



The Ethics of In-House Pro Bono

June 23, 2021



Why Do Pro Bono When You Are In-House?

1. Address the access to justice gap
2. Many benefits for the individual employee, legal department, and company
3. Ethical obligation

The Access to Justice Gap

- Pre-pandemic, the Legal Services Corporation found that 86% of the civil legal problems reported by low-income Americans received inadequate or no legal help.
- Millions more are now eligible for legal services due to job loss.
- Requests for legal aid are up – especially housing and unemployment.
- Nationally there are ~ 40 attorneys per 10,000 people, but less than one civil legal aid attorney per 10,000 people in poverty.
- In our region, the number of civil legal aid attorneys per 10,000 people is:
 - Virginia: 0.6
 - Maryland: 1.49
 - D.C.: 9.33
- Pro bono attorneys can help.

Sources: <https://www.lsc.gov/justicegap2017>; <https://justiceindex.org/2016-findings/attorney-access/#site-navigation>

More Benefits of Doing Pro Bono

- Professional development
- Use your skills to help the community
- Learn new skills
- Adds value to CSR efforts
- Offers opportunities for teamwork
- Builds morale
- Feels good!
- Meet your ethical obligation

Ethical Rules Covering Pro Bono Work

ABA Model Rules of Professional Conduct. Rule 6.1 Voluntary Pro Bono Publico Service:

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.

Virginia Rule of Professional Conduct 6.1

Voluntary Pro Bono Publico Service

- A lawyer should render **at least two percent** per year of the lawyer's professional time to pro bono publico legal services
- Direct financial support of programs that provide direct delivery of legal services . . . is an alternative method for fulfilling a lawyer's responsibility under this Rule.

Maryland Rules Attorneys, Rule 19-306.1

Pro Bono Public Service (6.1)

- A lawyer should render **at least 50 hours per year** of pro bono publico legal services.
- Financial support of organizations that provide legal services to persons of limited means is an alternative method for fulfilling a lawyer's responsibility under this Rule.
- The rule is aspirational, not mandatory.

D.C. Rule of Professional Conduct 6.1

A lawyer should participate in serving those persons, or groups of persons, who are unable to pay all or a portion of reasonable attorney's fees . . . A lawyer may discharge this responsibility by providing professional services at no fee, or at a substantially reduced fee, **to persons and groups who are unable to afford or obtain counsel, or by active participation in the work of organizations that provide legal services to them.** When personal representation is not feasible, a lawyer may discharge this responsibility by providing financial support for organizations that provide legal representation to those unable to obtain counsel.

Comment 5 to D.C. Rule 6.1

[L]awyers admitted to practice in the District of Columbia should be guided by the Resolutions on Pro Bono Services passed by the Judicial Conferences . . .

- (1) accept one court appointment,
- (2) provide 50 hours of *pro bono* legal service, or
- (3) when personal representation is not feasible, contribute the lesser of \$750 or 1 percent of earned income to a legal assistance organization . . .

Ethical Obligation to Do Pro Bono: Pro Bono Reporting Requirement

- **Virginia asks attorneys to volunteer information about pro bono activity** (voluntary pro bono reporting) (Virginia Section IV, Paragraph 22 of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court)
- **Maryland requires attorneys to report their pro bono activity** (mandatory pro bono reporting) (MD Rules Attorneys, Rule 19-503. Reporting Pro Bono Legal Service)
- **DC has no reporting requirement**

Getting Started

- Avoiding Unauthorized Practice of Law – Rule 5.5
- Ensuring Malpractice Insurance Coverage
- Getting a Case
- Partnerships
- Training & Competency – Rule 1.1
- Involving Legal Staff – Rule 5.3
- Avoiding Conflicts – Rules 1.7, 1.8 & 1.9
- Drafting the Retainer Letter – Rules 1.2 & 1.5

Avoiding Unauthorized Practice of Law

- Most states permit in-house counsel, who are licensed to practice in another jurisdiction but not in the state where their employer is located, to work for their employer.
 - ❑ **Registration or Certification Process**
 - ❑ **Authorization under Model Rule 5.5(d)(1):** A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that....are provided to the lawyer's employer or its organizational affiliates
- ***Non-locally licensed counsel need an additional authorization to do pro bono.**

Avoiding Unauthorized Practice of Law

- [Multijurisdictional Practice Guide](#)
- [In-House Pro Bono Rules Guide](#)

INITIATIVES

- IN
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- Multijurisdictional Practice
- Strategic Partnerships
- Pro Bono Summits
- Task Force Initiatives
- Awards

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MULTIJURISDICTIONAL PRACTICE RULES MAP

Multijurisdictional Practice

Multijurisdictional practice rules pose a significant obstacle for many in-house attorneys participating in pro bono activities. Numerous in-house attorneys, though admitted and in good standing in one or more U.S. jurisdictions, are not licensed in the states in which they currently work. The practice rules in all but a few states permit in-house counsel licensed in other U.S. jurisdictions to represent their in-state employer, often through a registration or similar certification process, but many of these rules limit representation to the employer-client. Some states provide pro bono exemptions, allowing non-locally licensed in-house counsel

Legend
■ Broad participation
■ Approved organization or supervision
■ Approved organization
■ Approved organization and supervision
■ Out-of-state rule
■ No pro bono rule

Virginia – Rule for Part I Corporate Counsel

Virginia Supreme Court Rules 1A:5 Part I(f) (“Model Rule”)

- (f) ...[A] lawyer certified pursuant to Part I of this rule may, and is encouraged to, provide voluntary pro bono publico services in accordance with Rule 6.1 of the Virginia Rules of Professional Conduct.

No authorization for Corporate Counsel Registrants. **See Va. Sup. Ct. R. 1A:5 Part II**

- In 2021, Corporate Pro Bono is working with a coalition of legal departments and their outside counsel to advocate for a change to these rules. *Let us know if you are interested in getting involved!*

Maryland – Out-of-State Attorney Rule

- Maryland requires non-locally licensed in-house counsel to register, but the rule does not include a pro bono authorization. [Md. Code Ann., Bus. Occ. & Prof. § 10-206(d)]
- Out-of-state attorneys may be certified to provide pro bono legal assistance, **under the supervision of a Maryland Bar member, in association with an approved entity** that provides civil legal services to low-income individuals in Maryland, the Maryland Office of the Public Defender, a clinic in a courthouse offering pro bono legal services, or a local pro bono committee or bar association affiliated project that provides pro bono legal services. [Md. R. Attys. 19-218]

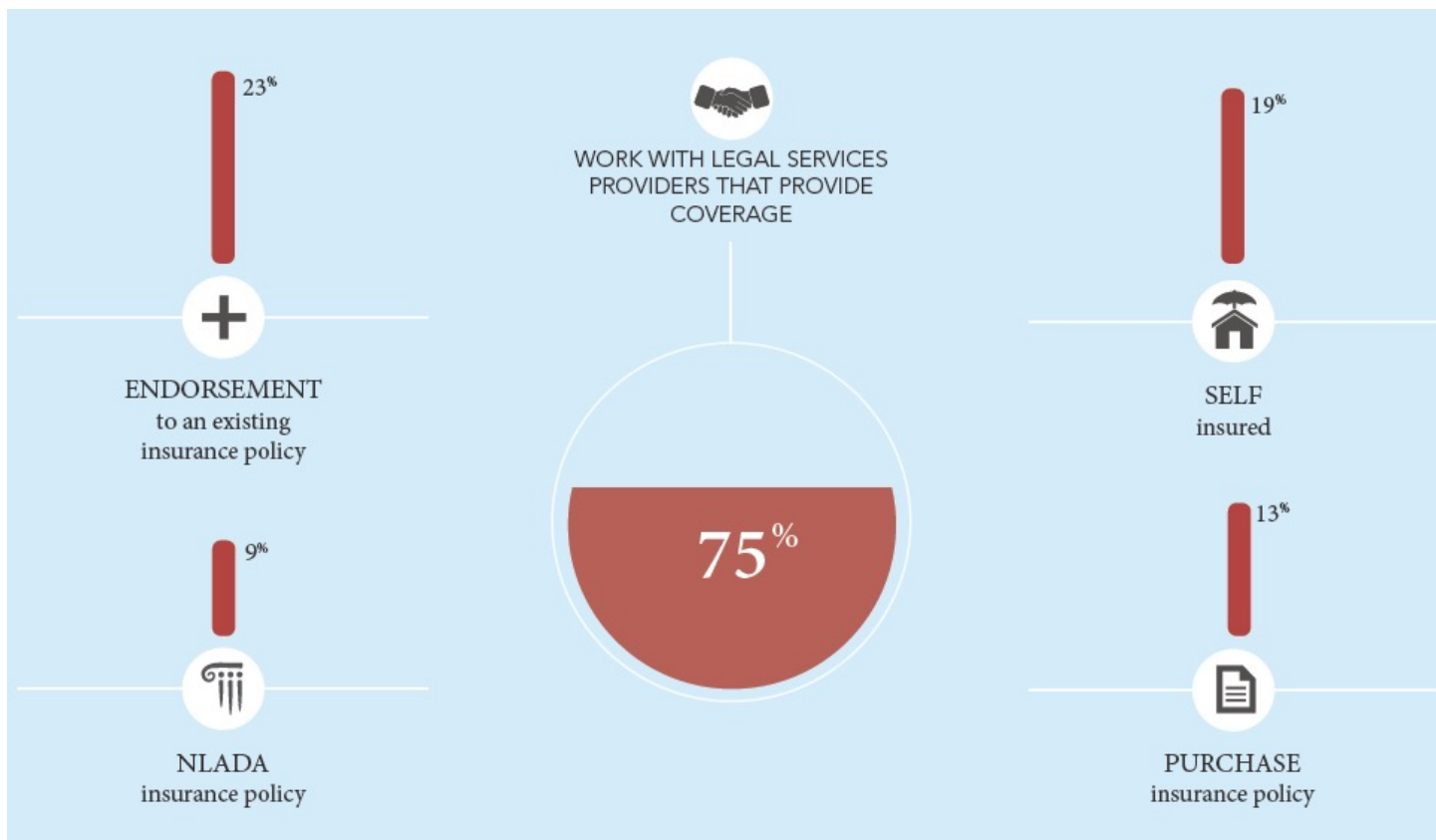
D.C. – Out-of-State Attorney Rule

- D.C. authorizes non-locally licensed “internal counsel” to practice law for their employer without registering. D.C. App. R. 49(c)(6) Internal Counsel.
- Out-of-state attorneys may provide pro bono legal services **in affiliation with an organization** that provides legal services to individuals with limited means at no charge or for a nominal processing fee, provided that the individual is **supervised by an active member of the D.C. Bar**. [D.C. App. R. 49(c)(9)(A)]

Other Multijurisdictional Practice Rules Impacting Pro Bono

- “Katrina Rules” permitting out-of-state lawyers to provide pro bono legal assistance after a determination of a major disaster.
 - Adopted by Virginia (Va. Sup. Ct. R., Part Ten, R.10)
- Emeritus Rules permitting “emeritus” attorneys to provide pro bono, generally subject to restrictions. Qualifications vary but may include retired, inactive, and/or out-of-state attorneys.
 - (Va. Sup. Ct. R., Part 6 § IV, Para. 3(f); MD Rules Attorneys, Rule 19-605; D.C. App. R. 49(c)(9)(A))

Ensure Malpractice Insurance is in Place



Malpractice Coverage for Pro Bono Attorneys

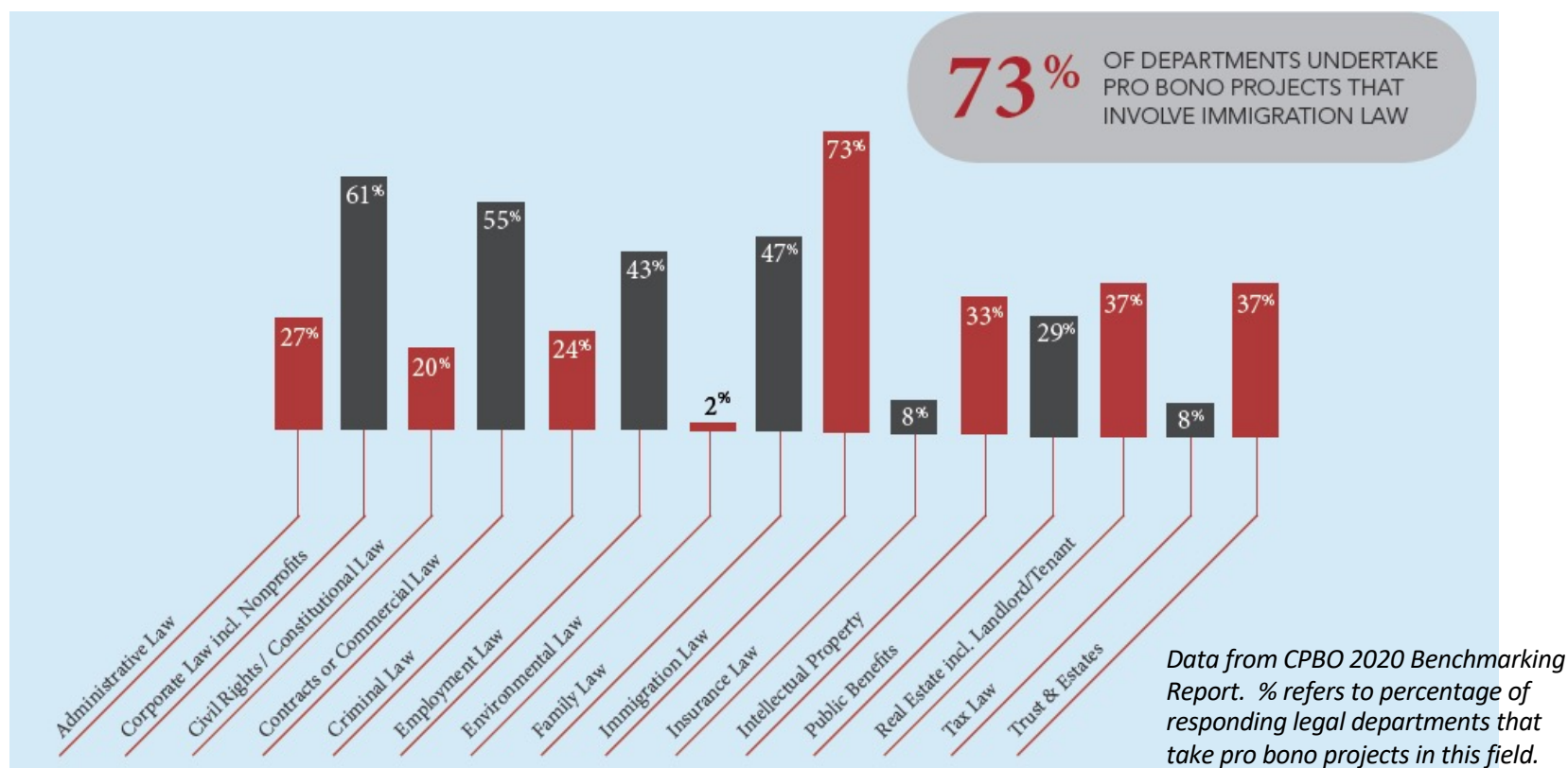
Examples of the many Legal Services Providers that have policies covering pro bono attorneys

- Capital Area Immigrants Rights Coalition
- Children's Law Center
- D.C. Bar Pro Bono Center
- Legal Aid Society of the District of Columbia
- Legal Services of Northern Virginia
- Washington Legal Clinic for the Homeless
- Washington Lawyers Committee for Civil Rights and Urban Affairs
- Whitman-Walker Legal Services

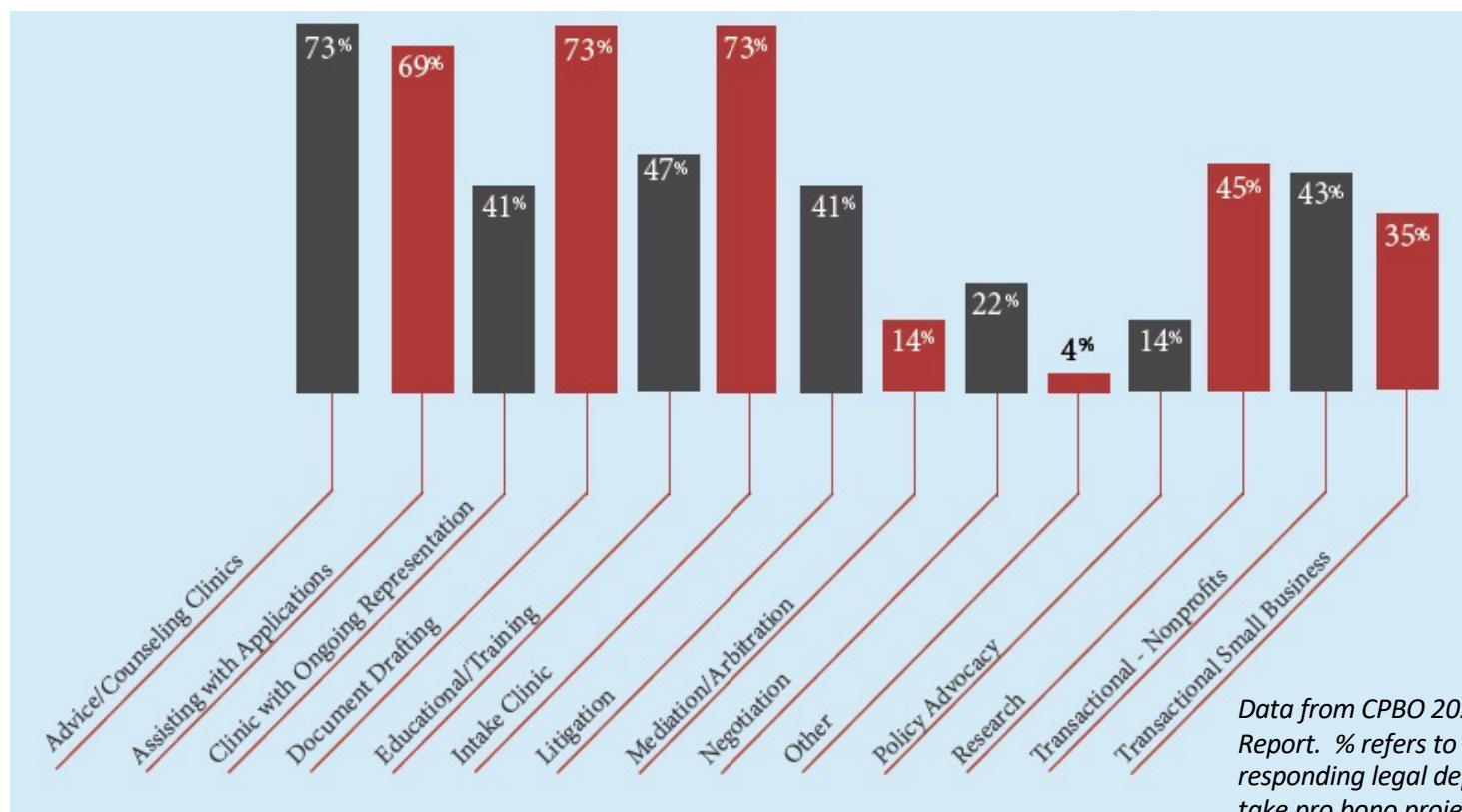
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**Where Can I Get
Pro Bono Work?**

Variety of Opportunities



Variety of Time Commitments



Data from CPBO 2020 Benchmarking Report. % refers to percentage of responding legal departments that take pro bono projects of this nature.

Sources of Pro Bono Referrals: Immigration

- Ayuda
- Capital Area Immigrants' Rights (CAIR) Coalition
- Catholic Charities Immigration Legal Services
- Human Rights First
- Kids in Need of Defense (KIND)
- Tahirih Justice Center

Sources of Pro Bono Referrals: Poverty Law

- Bread for the City
- Children's Law Center
- D.C. Bar Pro Bono Center
- Legal Aid Society of the District of Columbia
- Neighborhood Legal Services Program
- Rising for Justice
- Washington Legal Clinic for the Homeless
- Tzedek DC

Sources of Pro Bono: Special Populations

- D.C. Volunteer Lawyers Project – Domestic Violence
- Domestic Violence Legal Empowerment and Appeals Project
- Legal Counsel for the Elderly
- Network for Victim Recovery of DC
- National Veterans Legal Services Program
- Veterans Consortium
- Whitman-Walker Legal Services – LGBTQ+ clients

Sources of Pro Bono: Virginia & Maryland

- CancerLINC (VA)
- Fairfax Bar Pro Bono Program
- Legal Aid Justice Center (VA)
- Legal Services of Northern Virginia
- Community Law Center (nonprofits) (MD)
- Disability Rights Maryland (MD)
- Free State Justice (LGBTQ) (MD)
- House of Ruth (domestic violence) (MD)
- Maryland Legal Aid
- Maryland Volunteer Lawyers for the Arts
- Maryland Volunteer Lawyers Service
- Senior Legal Services of the Bar Association of Baltimore County

Engaging in Pro Bono Matters: Partnerships

❑ Partnerships and Co-Counseling

- In-House Legal Departments (CPBO 2020 Benchmarking Report)
 - 80% Enter into Partnerships with Law Firms
 - 80% Enter into Partnerships with Legal Services Organizations
 - 48% Enter into Partnerships with Other Legal Departments

❑ Ethical Advantages

- Training and Expertise
- Administrative Support
- Malpractice Insurance
- Additional Resources

❑ Practical Considerations

- Defining Expectations
- Clear Communications



Training & Support

- **Model Rule 1.1 Competence:** *A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*
- **Model Rule 1.3 Diligence:** *A lawyer shall act with reasonable diligence and promptness in representing a client.*
 - ❑ Virginia Rules of Professional Conduct. Rule 1.1, 1.3
 - ❑ DC Rules of Professional Conduct. Rule 1.1, 1.3
 - ❑ Maryland Attorney's Rules of Professional Conduct. Rule 19-301.1, 19-301.3
- DC RPC adds 1.1(b): A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

Involving Legal Staff

- **Model Rule 5.3:** *With respect to a nonlawyer employed or retained by or associated with a lawyer:*
 - (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and*
 - (c) a lawyer shall be responsible for conduct of such a person**....*

- ☐ Virginia Rules of Professional Conduct. Rule 5.3
- ☐ DC Rules of Professional Conduct. Rule 5.3
- ☐ Maryland Attorney's Rules of Professional Conduct. Rule 19-305.3

Limited Scope Representations

- **Common Practice.** Generally refers to attorneys assisting a client on a limited basis, with regard to a portion of a legal matter, not its entirety, and performing only specified legal services
 - Types of Projects
 - Advising clients on procedural and strategic aspects of a pending case
 - Assisting clients in completing forms
 - Preparing and drafting court documents
 - Coaching clients on how to present in court
 - Providing clients brief advice and counsel
 - Appearing in court for limited purposes

Limited Scope Rules by State

Limited Scope Representation

ABA Model Rules of Professional Conduct of 2010. Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs:

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 [Conflicts of Interest: Current Clients] and 1.9(a) [Duties to Former Clients] only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 [Imputation of Conflicts of Interest: General Rule] only if he lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

- ☐ Virginia Rules of Professional Conduct. Rule 6.5
- ☐ DC Rules of Professional Conduct. Rule 6.5
- ☐ Maryland Attorney's Rules of Professional Conduct. Rule 19-306.5

Comments to Virginia Rule 6.5

- Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide **short-term limited legal services - such as advice or the completion of legal forms** - that will assist persons to address their legal problems without further representation by a lawyer.
- In these programs, such as **legal-advice hotlines, advice-only clinics or pro se counseling programs**, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation.
- Such programs operate in circumstances in which it is not feasible to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g., Rules 1.7, 1.9 and 1.10.*
- Other Rules still apply, including:
 - 1.6 [*Confidentiality of Information*]
 - 1.9(c) [*Conflict of Interest: Former Client – not revealing/using information related to or gained in the representation*].

Positional or Business Conflicts

- Legal departments often avoid categories of pro bono matters that present a positional or business conflict.
 - E.g., a company that handles mortgages may avoid pro bono matters related to housing.
- Legal departments may also consider public relations and political sensitivities.
- These considerations apply to both limited scope representation and full representation.



How to Set Up A Pro Bono Engagement?

Additional Conflicts of Interest

Outside of the limited scope engagement, the usual rules – including for conflicts checks – apply.

ABA Model Rules of Professional Conduct. Rule 1.7 Conflict Of Interest: Current Clients:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or*
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.*

- ☐ Virginia Rules of Professional Conduct. Rule 1.7(a)
- ☐ DC Rules of Professional Conduct. Rule 1.7(b)
- ☐ Maryland Attorney's Rules of Professional Conduct. Rule 19-301.7(a)

Resolve Conflicts of Interest

- ☐ Informed Consent
- ☐ Clear Internal Policies
- ☐ Avoid Certain Claims

ABA Model Rules of Professional Conduct. Rule 1.7 Conflict Of Interest: Current Clients:

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

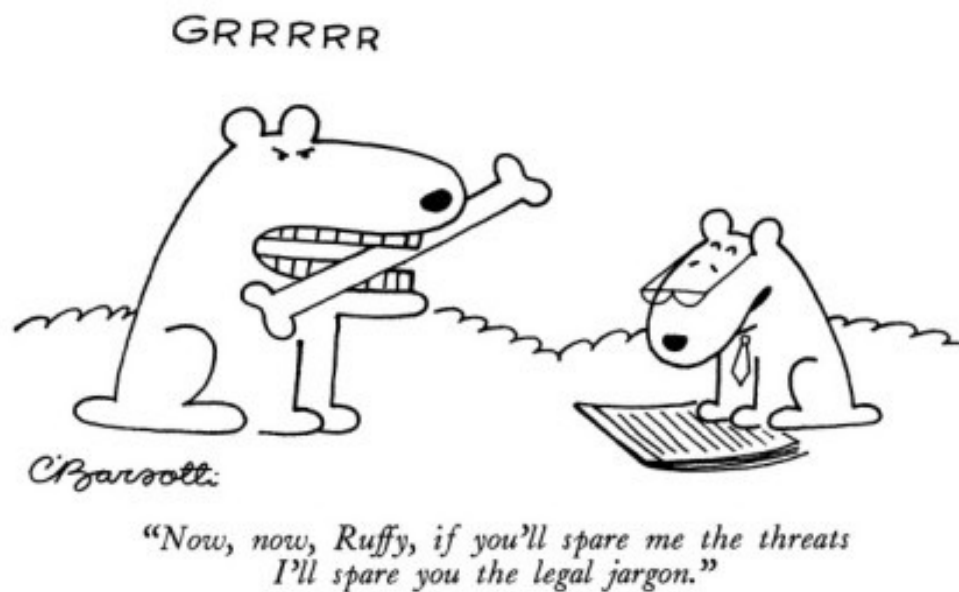
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;*
- (2) the representation is not prohibited by law;*
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and*
- (4) each affected client gives informed consent, confirmed in writing.*

- ☐ Virginia Rules of Professional Conduct. Rule 1.7(b)
- ☐ DC Rules of Professional Conduct. Rule 1.7(c)
- ☐ Maryland Attorney's Rules of Professional Conduct. Rule 19-301.7(b)

Draft Retainer Letter – Avoid Problems Ahead

- Principle 1: Scope of Representation
- Principle 2: No Fee will be charged
- Principle 3: Client's Provision of Complete and Honest Information
- Principle 4: Client's Cooperation
- Principle 5: Client's Attendance at All Appointments
- Principle 6: Keeping Contact Information Up to Date

Scope of Representation



Principle 1: Scope of Representation

- Set forth clearly what you will and will not do as part of the representation
- Applicable Rules
 - ☐ Virginia Rules of Professional Conduct. Rule 1.2
 - ☐ DC Rules of Professional Conduct. Rule 1.2
 - ☐ Maryland Attorneys Rules of Professional Conduct. Rule 19-301.2

Scope of Representation - Individual

Counsel has agreed to represent you on the trial court level in pending litigation in the D.C. Superior Court, *RB v. JD* in **seeking legal custody of your child. Counsel at this time has not agreed to represent you in any appeal of this matter in litigation other than establishing custody for your child.**

“Counsel’s **representation of you will end** upon the Court’s issuance of a custody order or the entry of a settlement agreement resolving custody and visitation issues regarding your child. Counsel has not agreed to represent you in subsequent proceedings that may occur after the issuance of the custody order, such as motions to modify or enforce the order or motions for modification of a child support award.”

Scope of Representation – Organizational Client

Counsel agrees to provide advice and legal assistance to Nonprofit in drafting a template licensing agreement to be used with the organization's partners. At this time, Counsel has not undertaken to represent Nonprofit in negotiations with any particular partner or in any litigation that may arise from or during the course of a licensing agreement. **Counsel has not agreed to serve as general corporate counsel for Nonprofit or to provide legal advice on issues other than those mentioned above.**

Principle 2:

Statement of Fees Charged Coverage of Expenses

- **Rule 1.5 (both D.C. & VA)** requires “the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.” Has been interpreted as requiring statement in writing that NO fee will be charged.

Confirmation of Pro Bono Basis

For the assistance it provides, the Firm will not expect compensation for the time expended by its attorneys and/or legal assistants or for any other charges for services.

Principle 3: Client's Provision of Complete and Honest Information



"I find in these cases that the best defense is a pack of lies."

Principle 3:

Client's Provision of Complete and Honest Information

The Firm's representation, however, is conditioned on (1) your provision of complete and honest information, including information that will assist the assigned attorney in investigating the matter;

Principle 4: Client's Cooperation

...(2) your cooperation in providing documents and other information in a timely manner;

Principles 5 & 6: Client's Participation

... (3) your prompt attendance at required meetings and court hearings; and (4) your prompt notification to the Firm of any change in your address and/or telephone number.

Enforcement of Client Responsibilities

The Firm may terminate its representation by providing written notice of its intention to do so, if you do not comply with the above terms.

Tough Love: Enforcing Expectations

Dear Ms. Doe:

This letter is in confirmation of our discussion after the Court hearing on October 10, 2001.

As you know, my firm's representation of you was "conditioned on," among others, "your cooperation in providing documents and other information in a timely manner . . . your prompt attendance at required meetings and court hearings . . . [and] your prompt notification to the Firm of any change in your address and/or telephone number."

Several months ago, you moved from Washington D.C. to Maryland without informing me. Eventually, I discovered that you moved but you confirmed it only when I confronted you with this information. It also took you eight months to get me basic financial and expense information that I needed to address the child support portion of your case.

Closing Matters: Limiting Future Liability

□ Closing Matters

- Closing Letter
 - Important in reinforcing limitations of representation set forth in retainer
 - Clarifies for client that the attorney-client relationship has ended
- Returning Client Materials

Disclaimer

The information contained in this presentation has been prepared as a service to the community and is not intended to constitute legal advice. Reasonable efforts were used in collecting, preparing, and providing this information, but Pro Bono Institute, CPBO, and the presenter do not guarantee the accuracy, completeness, adequacy, or currency of the information contained in this presentation. The publication and distribution of this presentation are not intended to create, and receipt does not constitute, an attorney-client relationship. Participants are encouraged to seek independent legal counsel for their specific legal needs.

Contacts

Corporate Pro Bono (CPBO) is the global in-house project of Pro Bono Institute. Through online services (www.cpbo.org), technical assistance to the in-house community, and educational outreach, CPBO seeks to encourage and support the participation of in-house counsel in pro bono legal services. For more information, please visit us at www.cpbo.org, or contact Alyssa Saunders, Director of Corporate Pro Bono, at asaunders@probonoinst.org or 202.729.6995.

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Board Governance

Ethical and Legal Obligations

Sadina Montani





Nonprofit Board Service

Overview of Board Roles

**Overview of Board Legal and Ethical
Obligations**

What does serving on a Board entail?

- Financial Oversight
- Strategic Guidance and Assessment
- Overseeing Organization's Management
- Fundraising
- Risk Management
- *All Informed by the Directors' Fiduciary Duties*

Role of the Board

Financial Oversight

- Adequate financial systems and controls
- Budget and expenses
- Prudent investment of assets

Strategy vs Operations

- Development of long-term strategic plan for organization
- Identifying needs/concerns of stakeholders
- Assessment of existing programs in achieving organization's mission
- Evaluating existing resources to meet goals
- Implementation of plan = management obligation

Role of the Board

Overseeing Organization's Management

- Hiring and supervising chief executive
- Setting performance objectives for and reviewing chief executive's performance annually
- Determining appropriate base compensation and potential bonuses

Fundraising

- Setting fundraising strategy
- Leveraging your network for connections and donations
- Fundraising practices (restricted donations, gifts, in-kind services, etc.)

Role of the Board

Risk Management

- Organizational liability
 - Employer
 - Programming
 - Contract compliance
 - Partnerships
- Potential liability as a director

Roles of the Board

Fiduciary Duties

- Duty of Loyalty
- Duty of Fairness
- Confidentiality
- Duty of Care

Lawyers on Boards should be cautious about providing legal advice; however, the ethical guidelines in the Virginia Rules of Professional Conduct provide a framework for lawyers to consider their fiduciary Board duties, consistent with ethical requirements as lawyers.

Board Fiduciary Duties: Duty of Care

- In executing duties, Directors may rely on information provided by staff, management or advisors, and decisions duly made by Directors may be protected under the “business judgment rule.” See Virginia Nonstock Corporation Act, VA. CODE ANN. § 13.1-870; see also Va. Rules of Prof’l Conduct 1.1.
- Similar to guidance in Va. Rules of Prof’l Conduct 2.1 regarding your role as an advisor:
 - *In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.*

Board Fiduciary Duties: Duty of Loyalty

- By assuming office, Directors commit loyalty to the Organization and acknowledge that the best interests of the Organization and its beneficiaries must prevail over any personal, individualized interest.
- Directors shall not use their Organization positions for personal profit, gain, or other personal advantage.
- *Similar to Va. Rules of Prof'l Conduct 1.7 (comments):*
 - *A lawyer may not allow business or personal interests to affect representation of a client.*
 - *Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests.*

Conflicts of Interest

- What if there's a potential conflict of interest?
 - Disclosure is key!
 - Describe the nature of the conflict or potential conflict (*e.g.*, financial, family relationship, professional or business affiliation, etc.)
 - Disclosure must be taken *before* the time action will be taken by the Board
 - If the Board proceeds, the conflicted Director should abstain from any votes.
- *A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has an interest that precludes him from being a disinterested director. Virginia Nonstock Corporation Act, VA. CODE ANN. § 13.1-871; see also Va. Rules of Prof'l Conduct RR. 1.7, 1.8.*

Board Fiduciary Duties: Duty of Fairness

- When real or potential conflicts are considered, all Directors must be concerned that fairness obligations are recognized and satisfied.
- Fairness to the Organization should be the primary concern for both the interested Director and those disinterested Directors considering the potential conflict.
- The standard commonly used involves ascertainment that the proposed transaction is on at least as favorable terms to the corporation as might be available (assuming appropriate comparability) from any other person or entity.
- See Virginia Nonstock Corporation Act, VA. CODE ANN. § 13.1-871.1; *see also* Va. Rules of Prof'l Conduct R. 1.8.

Board Fiduciary Duties: Confidentiality

- Directors may not disclose information they learn as a result of Board service, that is not otherwise known.
- This confidentiality obligation extends to all information to which the Director has access as a result of Board membership, including employment decisions.
- See Va. Rules of Prof'l Conduct R. 1.6 – particularly:
 - *A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, [confidential] information.*

Board Fiduciary Duties: Duty of Care

- Directors assume a duty to act carefully in fulfilling the important tasks of monitoring and directing the activities of organizational management.
- A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
 - In good faith;
 - With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - In a manner he or she reasonably believes to be in the best interests of the Organization.
 - See Virginia Nonstock Corporation Act, VA. CODE ANN. § 13.1-870; *see also* Va. Rules of Prof'l Conduct 1.1, 1.13, 1.3, 2.1.

Board Meetings

- Directors have a responsibility to participate actively in the oversight of the Organization's activities.
- Regular attendance at meetings of the Board of Directors and Board committees is an obvious requirement for acceptable Director performance.
- In preparation for such meetings, the Director should be furnished with appropriate information regarding every important matter requiring Board actions
- In order to ensure compliance with fiduciary duties, Board members should thoroughly review Board materials in advance of the meeting.

Risks and Benefits for Lawyers on Boards

- Risks
 - Critical to avoid ethical conflicts: are you lawyer, or client?
 - Potential exposure based on fiduciary breaches
 - Be aware of state indemnification requirements and indemnification protections in Bylaws
 - Ensure Directors & Officers Insurance is up-to-date
- Benefits
 - Of course, service to the community!
 - Ability to bring unique issue-spotting skills as an attorney to the organization
 - Opportunity to build robust and meaningful personal and professional relationships
 - Professional development

Board Service : Experiences & Resources

- Different types of nonprofit boards offer different benefits and experiences
 - Associations
 - Direct services organizations
 - Alumni groups
 - Foundations
 - Advisory board opportunities
- Many organizations offer opportunities to connect potential board members with organizations
- The Center for Nonprofit Advancement and the D.C. Bar Pro Bono Center regularly co-host a “board boot camp”

Contact

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