

Pro Bono Legal Service:  
Current Trend and Possibilities for Improvement

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## I. Introduction

The term “pro bono” is defined by Black’s law dictionary as being or involving uncompensated legal services performed especially for the public good. However, there are a wide variety of services that can be considered pro bono. Most commonly, pro bono work refers to legal services provided to indigent persons or to charitable, religious, civic, community, governmental and educational organizations seeking to secure or protect civil rights and liberties.<sup>1</sup> Although pro bono legal services are provided without the expectation of compensation, the acceptance of statutory attorneys’ fees in a case originally accepted as pro bono does not disqualify work from being pro bono.<sup>2</sup> For instance, limited fees awarded under the Criminal Justice Act or Public Defender Compensations programs for post-conviction may be suitably defined as pro bono.<sup>3</sup>

For centuries, Lawyers and bar leaders have recognized and maintained that it is a professional responsibility to provide assistance to those who cannot afford it.<sup>4</sup> In fact, the words “Equal Justice Under Law” are inscribed above the entrance to the United States Supreme Court.<sup>5</sup> While the United States Constitution guarantees legal counsel for the criminally accused, the legal profession has not universally embraced the view that pro bono work is a professional obligation.<sup>6</sup> As a result, many poor Americans do not have access to legal counsel and are unable to seek justice.<sup>7</sup> “In *Powell v. Alabama*, the United States Supreme Court

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<sup>1</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 (2002).

<sup>2</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 cmt. 4 (2002).

<sup>3</sup> Jeff C. Woods, *I Owe! I Owe! Shall I Work Pro Bono?*, WEST VIRGINIA LAWYER, Jan./Feb. 2007 at 30.

<sup>4</sup> Deborah L. Rhode, *Pro Bono In Principal and In Practice*, 26 HAMLINE J. PUB. L. & POL’Y 315, 315-16 (2005).

<sup>5</sup> Woods, *supra* note 3, at 30.

<sup>6</sup> *Id.*

<sup>7</sup> Rhode, *supra* note 4, at 316.

recognized that ‘the right to be heard [is] of little avail if it does not [include] the right to be heard with counsel.’”<sup>8</sup>

Part II of this paper begins with a brief history of pro bono, and describes the events that led the American Bar Association to adopt the current Model Rule 6.1.<sup>9</sup> Part III then discusses the debate surrounding the adoption of a mandatory pro bono requirement for lawyers,<sup>10</sup> and sets forth the arguments for and against such a requirement.<sup>11</sup> Part IV discusses pro bono programs in law schools,<sup>12</sup> beginning with a brief history of the rise of mandatory pro bono programs in law schools<sup>13</sup> and concluding with examples of the different types of pro bono programs that have been enacted.<sup>14</sup> Finally, Part V describes the three major sources of legal assistance: legal assistance services affiliated with the Legal Services Corporation,<sup>15</sup> legal aid agencies not affiliated with the Legal Services Corporation,<sup>16</sup> and pro bono organizations.<sup>17</sup>

## II. Background

Historically, the Legal Aid Society of New York, which was founded in 1876, was the first to provide legal services to the poor.<sup>18</sup> However, the Legal Aid Society of New York and other legal aid societies in the early nineteenth century were founded with support from local charities and municipal governments with very little participation or help from the profession.<sup>19</sup> In a study published by Reginald Heber Smith in 1919, *Justice and Poor*, it was reported that a total of approximately forty legal aid societies with about sixty full time attorneys had a

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<sup>8</sup> Woods, *supra* note 3, at 30.

<sup>9</sup> See *infra* Part II.

<sup>10</sup> See *infra* Part III.

<sup>11</sup> See *infra* Part III.A.B.

<sup>12</sup> See *infra* Part IV.A.

<sup>13</sup> See *infra* Part IV.B.

<sup>14</sup> See *infra* Part IV.C.

<sup>15</sup> See *infra* Part V.A.

<sup>16</sup> See *infra* Part V.B.

<sup>17</sup> See *infra* Part V.C.

<sup>18</sup> Woods, *supra* note 3, at 30.

<sup>19</sup> Rhode, *supra* note 4, at 316.

combined budget of approximately \$200,000.<sup>20</sup> A small amount of this money came from the bar.<sup>21</sup>

Around the middle of the twentieth century, the bar encouraged greater pro bono involvement.<sup>22</sup> In part, this was prompted to deter the government from responding to pervasive unmet needs by relaxing the rules against practice by nonlawyers or by significantly increasing public funding for civil legal aid.<sup>23</sup> Initially, the organized bar resisted funding out of fear that government subsidies would lead to government control and result in the “functional equivalent of socialized medicine.”<sup>24</sup> “By the mid-1960s, a growing concern about poverty within the culture generally and the profession in particular increased support for both government-subsidized aid and lawyer pro bono assistance.”<sup>25</sup> The value of such assistance in turn grew as the poor acquired more legal entitlements.<sup>26</sup> And as the profession became more diverse and socially aware, more lawyers and law students insisted on more public service opportunities.<sup>27</sup>

The increasing support for pro bono initiatives found recognition in the ABA’s new Code of Professional Responsibility, adopted in the 1970s. Many of its aspirational Ethical Considerations focused on lawyers’ obligations to broaden access to the legal system. Specifically, Ethical Consideration 2-25 provides:

historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 317.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Rhode, *supra* note 4, at 317

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

professional workload, should find time to participate in serving the disadvantaged . . . [It has also] been necessary for the profession to institute additional programs to provide legal services . . . Every lawyer should support all proper efforts to meet this need for legal services . . .<sup>28</sup>

There is no disciplinary rule that addresses this “basic responsibility” and the rewards of serving the disadvantaged are not enough to get lawyers to accept this responsibility. Ironically, the creation of the Office of Economic Opportunity in 1965, the first national program to provide legal assistance, diminished the motivation for assistance from the private bar.<sup>29</sup> Because report after report showed such a lack of participation among lawyers in pro bono work, in 1977, a Special ABA Committee on Public Interest Practice issued a report appealing to state and local bar associations to take an active role in encouraging pro bono work.<sup>30</sup> The report sanctioned a quantifiable, although aspirational, minimum obligation. In response to the ABA initiative, bar leaders in California and New York issued proposals asking for modest levels of required public service, on the order of thirty to fifty hours per year.<sup>31</sup> These proposals met fierce opposition and were promptly withdrawn.<sup>32</sup>

Controversy persisted at the national level during the early 1980s in debates over the ABA’s new Model Rules of Professional Conduct, which were intended to replace the outdated Code of Professional Responsibility.<sup>33</sup> The Commission drafting the Model Rules originally proposed a requirement that lawyers provide a minimum of forty hours of work per year at a no fee or reduced fee, or the financial equivalent, to persons of limited means or to organizations assisting them.<sup>34</sup> This caused such vociferous outcry that the Commission proposed instead that

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<sup>28</sup> MODEL CODE OF PROF’L RESPONSIBILITY, EC 2-25 (1981).

<sup>29</sup> Woods, *supra* note 3, at 30; Rhode, *supra* note 4, at 318.

<sup>30</sup> Rhode, *supra* note 4, at 318.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Text of Initial Draft of Ethics Code Rewrite Committee, LEGAL TIMES OF WASHINGTON, Aug. 27, 1979, at 26, 45, col.4.

lawyers merely make an annual report of pro bono work, and that the Rule not specify what would qualify as “pro bono.”<sup>35</sup> Even this minimal obligation proved intolerable.<sup>36</sup> Opinion polls found that approximately four-fifths of the bar opposed any pro bono requirement.<sup>37</sup> As originally adopted, Rule 6.1, provided that:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or reduced fee to persons of limited means or to public service or charitable groups or organizations, or by service in activities for improving the law, the legal system or the legal profession.<sup>38</sup>

“Over the two decades, attempts to strengthen pro bono ethical standards have come and gone, but mainly gone.”<sup>39</sup> In 1993, the ABA again rejected the prospect of mandatory service, but did amend Rule 6.1 to quantify a goal of fifty hours per year.<sup>40</sup> In 2002, the ABA further stressed that every lawyer should assume public service obligations. Attorneys have professional responsibility to provide legal services to those who cannot afford them.<sup>41</sup> The Comment to the Rule provides that “when it is not feasible for a lawyer to engage in pro bono services,” the lawyer may give “financial support to organizations providing free legal services to persons of limited means” or may “satisfy the pro bono responsibility collectively, as by a firm’s aggregate pro bono activities.”<sup>42</sup> It is recommended that the financial support be “reasonably equivalent to the value of hours of service that otherwise would have been provided.” To highlight the purely aspirational nature of the Rule, the ABA added the term “voluntary” to its title and language to its Comment stressing that the “responsibility set forth in this Rule is not intended to be enforced

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<sup>35</sup> Rhode, *supra* note 4, at 320.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 (1983).

<sup>39</sup> Rhode, *supra* note 4, at 320.

<sup>40</sup> *Id.* at 321.

<sup>41</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 (2002).

<sup>42</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 cmt 9 (2002).

through [the] disciplinary process.”<sup>43</sup> Once again in 2001, “the ABA’s Ethics 2000 Commission rejected proposals for mandatory pro bono service or an annual reporting requirement.”<sup>44</sup> The only modifications made were the addition of a sentence to the Rule stating that “every lawyer has a professional responsibility to provide legal services to those unable to pay” and a sentence to the Comment suggesting that “law firms should act reasonably to enable all lawyers in the firm to provide pro bono services called for in this Rule.”<sup>45</sup> Despite the fact that a mandatory requirement has never been adopted, there are some very compelling arguments for imposing such a requirement.

### III. Mandatory Pro Bono for Lawyers

As described above, bar leaders, ethical codes and countless commissions and committees have proclaimed that all lawyers have obligations to assist those who cannot afford legal counsel.<sup>46</sup> However, the percentage of lawyers who actually do so has remained quite small.<sup>47</sup> Estimates suggest that most attorneys do not perform significant pro bono work and that only about ten and twenty percent of those who do are assisting low income individuals.<sup>48</sup> The average for the profession as a whole is less than a half an hour per week.<sup>49</sup> The American Bar Association Model Rules suggest that “[a] lawyer should aspire to render at least (50) hours of pro bono publico legal services per year,” primarily to “persons of limited means” or to “organizations in matters that are designed primarily to address the needs of persons of limited means.”<sup>50</sup> However, few lawyers come close to satisfying this.<sup>51</sup>

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<sup>43</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 cmt 12 (1993)

<sup>44</sup> Rhode, *supra* note 4, at 322.

<sup>45</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 (2002).

<sup>46</sup> Debra L. Rhode, Article, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415, 2415 (1999).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> MODEL RULES OF PROF’L CONDUCT R. 6.1 (2006).

There is much debate concerning the role of the private bar in the provision of legal services to the poor. Some argue that members of the bar should be required to provide legal services to the poor, while others assert that members of the bar have absolutely no responsibility to provide the poor with legal services.<sup>52</sup> One point of agreement is that poor persons residing in the United States have an enormous amount of unmet legal needs.<sup>53</sup> In fact, the poor face approximately six million legal matters without counsel each year.<sup>54</sup> Cost is one of the biggest factors contributing to the failure of low income individuals to seek resolution of their legal troubles through the civil justice system.<sup>55</sup> However, despite these numbers, disagreement still surrounds the debate regarding the appropriate role of the private bar in ameliorating the legal crisis of the country's poor.<sup>56</sup>

#### A. Arguments In Favor of a Mandatory Pro Bono Requirement

The primary objective of a mandatory pro bono requirement is to increase legal services available to the poor.<sup>57</sup> This includes direct services for low-income individuals and impact litigation serving groups overwhelmingly comprised of low-income persons, such as children in foster care, battered women, or prisoners.<sup>58</sup> Proponents of mandatory pro bono have shown that providing such services is desirable and that it is unlikely that services adequate to meet the needs of low income groups would be provided in the absence of some form of mandatory pro bono requirement.<sup>59</sup>

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<sup>51</sup> Rhode, *supra* note 46, at 2415.

<sup>52</sup> See Jennifer Murray, Comment, *Lawyers Do It For Free? An Examination of Mandatory Pro Bono*, 29 TECH. L. REV. 1141 (1998).

<sup>53</sup> *Id.* at 1143.

<sup>54</sup> *Id.* at 1144.

<sup>55</sup> *Id.* at 1145.

<sup>56</sup> See *id.* at 1144.

<sup>57</sup> Mary Coombs, *Your Money or Your Life: A Modest Proposal for Mandatory Pro Bono Services*, 3 B.U. PUB. INT. L.J. 215, 216 (1993).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

At the forefront of the arguments in support of mandatory pro bono is the idea that provision of legal services to the poor is, and always has been, a fundamental element of the practice of law.<sup>60</sup> Proponents stress the historical commitment of attorneys to pro bono work and argue that lawyers should continue this tradition.<sup>61</sup> They argue that pro bono service is a professional responsibility of all lawyers because lawyers have a monopoly over the legal work and the court in this country.<sup>62</sup> In the United States, attorneys have a much more extensive and exclusive right to provide legal assistance than attorneys in other countries.<sup>63</sup> Therefore, it is not unreasonable to expect lawyers to make some pro bono contributions in return for their privileged status.<sup>64</sup>

Another justification for imposing mandatory pro bono requirements on lawyers stems from their special role in our governance structure.<sup>65</sup> Because lawyers occupy such a central role in our governance system, there is particular value in exposing them to how that system functions, or fails to function, for the poor.<sup>66</sup> Giving broad segments of the bar some experience with poverty-related problems and public-interest causes may lay critical foundations for change.<sup>67</sup> Pro bono programs have often launched leading social reform initiatives and strengthened support for government subsidies of legal services.<sup>68</sup>

Proponents also argue that mandatory pro bono requirements would benefit lawyers individually and collectively.<sup>69</sup> For example, for young attorneys, such work can provide

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<sup>60</sup> Murray, *supra* note 52, at 1148.

<sup>61</sup> *Id.* at 1148-49.

<sup>62</sup> *See id.* at 1150.

<sup>63</sup> Rhode, *supra* note 46, at 2419.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 2420.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Rhode, *supra* note 46, at 2420.

valuable training, trial experience, and professional contacts.<sup>70</sup> Involvement in charitable organizations and public interest activities is a way for attorneys to expand their perspectives, enhance their reputations, and attract paying clients.<sup>71</sup> It is also good for the image of the profession as a whole.<sup>72</sup> In one representative ABA poll, nearly half of non-lawyers believed that providing free legal services would improve the profession's image.<sup>73</sup>

#### B. Arguments Opposing a Mandatory Pro Bono Requirement

Opponents, on the other hand, claim that mandatory pro bono will not help the poor.<sup>74</sup> They contend that the reason the poor do not presently consume more legal services is because they are rational.<sup>75</sup> Given their limited wealth, legal services are very low on a poor person's shopping list.<sup>76</sup> They would rather spend their money on other things, like food, shelter, clothing, cars, or an education.<sup>77</sup> In other words, poor people do not hire lawyers because they use their limited resources to buy things that they value more than legal services.<sup>78</sup>

Opponents also argue that requiring lawyers to provide legal services to the poor is inefficient and wasteful.<sup>79</sup> They argue that both lawyers and clients could improve their circumstances if lawyers could donate money directly to the poor, instead of donating their time to help them with their legal problems.<sup>80</sup> Then, the lawyers could put the time they saved to more productive uses, and the poor could decide for themselves how to best spend their money.<sup>81</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *See id.*

<sup>73</sup> *Id.*

<sup>74</sup> Jonathan R. Macey, *Mandatory Pro Bono: Comfort For The Poor Or Welfare For The Rich?* 77 CORNELL L. REV. 1115, 1116 (1992).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 1117.

<sup>79</sup> *Id.*

<sup>80</sup> Macey, *supra* note 74, at 1117.

<sup>81</sup> *Id.*

Opponents even go so far as to say that the increased consumption of legal services by poor may actually harm the poor rather than help them.<sup>82</sup> For example, with the possible exception of matrimonial work, lawsuits against landlords would occupy the lion's share of the time that lawyers, compelled to provide legal services for the poor, spend on mandatory pro bono.<sup>83</sup> If more lawsuits are brought against landlords because lawyers need something to do to fulfill their mandatory pro bono obligations, the landlord's costs of providing housing to the indigent inevitably will go up.<sup>84</sup> As the cost of providing housing goes up, rents would increase, and the supply of housing for the poor would go down.<sup>85</sup>

Opponents also point out that a mandatory pro bono requirement would make the profession look bad.<sup>86</sup> This would imply that some work done by lawyers (like representing the poor) furthers society's interest, while the rest (like representing corporations) hurts society.<sup>87</sup> It also fuels the perception that legal services provided to the poor for free further the public interest, while legal services provided to paying clients serve no purpose other than to transfer wealth from society as a whole to a few undeserving lawyers.<sup>88</sup> As a matter of principle, some argue that compulsory charity is contradictory in terms, and thus mandatory pro bono would undermine its moral significance as well.<sup>89</sup>

Despite many mandatory pro bono proposals, including one by the ABA, no state has adopted a mandatory pro bono requirement.<sup>90</sup> Many state bar associations have modeled statutes

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 1118.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> See Macey, *supra* note 74, at 1122.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Rhode, *supra* note 46, at 2420.

<sup>90</sup> Murray, *supra* note 52, at 1146.

after Model Rule 6.1 or adopted similar goals. However, such goals are merely aspiration, and thus, not enforceable.

#### IV. Pro Bono Programs in Law Schools

##### A. Rationale for Pro Bono Programs in Law Schools

The primary justifications for pro bono service by law students parallel the justifications for pro bono service by lawyers.<sup>91</sup> Most leaders in legal education agree that such service is a professional responsibility and that their institutions should prepare future practitioners to assume it.<sup>92</sup> Society often blames law schools for the significant decrease in the number of lawyers dedicated to public interest work and the resulting increase in the number of poor whose legal needs are left unmet.<sup>93</sup>

In 1997, the American Association of Law Schools (AALS) created a Commission on Pro Bono and Public Service Opportunities to address the role of law schools in educating students regarding the problems facing the poor and the growing need for pro bono work.<sup>94</sup> After conducting a national survey of law schools, the study found that at most law schools, only a minority of students perform pro bono services.<sup>95</sup> The AALS study made it clear that law schools need to do more and that it would be wise for law schools to consider seriously adopting a pro bono program that would be mandatory for all of their students.<sup>96</sup>

The basic notion is that law schools play an important role in promoting responsibility and social awareness in its students. It was reported that ninety-five percent of all deans responding to the AALS survey agreed that “it is an important goal of law schools to instill in

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<sup>91</sup> Rhode, *supra* note 46, at 2433.

<sup>92</sup> *Id.*

<sup>93</sup> Murray, *supra* note 52, at 1167.

<sup>94</sup> Sabrina A. Hall & Tammy R. Wavle, Feature, *A Vision for the Future: Mandatory Pro Bono Programs In Texas Law Schools*, 38 HOUSTON LAWYER 18, 19 (2001).

<sup>95</sup> *Id.*

<sup>96</sup> *See id.*

students a sense of obligation to perform pro bono work during their later careers.”<sup>97</sup> The American Bar Association (ABA) standards for accreditation also provide that law schools should “encourage” students to provide pro bono services to the poor.<sup>98</sup> The fact that the ABA sets the standard for accreditation at *encouraging* student pro bono work is a good sign. However, a program that simply encourages pro bono work may not be enough because, as stated above, this seems likely to result in only a minority of law students performing pro bono work. Some recent statistics from the University of Pennsylvania School of Law tended to show that instilling a sense of social awareness and professional responsibility in students from the beginning makes it more likely that the students will continue to perform such services after they graduate law school.<sup>99</sup> The focus of this discussion will be on mandatory pro bono programs in law schools, the advantages, criticisms, models, and real life examples of mandatory pro bono programs.

#### B. Rise of Mandatory Pro Bono Programs in Law Schools

In 1987, Tulane University was the first law school to institute a mandatory pro bono program.<sup>100</sup> A few years after its initiation, two thirds of the graduates reported that participation in public service had increased their willingness to participate in the future, and about three quarters agreed that they had gained confidence in their ability to represent indigent clients.<sup>101</sup> At other schools with mandatory programs, between three-fourths and four-fifths of students who participated in the program indicated that their experience had increased the likelihood that they would engage in similar work as practicing attorneys.<sup>102</sup> However, at this

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 22.

<sup>101</sup> Rhode, *supra* note 46, at 2434.

<sup>102</sup> *Id.*

point in time there has been no study that compares the amount of pro bono work done by graduates of schools with a mandatory pro bono program and those without.<sup>103</sup>

In 1990, the National Association for Public Interest Law instituted a national campaign to encourage law schools to implement mandatory pro bono programs.<sup>104</sup> Although this mandatory pro bono movement met some resistance, the campaign was generally successful.<sup>105</sup> In the 2007 ABA Directory of Law School Public Interest and Pro Bono Programs, there were thirty-one law schools that had some type of a pro bono requirement for graduation.<sup>106</sup> Out of those thirty-one, fifteen had a requirement of purely pro bono work, thirteen had a public service requirement and three had a community service requirement.<sup>107</sup> Ninety-five schools have a formal voluntary pro bono program.<sup>108</sup>

#### 1. The Advantages of Mandatory Pro Bono Programs in Law Schools

There are many advantages that may result from a law school having a mandatory pro bono requirement for graduation. The legal profession has criticized law schools for the woeful lack of competence among young lawyers.<sup>109</sup> The MacCrate Report, published in 1992 by the ABA section of Legal Education and Admissions to the Bar, concluded that “much remains to be done to improve the preparation of new lawyers for practice.”<sup>110</sup> There already is some awareness that the mastery of lawyering skills cannot take place solely in the classroom.<sup>111</sup> Thus pro bono requirements take note of this by giving students opportunities to assist organizations in

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<sup>103</sup> *See id.*

<sup>104</sup> Murray, *supra* note 52, at 1168.

<sup>105</sup> *Id.*

<sup>106</sup> American Bar Association, [http://www.abanet.org/legalservices/probono/lawschools/pb\\_programs\\_chart.html](http://www.abanet.org/legalservices/probono/lawschools/pb_programs_chart.html) (last visited Apr. 21, 2007).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* Santa Clara University School of Law is included as one school with a formal voluntary pro bono program. *See id.*

<sup>109</sup> Richard F. Storrow & Patti Gearhart Turner, Articles, *Where Equal Justice Begins: Mandatory Pro Bono in American Legal Education*, 72 UMKC L. REV. 493, 501.

<sup>110</sup> *Id.*

<sup>111</sup> *See id.*

representing clients, thereby introducing them to the techniques of client interviewing and counseling in a real-world setting.<sup>112</sup>

A mandatory pro bono requirement may also better prepare law students for the bar.<sup>113</sup> In particular, many states (including California) require each applicant for membership in the bar to successfully pass the something known as a Performance Test.<sup>114</sup> This test is designed to examine an applicant's ability to use fundamental lawyering skills in a realistic situation, most frequently through completing a drafting exercise.<sup>115</sup> A pro bono requirement would ensure that many students would have the opportunity to observe or assist with drafting legal documents before graduation.<sup>116</sup>

Additionally, a mandatory pro bono requirement would enhance students' career opportunities by helping them forge professional relationships with individual lawyers and begin to cultivate a network of mentors in the legal community.<sup>117</sup> In a broader sense, students would benefit from the positive exposure the law school could receive as the public became more aware of its pro bono requirements and service to the community.<sup>118</sup> In addition, it has been speculated that the requirement could forge stronger connections with alumni because alumni would take pride in becoming active participants as mentors and role models to students fulfilling these requirements.<sup>119</sup> In essence, a mandatory pro bono program has strong potential to enrich law schools with a whole host of benefits that would be self-perpetuating.

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<sup>112</sup> *Id.* at 502.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Storrow & Turner, *supra* note 109, at 502.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

## 2. The Criticism of Mandatory Pro Bono Programs in Law Schools

The main criticism of mandatory pro bono programs in law schools is that this work may be seen by students as an obligation, causing students to feel less interested in pro bono work in the future.<sup>120</sup> This statement does not seem to hold true when examining the attitudes of the students at schools with mandatory pro bono programs.<sup>121</sup> Moreover, it can be said that just about everything about law school is an obligation. Clearly, required first year courses are an obligation, but they are justified because they form a foundation for the further study of the law.<sup>122</sup> It can be said that pro bono work is a foundation for students in that it provides them with practical experience and the opportunity to apply the law and reasoning to real life situations; this is something that any law student must do once they practice law. Thus, even though a mandatory pro bono requirement may be seen as an “obligation,” it gives students an earlier exposure to real legal situations and, in the long run, is a huge benefit to students and clients.

### C. Models of Mandatory Law School Pro Bono Programs

#### 1. Types of Programs

It must be noted that all pro bono programs vary considerably in scope and structure. As stated above, there are currently thirty-one law schools with some form of a mandatory pro bono program.<sup>123</sup> Within the overall umbrella of pro bono programs, there are three main subcategories.

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<sup>120</sup> *See id.* at 495.

<sup>121</sup> *See supra* Part III.B.

<sup>122</sup> Storrow & Turner, *supra* note 109, at 495.

<sup>123</sup> *See supra* note 102 and accompanying text.

The first subcategory, with fifteen schools, is a strict pro bono requirement which requires students to perform a set number of hours of law-related public service.<sup>124</sup> The number of hours required by these schools ranges from twenty to seventy, and the students' service is strictly pro bono as they receive neither academic credit nor pay for their service.<sup>125</sup>

The second subcategory, with thirteen schools, is the public service graduation requirement which requires students to perform law-related public service or to be exposed to poverty law through a class or independent study.<sup>126</sup> The ways in which the graduation requirement can be met vary from school to school.<sup>127</sup> Eligible service options include the completion, in a public interest setting, of a pro bono placement, externship, clinic, and/or internship.<sup>128</sup>

The third subcategory, with three schools, is the public service graduation requirement, also known as a community service graduation requirement.<sup>129</sup> These schools require students to perform a set number of hours of public service.<sup>130</sup> Eligible service options include both law and non-law related placements. The students receive neither pay nor academic credit for their service.<sup>131</sup>

## 2. Actual Law School Pro Bono Mandatory Programs

Tulane Law School paved the way for future mandatory pro bono programs when in 1987, the faculty voted to require law students to perform twenty hours of pro bono work as a

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<sup>124</sup> American Bar Association, [http://www.abanet.org/legalservices/probono/lawschools/pb\\_programs\\_chart.html](http://www.abanet.org/legalservices/probono/lawschools/pb_programs_chart.html) (last visited Apr. 21, 2007).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> American Bar Association, [http://www.abanet.org/legalservices/probono/lawschools/pb\\_programs\\_chart.html](http://www.abanet.org/legalservices/probono/lawschools/pb_programs_chart.html) (last visited Apr. 21, 2007).

<sup>131</sup> *Id.*

condition of graduation.<sup>132</sup> Students at Tulane Law School do not receive credit nor do they receive compensation.<sup>133</sup> Tulane describes the basis for their program as a “trickle up’ theory of moral obligation.<sup>134</sup> They believe that if the organized bar is not ready to make pro bono mandatory for attorneys, the best way to alter attorney attitudes is from the ground up by instilling in law students a sense of the responsibility they must shoulder when they become members of the bar.<sup>135</sup> Students at Tulane may fulfill their graduation requirement by participating in a number of pro bono programs, including Tulane’s own legal advice clinic in which students interview clients and assist attorneys in handling cases involving poverty law.<sup>136</sup> The issues confronted in this program involve juvenile problems, consumer disputes, and issues confronting elderly prisoners in Louisiana.<sup>137</sup>

The University of Pennsylvania has the most rigorous public service program in the U.S., requiring every student to perform seventy hours of pro bono service as a condition of graduation.<sup>138</sup> The University of Hawaii also has quite an rigorous program which requires students perform sixty hours of pro bono work as a condition of graduation in the second and third years.<sup>139</sup> As result of a student petition in 1993, Columbia University founded a mandatory pro bono program that requires students to perform forty hours of pro bono service to graduate. University of Nevada Boyd School of Law requires all first year students to participate in a community service program, a partnership between the law school, Clark County Legal Services and Nevada legal services.<sup>140</sup> Each student devotes approximately forty hours to one of three

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<sup>132</sup> Hall & Wavle, *supra* note 94, at 22.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Hall & Wavle, *supra* note 94, at 23.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

areas: small claims, housing, or family court.<sup>141</sup> The students do not receive credit for this service.<sup>142</sup>

## V. Legal Aid Agencies and Pro Bono Programs

The great need for legal services has led to the development of programs for the indigent and low income persons who do not have access to expensive legal representation or advice. In the last two decades, law firms, government agencies, and law associations have streamlined and centralized the administration of legal pro bono services.<sup>143</sup> Many of the free to low cost legal services offered in the United States today come from three main sources: (1) legal assistance services affiliated with the Legal Services Corporation (LSC), (2) legal aid agencies not affiliated with the Legal Services Corporation, and (3) pro bono organizations.<sup>144</sup>

### A. LSC Funded Legal Aid Services

The first category, LSC funded legal aid services, is a major resource for low income individuals seeking assistance in civil matters. Congress created LSC in 1974 with the dual purpose of promoting equal access to justice and providing high quality civil legal assistance to low income individuals.<sup>145</sup> LSC does not provide services directly to individuals; instead it funds civil legal assistance programs which in turn offer legal aid.<sup>146</sup> In 2007, LSC provided

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers*, 41 LSOCR 113, 113 (2007).

<sup>144</sup> Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 LSOCR 79, 83 (2007).

<sup>145</sup> Legal Services Corporation, What is the Legal Services Corporation, Fact Sheet, <http://www.lsc.gov/pdfs/WhatIsLSC.pdf>.

<sup>146</sup> Sandefur, *supra*, note 144.

grants to 138 independent legal programs and more than 900 offices.<sup>147</sup> In 2007, LSC funding reached \$411.8 million.<sup>148</sup>

LSC funded projects are subject to the “private money restriction,” which prohibits civil legal aid agencies that receive LSC funding from using their non-federal dollars to finance certain legal activities.<sup>149</sup> Because the funding originates from a government source, there are strings attached to the grants, which limit the types of services the agencies can offer. In particular, cases dealing with class actions, undocumented immigrants, and reproductive rights are usually prohibited.<sup>150</sup>

#### B. Legal Aid Agencies Not Affiliated with or Funded by LSC

The civil legal aid societies having no affiliation with LSC are a second source of assistance for low income and indigent clients. More than 650 of these agencies, including law school clinics, exist across the country.<sup>151</sup> Many of these agencies choose to obtain funding from sources other than LSC, so that the organizations can serve vulnerable clients without regard for the restrictions associated with LSC money.<sup>152</sup> For example, while LSC funded programs are typically prevented from representing illegal aliens or cases involving reproductive rights, non-LSC funded groups can represent essentially any client who is in need of legal aid.<sup>153</sup>

One organization which operates independently of LSC is the Katharine and George Alexander Law Center, a legal aid agency affiliated with Santa Clara University, School of Law. In 2006, the Law Center gave advice to approximately 800 individuals and held workshops that

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<sup>147</sup> *Supra*, note 145.

<sup>148</sup> Legal Services Corporation, Budget Request for Fiscal Year 2007, <http://www.lsc.gov/about/budget/FY07BReq.pdf>.

<sup>149</sup> Brennan Center for Justice at NYU School of Law, Legal Services Funding Restrictions, [http://www.brennancenter.org/subpage.asp?key=40&init\\_key=137](http://www.brennancenter.org/subpage.asp?key=40&init_key=137).

<sup>150</sup> Interview with Angelo Ancheta, Director, Katharine and George Alexander Law Center, in San Jose, Cal. (Apr. 5, 2007).

<sup>151</sup> Sandefur, *supra* note 144, at 83.

<sup>152</sup> *Supra*, note 150.

<sup>153</sup> *Supra*, note 149.

served another 1,200 members of the community.<sup>154</sup> The primary source of funding for the Center is through donations: approximately sixty percent of the funds derive from private sources, thirty percent derive from some form of government funding, and Santa Clara University School of Law provides the remaining funds, approximately ten to fifteen percent of the Center's budget.<sup>155</sup> Another source of funding for the Center is cy pres awards. Under the cy pres doctrine, courts distribute unclaimed portions of a class-action judgment or settlement to a charity.<sup>156</sup> These funds, while extremely helpful, are an unpredictable source of financial support and legal aid organizations cannot rely on receiving any set amount of cy pres dollars in a particular year.

The Law Center must constantly seek financial support to continue the services it has provided to the community for over fourteen years.<sup>157</sup> The Center provides advice and representation to low income individuals in workers' rights, workers' compensation, consumer rights, and immigration rights cases.<sup>158</sup> In addition to offering service to the community, the Center also serves as a training ground and learning environment for law students.<sup>159</sup>

### C. Pro Bono Work

Attorneys not working for legal aid agencies, but who volunteer time in legal services, provide a third type of aid, pro bono assistance.<sup>160</sup> Many of these attorneys find cases through legal associations or their law firms. In fact, many law firms now have personnel, such as partners or managers, whose primary responsibility is to coordinate pro bono activities.<sup>161</sup> Over

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<sup>154</sup> Katharine & George Alexander Community Law Center, Santa Clara University, School of Law, [http://www.scu.edu/law/kgaclc/about\\_us.html](http://www.scu.edu/law/kgaclc/about_us.html).

<sup>155</sup> *Supra*, note 150.

<sup>156</sup> Black's Law Dictionary (8th ed. 2004).

<sup>157</sup> *Supra*, note 150.

<sup>158</sup> *Supra*, note 154.

<sup>159</sup> *Supra*, note 154.

<sup>160</sup> Sandefur, *supra* note 144, at 84.

<sup>161</sup> Granfield, *supra*, note 143, at 114.

150 large law firms have become signatories of the Pro Bono Institute's "Law Firm Pro Bono Challenge," which since 1993 has challenged each firm to allocate three to five percent of attorney time to pro bono work.<sup>162</sup> A similar program now exists for corporate in-house legal departments, many of whom partner with law firms to represent clients.<sup>163</sup>

Although law firms are traditionally known for extreme billing practices and unrelenting pressure on attorneys to bring in clients with deep pockets, many firms have implemented pro bono policies to fulfill a professional and moral obligation to the community. Law firms seem to be recognizing that strong pro bono programs not only satisfy profession responsibilities, but contribute to the firm's bottom line as well. Many large corporate clients have adopted the practice of inquiring into a law firm's pro bono policy when submitting requests for proposals from the firm. Some clients require a listing of all pro bono work done by each attorney staffed on the legal team assigned to its matter.<sup>164</sup> With the trend of client pro bono conscientiousness, law firms have even greater incentive to encourage attorneys to provide legal services within the community.

Pro bono programs within large law firms commonly follow one of two models.<sup>165</sup> The first model is one in which pro bono is heavily encouraged, but there is no official policy as to the number of pro bono hours that will be counted as billable equivalent work.<sup>166</sup> Often in this model, the firm's policy allows attorneys to work as many pro bono hours as they wish and receive billable equivalent for these hours. Although many firms may have a policy of unlimited

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<sup>162</sup> Pro Bono Institute at Georgetown University Law Center, Law Firm Pro Bono Challenge, <http://www.probonoinst.org/challenge.php>.

<sup>163</sup> Corporate Pro Bono (CPBO) is a national resource for in-house corporate counsel seeking to do pro bono. The Pro Bono Institute and the Association of Corporate Counsel issued a "Corporate Pro Bono" challenge in 2006 to encourage corporations to communicate their commitment to pro bono. Thus far, 56 corporations have become signatories of the challenge; *available at* <http://www.cpbo.org/aboutUs/>.

<sup>164</sup> Interview with Renee Glover Chantler, Pro Bono Manager, DLA Piper, US LLP, in East Palo Alto, Cal. (Apr. 9, 2007).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

pro bono billable equivalent hours, the reality is that law firms are businesses and it is almost always impractical for attorneys to perform a greater amount of pro bono work than billable client work. In such law firms, theoretically an attorney could work primarily on pro bono cases and bill very little; however, this literal interpretation of “unlimited pro bono” is unrealistic and would not work well in practice. Nonetheless, this policy does encourage attorneys to take on pro bono work within the law firm setting as it allows for pro bono hours to be counted as billable hours.

The second model involves dedicated pro bono personnel within the firm who focus entirely on free legal services. The attorneys and staff within this pro bono group spend 100 percent of their resources on free legal services and are instrumental in procuring pro bono projects for the firm’s attorneys. The pro bono policy for the firm’s billing attorneys can vary from designating a limited number of pro bono hours as billable equivalent hours to not having any formal pro bono hour limit.

One such firm with a dedicated pro bono program is DLA Piper, US LLP (DLA). DLA has five attorney pro bono managers who are dedicated full-time to offering free legal services and to procuring pro bono projects for the Firm’s attorneys.<sup>167</sup> The Firm’s current policy requires every attorney to complete twenty hours of pro bono service per year.<sup>168</sup> It encourages attorneys to perform sixty hours per year (or three percent of the firm’s required billable hours); this sixty hour requirement corresponds to the ABA’s challenge guidelines.<sup>169</sup> Associates receive billable equivalent for up to 100 hours (or five percent of the billable requirement) of pro

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> Law Firm Pro Bono Challenge, *supra* note 162.

bono service per year.<sup>170</sup> The policy for partners and of counsel differs, and is negotiated on an individual basis with the compensation committee.<sup>171</sup>

Within law firm pro bono programs there are several restrictions on the types of services accepted for billable equivalent work. Many programs allow for legal services to indigent and low income individuals, services to non-institutionalized non-profits, and a limited number of non-legal qualified programs, such as habitat for humanity or occasional work at a food bank.<sup>172</sup> Community activities which typically do not count towards billable equivalent work include teaching services or serving on the board of directors for a charitable organization.<sup>173</sup>

## VI. Conclusion

While the legal community has yet to entirely embrace its professional responsibility by providing legal services to those who cannot afford it, pro bono service has come a long way — with the large number of Legal Aid Centers, law clinics, and firms dedicated to providing pro bono legal services. Even still, each of the three major sources of legal assistance face unique challenges in the administration of free legal aid. Although funding is a critical component to each of the programs, the most severe problem plaguing these agencies is the lack of attorneys willing to dedicate time to assist those who most need legal expertise. Thus, bar leaders and lawyers dedicated to pro bono service continue to strive for a way to increase participation in pro bono services among the members of the bar. Perhaps, implementing a mandatory requirement among lawyers and law students is the only way to achieve wholesale participation.

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<sup>170</sup> *Supra*, note 164.

<sup>171</sup> *Supra*, note 164.

<sup>172</sup> *Supra*, note 164.

<sup>173</sup> *Supra*, note 164.