



The Moral Imperative of Pro Bono Service: Mass. R. Prof. C. 6.1

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It's a safe bet that many lawyers are unaware of the dictates of Mass. R. Prof. C. 6.1. Its terms are simple: "A lawyer should provide annually at least 25 hours of *pro bono publico* legal services for the benefit of persons of limited means." Subsection (b) offers the option to "contribute from \$250 to 1% of the lawyer's annual taxable, professional income to one or more organizations that provide or support legal services to persons of limited means."

Unlike most disciplinary rules, this one is aspirational, meaning there are no disciplinary consequences for the lawyer who fails to follow it. However, this shouldn't lessen the rule's moral urgency. A lawyer is, after all, "a public citizen having special responsibility for the quality of justice," and the Rules encourage all lawyers to be "mindful of the deficiencies in the administration of justice and of the fact that the poor . . . cannot afford adequate legal assistance."

The provision of proper legal services to the poor is relentlessly challenging. To help alleviate it, in addition to including this aspirational goal in our code of ethics, the Supreme Judicial Court has adopted two affirmative initiatives. First, in 2009, the Court issued an order providing for the implementation of Limited Assistance Representation (LAR) in the trial courts. In the Court's words, LAR "permits attorneys to assist a self-represented litigant on a limited basis without undertaking a full representation of the client on all issues related to the legal matter for which the attorney is engaged."¹ To date, the Probate and Family Court, District Court, BMC, Housing and Land Courts have all adopted procedures regulating LAR. The Superior Court is currently receiving comments on a proposed LAR rule applicable to attorneys appearing there. The animating principle behind the LAR initiative is that access to justice could be enhanced if, instead of signing on for an entire matter and risking an indefinite or unpredictable commitment, attorneys are permitted to undertake discrete, agreed-to parts of a case.

¹ Order In Re: Limited Assistance Representation (April 10, 2009, eff. May 1, 2009). Detailed in the order are various conditions and prerequisites to be met before the LAR can occur.

Second, in 2010, the Court approved revisions to S.J.C. Rule 4:03 to provide for an annual fee of \$51 to be used to further access to justice. *Id.*, at § (1)(b). Payment of this fee, collected by the Board of Bar Overseers at the same time as bar registration dues, was and remains voluntary, and the individual lawyer's decision whether or not to pay it is confidential. Unfortunately, the BBO's statistics reflect that for FY 2016, fewer than half of all active attorneys elected to make this contribution.

Yet, the need for funding remains unmet. In its most recent Annual Report, Greater Boston Legal Services indicates that in 2015, more than 33,000 low-income people in need of a legal aid lawyer were turned away.² The report contains many more equally sobering statistics, including a twenty-five percent increase in Boston's population of homeless families.³ It also reflects some good news, like the \$7.3 million that civil legal aid programs saved the Commonwealth by preserving housing for those facing eviction.⁴

Many law firms and individuals certainly take seriously the need to improve the legal system and to help close the access to justice gap. But more assistance is needed. Whether by undertaking legal representation or donating money in lieu of services, each member of the bar should contribute towards our collective professional responsibility to make justice accessible to all. Doing so will help foster the legitimacy and efficacy of the rule of law, and its fair and even-handed administration by the courts.

Rule 6.1 outlines modest goals. And although there is no disciplinary penalty for a failure to comply with the rule, there is most assuredly a moral and social cost. Every member of our profession has been charged with a grave and sacred trust: responsibility for the quality and integrity of justice and its equal availability to all people. To that end, it's incumbent on each of us to contribute appropriately to effect perhaps not a perfect legal system but, at the least, a more perfect one.

² Greater Boston Legal Services 2015 Annual Report at 5.

³ *Id.*

⁴ *Id.*