possible to develop strategies for increasing contributions and for tracking progress over time.

5. Definition of pro bono

The Working Group believes that the definition of reportable pro bono work should focus primarily on the legal needs of the poor and of organizations that serve the legal needs of poor clients. However, not all the states have utilized pro bono definitions that are that narrowly drawn. To be effective, the pro bono definition must be one that is generally accepted among the

members of the bar.

6. Mandatory reporting

Florida, which has mandatory reporting of pro bono hours and contributions, appears to have enjoyed the greatest increase in the amount of pro bono work performed by members of the bar and in the amount of contributions to legal services organizations. Maryland, which has mandated reporting of pro bono hours and contributions, has also seen a significant increase in the number of lawyers reporting pro bono hours to 57 per cent of the members of the bar (and this is in a state where 40 per cent of the members of the bar live out of state, usually in Washington DC or Virginia, and 20 per cent of the bar are public employees). While Florida makes the data collected available on an individual basis, Maryland only makes data available on an aggregated basis. States such as Montana, which has no mandatory reporting requirement but a very small number of bar members, have also managed to achieve substantial improvement in the amount of pro bono hours and financial support, in large measure because of the utilization of the other best practices outlined above.

V. ANALYSIS OF THE NEW YORK RULE

A variety of substantive objections to the provisions of Section 118.1(e)(14) have been advanced. These include:

- an objection to the mandatory nature of the reporting;
- an objection to the public disclosure of hours and contributions by attorneys;
- an objection to what has been viewed as a narrow definition of pro bono service;
- an objection to the administrative difficulty in tracking pro bono time.

This report examines these objections in light of the overwhelming justice gap in New York and proposes an approach that addresses these concerns while preserving aspects of the rule that are likely to advance access to justice for the neediest New Yorkers.

A. Mandatory Reporting

There are compelling reasons to require reporting of pro bono activity and financial contributions to legal services organizations. Mandatory reporting leads to expanded pro bono service and contributions. The experience in other states, some of which have required reporting for many years, has been that requiring attorneys to report pro bono activity and contributions, whether or not that information is disclosed, usually has a positive effect on attorney behavior and fosters greater pro bono activity and contributions. The simple fact that attorneys need to record and then report their activity is likely to focus attorneys' attention on their professional and ethical obligations as members of the bar and the importance of furthering access to justice and to prompt them to do more.

Required reporting also provides enormously useful data on the extent to which pro bono activity and contributions are contributing to addressing the justice gap and, over time, whether that contribution is growing. Looking at the data by region, by nature of practice, by stage of career and by other variables, will enable the courts, the state bar, pro bono organizations and

others to promote pro bono activity in areas that are underserved and to tailor pro bono programs to address the capacities and interests of different members of the profession. Data generated on contributions will similarly support the ability to devise targeted fundraising strategies. Moreover, a granular analysis of the data can help to set expectations that reflect the very different circumstances faced by attorneys in different types of practice, different locations in the state and different stages of their careers. A recent law grad in solo practice in a sparsely populated part of the state is not, for example, likely to have the same capacity to give time and dollars as a partner nearing retirement in a high-revenue corporate law firm in New York City, and the expectations for each should be different.

There is another important potential effect of this focus on reporting pro bono work and contributions. NYSBA is squarely on record in favor of a government-funded right to counsel in civil legal matters in which fundamental human needs are at stake. The more exposure members of the bar have to the legal problems of the poor, the greater the likelihood that they will support government-funded access to justice which will further help to address the current justice gap.

The primary objection to mandatory reporting appears to be that the gathering of information is inherently coercive and/or burdensome or intrusive. This argument undervalues, if it acknowledges at all, the fact that the legal profession is a licensed and highly-regulated profession and that in exchange for the exclusive privilege of practicing law before the courts, attorneys are expected to adhere to certain professional and ethical standards, among which is the obligation to contribute to furthering access to those courts. It also fails to take into account the responsibility of all lawyers in a democratic society to serve the interests of justice and to do what they reasonably can to ensure that access to justice is universal.

Others have objected to the new rule on the grounds that forcing lawyers to perform pro bono work is unfairly coercive and does not recognize that some lawyers are less able to perform significant amounts of pro bono work because of the nature of their practices or because of other individual circumstances. These lawyers raise legitimate concerns that would need to be addressed if the new rule required mandatory *performance* of pro bono work. The rule, however, only requires reporting of pro bono work. If a lawyer chooses to do little or no pro bono work or if a lawyer is otherwise constrained from being able to perform a significant amount of pro bono work, he or she can simply report the few, if any, hours of work that they do perform.

B. Public Disclosure

Law is, at its core, a competitive profession. In promulgating a rule that would allow for disclosure of the information attorneys report on their pro bono activity and financial contributions, Judge Lippman has assumed that the prospect of public disclosure is likely to be a powerful motivating force for attorneys who will not want to be seen as shirking their ethical responsibilities. He is, in essence, trying to advance a public good by relying on the competitive nature of the profession.

Almost all states that have mandatory reporting and all states that have voluntary reporting do not disclose information reported by individual attorneys. To the extent that data is reported, it is for the most part reported in the aggregate. However, Florida, which does disclose

information reported by individual attorneys, has had the most success in advancing both the amount of pro bono activity and the financial contributions to civil legal services organizations of all the states with reporting in place. This data strongly supports the utility of disclosure.

The objection to disclosure revolves around the view that this type of information should be held private. This concern is particularly strong among lawyers who, for a variety of reasons, are unable to perform a meaningful amount of pro bono work or make significant financial contributions but do not want their limited contributions of time or money to be made public. Objections are also based on the notion that fear of exposure, while it may be a powerful motivating force, is not an ideal motivator and that it would be better to transform behavior through the "carrot" rather than the "stick." There is also concern that the information would be used to solicit donations from individuals either because they are or are not particularly generous. The drafters are sympathetic to these concerns and applaud Judge Lippman for delaying disclosure at this juncture. As discussed below in our recommendations, we believe that New York State can enjoy the benefits of mandatory reporting of pro bono efforts without disclosing individual information in a manner that raises privacy concerns or fear of embarrassment for members of the bar.

C. The Definition of Pro Bono

There are some inherent issues and ambiguities with respect to the scope of pro bono work that may be reported under the new rule.

The rules requires reporting of time spent providing "unpaid legal services to poor and underserved clients." While this does not define "underserved clients" and appears to exclude legal services provided to organizations that address the needs of the poor, the answer to the 5th FAQ to the rules says that "An attorney should report pro bono legal services that comport with the definition set forth in 22 NYCRR Part 1200, Rule 6.1 (b). Rule 6.1(b) provides in "pertinent part" for inclusion of:

"(1) professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel;

(2) activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and

(3) professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons."

There are a number of issues with this definition. First, it excludes significant areas of pro bono practice that provide great value to our community. As an example, Part (1), on its face, does not include pro bono work in criminal matters governed by Gideon – despite the fact that it is generally recognized that the promise of Gideon has not been met. Indeed, there is pending litigation challenging the quality of criminal defense services in New York. Moreover, inadequate representation in criminal cases often has collateral consequences in terms of civil penalties, family law matters, re-entry limitations, and even deportation. While it appears that at least work on post-conviction, habeas, parole, and clemency matters where there is no right to counsel should be considered reportable pro bono work, the rule never says this clearly.

Other examples include work related to improving the administration of justice but which does not specifically increase the availability of legal services to the poor and work on behalf of organizations seeking to preserve the environment. These types of pro bono legal work fall within the standard definitions of pro bono work promulgated by organizations such as the Pro Bono Institute, but they are not reportable under the current rule.

A number of lawyers have complained that, while they would like to perform pro bono work that addresses the needs of the poor, they do not feel that they have the necessary experience or expertise to provide competent legal advice and representation in the subject matter areas in which the poor have the greatest need. By limiting the type of pro bono work that can be reported, the rule does not recognize the important contributions that these lawyers can make to the administration of justice more generally.

There is also a lack of clarity as to who qualifies as "poor." The answer to FAQ 6 refers to two different terms used by The Chief Judge's Task Force to Expand Legal Services" – "poor" and "working poor." It is not clear whether there is meant to be a distinction between these two terms. In any event, the FAQs leave lawyers to try figure out for themselves how to determine whether a client is "poor" and does not offer any guidance such as a measure tied to the federal poverty level.

D. The Reporting Period

Under the new rule, attorneys are required to report information on their pro bono activities and contributions for the previous biennial reporting period (which is the two years prior to their birthday) rather than on a calendar year basis. Most individuals and law firms keep records on a calendar year basis. Requiring lawyers to figure out how much pro bono work they performed in the two years before their birthday imposes an additional burden. The burden is even greater with respect to charitable contributions. The Internal Revenue Service and state taxing authorities require the reporting of tax information on a calendar year basis and, since many charitable contributions are tax-deductible, lawyers generally keep records of their donations on a calendar year basis. Moreover, many lawyers who are partners in a firm would like to include in their reported contributions their pro rata share of contributions made by their firm. By requiring reporting for each individual lawyer based on his or her birthday, figuring out an individual partner's pro rata share of her or his firm contributions poses an even greater burden. Finally, collecting data on a calendar year basis will facilitate the use of that data to make historic comparisons on an "apples to apples' basis.

VI. RECOMMENDATIONS

Based upon the Working Group's analysis of the current rule and our examination of the experience of other states that have implemented various pro bono reporting regimes, the Working Group has the following recommendations for the New York State Bar Association:

Recommendation 1: *Support the new requirement that attorneys report the amount of pro bono work they have performed and the amount of money that they have contributed to organizations serving the poor and underserved.* The Working Group believes that access to

justice in New York will reap enormous rewards from the new mandatory reporting system, particularly if it is supported by the NYSBA. If it is appropriately administered and supported by the courts and bar associations, it will result in greater pro bono activity and increased donations to legal assistance organizations. It will provide the courts and the bar with data that will facilitate the development of pro bono programs that are targeted to regional needs. And it will enable lawyers, the courts and the bar to see progress in the bar's contribution to access to justice over time.

Recommendation 2: *Request that the Chief Judge and the Office of Court Administration collect the information and make it publicly available only on an aggregate – rather than on an individual lawyer – basis. NYSBA should commit to working closely with the courts to develop a comprehensive plan to promote pro bono activity and charitable donations for civil legal services.* The experience in Florida, which has a mandatory reporting rule and disclosure of reported information, demonstrates the effectiveness of that approach in advancing access to justice. No doubt, the possibility of disclosure has been a powerful motivator. However, there has been a strong negative reaction against disclosure by attorneys in New York and many lawyers have raised privacy concerns – particularly with respect to the reporting of financial contributions. Moreover, many lawyers have expressed a concern that the nature of their practice or other, individual situations, makes it harder for them to perform a substantial amount of pro bono work and they worry that a public disclosure of their pro bono hours would be unfair under the circumstances. Accordingly, the Working Group believes that a joint, comprehensive effort by the courts and the bar to promote pro bono activity has the potential to be just as effective a motivator as the prospect of disclosure. Moreover we believe that it would be preferable to rely on the good will and high ethical values of members of the bar as a motivating force than to rely on the prospect of disclosure. By collecting data and making it available on an aggregate basis – perhaps by county or judicial district -- the bar and others will be able to make informed analyses regarding the nature and amount of pro bono work being performed and the amount of money being contributed to organizations serving the legal needs of the poor. The data should be analyzed annually and, if after three years of a joint effort by the bar and courts to promote pro bono and charitable donations there is not an appreciable increase in the amount of relevant pro bono work being performed, reporting the collected information on an individual lawyer basis should be revisited. Section 118.2 of the Rules of the Chief Administrator can be amended to include the reported pro bono hours and financial contributions among the information that cannot be reported to the public. Moreover, the data should be collected anonymously or by a third party so that there is no way for the information to become publicly available other than on an aggregate basis.

Recommendation 3: *Request that OCA expand the scope of pro bono work that can be reported.* While there should continue to be a separate category for pro bono work designed to address the legal needs of the poor in order to stress the primary importance of this work, lawyers should also be able to report – in a separate category – other pro bono legal work that falls within one of the publicly promulgated definitions such as that of the Pro Bono Institute.

Recommendation 4: *The reporting period for pro bono work and charitable contributions to legal services organizations should be for the previous two full calendar years*

rather than for the reporting lawyer's biennial reporting period. As discussed above, this will ease the record-keeping burden on attorneys.

Recommendation 5: *Request that OCA expand the type of information collected.* The information gathering process will be more valuable if attorneys report not just the aggregate amount of pro bono work and financial contributions but other metrics such as the number of years in practice, size of their firm or organization, geographic location of their practice, general subject area or areas of practice and any additional information that will enable interested parties to conduct a meaningful analysis of what is currently being done to decrease the justice gap and ways in which those efforts could be augmented or improved.

Recommendation 6: *Make it possible for attorneys to make charitable contributions for civil legal services along with their registration.* OCA should explore whether it is possible for New York's attorney registration system to offer reporting lawyers the ability to make donations on-line to qualifying organizations as part of their registration process in order to facilitate efforts to increase the amount of funding available for legal assistance to the poor.

Recommendation 7: *Convene a joint working group with representatives of NYSBA and OCA to address the details of the pro bono reporting system and to develop programs to foster and support pro bono work.* While this report makes several recommendations, there are a large number of additional details that need to be addressed in order to develop a successful pro bono reporting program that expands access to justice and enjoys broad support. As noted in the second recommendation above, NYSBA should commit to working closely with the courts to analyze the aggregate data that is collected and develop a comprehensive plan to promote pro bono activity and charitable donations for civil legal services that is tailored to different practices, different regions and different stages of attorneys' careers. To this end, NYSBA and OCA should convene a joint working group to address these issues in a collaborative, cooperative process.

APPENDIX A -- COMPILATION OF INFORMATION FROM OTHER STATES

A. Summary Chart

State	Bar Association Mandatory/Voluntary	Reporting of Hours Mandatory/Voluntary	Mandatory Reporting of Contributions Mandatory/Voluntary	Penalty/Sanction for Failure to Report	Data Reported Individual/Aggregate
Florida	Mandatory	Mandatory	Mandatory	Yes	Individual
Hawaii	Mandatory	Mandatory	Mandatory	Yes	Aggregate
Illinois	Voluntary	Mandatory	Mandatory	No	Aggregate
Maryland	Voluntary	Mandatory	Mandatory	Yes	Aggregate
Mississippi	Mandatory	Mandatory	Mandatory	No	Aggregate
Nevada	Mandatory	Mandatory	Mandatory	Yes	
New Mexico	Mandatory	Mandatory	Mandatory	Yes	Aggregate
Arizona	Mandatory	Voluntary	Voluntary	Unknown	No data collection
Georgia[1]	Mandatory	Voluntary	Not reported	No	No data collection
Kentucky	Mandatory	Voluntary	Not reported	Unknown	Aggregate
Louisiana	Mandatory	Voluntary	Unknown	No	Unknown
Michigan	Mandatory	Voluntary	Voluntary	No	Unknown
Montana[2]	Mandatory	Voluntary	No longer collected	No	Unknown
Ohio	Voluntary	Voluntary	Voluntary	No	Aggregate
Tennessee	Voluntary	Voluntary	Voluntary	No	Unknown
Texas[3]	Mandatory	Voluntary	Unknown	No	Few attorneys report
Washington	Mandatory	Voluntary	Not collected	No	Unknown

[1]Georgia had voluntary reporting of pro bono hours for about four to five years during the late 1990's. The reporting system was eliminated. Georgia attorneys now only answer whether they met their aspirational goal of 50 hours of voluntary pro bono.

[2] Montana couples its voluntary reporting of pro bono hours with a mandatory IOLTA account compliance report. Until three years ago, Montana asked about financial contributions to civil legal services providers, but removed the question because it was suspected that it caused a reduction in the numbers of attorneys who were willing to voluntarily report pro bono activity.

[3] Texas' voluntary pro bono reporting system has yielded very little data as majority of attorneys do not bother to report.

B. Mandatory Reporting States

1. Florida

Florida is a mandatory bar and was the first state in the nation to have implemented mandatory reporting of pro bono hours and financial contributions to legal services organizations (effective October 1995). The Florida Rule states that an attorney should annually perform 20 hours of pro bono service or make a financial contribution of $350 to a legal aid organization. The Rule also permits law firms to report aggregate pro bono under plans that must be approved by the Court's local pro bono committee, Failure to report is considered a violation of the rules of the Florida Bar and can result in a penalty. Information that is reported is made available to the public. Over time, reporting has stayed close to 80 percent. Since its inception, the rule has resulted in a tripling of pro bono hours. By 2012, financial contributions had grown to $4.85 million, from a base of a few hundred thousand when the rule was adopted.

2. Hawaii

Hawaii is a mandatory bar state. Members of the Hawaii State Bar are required to file an attorney registration statement with the Hawaii State Bar and must report hours of pro bono service and amount of related financial contributions for the previous year if made as an alternative to pro bono service. Individual pro bono service hours and financial contributions are kept confidential and the information that is collected is only disclosed in the aggregate. The failure to complete the attorney registration statement by reporting pro bono hours and financial contributions is a disciplinary offense.

3. Illinois

Illinois is a voluntary bar state with mandatory reporting of pro bono hours. Attorneys in Illinois report annually on a calendar year basis, not linked to their date of birth. Attorneys receive their annual registration statements in October of each year and the pro bono related questions are included in the registration form. Information reported is not subject to public disclosure or used in any disciplinary context. The information reported by an individual attorney on pro bono hours and financial contributions is only reported, retained and disclosed in the aggregate. According to Illinois Bar Association personnel, the rule has served as an annual reminder each year that pro bono is important.

4. Maryland

Maryland, which has a voluntary bar, has had a court rule that requires reporting of pro bono hours and contributions since 2002. Today, compliance with the reporting requirement is over 99 percent, largely because failure to report, after a number of reminders, can result in decertification to practice. There is guaranteed non-disclosure of the individual pro bono hour and contribution information but the data are compiled annually in an aggregate form and made available in published reports. Maryland has an aspirational goal of 50 pro bono hours per year. In 2002, when mandatory reporting began, that goal was met by 17 per cent of those reporting; in 2012; the percentage had increased to 22 percent and 57 percent reported, that they had performed at least some pro bono work. Over the same period, financial support for programs

delivering legal services to the poor has increased by 89 percent. On-line reporting is available and used by 80 percent of the bar.

5. Mississippi

Mississippi has a mandatory bar association. Mandatory reporting of pro bono efforts was adopted by the Mississippi Supreme Court on its own initiative in 2005. The state bar collects the information as a part of its annual enrollment fee statement. The Rule provides for a goal of 20 hours of pro bono work or a $200.00 financial commitment annually. Individual attorney reports on pro bono commitment and financial commitment are filed with the State Bar. The State Bar processes the reports and there are no sanctions for noncompliance. According to bar association staff, larger firms now require their attorneys to do pro bono work and did not do so prior to adoption of the rule.

The 2014 MS Volunteer Lawyers Project Pro Bono Survey was administered electronically in February 2014 to members of the MS Bar Association. The survey was made available to all Bar members through a link emailed to them. The questions for the survey were suggested by the Mississippi Volunteer Lawyers Project (MVLP) in consultation with The Mississippi Bar.

A total of 534 members responded and completed the 2014 Pro Bono Survey. Of the responses received, the largest percentage (71.9 percent) were actively engaged in private practice, with the majority (28.9 percent) of responders indicating that they have practiced for over thirty years. Most of the respondents practice in firms of less than ten attorneys.

88.9 percent responded that they reported their pro bono hours to the MS Bar on their annual enrollment form as required by Rule 6.1. 27.5 percent of the respondents provided 21-30 total hours of pro bono legal services in 2013. 21.7 percent provided 11-20 hours of pro bono legal services. 37.2 percent of the attorneys practiced in a 2-10 attorney office. 27.7 percent were solo practitioners.

6. Nevada

Nevada is a mandatory bar state and has a 20 hour of pro bono service aspirational rule, which defines pro bono more broadly than New York's rule and says that a substantial majority of the 20 hours should be for free services to low income individuals. It allows compliance, as an alternative, by contributing at least $500 annually to a pro bono organization. The rule expressly states that failure to render pro bono services is not a disciplinary violation. Nevada requires reporting of pro bono information to the state bar along with the annual attorney registration. They use a primarily paper based system. A relatively small proportion of attorneys who practice in Nevada (3,568 of the 10,425 attorneys who must report, or 34 percent) reported that they provided free legal services in 2012, the most recent year for which data is available. The pro bono reporting form gathers data about: the number of hours of free legal services provided to low income individuals, if any, and the number of hours of other types of pro bono, like reduced fee or services to organizations. The data for pro bono is reported to the state bar. If no report is filed, the attorney is potentially subject to a $100 fine, if s/he does not file after receiving a warning.

7. New Mexico

New Mexico is a mandatory bar state and requires attorneys to report hours of pro bono legal services and financial contributions to organizations providing legal services to the indigent. There is an aspirational goal of 50 hours of pro bono work. However, this goal can be satisfied in full by $500 in financial contributions, or it can be satisfied by a combination of hours and financial contributions. Failure to meet the aspirational goal is not a basis for discipline. However, the failure to report can lead to sanctions. The required information is reported on a form that is part of each lawyer's annual membership fees statement submitted to the New Mexico State Bar Association. Each year the New Mexico state bar association files a report providing the aggregate data reported on the dues forms for the previous year. The percentage of attorneys who reported in 2008 was 60 percent and the percentage who reported in 2009 was 64 percent. The average number of hours of pro bono work reported in 2008 was 61 and the average financial contribution as reported was $197. The average number of hours of pro bono work reported in 2009 was 64 and the average financial contribution as reported was $172.

C. Voluntary Reporting States

1. Arizona

Arizona has had a voluntary pro bono reporting system in place since 1994 and is a mandatory bar state. Attorneys are asked to report their pro bono hours on their annual dues statement. The report form asks about a variety of different activities in addition to providing free legal services to the indigent. When the reporting system was initiated, attorneys would report on paper, now they are asked to report online. The Arizona Bar Association does not collect current data on the rates of reporting, but in the first couple of years, about 1/3 of the attorneys in the state reported their hours and the bar assumes that is still about the portion of attorneys who currently report. The Arizona bar does not tabulate the aggregate numbers of pro bono hours reported. Arizona has a court rule that sets an aspirational goal of 50 pro bono hours per year for each attorney. The Arizona bar also has a box on its dues statement for attorneys to check if they have donated to a civil legal services program in the prior reporting period. They are not asked for the amounts they have contributed and the bar does not tabulate the number of attorneys who check this box. The form also asks if attorneys would like to contribute to the State Bar Foundation and provides for a default contribution of $50.00.

2. Georgia

Georgia, a mandatory bar, had voluntary reporting of pro bono hours for about four or five years in the late 90's. Initially, the information was requested via a mandatory CLE affidavit. Although information was requested about both criminal and civil pro bono, the vast majority of pro bono reported was on the civil side. The highest level of reporting was 8 percent. The system was eventually eliminated. Now, in Georgia, lawyers only have to answer whether they have met their aspirational goal of 50 hours of voluntary pro bono work. About 11 – 12 percent check yes. Voluntary reporting has had no impact on increasing the amount of pro bono work done.

3. Kentucky

Kentucky is a mandatory bar state that has had a voluntary system for reporting pro bono hours in place since the early 1990's. The aspirational goal of pro bono service is 50 hours. Donated legal services "may be reported" on the annual dues statement that the Kentucky Bar Association sends to each Kentucky attorney. The rule provides that lawyers who render at least 50 hours of donated legal services "shall receive a recognition award" from the Kentucky Bar Association. There is no option on the dues statement to report financial contributions. The Kentucky Volunteer Legal Program (KVLP) was founded in 2006 and is a quasi-official agency. Since 2006, the KVLP has collected and maintained the reported data. There has been slow, steady growth in the number of pro bono hours reported since 2006 but no clear explanation as to why.

4. Louisiana

Louisiana has a mandatory bar association. Attorneys in Louisiana are asked to report their pro bono activity annually for the 12 month period between July 1 and June 30. Attorneys can report through a link on the bar association website using their bar number, or complete a paper form and fax in the completed form. This rule is not intended to be enforced through the disciplinary process.

5. Michigan

Michigan is a mandatory bar state with voluntary reporting of pro bono hours and contributions. Michigan adopted Rule 6.1 in 1988 and in 1990, the State Bar Adopted the Voluntary Standards for Pro Bono Participation which provides guidance for Michigan lawyers meeting their responsibilities under Rule 6.1. According to the Pro Bono Service Counsel of the State Bar of Michigan there has never been an indicator that the policymaking bodies of the State Bar of Michigan would be supportive of mandatory reporting of pro bono efforts.

Compliance with the Rule was assessed by the Michigan Bar in 1997 for 1996 activities and again in 2008 for 2007 activities through a web survey to attorneys, focus groups with attorneys and telephone interviews with pro bono coordinators.

In 2008, 32,205 web surveys were sent; 15 percent of those invited accessed the link; of those who accessed the survey link, 82 percent completed the survey; 4,588 lawyers completed the questionnaire which represents an overall 15 percent response rate. In 2008, 68 percent of those reporting said they provided some pro bono service. In 1997, 71 percent said they provided some pro bono service.

The total number of hours of pro bono service attorneys reported for 2007 was 278,935 hours or 76.21 hours per attorney. The average number of hours of service per attorney provided free to poor individuals for civil or criminal legal matters was 28.4 hours, while the average number of hours of service per attorney provided free to organizations or groups that serve the poor was 16.7 hours (this includes criminal and free/reduced fee work).

The average number of hours per attorney providing free civil legal services for poor individuals declined by nearly 6 hours per attorney from nearly 22 hours in 1996 to slightly more

than 16 hours in 2007. The average number of hours provided to individuals was virtually the same as that reported nationally in the 2009 ABA survey, while the average number of hours provided for organizations was slightly greater than the 13 hours reported nationally in the ABA survey.

6. Montana

Montana is a mandatory bar state and has a rule calling for 50 hours of pro bono service annually. The rule defines pro bono more broadly than New York's rule but states that a substantial majority of the legal services should be without expectation of fee to individuals or organizations designed to meet the needs of persons of limited means. Montana has voluntary reporting of pro bono information. A high proportion of attorneys who actively practice in Montana (approximately 70 percent in 2013) voluntarily comply. Reported pro bono hours increased 10.4 percent in 2013, over those reported in 2012 and attorneys reported an average of over 46 hours per attorney. Over the past two years as Montana moved to electronic reporting (96 percent of attorneys report on line) the number of attorneys reporting has doubled. Montana achieves this high reporting rate by coupling the voluntary pro bono reporting in an on-line system with a mandatory IOTLA account compliance report. Until three years ago Montana asked about financial contributions to civil legal services providers, but they removed the question because they came to believe that it was reducing the number of attorneys who were willing to voluntarily report on pro bono activity. After the question was removed there was no reduction in contributions to the civil legal services programs and there was a significant increase in voluntary pro bono reporting. The data on pro bono activity goes to the state bar, which allows the statewide pro bono coordinator to drill down and see areas where there are opportunities to increase pro bono effectiveness and penetration.

7. Ohio

Ohio is a voluntary bar state and has voluntary reporting of hours of pro bono legal services and financial contributions to organizations providing legal services to the indigent. Each January the Supreme Court of Ohio sends an e-mail to all lawyers admitted to practice containing a link to a reporting website. The Ohio Legal Assistance Foundation ("OLAF") administers the reporting process, and reports that this website process is effective, efficient and relatively inexpensive, and it assures attorneys that the process is anonymous. Each year OLAF files a report with the Supreme Court of Ohio providing the aggregate data which has been reported for the previous year. The effect has not been positive. The percentage of attorneys who voluntarily reported, commencing in 2009, has fluctuated as follows:

2009 – 7 percent
2010 – 14 percent;
2011 – 8 percent;
2012 – 10 percent

The average number of hours of pro bono work and average financial contribution as reported has been as follows:

2009 -- 56.6 hours and $464;
2010 -- 25.2 hours and $3,277;
2011 -- 33.4 hours and $208;

2012 -- 38.7 hours and $369

(The relatively substantial amount of financial contributions in 2010 was the result of a specific fund-raising event.)

8. Tennessee

Tennessee has a voluntary bar association. In November 2009, the Tennessee Supreme Court adopted a rule requests that every attorney who is required to file an Annual Registration Statement with the Board of Professional Responsibility voluntarily file a statement reporting the attorney's pro bono service and activity during the last calendar year.

The types of pro bono that are reported include volunteering at organized legal clinics, providing legal services at a free or reduced rate, offering legal advice online at OnlineTNJustice.org, or assisting those in their local or worship community with legal questions. The reporting is made in four different categories:

1. Legal services without a fee or at a substantially reduced fee to persons of limited means;
2. Legal services without a fee to non-profit organizations serving persons of limited means;
3. Legal services to groups and organizations at a reduced fee when payment of standard fees would create a financial hardship; and
4. Legal services to improve the law, the legal system, or the legal profession.

Voluntary reporting is aided by the efforts of the Access to Justice Commission, whose strategic plans for improving access to justice include pro bono strategies. It is appointed by the Tennessee Supreme Court. In February 2013, the Tennessee Supreme Court launched an extensive recognition program to honor all attorneys volunteering at least 50 hours of pro bono service annually.

In 2011, 9,736 attorneys practicing in Tennessee provided 804,961 hours of pro bono, an average of 82.68 hours per attorney. There were a total of 21,111 attorneys licensed in Tennessee in 2011, which means that 46 percent reported participating in pro bono activity. This was said to be a 6 percent increase over 2010 in the percentage of attorneys doing pro bono (and way over the 18 percent in 2009) and to be a total of pro bono hours that was more than 173 percent of the pro bono hours reported for 2009.

For 2011, 4,721 (22.36 percent) of all attorneys reported voluntary contributions of financial support to organizations providing legal services to persons of limited means. The commission did not compare this with any prior data.

9. Texas

Texas is a mandatory bar state with a voluntary pro bono reporting program that was implemented with the goal of obtaining accurate information about the nature and amount of pro bono work being performed by Texas lawyers. Very few lawyers bother to report, so the

program does not provide any statistically significant data and it has not had any apparent effect on the amount of pro bono work being done in Texas. In fact, the program provides so little information that the Texas State Bar has gone to the expense of paying a third party to conduct a survey of Texas lawyers regarding their pro bono work every other year in order to obtain some data that it can use when it talks with legislators and others about these issues.

10. Washington

Washington has a mandatory bar association. Voluntary pro bono reporting has been elicited by the Washington State Bar Association since 2003. The state bar collects the information through a separate form that is part of the annual licensing packet.

Washington's Rule of Professional Conduct 6.1, encourages Washington lawyers to provide at least thirty (30) hours of pro bono or public service each year. Washington decided against recommending a financial commitment.

The definition of pro bono or public service includes (among other things): 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, civil, 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; delivery of legal services at a substantially reduced fee to persons of limited means; and participation in activities for improving the law, the legal system or the legal profession.

Reporting, according to the ABA, was between 13% and 15% between 2003 and 2006.