

## McCurdy, Lauren

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**From:** Kevin Mohr [kemohr@charter.net]  
**Sent:** Tuesday, March 23, 2010 11:46 AM  
**To:** Harry Sondheim; Mark Tuft; Paul Vapnek; Linda Foy; JoElla L. Julien; Robert L. Kehr; Stan Lamport; Raul Martinez; Kurt Melchior; Ellen Peck; Ignazio J. Ruvolo; Jerome Sapiro; Kevin Mohr; Difuntorum, Randall; McCurdy, Lauren; Hollins, Audrey; Marlaud, Angela; Lee, Mimi; Kevin Mohr; Dominique Snyder  
**Subject:** RRC - 6.1 - III.I. - Superseding Materials for 3/26-27/10 Meeting  
**Attachments:** RRC - [6-1] - CYLA Public Comment - Official - F-2010-393.pdf; RRC - [6-1] - Dash, Intro, Rule, Comment, Land, Pub Com - COMBO - DFT3.1 (03-23-10).pdf; RRC - [6-1] - SCDLS - Legal Services - Public Comment - F-2010-398.pdf  
**Importance:** High

Greetings:

I've attached to this e-mail a single, scaled PDF file that includes the following:

1. Dashboard, Draft 3.1 (3/23/10);
2. Introduction, Draft 2.1 (3/23/10);
3. Rule & Comment Chart, Draft 3 (3/23/10);
4. Rule, Draft 3 (3/23/10), redline, compared to Pub Comment Draft [#2] (11/28/09);
5. Public Comment Chart, Draft 2.6 (3/23/10)DS-KEM.

I have also attached the full public comment of the State Bar's Standing Committee on the Delivery of Legal Services ("SCDLS") and the Cal. Young Lawyer's Ass'n ("CYLA"). These comments were not included in the public comment chart in the agenda materials, the former because the drafters did not receive it until yesterday and the latter because we were advised that the comment that had been submitted was unofficial and that we should hold off consideration until we received an official CYLA comment. Please read the notes and comments below, which should help you with your review of the attached.

### Notes & Comments:

1. Our apologies for sending this to you at this late hour but the public comment by two apparent stakeholders is deserving of careful consideration at our meeting. CYLA objects to having any rule at all. The drafters believe, as noted by Toby Rothschild at our November meeting, that an RPC will make the pro bono policy more accessible and will also have more impact as coming from the Supreme Court.
2. SCDLS takes the position that the definition of pro bono the RRC has recommended is too broad and should be narrowed along the lines of the BOG Resolution and the Pro Bono Institute's definition. The drafters believe that the Model Rule definition, as revised in our rule, is

appropriate. Please see Response to SCDLS in the Public Comment Chart, paragraph 2.

3. The principal document to review is the public comment chart. New matter that has been added since the agenda mailing is shaded in gray.

4. Dashboard. The drafters recommend that level of controversy for this rule be changed to "very controversial". Given the positions of SCDLS and CYLA, this rule needs to be discussed by RAC at its May 2010 meeting and a policy decision made by the BOG.

5. Introduction. Additions have been made to the Public Comment section, in redline.

6. Rule & Comment Chart. The parentheses around "50" have been removed and reference to "judges" in Comment [5] stricken.

7. Rule, Draft 3, compared to PCD. Same as item #6, above.

8. Public Comment Chart, Draft 2.6. As noted in 1 & 2 above, the comments from SCDLS and CYLA, and the suggested responses of the RRC thereto, have been added.

Please let me know if you have any questions. Thanks,

Kevin

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# Proposed Rule 6.1 [n/a]

## “Voluntary Pro Bono Publico Service”

(Draft #3, 3/23/10)

**Summary:** Proposed Rule 6.1, which encourages lawyers to provide *pro bono publico* services to persons of limited means, largely tracks Model Rule 6.1, except that it incorporates some language from the Board of Governors Pro Bono Resolution (2002) and includes specific references to California statutory law. See Introduction and Explanation of Changes.

### Comparison with ABA Counterpart

| Rule   | Comment  |
|--|--|
| <input checked="" type="checkbox"/> ABA Model Rule substantially adopted | <input checked="" type="checkbox"/> ABA Model Rule substantially adopted |
| <input type="checkbox"/> ABA Model Rule substantially rejected           | <input type="checkbox"/> ABA Model Rule substantially rejected           |
| <input type="checkbox"/> Some material additions to ABA Model Rule       | <input type="checkbox"/> Some material additions to ABA Model Rule       |
| <input type="checkbox"/> Some material deletions from ABA Model Rule     | <input type="checkbox"/> Some material deletions from ABA Model Rule     |
| <input type="checkbox"/> No ABA Model Rule counterpart                   | <input type="checkbox"/> No ABA Model Rule counterpart                   |

| Primary | Factors | Considered |
|---------|---------|------------|
|---------|---------|------------|

Existing California Law

Rule

Statute

Bus. & Prof. Code § 6068(h).

Case law

State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

Other Primary Factor(s)

State Bar of California Board of Governors Pro Bono Resolution (2002);  
 Definition of “pro bono” by the Pro Bono Institute (“PBI”).

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## Rule Revision Commission Action/Vote to Recommend Rule Adoption

(13 Members Total – votes recorded may be less than 13 due to member absences)

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Approved on 10-day Ballot, Less than Six Members Opposing Adoption

Vote (see tally below)

Favor Rule as Recommended for Adoption \_\_\_\_\_

Opposed Rule as Recommended for Adoption \_\_\_\_\_

Abstain \_\_\_\_\_

Approved on Consent Calendar

Approved by Consensus

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## Commission Minority Position, Known Stakeholders and Level of Controversy

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Minority Position Included. (See Introduction):  Yes  No

No Known Stakeholders

The Following Stakeholders Are Known:

Commission on Access to Justice.

Very Controversial – Explanation:

A number of public commenters and Commission members have expressed their belief that the delivery of pro bono services is not an appropriate subject for a disciplinary rule. See Introduction and Public Comment Chart. The State Bar's Standing Committee on the Delivery of Legal Services ("SCDLS") believes that the definition of pro bono legal services is not sufficiently narrow.

Moderately Controversial – Explanation:

Not Controversial – Explanation:

# COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

## Proposed Rule 6.1\* Voluntary Pro Bono Publico Service

March 2010

(Draft rule to be considered for public comment.)

### *INTRODUCTION:*

Proposed Rule 6.1, which encourages lawyers to provide or enable the direct delivery of pro bono publico services to persons of limited means, tracks Model Rule 6.1, except that it incorporates some language from the Board of Governors Pro Bono Resolution (2002) (“Board Resolution”) and includes specific references to California statutory law. Paragraph (a) primarily concerns the direct or indirect delivery of uncompensated legal services. Paragraph (b) addresses a lawyers delivery of legal services at a reduced fee to social service, medical research, etc., organizations, or to persons of limited means, or a lawyer’s participation in activities to improve the law or access to justice. The Comment largely tracks the Model Rule.

*Minority.* A minority of the Commission agrees that lawyers should be encouraged to provide pro bono legal services, and as the legislature stated in Business & Professions Code section 6073, this is “the tradition” of the Bar. The minority, however, takes the position that the Rule’s statement of this aspiration is not intended to be the basis for discipline (this is said in Comment [12]), and thus placing the aspiration in the disciplinary rules therefore has no legal purpose. The minority further states that this Rule adds nothing meaningful to what the legislature has fully and carefully stated in section 6073, but placing the statement in the Rules muddles the disciplinary purpose of the Rules. Finally, the minority argues that while all lawyers should aspire to meet the pro bono goal, not all lawyers can do so. The current economic crisis highlights only the most obvious of the reasons for this as thousands of lawyers are unemployed and countless others struggle to pay their rent and keep the lights on. No lawyer should be subject to arm twisting or ridicule for an inability to meet the goal.

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\* Proposed Rule 6.1, Draft #3 (3/23/10).

*Public Comment and Response of the Commission.* Many public commenters support the Commission’s recommendation to adopt proposed Rule 6.1. See public comments from California Commission on Access to Justice, COPRAC, and the San Diego County Bar Association. Other public commenters approve of the minority position and recommend against the Rule’s adoption, including CYLA, OCTC, the Orange County Bar Association and the Santa Clara Bar Association. See Public Comment Chart. Although favoring the adoption of a rule in principle, the State Bar’s Standing Committee on the Delivery of Legal Services (“SCDLS”) urges the adoption of a narrower definition of pro bono than the one that the Commission has proposed.

The Commission has responded to each submitted comment. See Public Comment Chart, below. The Commission continues to recognize the overwhelming need for Access to Justice in California, and believes that this Rule supports a means of accomplishing it. Although the Board of Governors’ Resolution expresses this policy, many members of the bar are unaware of its existence. This Rule will be a stronger policy statement if it is approved by the Supreme Court. Given the repeated statements by Presiding Justice George regarding Access to Justice issues, and the findings of the Commission on Access to Justice, it is likely that the Supreme Court would look favorably upon this Rule. As to the concerns expressed by SCDLS that the definition is not sufficiently narrow to facilitate the access to justice goal, the Commission does not believe that encouraging a broader range of activities under the rule will result in causing confusion or diverting attention away from the principal goals of the Rule. See Commission Response to SCDLS, ¶. 2, in Public Comment Chart, below.

*Variations in other jurisdictions.* Nearly every jurisdiction has adopted some version of Model Rule 6.1. Illinois, North Carolina, Ohio, Oregon and Texas are notable exceptions, though all but North Carolina either mandate or encourage that lawyers report their pro bono activities to the bar. Of the remaining jurisdictions, there is a wide range of variation in their adoption of Model Rule 6.1, with some retaining the 1983 version, some adopting the 2002 version, and others implementing unique provisions, ranging from D.C.’s relatively short rule to Florida’s rule, which establishes an elaborate pro bono framework.

| <p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service</b></p>  | <p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service</b></p>   | <p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>  |
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| <p>Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:</p> | <p>Every lawyer<del>has,</del> <u>as</u> a <u>matter of</u> professional responsibility<del>to,</del> <u>should</u> provide legal services to those unable to pay. A lawyer should <del>aspire to render</del><u>provide or enable the direct delivery of</u> at least <b>50</b> hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:</p> | <p>The introductory clause to proposed Rule 6.1 is based on its Model Rule counterpart. The first sentence has been revised to emphasize that the proposed Rule is hortatory, and not mandatory. The second sentence has been revised to track the language of the Board of Governors Pro Bono Resolution (2002) ("Board Resolution").</p>                             |
| <p>(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:</p>   | <p>(a) provide a substantial majority of the <b>50</b> hours of legal services without <del>fee or</del> expectation of <del>fee</del><u>compensation other than reimbursement of expenses</u> to:</p>  | <p>Paragraph (a) is based Model Rule 6.1(a). It has been revised to track language in the Board Resolution.</p>  |
| <p>(1) persons of limited means or</p>  | <p>(1) persons of limited means or</p>  | <p>Subparagraph (a)(1) is identical to Model Rule 6.1(a)(1). Although paragraph (1) of the Board Resolution refers to "indigent persons," it appears that "persons of limited means" and "indigent persons" mean the same thing, see Comment [3], so the Model Rule language is used.</p>  |
| <p>(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and</p>   | <p>(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and</p>   | <p>Subparagraph (a)(2) is identical to Model Rule 6.1(a)(2). This subparagraph incorporates the concept of Board Resolution, paragraph (1), which urges lawyers "[to provide or enable the direct delivery of legal services] to not for profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged."</p> |

\* Proposed Rule 6.1, **Draft 3 (3/23/10)**. Redline/strikeout showing changes to the ABA Model Rule.

| <p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service</b></p>   | <p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service</b></p>  | <p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>  |
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| <p>(b) provide any additional services through:</p> <p>(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;</p> | <p>(b) provide any additional services through:</p> <p>(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;</p> | <p>Subparagraph (b)(1) is identical to Model Rule 6.1(b)(1).</p>   |
| <p>(2) delivery of legal services at a substantially reduced fee to persons of limited means; or</p>   | <p>(2) delivery of legal services at a substantially reduced fee to persons of limited means; or</p>   | <p>Subparagraph (b)(2) is identical to Model Rule 6.1(b)(2).</p>   |
| <p>(3) participation in activities for improving the law, the legal system or the legal profession.</p>  | <p>(3) participation in activities for improving the law, the legal system or the legal profession, <u>or increasing access to justice.</u></p>  | <p>Subparagraph (b)(3) is identical to Model Rule 6.1(b)(3). The additional language at the end of the subparagraph is taken from the Board Resolution, paragraph (1).</p> |



| <p align="center"><u>ABA Model Rule</u><br/>Rule 6.1 Voluntary Pro Bono Publico Service</p>  | <p align="center"><u>Commission's Proposed Rule*</u><br/>Rule 6.1 Voluntary Pro Bono Publico Service</p>   | <p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>   |
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| <p>In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.</p> | <p>In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.</p> | <p>The last clause of the Rule is identical to its Model Rule counterpart. A similar concept is found in paragraph (4) of the Board Resolution.</p> |

| <p align="center"><b><u>ABA Model Rule</u></b></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>  | <p align="center"><b><u>Commission's Proposed Rule</u>*</b></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>   | <p align="center"><b><u>Explanation of Changes to the ABA Model Rule</u></b></p>   |
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| <p>[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.</p> | <p>[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. <del>The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions.</del> It is recognized that in <a href="#">ln</a> some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.</p> | <p>Comment [1] is identical to Model Rule 6.1, cmt. [1], except that the second and third sentences have been deleted as unnecessary exposition that does not add to an understanding of the Rule.</p> |
| <p>[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the</p>   | <p>[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the</p>   | <p>Comment [2] is identical to Model Rule 6.1, cmt. [2].</p>   |

\* Proposed Rule 4.1, Draft 1 (XX/XX/09). Redline/strikeout showing changes to the ABA Model Rule

| <p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>  | <p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>  | <p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>  |
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| <p>disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.</p>   | <p>disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.</p>  |  |
| <p>[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.</p> | <p>[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in <del>programs funded by the Legal Services Corporation</del> <a href="#">qualified legal services program under Business and Professions Code section 6213</a> and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals <a href="#">under paragraph (a)(1)</a> or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means <a href="#">under paragraph (a)(2)</a>. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.</p> | <p>Comment [3] is based on Model Rule 6.1, cmt. [3]. Rather than use the generalized Model Rule definition of individuals the Rule is intended to benefit, a more precise definition based on California law has been substituted.</p> <p>Language has been added to the second sentence of the Comment to clarify the scope of conduct addressed in each of the subparagraphs of paragraph (a).</p> |

| <p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>  | <p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>   | <p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>   |
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| <p>[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.</p>   | <p>[4] Because service must be provided without <del>fee or expectation of fee</del> <u>compensation</u>, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. <del>Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.</del></p>   | <p>Comment [4] is based on Model Rule 6.1, cmt. [4]. The word "compensation" has been substituted for "fee or expectation of fee" to conform to the proposed language of the introductory clause. See Explanation of Changes for the introductory clause. The last sentence has been deleted because the adoption of Model Rule 5.4(a)(4), which permits sharing of "court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer," has not been recommended. Thus, such fee sharing would violate proposed Rule 5.4.</p> |
| <p>[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).</p> | <p>[5] While it is <del>possible for</del> <u>preferable that</u> a lawyer <del>to</del> fulfill <del>the</del> <u>his or her</u> annual responsibility to perform pro bono services <del>exclusively</del> through activities described in paragraphs (a)(1) and (2), <del>to the extent that any hours of service remained unfulfilled, the remaining</del> <u>lawyer's</u> commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers <del>and judges</del> from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers <del>and judges</del> may fulfill their pro bono responsibility by performing services outlined in paragraph (b).</p> | <p>Comment [5] is based on Model Rule 6.1, cmt. [5], which explains that the activities describe in paragraph (b) are an alternative to providing direct legal services. The word "preferable" has been substituted for "possible" to emphasize the preference, in conformance with the Board Resolution, that a lawyer devote most of his or her 50 hours to the direct delivery of legal services.</p> <p>The references to judges has been stricken because judges in California are not subject to this Rule.</p>   |

| <p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>   | <p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>  | <p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>   |
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| <p>[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.</p> | <p>[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims, <a href="#">claims under the California Fair Employment and Housing Act</a>, and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.</p> | <p>Comment [6] is based on Model Rule 6.1, cmt. [6]. A reference to claims brought under the California Fair Employment and Housing Act has been added to avoid suggesting that the services described in the Comment are limited to those arising under the U.S. Constitution or federal statutes.</p> |
| <p>[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.</p>  | <p>[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. <del>Participation in judicare programs and acceptance</del> <a href="#">Acceptance</a> of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.</p>  | <p>Comment [7] is based on Model Rule 6.1, cmt. [7]. The reference to "judicare programs" has been deleted because there are few such programs in California.</p>   |
| <p>[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal</p>   | <p>[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession, <a href="#">or that are designed to increase access to justice</a>. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging</p>   | <p>Comment [8] is based on Model Rule 6.1, cmt. [8]. The references to programs designed to increase access to justice has been added because of the California's well-documented needs in this area. See also Explanation of Changes for paragraph (b)(3).</p>   |

| <p align="center"><b><u>ABA Model Rule</u></b></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>   | <p align="center"><b><u>Commission's Proposed Rule*</u></b></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service Comment</b></p>  | <p align="center"><b><u>Explanation of Changes to the ABA Model Rule</u></b></p> |
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| <p>system or the profession are a few examples of the many activities that fall within this paragraph.</p>  | <p>in legislative lobbying to improve the law, the legal system or the profession, <a href="#">or to increase access to justice</a> are a few examples of the many activities that fall within this paragraph.</p>  |  |
| <p>[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.</p> | <p>[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.</p> | <p>Comment [9] is identical to Model Rule 6.1, cmt. [9].</p>                     |
| <p>[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.</p>   | <p>[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.</p>   | <p>Comment [10] is identical to Model Rule 6.1, cmt. [10].</p>                   |

| <p align="center"><u>ABA Model Rule</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service<br/>Comment</b></p>                           | <p align="center"><u>Commission's Proposed Rule*</u></p> <p align="center"><b>Rule 6.1 Voluntary Pro Bono Publico Service<br/>Comment</b></p>              | <p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>  |
|--|--|--|
| <p>[11]Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.</p> | <p>[11]Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.</p> | <p>Comment [11] is identical to Model Rule 6.1, cmt. [11].</p>   |
| <p>[12]The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.</p>  | <p>[12]The responsibility set forth in this Rule is not <del>intended to be enforced</del><u>enforceable</u> through disciplinary process.</p>             | <p>Comment [12] is based on Model Rule 6.1, cmt. [12]. The word “enforceable” has been substituted for “intended to be enforced” to emphasize that a lawyer’s failure to achieve the number of hours of service suggested by the Rule is not a basis for discipline.</p> |

**Rule 6.1: Voluntary Pro Bono Publico Service**  
(Commission's Proposed Rule – Draft 3 (3/23/10) – COMPARED TO PCD [#2] (11/28/09))

Every lawyer, as a matter of professional responsibility, should provide legal services to those unable to pay. A lawyer should provide or enable the direct delivery of at least ~~(50)-50~~ hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the ~~(50)-50~~ hours of legal services without expectation of compensation other than reimbursement of expenses to:
  - (1) persons of limited means or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
  - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

- (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
- (3) participation in activities for improving the law, the legal system or the legal profession, or increasing access to justice.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

**COMMENT**

- [1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.
- [2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities,

<sup>1</sup> **Drafters' Note:** The brackets around "50" have been removed from the Model Rule version, which is only a recommended number of hours.



including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

- [3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in a qualified legal services program under Business and Professions Code section 6213 and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals under paragraph (a)(1) or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means under paragraph (a)(2). The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.
- [4] Because service must be provided without compensation, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section.
- [5] While it is preferable that a lawyer fulfill his or her annual responsibility to perform pro bono services through activities described in paragraphs (a)(1) and (2), the lawyer's commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory

or regulatory restrictions may prohibit or impede government and public sector lawyers ~~and judges~~<sup>2</sup> from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers ~~and judges~~ may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

- [6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims, claims under the California Fair Employment and Housing Act, and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.
- [7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.
- [8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession, or that are designed to increase access to justice. Serving on bar association

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<sup>2</sup> **Drafters' Note:** Reference to "judges" in this Rule have been stricken in response to the comments of the State Bar's Standing Committee on the Delivery of Legal Services ("SCDLS").

committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession, or to increase access to justice are a few examples of the many activities that fall within this paragraph.

- [9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.
- [10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.
- [11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.
- [12] The responsibility set forth in this Rule is not enforceable through disciplinary process.

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter                                  | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment   | RRC Response  |
|-----|--|-----------------------|-----------------------------|----------------|---|---|
| 1   | Anonymous                                  | A                     |                             |                | Although commenter did not specifically reference this rule, she expressed her support for all the rules contained in Batch 6.  | No response required.   |
| 6   | California Commission on Access to Justice | A                     |                             |                | <p>The California Commission on Access to Justice strong supports proposed rule 6.1. We believe that its inclusion will go a long way toward achieving the goal of establishing a fair and equitable justice system. By emphasizing the professional obligation of all lawyers, and providing a framework for pro bono service, the new rule should result in substantially increased legal assistance being made available to vulnerable individuals throughout our state.</p> <p>There is one change that we think would strengthen this rule and avoid unnecessary confusion. As you are aware, there is more than one definition of pro bono. The one in Model Rule 6.1 is different from the one promoted by the national Pro Bono Institute, which is followed by most large firms across the country. Both of those definitions are different from the pro bono resolution adopted in California by the Board of Governors, and used in many of our State Bar activities over the past 30 years.</p> | <p>No response required.</p> <p>The Commission disagrees. While large law firms play a important role in the delivery of pro bono legal services, other lawyers in smaller and solo practice also provide considerable pro bono service. The Commission specifically considered and approved this broader definition of pro bono service. One Commission member who endorsed legal services for those who cannot afford to pay, also expressed his belief that attorneys who devote their services for the social good should be included in the definition of pro bono and that their service should count. This is not intended to dilute or diminish the</p> |

<sup>1</sup> A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment   | RRC Response   |
|-----|-----------|-----------------------|-----------------------------|----------------|---|--|
|     |           |                       |                             |                | <p>We believe that the confusion that might exist because of these different definitions can be avoided if we eliminate part of subsection (b)(1), and recommend that everything after “civil liberties or public rights” be eliminated. In other words, section (b)(1) would now read:</p> <p style="padding-left: 40px;">provide any additional services through:</p> <p style="padding-left: 80px;">(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights;</p> <p>The deleted section offers an alternative suggestion for how the “additional” pro bono service can be provided, and the main disagreement among the various pro bono definitions has to do with how the “additional” pro bono obligation can be fulfilled. By limiting (b)(1) to legal services at no fee, or a reduced fee, and by expanding it beyond straight legal aid work to include civil rights, civil liberties and public rights, this section would offer an additional type of service that lawyers can offer while fulfilling their pro bono obligation that stays quite true to the true need for pro bono. Only lawyers can offer legal help for low-income, vulnerable</p> | <p>Commission’s recognition that Access to Justice is the primary goal. Although the Commission considered whether to include specific activities such as Law Day, mediation, MCLE, among others, the Commission approved inclusion of these concepts.</p> |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter  | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment   | RRC Response   |
|-----|--|-----------------------|-----------------------------|----------------|---|--|
|     |  |                       |                             |                | <p>Californians, and we believe that any broader definition of pro bono would undermine the important need of addressing the legal needs of the most vulnerable among us.</p> <p>This definition is within the definition used by the Pro Bono Institute, and we do want to avoid adopting any rule that causes confusion (and possibly the result that less pro bono will be done by large firms.)</p>   |  |
| 8   | California Young Lawyers Association (CYLA) Executive Committee and Pro Bono Committee | D                     |                             |                | <p>The California Young Lawyers Association's (CYLA) Executive Committee and Pro Bono Committee oppose the addition of proposed rule 6.1, "Voluntary Pro Bono Service," to the Rules of Professional Conduct of the State Bar of California. While CYLA actively encourages and supports pro bono service amongst its members through various efforts as an organization, we believe the rule is duplicative and misplaced as an amendment to the Rules of Professional Conduct.</p> <p>CYLA encourages pro bono activity through co-sponsored trainings with legal aid organizations that prepare CYLA members and others for pro bono opportunities across the state. In addition, CYLA supports pro bono activity by publicizing pro bono opportunities to our members on our website at</p> | <p>The Commission disagrees. Although CYLA "actively encourages and supports pro bono service," this does not mean that the rule is duplicative or misplaced. The Commission, after lengthy deliberations, concluded that including the rule in the proposed Rules of Professional Conduct is appropriate. CYLA's goals and activities are not in conflict with the rule, which has been endorsed by Pro Bono organizations and the California Access to Justice Commission.</p> |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment  | RRC Response   |
|-----|-----------|-----------------------|-----------------------------|----------------|--|--|
|     |           |                       |                             |                | <p><a href="http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10105&amp;id=10610">http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10105&amp;id=10610</a>.</p> <p>CYLA is committed to promoting and facilitating the completion of 50 hours of pro bono service per year by each of its members.</p> <p>Currently, there are three pro bono standards in California, all of which are aspirational. California Business and Professions Code section 6073 encourages lawyers to provide pro bono legal services and in the alternative to provide financial support to organizations providing free legal services. The California State Bar's Board of Governors Pro Bono Resolution sets forth an aspirational standard for pro bono service that exceeds the standard proposed in rule 6.1. Finally, the Pro Bono Institute Law Firm Challenge urges law firms with more than 50 lawyers to aspire to meet pro bono service targets. The addition of proposed rule 6.1 is duplicative and unnecessary.</p> <p>Moreover, the placement of proposed rule 6.1 in the Rules of Professional Conduct of the State Bar of California is inappropriate. The Rules of Professional Conduct are attorney conduct rules the violation of which subject an</p> | <p>The Commission has considered and included language from the Board of Governors resolution. Notwithstanding other aspirational goals that support and encourage pro bono service reflected by CYLA, the Pro Bono Institute and others, the overwhelming and pressing issues of Access to Justice justify inclusion of this rule and comments.</p> |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter   | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment   | RRC Response  |
|-----|---|-----------------------|-----------------------------|----------------|---|---|
|     |   |                       |                             |                | attorney to discipline. The proposed rule is aspirational and states in Comment 12, that "the responsibility set forth in this Rule is not enforceable through disciplinary process." An aspirational goal is misplaced within the Rules of Professional Conduct and is better located in a formal policy statement or Board of Governors' resolution.  |   |
| 7   | Committee on Professional Responsibility and Conduct ("COPRAC") | A                     |                             |                | <p>COPRAC supports adoption of proposed Rule 6.1. While several members of our committee are sympathetic to the view of the Commission's minority and question whether this aspirational statement should be included in the rules, the majority supports the Rule. Given the importance of our professional obligation to improve access to justice, and recognizing the enormous unmet need for counsel for persons of limited means, we favor adoption of the Rule.</p> <p>Recognizing, however, that there remains some controversy about including this Rule with other rules which are obviously concerned with potential disciplinary issues, we have four suggestions for changes that would make it clearer that Rule 6.1 is aspirational.</p> <p>1. We would retain the ABA language in the</p> | <p>The Commission agrees with the majority of COPRAC's members who support the proposed rule.</p> <p>The Commission responds to COPRAC's suggested revisions as follows:</p> <p>1. The Commission considered the word "aspire to"</p> |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment  | RRC Response   |
|-----|-----------|-----------------------|-----------------------------|----------------|--|--|
|     |           |                       |                             |                | <p>opening paragraph stating that lawyers are to “aspire to” provide pro bono services. We think this is sufficiently important to be included in the text of the rule.</p> <p>2. We recommend incorporating the language of Comment [12] into the body of the Rule.</p> <p>3. We would also change Comment [12] to state that the rule is not enforceable through the “disciplinary process or otherwise.”</p> <p>4. We would preface the last sentence of Comment [12] with “Notwithstanding Rule 1.0(b)(2),”.</p> <p>By making very clear that this rule is different from most of the other rules, the Commission need not further address other concerns raised by COPRAC members regarding the terminology in the Rule which is, in some parts, somewhat vague and unclear. (For</p> | <p>but substituted “every lawyer, as a matter of professional responsibility, should” to convey this concept. The Commission concluded it was appropriate to recognize that this Rule derives from a lawyer’s professional responsibilities to the justice system.</p> <p>2. The Commission discussed moving Comment [12] into the body of the Rule but determined that placing the provision in the Comment achieved the same effect.</p> <p>3. While the Commission has included a statement that the rule is not enforceable through the disciplinary process, “or otherwise” has not been included. COPRAC has offered no example of any other possible means or risk of enforcement, or explained, if such means exist, how a disciplinary rule could provide immunity from its application.</p> <p>4. The Commission disagrees with the commenter’s suggestion. Including a reference to proposed Rule 1.0(b)(2), which provides “[a] wilful violation of these Rules is a basis for discipline,” would add nothing to the sentence’s substance.</p> |



**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter                         | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment  | RRC Response   |
|-----|-----------------------------------|-----------------------|-----------------------------|----------------|--|--|
|     |                                   |                       |                             |                | example, eligibility for group representation in (b)(1) is not well-defined.) Since no one would be subject to punishment for an incorrect interpretation of the Rule, we agree that retention of the imprecise ABA language is appropriate. |  |
| 5   | Office of the Chief Trial Counsel | D                     |                             |                | This is a noble goal, but it does not belong in a rule of professional conduct since it is merely advisory and not enforceable. It dilutes the rest of the rules. The Comments have the same problem.  | The Commission disagrees. Some form of the rule has been adopted in a substantial majority of states. Access to Justice is an overwhelming problem in California and including proposed Rule 6.1 (and Comments), in the rules of professional conduct will have no effect on the remainder of the disciplinary rules.  |
| 4   | Orange County Bar Association     | D                     |                             |                | We support adoption of the minority's view to leave this aspirational statement that lawyers should strive to provide pro bono legal services out of the disciplinary-based rules being considered.  | The Commission disagrees. In recommending the adoption of this Rule, the Commission recognizes the overwhelming need for Access to Justice in California, and this rule supports a means of accomplishing it. Although the Board of Governors' Resolution expresses this policy, many members of the bar are unaware of its existence. This Rule will be a stronger policy statement if it is approved by the Supreme Court. Given the repeated statements by Presiding Justice George regarding Access to Justice issues, and the findings of the Commission on Access to Justice, it is likely that the Supreme Court would look favorably upon such a rule. |
|     |                                   |                       |                             |                | If the Commission decides to adopt this Rule,  | The Commission disagrees that the older version of   |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment  | RRC Response  |
|-----|-----------|-----------------------|-----------------------------|----------------|--|---|
|     |           |                       |                             |                | <p>we urge the Commission to utilize the 1983 ABA Model Rule language for proposed Rule 6.1. This older version of the Model Rule promoting pro bono service not only encapsulates the overall intent of the ABA's current Model Rule (and the California Board of Governors' 2002 Pro Bono Resolution), but it also artfully avoids the imposition of the type of hourly and financial commitments that the minority view of the proposed Rule found to be either economically unacceptable, or simply not attainable, for some practitioners:</p> <p>“A lawyer should render public interest service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.”</p> <p>This is a noble goal, but it does not belong in a rule of professional conduct since it is merely advisory and not enforceable. It dilutes the rest of the rules. The Comments have the same problem.</p> | <p>Model Rule 6.1 is preferable. The Commission considered and voted on specific aspects of pro bono service including Law Day activities, MCLE instruction, and mediation and arbitration activities. These examples offer attorneys a broad range of activities beyond the direct provision of legal services and financial support.</p> <p>The Commission disagrees. Members of the Commission recognize the overwhelming need for Access to Justice in California, and this rule supports a means of accomplishing it, whether or not it is enforceable as a disciplinary rule. Such a rule presents a strong policy statement consistent with comments expressed by Presiding Justice George regarding Access to Justice issues, as well</p> |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter  | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment  | RRC Response  |
|-----|--|-----------------------|-----------------------------|----------------|--|---|
|     |  |                       |                             |                |  | as the findings of the Commission on Access to Justice. It is likely that the Supreme Court would look favorably upon such a rule.  |
| 2   | San Diego County Bar Association Legal Ethics Committee                | A                     |                             |                | We approve the new rule in its entirety.   | No response required.   |
| 3   | Santa Clara County Bar Association                                     | D                     |                             |                | We recommend against including this as a disciplinary rule. Our Association fully supports encouraging lawyers to provide pro bono services to persons of limited means. However, this rule is hortatory in nature and is not a rule of conduct that can or should be subject to discipline.   | The Commission disagrees. As the rule states in its title, it sets forth the parameters of "Voluntary" Pro Bono Service. Although this rule will not subject an attorney to discipline, it nevertheless sets forth an important principle that every attorney should contribute to Access to Justice.   |
| 9   | State Bar Standing Committee on the Delivery of Legal Services (SCDLS) | M                     |                             |                | <p>1. All but a handful of states have adopted some form of ABA Model Rule 6.1 and the time is ripe for California to adopt an aspirational rule that encourages pro bono participation. SCDLS supports an aspirational pro bono rule but we have significant concerns about the definition of pro bono used in this Proposed Rule.</p> <p>2. There are already two other definitions of "pro bono" in wide use in California. The first is the national Pro Bono Institute's (PBI) definition, and the second is the definition set forth in the State Bar Pro Bono Resolution. SCDLS believes it is critical for the State Bar</p> | <p>1. The Commission agrees with SCDLS's members who support the proposed rule.</p> <p>2. The Commission appreciates the concerns the commenter expresses but does not believe that the Commission's recommendation to adopt a modified version of the Model Rule definition of pro bono will necessarily result in the consequences the commenter foresees. The Commission specifically considered and approved this broader definition of</p> |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph    | Comment  | RRC Response  |
|-----|-----------|-----------------------|-----------------------------|-------------------|--|---|
|     |           |                       |                             | 6.1(a)            | <p>of California to maintain a consistent and unified voice with respect to pro bono, and introducing a third definition of pro bono that is broader than both the Resolution definition and the PBI definition is likely to cause confusion and divert attention from the key goal here, which is to encourage more pro bono activity for people of limited means and related to issues of significant public importance.</p> <p>3. In 6.1(a), delete “a substantial majority of the” and replace with “at least.” SCDLS believes 50 hours of pro bono legal services should be the minimum as stated in the Pro Bono Resolution.</p> | <p>pro bono service. The added categories of service, which are derived primarily from the Model Rule, do not exclude the provision of legal services directly to persons of limited means or to organizations “in matters designed to address the needs of persons of limited means.” On the contrary, this aspirational Rule expressly states that every lawyer should provide a “substantial majority” of the “at least” 50 hours of service in the activities that the commenter apparently believes should be the sole focus of the Rule. The Commission expressly approved the concept that lawyers time devoted to the social good should also come within this Rule and believe that encouraging such activities will not result in causing confusion or diverting attention away from the principal goals of the Rule as implied in paragraph (a): the promotion and realization of access to justice for those in need.</p> <p>3. The Commission did not make the suggested change. The introductory clause of the Rule already provides that a lawyer should provide “at least” 50 hours. Of that total of at least 50 hours, paragraph (a) provides that a “substantial majority” should be devoted to the activities identified therein. See also response in paragraph 2.</p> |
|     |           |                       |                             | 6.1(b)(1)(2) &(3) | <p>4. Change 6.1(b)(1), (2) and (3) to reflect either the PBI definition or the State Bar Pro Bono Resolution definition. If the Commission</p>  | <p>4. The Commission did not make the suggested change. See response in paragraph 2, above. The Commission also notes that a member of the</p>  |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment  | RRC Response   |
|-----|-----------|-----------------------|-----------------------------|----------------|--|--|
|     |           |                       |                             | Comment [2]    | wants to retain the ABA Model Rule language as proposed, SCDLS strongly encourages the Rules Revision Commission to seek input on the pro bono definition from stakeholders.<br>5. In Comment [2], replace “a substantial majority” with “all.” Also, SCDLS recommends adding language with respect to “legislative lobbying” and “administrative rule making” that relates those activities to increasing access to justice for persons of limited means or addressing other systemic issues on behalf of clients of limited means. | <p>Commission on Access to Justice was present during the deliberations of this Rule and provided input.</p> <p>5. The Commission did not make the requested change. See response in paragraph 3., above.</p> <p>6. The Commission did not make the requested change. The Commission does not understand how the proposed change in language will insulate a lawyer from a violation of proposed Rule 5.4.</p> <p><b>7. The Commission agrees and has made the suggested change.</b></p> <p>8. The Commission has not made the suggested changes. Please see response in paragraph 2, above.</p> |
|     |           |                       |                             | Comment [4]    | 6. In Comment [4], retain the last sentence and replace “to contribute an appropriate portion of such fees” with “to make a contribution.” Donation of statutory attorneys’ fees to the legal services organization through which the attorney is doing pro bono work has been a widely accepted practice in California and nationally. By not linking the contribution to the award of attorneys’ fees, there is no fee sharing issues and thus no violation of Proposed Rule 5.4.  |  |
|     |           |                       |                             | Comment [5]    | 7. In Comment [5], delete both references to “judges.” Proposed Rule 6.1 applies only to lawyers.  |  |
|     |           |                       |                             | Comment [6]    | 8. In Comment [6], SCDLS supports language that is consistent with its recommendation to change (b)(1), (2) and (3), which is to reflect   |  |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment   | RRC Response  |
|-----|-----------|-----------------------|-----------------------------|----------------|---|---|
|     |           |                       |                             | Comment [7]    | either the PBI definition or the State Bar Pro Bono Resolution definition.<br>9. In Comment [7], SCDLS supports language that is consistent with its recommendation to change (b)(1), (2) and (3), which is to reflect either the PBI definition or the State Bar Pro Bono Resolution definition.   | 9. The Commission has not made the suggested changes. Please see response in paragraph 2, above.  |
|     |           |                       |                             | Comment [8]    | 10. In Comment [8], SCDLS supports language that is consistent with its recommendation to change (b)(1), (2) and (3), which is to reflect either the PBI definition or the State Bar Pro Bono Resolution definition. Additionally, serving on bar association committees, taking part in Law Day activities, acting as a legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are not considered pro bono activities and should not be included in the Comments. | 10. The Commission has not made the suggested changes. Please see response in paragraph 2, above.   |
|     |           |                       |                             | Comment [9]    | 11. In Comment [9], SCDLS supports the Comments but recommends inserting "at least" before "reasonably equivalent" per the Pro Bono Resolution (see Recommendations to Proposed Rule 6.1(a), above).  | 11. The Commission did not make the suggested change. See response in paragraph 3, above. In addition, inserting "at least" in this context of making a financial contribution is unnecessary. Lawyers are urged in the introductory paragraph to of the Rule provide "at least" 50 hours. A lawyer proceeding under this Comment might determine that he or she would have provided 60 hours of service if feasible. The contribution therefore would be "reasonably |

**Rule 6.1 Voluntary Pro Bono Service  
[Sorted by Commenter]**

TOTAL = \_\_ Agree = \_\_  
Disagree = \_\_  
Modify = \_\_  
NI = \_\_

| No. | Commenter | Position <sup>1</sup> | Comment on Behalf of Group? | Rule Paragraph | Comment   | RRC Response  |
|-----|-----------|-----------------------|-----------------------------|----------------|---|---|
|     |           |                       |                             | Comment [11]   | In Comment [11], after "law firms," add "corporate and governmental legal departments, and other employers of lawyers" and delete "in the firm." SCDLS believes the Comment should be broadened to include lawyers in other practice settings and not limited to law firms. | equivalent" to the value of 60 hours. The term "at least" would be unnecessary.<br><br>The Commission did not make the requested change. The definition of "law firm" in proposed Rule 1.0.1 already encompasses the organizations listed by the commenter. |

The California Young Lawyers Association's (CYLA) Executive Committee and Pro Bono Committee oppose the addition of proposed rule 6.1, "Voluntary Pro Bono Service," to the Rules of Professional Conduct of the State Bar of California. While CYLA actively encourages and supports pro bono service amongst its members through various efforts as an organization, we believe the rule is duplicative and misplaced as an amendment to the Rules of Professional Conduct.

CYLA encourages pro bono activity through co-sponsored trainings with legal aid organizations that prepare CYLA members and others for pro bono opportunities across the state. In addition, CYLA supports pro bono activity by publicizing pro bono opportunities to our members on our website at [http://www.calbar.ca.gov/state/calbar/calbar\\_generic.jsp?cid=10105&id=10610](http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10105&id=10610). CYLA is committed to promoting and facilitating the completion of 50 hours of pro bono service per year by each of its members.

Currently, there are three pro bono standards in California, all of which are aspirational. California Business and Professions Code section 6073 encourages lawyers to provide pro bono legal services and in the alternative to provide financial support to organizations providing free legal services. The California State Bar's Board of Governors Pro Bono Resolution sets forth an aspirational standard for pro bono service that exceeds the standard proposed in rule 6.1. Finally, the Pro Bono Institute Law Firm Challenge urges law firms with more than 50 lawyers to aspire to meet pro bono service targets. The addition of proposed rule 6.1 is duplicative and unnecessary.

Moreover, the placement of proposed rule 6.1 in the Rules of Professional Conduct of the State Bar of California is inappropriate. The Rules of Professional Conduct are attorney conduct rules the violation of which subject an attorney to discipline. The proposed rule is aspirational and states in Comment 12, that "the responsibility set forth in this Rule is not enforceable through disciplinary process." An aspirational goal is misplaced within the Rules of Professional Conduct and is better located in a formal policy statement or Board of Governors' resolution.

Based on the foregoing, the CYLA Executive Committee and Pro Bono Committee oppose the addition of proposed rule 6.1, "Voluntary Pro Bono Service," to the Rules of Professional Conduct of the State Bar of California.

**Disclaimer :**

**This position is only that of the California Young Lawyers Association. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.**





# THE STATE BAR OF CALIFORNIA

OFFICE OF LEGAL SERVICES

Standing Committee on the Delivery of Legal Services

Chair, Maureen Alger, Palo Alto

180 Howard Street, San Francisco, California 94105

Telephone (415) 538-2267 Fax (415) 538-2552

March 12, 2010

Audrey Hollins  
Office of Professional Competence, Planning and Development  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Re: Proposed Rule 6.1, Voluntary Pro Bono Publico Service

Dear Ms. Hollins:

The State Bar Standing Committee on the Delivery of Legal Services (SCDLS) has reviewed proposed Rule 6.1 and offers the attached comments. SCDLS very much appreciates the opportunity to comment and commends the Rules Revision Commission for their efforts.

Should you have any questions about the attached comments, please do not hesitate to contact Maureen Alger, SCDLS Chair, at [malger@cooley.com](mailto:malger@cooley.com) or 650-843-5201, Tiela Chalmers, SCDLS Vice Chair, at [tchalmers@sfbar.org](mailto:tchalmers@sfbar.org) or 415-782-9000, ext. 8117, or me at 415-538-2267 or [sharon.ngim@calbar.ca.gov](mailto:sharon.ngim@calbar.ca.gov).

## Disclaimer

**This position is only that of the State Bar of California's Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.**

Sincerely,

*Sharon Ngim*

Sharon Ngim  
Staff Liaison to the Standing Committee on the  
Delivery of Legal Services

Attachment

## **SCDLS Comments on Proposed Rule 6.1: Voluntary Pro Bono Publico Service**

The State Bar's Standing Committee on the Delivery of Legal Services (SCDLS) strongly supports the inclusion of an aspirational rule on pro bono in the Rules of Professional Conduct of the State Bar of California. SCDLS believes that even an aspirational rule not intended to be the basis for discipline would be valuable because it would provide formal recognition in California that all lawyers have a professional responsibility to perform pro bono work.

### Background

SCDLS began working with COPRAC in late 2001 to develop a two-part approach to increasing pro bono participation in California. The first component was to revise and strengthen the State Bar's 1989 Pro Bono Resolution by (1) acknowledging leadership for pro bono at the judicial, executive and legislative levels, (2) linking the resolution to existing authority, and (3) adding a financial contribution option to the resolution. The Board of Governors adopted these revisions in June 2002.

The second component was to work with the Commission for the Revision of the Rules of Professional Conduct on the possibility of adopting an aspirational pro bono rule similar to ABA Model Rule 6.1 but with "California adjustments." In a letter dated April 4, 2002 to COPRAC, SCDLS observed that "re-publication of a revised Board resolution will not garner the far-reaching and sustained attention as a policy articulated in the Rules of Professional Conduct, even an aspirational policy not subject to discipline." Now eight years later, SCDLS welcomes the opportunity to comment on proposed Rule 6.1 as the Commission nears completion of its work.

### Comments Regarding the Proposed Rules

Pro bono participation and financial support by lawyers are needed now more than ever in California. The need for legal services to the poor continues to increase especially in the current economic recession. However, funding for legal services at the state level remains tenuous at best as California faces a multi-billion dollar deficit in 2009 - 2010 and 2010 - 2011, and interest on lawyers trust accounts continues to drop, from \$22 million in 2008 -2009 to \$7 million in 2009 - 2010. All but a handful of states including California have adopted some form of ABA Model Rule 6.1 and the time is ripe for California to adopt an aspirational rule that encourages pro bono. SCDLS supports an aspirational pro bono rule. We have significant concerns, however, about the definition of pro bono used in this proposed rule.

There are already two other definitions of “pro bono” in wide use in California. The first is the national Pro Bono Institute’s (“PBI”) definition, which is employed in the [Pro Bono Law Firm Challenge](#) that many large California law firms have signed, committing these firms to provide pro bono legal services to low-income and disadvantaged individuals and families and non-profit groups in an amount equal to 5 or 3 percent of the firm's total billable hours. Many localities have adopted a local version of the pledge using the same definition. Many large firms use the Pro Bono Institute definition not only in California, but nationally, and have adopted firm-wide pro bono policies, pro bono approval procedures, and reporting mechanisms based on this definition. Firms have indicated that they would not be able to monitor or report on pro bono activity based on a different definition because of the degree to which the Pro Bono Institute definition has been institutionalized within their firms.

The second definition of pro bono already in use in California is the definition set forth in the [State Bar Pro Bono Resolution](#) that this organization adopted in 1989 and reaffirmed in 2002. This definition is used by local bar associations, IOLTA funded legal services and pro bono programs, and State Bar certified lawyer referral services throughout the state.

SCDLS strongly advocates that proposed Rule 6.1 employ either the definition of pro bono set forth in the Resolution or the PBI Law Firm Pro Bono Challenge, as opposed to a modified version of the ABA Model Rule. The Resolution definition and the PBI definition were both intentionally drafted to be narrower than the definition in the Model Rule, excluding certain categories of volunteer legal work that are not focused on providing legal services to those with limited means or addressing issues of significant public importance. Both the Resolution and the PBI definitions are consistent with criteria for the [President’s Pro Bono Service Awards](#) established by the Board of Governors in 1983 as well as the [Wiley W. Manuel Certificate for Pro Bono Legal Services](#). (This certificate program was created shortly after the 1989 Resolution was adopted to recognize California attorneys who contribute at least 50 hours of pro bono service annually.)

SCDLS believes it is critical for the State Bar of California to maintain a consistent and unified voice with respect to pro bono, and introducing a third definition of pro bono that is broader than both the Resolution definition and the PBI definition is likely to cause confusion and divert attention from the key goal here, which is to encourage more pro bono activity for people of limited means and related to issues of significant public importance.

### Recommendations on the Proposed Rule

1. (a): Delete “a substantial majority of the” and replace with “at least”. SCDLS believes 50 hours of pro bono legal services should be the minimum as stated in the Pro Bono Resolution.
2. Change (b) (1), (2) and (3) to reflect either the PBI definition or the State Bar Pro Bono Resolution definition . If the Commission wants to retain the ABA Model Rule language as proposed, SCDLS strongly encourages the Rules Revision Commission to seek input on the pro bono definition from stakeholders.

## COMPARISON OF PRO BONO DEFINITIONS

| <a href="#">Proposed Rule 6.1</a>   | <a href="#">PBI Pro Bono Law Firm Challenge</a>  | <a href="#">State Bar Pro Bono Resolution</a>   |
|---|--|---|
| <p>(b) provide any additional services through:</p> <p>(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise in appropriate;</p> <p>(2) delivery of legal services at a substantially reduced fee to persons of limited means, or</p> <p>(3) participation in activities for improving the law, the legal system or the legal profession, or increasing access to justice.</p> | <p>7. As used in this statement, the term pro bono refers to activities of the firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice and consisting of</p> <p>(a) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means;</p> <p>(b) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; and</p> <p>(c) the provision of legal assistance to charitable, religious, civic, community, governmental or educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.</p> | <p>(1) ...to provide or enable the direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not for-profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice;</p> |

## Recommendations on the Comments to the Proposed Rule

Comment [1]: SCDLS supports the proposed language.

Comment [2]: Replace “a substantial majority” with “all.” Also, SCDLS recommends adding language with respect to “legislative lobbying” and “administrative rule making” that relates those activities to increasing access to justice for persons of limited means or addressing other systemic issues on behalf of clients of limited means.

Comment [3]: SCDLS supports the proposed language.

Comment [4]: Retain the last sentence and replace “to contribute an appropriate portion of such fees” with “to make a contribution”. Donation of statutory attorneys’ fees to the legal services organization through which the attorney is doing pro bono work has been a widely accepted practice in California and nationally. By not linking the contribution to the award of attorneys’ fee, there is no fee sharing issue and thus no violation of proposed Rule 5.4.

Comment [5]: Delete both references to “judges”. Proposed Rule 6.1 applies only to lawyers.

Comment [6]: SCDLS supports language that is consistent with its recommendation to change (b)(1), (2) and (3), which is to reflect either the PBI definition or the State Bar Pro Bono Resolution definition.

Comment [7]: SCDLS supports language that is consistent with its recommendation to change (b)(1), (2) and (3), which is to reflect either the PBI definition or the State Bar Pro Bono Resolution definition.

Comment [8]: SCDLS supports language that is consistent with its recommendation to change (b)(1), (2) and (3), which is to reflect either the PBI definition or the State Bar Pro Bono Resolution definition. Additionally, serving on bar association committees, taking part in Law Day activities, acting as a legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are not considered pro bono activities and should not be included in the comments.

Comment [9]: SCDLS supports the comments but recommends inserting “at least” before “reasonably equivalent” per the Pro Bono Resolution (see Recommendations to Proposed Rule, 1. above).

Comment [10]: SCDLS supports the proposed language.

Comment [11]: After “law firms”, add “corporate and governmental legal departments, and other employers of lawyers” and delete “in the firm”. SCDLS believes the comment should be broadened to include lawyers in other practice settings and not limited to law firms.

Comment [12]: SCDLS supports the proposed language.

## Disclaimer

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Table of Contents

July 1, 2006 Kehr E-mail to Sondheim, cc Difuntorum & KEM: ..... 1  
August 27, 2009 McCurdy E-mail to Snyder, cc Chair, Vapnek, Tuft & Staff: ..... 3  
October 21, 2009 Snyder E-mail to McCurdy, cc KEM:..... 5  
October 21, 2009 KEM E-mail to Snyder, cc McCurdy:..... 5  
October 22, 2009 Snyder E-mail to KEM:..... 5  
October 22, 2009 McCurdy E-mail to Snyder, cc KEM:..... 5  
October 24, 2009 Snyder E-mail to KEM:..... 6  
October 27, 2009 KEM E-mail to Snyder:..... 6  
October 27, 2009 Snyder E-mail to Drafters (Foy, Julien, Ruvolo, Voogd), cc Chair & Staff:..... 6  
November 1, 2009 Sapiro E-mail to RRC: ..... 7  
November 3, 2009 Sondheim E-mail to RRC: ..... 7  
November 3, 2009 Sondheim E-mail to RRC: ..... 7  
November 6, 2009 Kehr E-mail to RRC:..... 8  
November 9, 2009 KEM E-mail to Difuntorum, cc McCurdy & Lee: ..... 8  
December 1, 2009 KEM E-mail to Drafters, cc Chair & Staff: ..... 9  
December 15, 2009 Difuntorum E-mail to McCurdy, cc Lee, Yen, Andrew Tuft & KEM: ..... 10  
March 10, 2010 McCurdy E-mail to Drafters (Snyder, Foy, Julien & Ruvolo), cc Chair, Vice-Chairs & Staff: ..... 11  
March 11, 2010 KEM E-mail to Drafters, cc Chair, Vice-Chairs & Staff: ..... 12  
March 15, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 12  
March 15, 2010 Ruvolo E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff: ..... 12  
March 15, 2010 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 12  
March 15, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 13  
March 16, 2010 KEM E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:..... 13  
March 17, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 14  
March 17, 2010 Tuft E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff: ..... 14  
March 17, 2010 Foy E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:..... 14  
March 17, 2010 Snyder E-mail to Foy, cc Drafters, Chair, Vice-Chairs & Staff:..... 14  
March 17, 2010 Foy E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:..... 15  
March 18, 2010 McCurdy E-mail to Snyder, cc KEM: ..... 15  
March 18, 2010 KEM E-mail to Snyder & McCurdy:..... 15  
March 18, 2010 Snyder E-mail to McCurdy & Difuntorum, cc Chair, Lee & KEM: ..... 15  
March 18, 2010 KEM E-mail to McCurdy & Difuntorum, cc Drafters, Chair & Staff: ..... 15  
March 18, 2010 KEM E-mail to McCurdy & Difuntorum: ..... 16  
March 19, 2010 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:..... 16  
March 20, 2010 Kehr E-mail to RRC: ..... 16  
March 22, 2010 McCurdy E-mail to Snyder & KEM, cc Difuntorum: ..... 17  
March 22, 2010 KEM E-mail to McCurdy, cc Snyder & Difuntorum: ..... 17  
March 22, 2010 Sapiro E-mail to RRC List: ..... 17  
March 22, 2010 KEM E-mail to Snyder:..... 17  
March 23, 2010 Snyder E-mail to KEM:..... 18  
March 23, 2010 KEM E-mail to Snyder:..... 18

**RRC – Rule 6.1 [MR 6.1]  
E-mails, etc., -- Revised (3/24/2010)**

|  |    |
|--|----|
| March 23, 2010 KEM E-mail to RRC: .....      | 18 |
| March 23, 2010 Melchior E-mail to RRC: ..... | 19 |
| March 23, 2010 Sondheim E-mail to RRC:.....  | 19 |

**March 10, 2010 McCurdy E-mail to Drafters (Snyder, Foy, Julien & Ruvolo), cc Chair, Vice-Chairs & Staff:**

Rule 6.1 Drafting Team (SNYDER, Foy, Julien, Ruvolo):

This message provides the assignment background materials for Rule 6.1 on the March agenda. **The assignment deadline is Thursday, March 18, 2010.**

This message includes the following draft documents:

1. public comment compilation (full text of comment letters received to date – public comment period ends March 12th)
2. public commenter chart (a staff prepared chart with the synopsis of comments in draft form and open third column for the codrafters recommended response to the comments)
3. dashboard (public comment version)
4. introduction (public comment version – this should be updated if there are any recommended amendments to the rule)
5. Model Rule comparison chart (public comment version)
6. clean rule text (public comment version – use this clean version to make any changes to the rule, do not edit the rule in the Model Rule comparison chart)
7. state variations excerpt (this does not require any work)

The codrafters are assigned to review any written comments received and to prepare a revised draft rule and comment, if any changes are recommended. The “RRC Response” column on the public commenter chart should be filled in with the drafting team’s recommended action in response to the public comment. In addition, we need the drafting team to prepare a completed dashboard, and to update, as needed, the Introduction, and the Explanations in the third column of the Model Rule comparison chart based on the revised rule. Please do not edit the redline-middle column of the Model Rule comparison chart. Staff is available to generate a new redline of the post public comment rule to the Model Rule and will assist in completing the middle column of the Model Rule comparison chart.

We are looking for submissions that are as close to final form as possible. As noted above, please feel free to send us your revised clean version of the proposed rule and we will generate a redline comparison to the Model Rule for the comparison chart. Of course, you will still need to complete the Explanation column of the Model Rule Comparison Chart. Lastly, if among the drafters there is a minority view, please consider including the minority view in your draft Introduction.

**Attached:**

- RRC - [6-1] - Dashboard - ADOPT - DFT2 (03-10-10).doc
- RRC - [6-1] - Compare - Introduction - DFT1 (11-28-09)KEM-LM.doc
- RRC - [6-1] - Compare - Rule & Comment Explanation - DFT2 (11-28-09) LM.doc
- RRC - [6-1] - Rule - DFT2 (11-28-09)-CLEAN-LAND.doc
- RRC - [6-1] - Public Comment Complete - REV (03-10-10).pdf
- RRC - [6-1] - Public Comment Chart - By Commenter - DFT1 (03-10-10)AT.doc
- RRC - [6-1] - State Variations (2009).pdf



**March 11, 2010 KEM E-mail to Drafters, cc Chair, Vice-Chairs & Staff:**

To assist you in preparing the materials for the 3/26-27/10 meeting, I've attached the following for this Rule:

1. My cumulative meeting notes, revised 11/27/09.
2. Full E-mail compilation, revised 1/5/10.

Please let me know if you have any questions.

**March 15, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:**

Attached is a proposed draft of the Public Comment Chart. See my additions in yellow. There would be no revisions to the rule. Please let me know what you think.

**Attached:**

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2 (03-15-10)DS.doc

**March 15, 2010 Ruvolo E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:**

Looks fine to me.

**March 15, 2010 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:**

I've attached a zip file with copies of the additional public comments received since the earlier assignment messages were sent out last week. The file name for each comment letter include the rule number.

We are in the process of updating the public comment compilations and public commenter charts to add these comments and I will be sending those documents out to each drafting team as we update them. But, in the meantime, if you are working on your assignment between now and then, please refer to the attached letters, and go ahead and add the entries into the chart provided in my earlier message.

**Attached:**

Zip file containing:

F-2010-384 Jill Smith BHFS [3.9].pdf

F-2010-386 CBIA [3.9].pdf

**F-2010-387 CA Commission on Access Justice [6.1].pdf**

**F-2010-388 Public Interest Clearinghouse [6.1].pdf**

F-2010-389 Latham Watkins [3.9].pdf

F-2010-390 Brett Jolley [3.9].pdf

F-2010-391 BASF [1.18].pdf

F-2010-392a State Bar OCTC [1.0.1].pdf

F-2010-392b State Bar OCTC [1.11].pdf

F-2010-392c State Bar OCTC [1.17].pdf

F-2010-392d State Bar OCTC [1.18].pdf

F-2010-392e State Bar OCTC [3.9].pdf  
F-2010-392f State Bar OCTC [4.1].pdf  
F-2010-392g State Bar OCTC [4.4].pdf  
**F-2010-392h State Bar OCTC [6.1].pdf**  
F-2010-392i State Bar OCTC [6.2].pdf  
F-2010-392j State Bar OCTC [8.2].pdf  
**F-2010-393 CYLA [6.1].pdf**  
F-2010-394a David Ivester [3.9].pdf  
F-2010-394b David Ivester [4.1].pdf  
F-2010-395 Louise Renne [3.9].pdf  
F-2010-396a US Attorney's Office [1.11].pdf  
F-2010-396b US Attorney's Office [4.1].pdf  
F-2010-397a COPRAC [1.0.1].pdf  
F-2010-397b COPRAC [1.4.1].pdf  
F-2010-397c COPRAC [1.11].pdf  
F-2010-397d COPRAC [1.17].pdf  
F-2010-397e COPRAC [1.18].pdf  
F-2010-397f COPRAC [3.9].pdf  
F-2010-397g COPRAC [4.1].pdf  
F-2010-397h COPRAC [4.4].pdf  
**F-2010-397i COPRAC [6.1].pdf**  
F-2010-397j COPRAC [6.2].pdf  
F-2010-397k COPRAC [6.5].pdf  
F-2010-397l COPRAC [8.2].pdf

**March 15, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:**

Lauren sent additional comments today. Therefore, I've included them in this revised Commenter chart.

I would like you to pay particular attention to the Comment by the California Commission on Access to Justice. They enthusiastically support such a rule. However, I do not agree with their proposed revision to the rule. Please see my proposed response.

Included in this chart is COPRAC, OCTC and CYLA, too.

Please let me know what you think of my suggested responses.

**Attached:**

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.1 (03-15-10)DS.doc

**March 16, 2010 KEM E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:**

I've reviewed your chart and have made some suggested revisions. I've attached the following:

1. Public Comment Chart, Draft 2.2 (3/16/10)DS-KEM, redline, compared to Draft 2.1 (10/15/10)DS, the draft you circulated last night.
2. Public Comment Chart, Draft 2.2 (3/16/10)DS-KEM, clean.

**Notes & Comments:**

The only substantive disagreement I have is with your recommendation to follow COPRAC's suggestion #4. See page 2 and footnote 2 in the redline version.

I've also resorted the chart alphabetically.

Please let me know if you have any questions.

**March 17, 2010 Snyder E-mail to Drafters, cc Chair, Vice-Chairs & Staff:**

Attached is the proposed Commenter chart which includes my work and Kevin's additional suggestions. I'm sorry we could not get this to you earlier. However, as you may be aware, we received a number of the Comments only yesterday after my completion of a prior draft.

Note, that the CYLA comment is apparently still unofficial. We need to hear something about that soon or it should be taken out. Hopefully, Randy or Lauren will let us know today whether it should be included and discussed.

Please get back to me as soon as possible, and let me know what your comments. I will finalize the remainder of the documents by tomorrow morning. **The assignment deadline is tomorrow, Thursday, March 18, 2010.**

**Attached:**

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.3 (03-17-10)DS-KEM.doc

**March 17, 2010 Tuft E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:**

I am fine with your responses to the public comments to this rule.

**March 17, 2010 Foy E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:**

Thank you for your careful and excellent drafting. My only suggestion is that we use a single, uniform response to all of the comments expressing the view that the rule is solely aspirational and therefore should not be included among what are otherwise disciplinary rules. Right now, there are several different responses varying slightly in detail and emphasis, but I think it would be better to use a single, broadly worded response, e.g., the first of the responses to the Orange County Bar Association comments (line 8).

**March 17, 2010 Snyder E-mail to Foy, cc Drafters, Chair, Vice-Chairs & Staff:**

Thanks for reviewing this and providing your comments. I had originally thought of repeating the same response over and over, but thought it better not to sound stilted - like a canned response. While some of the commenters seemed to have similar criticisms that it is "aspirational" or "hortatory" - each differed slightly. I thought it might be better to tailor the responses since it also flows as a document from beginning to end and builds on the Access to

Justice concept depending on how detailed the comment is. Do you feel strongly about this? I'm getting short of time to make revisions because I'm working on a rush project for work.

**March 17, 2010 Foy E-mail to Snyder, cc Drafters, Chair, Vice-Chairs & Staff:**

I don't feel strongly about the uniformity of response, though I'm not sure we can assume commenters and others who review the comment chart will read from beginning to end and therefore appreciate the development of the Commission's response through the document. Fine to go with your current draft.

**March 18, 2010 McCurdy E-mail to Snyder, cc KEM:**

Dom, In follow-up to our conversation this morning concerning the CYLA comment, we expect to receive word tomorrow, so unfortunately, for purposes of our mailing today, any reference to the CYLA comment in any of your materials should be removed. However, we should save a version of your materials with the references to the CYLA comment in it because we will likely circulate the updated materials prior to the meeting once we receive the go ahead. If you have only have a reference to it in the commenter chart then send me a soft copy and I can save a version with it and create a new version omitting it.

**March 18, 2010 KEM E-mail to Snyder & McCurdy:**

I'll update the chart and save the responses to the CYLA comments. I should have you the materials shortly.

**March 18, 2010 Snyder E-mail to McCurdy & Difuntorum, cc Chair, Lee & KEM:**

I think this is in as "final" a form as I can make it. Please let me know if there's anything else I need to do. I hope I've done it correctly.

**March 18, 2010 KEM E-mail to McCurdy & Difuntorum, cc Drafters, Chair & Staff:**

I've attached the following, all in Word:

1. Dashboard, Draft 3 (3/18/10). Minor changes highlighted in yellow.
2. Introduction, Draft 2 (3/18/10). I've added a section called "public comment".
3. Rule & Comment Comparison Chart, Draft 2 (11/28/09). No change.
4. Rule, Draft 2 (11/28/09). This is the public comment draft. No changes are recommended.
5. Public Comment Chart, Draft 2.4 (3/18/10). Because the official CYLA comment has not yet been submitted, I've deleted the CYLA row from the Chart (but have save it in Draft 2.3 (3/17/10).)

Notes and Comments:

1. Only one comment. Given the negative public comment received from CYLA, OCTC, OCBA and SCCBA, we should consider identifying this Rule as "very controversial". At present it is listed as moderately controversial.

Please let me know if you have any questions.

**March 18, 2010 KEM E-mail to McCurdy & Difuntorum:**

Dom and I sent in dueling e-mails a few minutes apart on Rule 6.1. I've communicated w/ her and we decided you should use ALL the documents that are attached to my e-mail instead of the corresponding ones attached to hers. The time of my e-mail is 11:20 a.m.

Please let me know if you have any questions.

**March 19, 2010 McCurdy E-mail to Drafters, cc Chair, Vice-Chairs & Staff:**

The March meeting agenda materials should be arriving at your offices or places of residence today.

The e-mail comment deadline for these items is **Wednesday, March 24<sup>th</sup>**.

The following items that are not included in your package and should also be reviewed in preparation for the meeting are attached to this message:

1. The CYLA comment on Rule 6.1 is now "official" the only addition is a disclaimer at the end of the letter (a public commenter chart with the CYLA entry is also attached); and
2. A late comment on Rule 6.1 from the State Bar Standing Committee on the Delivery of Legal Services (SCDLS).

***Attached:***

RRC - [6-1] - CYLA Public Comment - Official - F-2010-393.pdf

RRC - [6-1] - SCDLS - Legal Services - Public Comment - F-2010-398.pdf

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.3 (03-17-10)DS-KEM2.doc

**March 20, 2010 Kehr E-mail to RRC:**

Here are my comments on these materials:

1. Why does the Rule place the number 50 within parentheses? I don't see any explanation of this. I suspect this simply copies the MR where I imagine the parentheses was used to indicate that the number might be varied in the adoption process.

2. I'm not certain that I understand the point of COPRAC's comment 4 on agenda p. 472, but if adopted it might be read as turning 6.1 into a disciplinary rule. That seems to me to be another reason to not follow this recommendation.

**March 22, 2010 McCurdy E-mail to Snyder & KEM, cc Difuntorum:**

This message provides an updated Public Commenter Chart for 6.1 adding a synopsis for the comment from the Standing Committee on Delivery of Legal Services - SCDLS (highlighted in green). We added it to the last version of the chart submitted by Kevin with message below. Please let me know if you would like me to circulate this to the entire committee now, or if you would like to take to update the RRC response column first, prior to my re-circulating this to the members.

Attached:

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.4 (03-22-10)DS-KEM.doc

**March 22, 2010 KEM E-mail to McCurdy, cc Snyder & Difuntorum:**

To avoid confusion, I've revised what you just sent by inserting the CYLA comments & the RRC responses to them that appeared in an earlier Draft, but were taken out when we were advised the CYLA comment was "unofficial." According to your 3/19 e-mail, the substance of the "official" is identical to the substance of the "unofficial," so we can just put them back in.

The attached file therefore is the one Dom and I should work with. We need to provide responses to SCDLS's comment. The file is named:

RRC - [6-1] - Public Comment Chart - By Commenter - DFT2.5 (03-22-10)DS-KEM.doc

The next file you get from us will be 2.6! I hope.

**March 22, 2010 Sapiro E-mail to RRC List:**

1. I disagree with the commenters who would make this into a disciplinary rule. It would be like resurrecting the draft: if not universal, it would breed contempt for our rules.
2. Did we vote to put the minimum standard at fifty hours per year? If so, I would not put it in parentheses in the introductory paragraph or in paragraph (a).

**March 22, 2010 KEM E-mail to Snyder:**

As we discussed earlier, I've attached Draft 2.6 of the Public Comment Chart. Please review my responses. I don't think we need to go into too much detail on this. I'd like to get it out to the Commission members for their responses and/or suggestions.

If you agree with the responses I drafted, let me know and I'll make any necessary changes to the Rule (I think the only change I recommend is to delete "judges" in Comment [5].) In addition, given that most commenters don't like this -- it's either not appropriate for a disciplinary rule (e.g., the bar associations, OCTC) or it is not sufficiently narrow (CYLA, SCDLS) -- we should probably redo the Dashboard and designate it as "very controversial". I can also do a quick revision of the Introduction to include a brief summary of public comment. Let me know what you think.

**March 23, 2010 Snyder E-mail to KEM:**

I made a couple of "tweaks" which you are free to accept or reject. I essentially agree with all of the responses, and with the deletion of "judges" in Comment [5]. Here's a redline. Let me know what you think.

**March 23, 2010 KEM E-mail to Snyder:**

I agree w/ your tweaks. I'll revise the Dash and Intro and sent them w/ the revised PC Chart to Lauren for distribution to the Commission.

**March 23, 2010 KEM E-mail to RRC:**

I've attached to this e-mail a single, scaled PDF file that includes the following:

1. Dashboard, Draft 3.1 (3/23/10);
2. Introduction, Draft 2.1 (3/23/10);
3. Rule & Comment Chart, Draft 3 (3/23/10);
4. Rule, Draft 3 (3/23/10), redline, compared to Pub Comment Draft [#2] (11/28/09);
5. Public Comment Chart, Draft 2.6 (3/23/10)DS-KEM.

I have also attached the full public comment of the State Bar's Standing Committee on the Delivery of Legal Services ("SCDLS") and the Cal. Young Lawyer's Ass'n ("CYLA"). These comments were not included in the public comment chart in the agenda materials, the former because the drafters did not receive it until yesterday and the latter because we were advised that the comment that had been submitted was unofficial and that we should hold off consideration until we received an official CYLA comment. Please read the notes and comments below, which should help you with your review of the attached.

**Notes & Comments:**

1. Our apologies for sending this to you at this late hour but the public comment by two apparent stakeholders is deserving of careful consideration at our meeting. CYLA objects to having any rule at all. The drafters believe, as noted by Toby Rothschild at our November meeting, that an RPC will make the pro bono policy more accessible and will also have more impact as coming from the Supreme Court.
2. SCDLS takes the position that the definition of pro bono the RRC has recommended is too broad and should be narrowed along the lines of the BOG Resolution and the Pro Bono Institute's definition. The drafters believe that the Model Rule definition, as revised in our rule, is appropriate. Please see Response to SCDLS in the Public Comment Chart, paragraph 2.
3. The principal document to review is the public comment chart. New matter that has been added since the agenda mailing is shaded in gray.

**RRC – Rule 6.1 [MR 6.1]  
E-mails, etc., -- Revised (3/24/2010)**

4. Dashboard. The drafters recommend that level of controversy for this rule be changed to "very controversial". Given the positions of SCDLS and CYLA, this rule needs to be discussed by RAC at its May 2010 meeting and a policy decision made by the BOG.
5. Introduction. Additions have been made to the Public Comment section, in redline.
6. Rule & Comment Chart. The parentheses around "50" have been removed and reference to "judges" in Comment [5] stricken.
7. Rule, Draft 3, compared to PCD. Same as item #6, above.
8. Public Comment Chart, Draft 2.6. As noted in 1 & 2 above, the comments from SCDLS and CYLA, and the suggested responses of the RRC thereto, have been added.

Please let me know if you have any questions.

**March 23, 2010 Melchior E-mail to RRC:**

While I continue to support the minority position fully, here's a nit: at p. 7 you mean Chief Justice George, not Presiding Justice.

**March 23, 2010 Sondheim E-mail to RRC:**

1. Revised Commenter Chart, p. 2: The last sentence of the RRC Response seems awkward. I don't understand the relationship between the "specific activities" and "these concepts." What concepts?
2. Revised Commenter Chart, p. 8: See item 1, supra.