

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR RE  
AMENDMENT TO RULES  
REGULATING THE FLORIDA  
BAR - 4-6.1 Pro Bono  
Public Service

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CASE NO. 88646

097  
FILED  
SEP 11 1996  
CLERK OF THE COURT  
TALLAHASSEE, FLORIDA

PETITION TO AMEND THE RULES REGULATING THE FLORIDA BAR

THE FLORIDA BAR hereby petitions the court for entry of an order amending the Rules Regulating The Florida Bar and shows:

1. All conditions prerequisite to the filing of a petition to amend said rules have been met.
2. Notice of intent to file this petition was published in the July 1, 1996 edition of The Florida Bar News.
3. This petition seeks amendment of 4-6.1, Pro Bono Public Service, by elimination of the mandatory annual report and substituting in its place a reporting process that is voluntary.
4. The full text of the proposed amendment is attached hereto.
5. The deadline for filing comments directed toward this proposed amendment is September 3, 1996.

WHEREFORE, THE FLORIDA BAR prays the court will amend the rule as requested.

Respectfully submitted,

  
The Florida Bar

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**RULE 4-6.1 PRO BONO PUBLIC SERVICE**

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**(a) Professional Responsibility.** 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. This professional responsibility does not apply to members of the judiciary or their staffs or to government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions. Neither does this professional responsibility apply to those members of the bar who are retired, inactive, or suspended, or who have been placed on the inactive list for incapacity not related to discipline.

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**(b) Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor.** The professional responsibility to provide pro bono legal services as established under this rule is aspirational rather than mandatory in nature. The failure to fulfill one's professional responsibility under this rule will not subject a lawyer to discipline. The professional responsibility to provide pro bono legal service to the poor **may** be discharged by:

(1) annually providing at least 20 hours of pro bono legal service to the poor; or

(2) making an annual contribution of at least \$350 to a legal aid organization.

**(c) Collective Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor.** Each member of the bar should strive to individually satisfy the member's professional responsibility to provide pro bono legal service to the poor. Collective satisfaction of this professional responsibility is permitted by law firms only under a collective satisfaction plan that has been filed previously with the circuit pro bono committee and only when providing pro bono legal service to the poor:

(1) in a major case or matter involving a substantial expenditure of time and resources; or

(2) through a full-time community or public service staff; or

(3) in any other manner that has been approved by the circuit pro bono committee in the circuit in which the firm



85 Particular part of a lawyer's pro bono public service  
86 responsibility. As our society has become one in which rights and  
87 responsibilities are increasingly defined in legal terms, access to  
88 legal services has become of critical importance. This is true for  
89 all people, be they rich, poor, or of moderate means. However,  
90 because the legal problems of the poor often involve areas of basic  
91 need, their inability to obtain legal services can have dire  
92 consequences. The vast unmet legal needs of the poor in Florida  
93 have been recognized by the Supreme Court of Florida and by several  
94 studies undertaken in Florida over the past two decades. The  
95 Supreme Court of Florida has further recognized the necessity of  
96 finding a solution to the problem of providing the poor greater  
97 access to legal service and the unique role of lawyers in our  
98 adversarial system of representing and defending persons against  
99 the actions and conduct of governmental entities, individuals, and  
100 nongovernmental entities. As an officer of the court, each member  
101 of The Florida Bar in good standing has a professional  
102 responsibility to provide pro bono legal service to the poor.  
103 Certain lawyers, however, are prohibited from performing legal  
104 services by constitutional, statutory, rule, or regulatory  
105 prohibitions. Consequently, members of the judiciary and their  
106 staffs, government lawyers who are prohibited from performing legal  
107 services by constitutional, statutory, rule, or regulatory  
108 prohibitions, members of the **bar** who are retired, inactive, or  
109 suspended, or who have been placed on the inactive list for  
110 incapacity not related to discipline are deferred from  
111 participation in this program.

112 In discharging the professional responsibility to provide  
113 pro bono legal service to the poor, each lawyer should furnish a  
114 minimum of twenty hours of pro bono legal service to the poor  
115 annually or contribute \$350 to a legal aid organization. "Pro bono  
116 legal service" means legal service rendered without charge or  
117 expectation of a fee for the lawyer at the time the service  
118 commences. Most pro bono service should involve civil proceedings  
119 given that government must provide indigent representation in most  
120 criminal matters. Pro bono legal service to the poor is to be  
121 provided not only to those persons whose household incomes are  
122 below the federal poverty standard but also to those persons  
123 frequently referred to as the "working poor." Lawyers providing  
124 pro bono -legal service on their own need not undertake an  
125 investigation to determine client eligibility. Rather, a good  
126 faith determination by the lawyer of client eligibility is

127 sufficient. Pro bono legal service to the poor need not be  
128 provided only through free legal services to individuals; it can  
129 **also be** provided through free legal services to charitable,  
130 religious, or educational organizations whose overall mission and  
131 activities are designed predominately to address the needs of the  
132 poor. For example, free legal service to organizations such as a  
133 church, civic, or community service organization relating to a  
134 project seeking to address the problems of the poor would qualify.

135 While the personal involvement of each lawyer in the  
136 provision of pro bono legal service to the poor is generally  
137 preferable, such personal involvement may not always be possible or  
138 produce the ultimate desired result, that is, a significant maximum  
139 increase in the quantity and quality of legal service provided to  
140 the poor. The annual contribution alternative recognizes a  
341 lawyer's professional responsibility to provide financial  
142 assistance to increase and improve the delivery of legal service to  
143 the poor when a lawyer cannot or decides not to provide legal  
144 service to the poor through the contribution of time. Also, there  
145 is no prohibition against a lawyer contributing a combination of  
146 hours and financial support. The limited provision allowing for  
147 collective satisfaction of the 20-hour standard recognizes the  
148 importance of encouraging law firms to undertake the pro bono legal  
149 representation of the poor in substantial, complex matters  
150 requiring significant expenditures of law firm resources and time  
151 and costs, such as class actions and post-conviction death penalty  
152 appeal cases, and through the establishment of full-time community  
153 or public service staffs. When a law firm uses collective  
154 satisfaction, the total hours of legal services provided in such  
155 substantial, complex matters or through a full-time community or  
156 public service staff should be credited among the firm's lawyers in  
157 a fair and reasonable manner as determined by the firm.

158 The reporting ~~form requirement~~ is designed to provide a  
159 sound basis for evaluating the results achieved by this rule,  
160 reveal the strengths and weaknesses of the pro bono plan, and to  
161 remind lawyers of their professional responsibility under this  
162 rule. The fourth alternative of the reporting requirements allows  
163 members to indicate that they have fulfilled their service in some  
164 manner not specifically envisioned by the plan.

165 The 20-hour standard for the provision of pro bono legal  
166 service to the poor is a minimum. Additional hours of pro bono  
167 legal service are to be encouraged. Many lawyers will, as they  
168 have before the adoption of this rule, contribute many more hours

169 than the minimum. To ensure that a lawyer receives credit for a  
170 particularly involved matter, this rule provides that the lawyer  
171 may carry forward, over the next 2 years, any time expended in  
372 excess of 20 hours in any 1 year.

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174 4-6.1 (approved by BOG May 17, 1996)