

PRO BONO IN A GLOBAL PANDEMIC



The Democratic Ideals Behind Rule 6.1

Equal justice is a shared American value

“Equal Justice Under Law” - U.S. Supreme Court Building

No state shall “deny to any person within its jurisdiction the **equal protection of the laws.**” - 14th Amendment

“With liberty and justice for all” - Pledge of Allegiance

The Justice Gap & Rule 6.1

The equal justice ideal cannot be realized without access to legal services - to lawyers in particular

- 80% of the legal needs of the poorest Virginians go unmet
- Most Virginia civil cases include at least one unrepresented party.
 - Both parties represented in only 1% of GDC cases, 6% of J&DR cases, 38% of Circuit Court cases
- There is an association between poverty and lack of representation.
- There is a significant disparity in outcomes between represented and unrepresented litigants (in favor of those represented by counsel).

Rule 6.1 establishes goals for pro bono service with equal justice ideals in mind and with the hope of increasing access to legal services for those unable to afford an attorney.

Beyond the Justice Gap

Economic & Human Impacts of COVID-19

- ▶ Loss of job and reduction in income for many Virginians
 - ▶ Total number of claims filed 1,508,365
 - ▶ Challenges accessing unemployment benefits
 - ▶ Lack of paid sick leave to care for themselves and family members
- ▶ Housing and food insecurity
 - ▶ Eviction moratoriums helping, but not all landlords are playing by the rules. Moratoriums will expire but economic hardship will continue.
- ▶ Childcare & school-related challenges
 - ▶ Affordability - loss of income makes it difficult to pay for care
 - ▶ Access - centers shutting down for weeks to contain exposures, some childcare options closing permanently
 - ▶ Schools closed for long periods of time and parents having to navigate virtual learning
 - ▶ Virtual learning and social distancing requirements impacting access to services (special education needs, meals, after-school programs, etc.)
- ▶ Increase in domestic violence incidents - strained essential services not able to respond to the demand (health services, helplines, shelters, etc.)

Virginia Rules of Professional Conduct (Rule 6.1)

- ▶ A lawyer should render at least two percent per year of the lawyer's professional time to pro bono public legal services. Pro bono publico services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services.
- ▶ A law firm or other group of lawyers may satisfy their responsibility collectively under this Rule.
- ▶ Direct financial support of programs that provide direct delivery of legal services to meet the needs described in (a) above is an alternative method for fulfilling a lawyer's responsibility under this Rule.

Model Rules:

A lawyer should be mindful of the deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest. . . .

MODEL R. PROF'L. CONDUCT, *Preamble*, ¶ ¶ 4, 6 (quoted in pertinent part).

RULE 6.1 Voluntary Pro Bono Publico Service

Rule 6.1

Not mandatory but...

▶ COMMENT [1]

Every lawyer, regardless of professional prominence or professional work load, has a personal responsibility to provide legal services to those unable to pay, and a personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.

- The Court cares about the Justice Gap and encourages you to do pro bono to address it.
- It's the right thing to do.
- There are personal and professional benefits to be captured.
- It's also easier than you might think.

Poverty Law

Providing low bono or pro bono legal assistance to someone who lacks the financial resources to hire a lawyer. (Comment 2)

- ▶ Legal aid clients
- ▶ Those with insufficient resources to pay an attorney, even if above legal aid guidelines
- ▶ Structured programs provide benefits, but ad hoc service does count
 - ▶ Helping a neighbor, a friend of a colleague, a fellow parishioner, etc.
- ▶ Examples of structured programs
 - ▶ Operation Healing Forces (OHF)
 - ▶ Greater Richmond Bar Foundation
 - ▶ Virginia Free Legal Answers
 - ▶ Any programs outlined in *Free and Low Cost Legal Resources in Virginia* pamphlet.

Civil Rights Law

Providing nominal fee or free legal assistance to assert or protect the rights of individuals in which society has an interest. (Comment 3)

- ▶ No requirement that client is unable to afford an attorney
- ▶ Professional services for victims of discrimination based on race, sex, age or handicap (“typical examples”) or any other protected class.
- ▶ Service to veterans, active-duty military, etc. if you are asserting or protecting a specific right extended to an individual because of their inclusion in one of these groups.
 - ▶ Look for a federal law that is designed to protect the rights of the specific group in question and ask, “are those rights being denied?” (Servicemembers Civil Relief Act, Vietnam Era Veterans Readjustment and Assistance Act, GI Bill, veterans' benefits, etc.)
 - ▶ General civil legal assistance to veterans and service members not related to specific protective rights extended to these groups probably doesn't count in this category.
- ▶ Structured Programs
 - ▶ ACLU of Virginia
 - ▶ Disability Law Center of Virginia
 - ▶ Housing Opportunities Made Equal (FHA and ADA claims)

Public Interest Law

Providing pro bono or sliding scale legal services to religious, charitable or civic groups in efforts such as...
(Comment 4)

- ▶ No requirement that the public interest group is unable to afford counsel
- ▶ Must be some connection between your legal service and a public service being provided by the organization
 - ▶ Setting up a shelter for the homeless, operating a hotline for battered spouses, providing public service information
- ▶ Service can be to the religious, civic, or charitable organization of your choice so long as the group is providing a public service in the spirit of the rule
- ▶ Structured programs
 - ▶ Northern Virginia Pro Bono Law Center
 - ▶ Greater Richmond Bar Foundation - Pro Bono Clearinghouse
- ▶ Be wary of providing legal service to a nonprofit if you're a member of the BOD (role confusion, loss of independence of professional judgment, conflicts of interest, competence, etc.)
 - ▶ Three-part webinar presentation "Before You Say Yes to Serving on a Board" -
https://www.vsb.org/site/sections/pro_bono/webinar_recordings

Other Volunteer Activities

Engaging in volunteer activities designed to increase the availability of pro bono (Comment 5).

- ▶ Does not require provision of legal services

Examples:

- ▶ Training and mentoring lawyers who have volunteered to take pro bono cases
- ▶ Helping recruit lawyers to do pro bono
- ▶ Drafting training materials that pro bono attorneys will use to assist clients in any of the three categories discussed
- ▶ Developing informational materials to promote pro bono programs
- ▶ Performing intake or screening services for legal aid or other legal services programs that serve clients consistent with Rule 6.1 (a) priorities.
- ▶ Serving on the [VSB Special Committee on Access to Legal Services](#) or other boards, committees or bodies that increase access to pro bono services on the state or local level (Access to Justice Commission or its many committees, VBA Pro Bono Council, local or specialty bar association or firm pro bono/public service committees)

Serving on a nonprofit board generally doesn't count unless it is somehow related to advancing pro bono service (so legal aid board would count). Also, volunteering to coach your kid's little league team doesn't count, even though that's admirable and great for the community.

Gateways to Rule 6.1 Pro Bono:

The Virginia State Bar offers Virginia.freelegalanswers.org, an ABA online Q&A portal that allows eligible client users to ask discrete civil legal questions for volunteer attorneys to answer.

VSB Conferences and Sections offer special projects and partnerships (YLC Wills for Heroes, SLC Senior Lawyers Handbook, CLSBA *So You're 18* materials, etc.)

Firms in Service in Richmond, Tidewater, and Northern Virginia recruit more attorneys to help, as does the VBA Pro Bono Council.

Gateways to Rule 6.1 Pro Bono:

Independent nonprofits/pro bono referral programs

- Greater Richmond Bar Foundation
- JustNeighbors
- CancerLINC
- The Community Tax Law Project
- Drive-To-Work
- Project for the Empowerment of Survivors

Benefits of working with structured nonprofits

- Pre-screened clients
- Support system (training, staff resources, policies & procedures to bolster transparency)

Gateways to Rule 6.1 Pro Bono Include:

Legal aid programs: non-profit law firms that provide free legal information, advice and representation in civil cases to low-income individuals and families. They have full-time staff attorneys, but they all require volunteer lawyers as well.

Some bars operate their own pro bono programs: **Prince William Country Bar Association**, and the **Fairfax Bar** are prominent examples.

An online portal, ***Justiceserver.org***, provides legal aid and other partner organization case opportunities across the state.

Pro Bono Program

Client and Attorney Costs

- **Clients** do not pay any legal fees
- **Clients** may be asked to reimburse for expenses such as medical records or publication costs, but often only if the program recovers funds on their behalf
- **Many programs provide malpractice insurance** on a primary basis to pro bono volunteers and reimburse expenses
- **Active VSB members** can, and should, **voluntarily report** their annual pro bono hours on their dues statement; reporting first became possible this fall.

The Pro Bono Gap & Rule 6.1

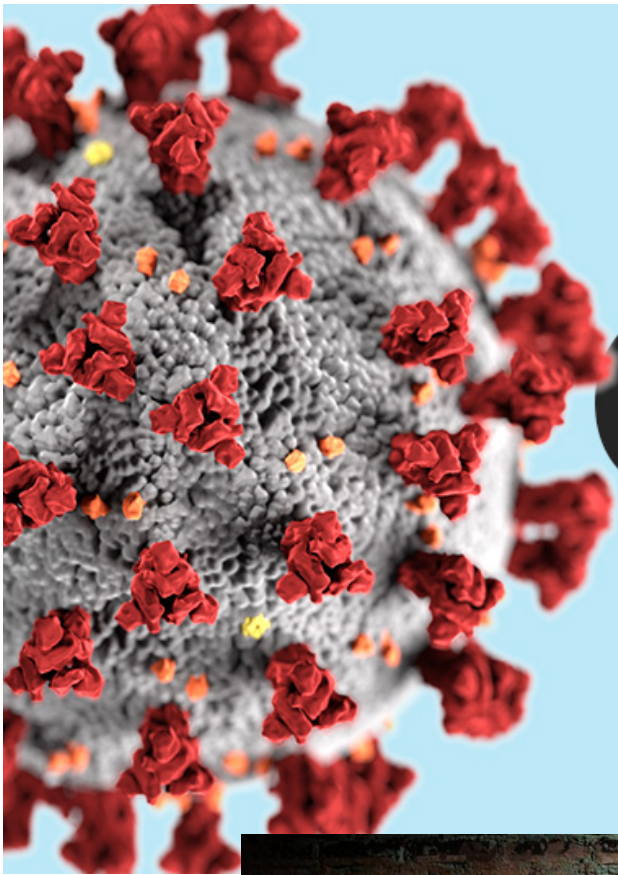
- ▶ Despite the aspirational goals outlined in **Rule 6.1**, we have a significant pro bono gap in Virginia.
- ▶ In the 2020 dues renewal season Virginia lawyers voluntarily reported pro bono contributions made in the previous year (2019 to 2020):
 - ▶ 400,000+ hours
 - ▶ \$1,500,000+ financial contributions

If we had 100% participation with this aspirational goal, we would be providing over 900,000 hours of pro bono!

Rule 6.1 Aspirations

Why are we falling short?

- ▶ Time constraints
- ▶ Commitment to family obligations
- ▶ Lack of skills or practice experience in the practice area needed
- ▶ Competing billable hour expectations and other firm policies
- ▶ The cost and financial burden on their practice
- ▶ The lack of administrative support
- ▶ The lack of malpractice insurance
- ▶ Fear of getting in over one's head - too much work for too long



COVID-19

CORONAVIRUS PANDEMIC





**KEEP
CALM
I'VE GOT YOU
COVERED**

Legal Services programs are responding to meet the needs of clients, legal services staff, and volunteers!



Virginia
Free Legal
Answers



Program Highlight

Virginia Free Legal Answers

So what is it?

- ▶ Part of a fairly new initiative undertaken by the ABA pro Bono Committee to build and maintain a fifty state interactive website to provide online pro bono assistance to low-income citizens.
- ▶ Online pro bono Q&A portal
- ▶ Anonymous, flexible, customizable, and limited in scope
- ▶ Volunteers covered by ABA malpractice insurance
- ▶ More than 40 states have signed up for the project to date.
- ▶ Virginia site launched August 22, 2016.



What are your barriers to pro bono service?

▶ Time constraints?

- ▶ *Manage your time as you prefer; it's as easy as answering an email.*
- ▶ *Do it anytime, from anywhere with an internet connection.*
- ▶ *Jump online before the kids wake up, after they've gone to sleep, or while you're having your morning coffee.*
- ▶ *Average question takes 20 minutes or less to answer.*

▶ Lack of skills or practice experience in poverty law?

- ▶ *You pick the questions you feel comfortable answering or have time to research and answer.*
- ▶ *Tons of training resources available through the state administrator.*

What are your barriers to pro bono service?

- ▶ **Competing billable hour expectations and policies?**
 - ▶ *Sign on when your workload is more manageable.*
 - ▶ *Questions are always available so no need to anticipate your availability or fear getting locked into a long-term commitment.*
 - ▶ *You can ignore the queue entirely during busy times in your practice.*
- ▶ **Cost and financial burden a concern?**
 - ▶ *Provided to the VSB for free! Dues don't pay for the service. Users don't pay a fee.*
 - ▶ *Limited-scope engagement means no expenses that would be associated with trying a case (experts, court reporters, travel, etc.)*

What are your barriers to pro bono service?

- ▶ Lack of administrative support?

- ▶ *Administered by the ABA and supported by VSB director of Access to Legal Services.*

- ▶ No malpractice insurance?

- ▶ *Volunteer attorneys answering questions on the website are covered under ABA/NLADA malpractice policy.*

AND IT'S SAFE!



Masks off!



PJs on!

VA FLA Clients: Pandemic- Related Needs



Program Highlight

- ▶ Increased number of individuals eligible for services due to job loss/income reduction
- ▶ 250% of Federal Poverty Guidelines
 - ▶ Up to \$10,000 in liquid assets
- ▶ Increased demand for services
 - ▶ Housing
 - ▶ Unemployment benefits
 - ▶ Employees rights
 - ▶ Family law
 - ▶ Debtor rights
 - ▶ Domestic violence

VA FLA Response & Related Needs



Program Highlight

- ▶ Utilizing COVID-19 Issue Tags to identify questions related to the pandemic
- ▶ Virtual Response
 - ▶ Increased demand = increased number of open questions
 - ▶ Connect to pro bono work via exclusively online platform
 - ▶ Everyone serving virtually
 - ▶ No client meetings or court appearances
 - ▶ Virtual trainings to support volunteers
 - ▶ COVID-19 guides²⁶ being developed

Sign Up to Help



Program Highlight

- ▶ *Register TODAY*
<https://virginia.freelegalanswers.org/Attorneys/Account/Agreement>
- ▶ *Contact Cris Gantz with questions*
 - ▶ *cgantz@vsb.org*
 - ▶ *804-775-0522*

Legal Aid Society of Eastern Virginia

- ▶ Offices in Norfolk, Hampton, Williamsburg and the Belle Haven serving 6 cities and 7 counties
- ▶ Civil Legal Services (no traffic or personal injury)
- ▶ Eligible client households must be:
 - At or below 125% of the Federal Poverty Guidelines (less than \$16,100/year for 1 person)
 - extended eligibility up to 200% for Seniors and limited housing cases
 - United States Citizens or other Permanent Resident status
 - Living in our Service Area
 - Without Access to the Private Bar or Other Court Appointed Counsel

Priority for Full Representation by Staff- Landlord-Tenant Eviction, Consumer, Domestic Violence, Unemployment, Public Benefits, Family Law matters where a private attorney is involved

Priority for Extended Rep. by Pro Bono Program- Bankruptcies, No-Fault Divorce, Bankruptcy By-Pass for Judgment Proof Debtors;, Adult Guardianships, Adoptions & Wills, Powers of Attorney

Legal Aid Society of Eastern Virginia Pro Bono & Private Attorney Involvement Program

- Collaboration with private attorneys across Hampton Roads to provide additional advice & representation to qualifying individuals.
- To volunteer, please contact
Tricia Batson
Phone (757) 648-1235
triciab@laseva.org



Program Highlight

Helpful Resources (for you and the public)

- ▶ VA Free Legal Answers website
 - ▶ “Attorney Agreement” page (<https://virginia.freelegalanswers.org/Attorneys/Account/Agreement>)
 - ▶ “Frequently Asked Questions from Volunteer Attorneys” page (<https://virginia.freelegalanswers.org/AttorneyFAQ>)
 - ▶ Link to instructional video included on this page
 - ▶ “Training Resources” page (<https://virginia.freelegalanswers.org/TrainingResources>)
- ▶ Access to Legal Services/Pro Bono
 - ▶ Carrico Center for Pro Bono & Public Service webpage (<https://law.richmond.edu/public-service/pro-bono/>)
 - ▶ VSB Access to Legal Services webpage (http://www.vsb.org/site/sections/pro_bono/resources_for_attorneys)
 - ▶ VSB Access to Legal Services Facebook page (<https://www.facebook.com/Virginia-State-Bar-Access-to-Legal-Services-715445355256426/>)
 - ▶ Crista Gantz at cgantz@vsb.org or 804-775-0522
- ▶ Fastcase - available to all members through VSB member page (www.fastcase.com for more information about the service)
- ▶ Self-Help Resources
 - ▶ <http://valegalaid.org>
 - ▶ <http://selfhelp.vacourts.gov>

Other Pro Bono Resources

- ▶ **Virginia Bar Association** - The VBA serves the public through a number of legal advocacy and volunteer service opportunities including the Veterans Initiative and ProsforKids.
http://www.vba.org/?page=how_we_help
- ▶ **Valegalaid.org** - This website is designed for pro se assistance and has helpful resources for pro bono volunteers. <http://www.valegalaid.org/>
- ▶ **VA CLE Pro Bono Portal** - This program provides free, non-credit bearing CLE presentations and materials to pro bono attorneys to assist in specific pro bono cases. This service is also available to legal aid attorneys. Simply create an account, log in, search the online seminars and add programs to your Cart. Repeat as necessary as pro bono cases arise.
https://www.vacle.org/Free_Pro_Bono_Content-pg222.aspx?utm_source=Magnet&utm_medium=Email&utm_campaign=180104ProBono
- ▶ **ProBono.net/va** - This website provides resources for pro bono and legal services attorneys to assist in the representation of low-income and disadvantaged clients. They also offer a Pro Bono Opportunities Guide. <http://www.probono.net/va/>
- ▶ **American Bar Association** - The ABA's Standing Committee on Pro Bono and Public Service offers many resources to volunteer lawyers including Pro Bono rules and policies, a clearinghouse library and a directory of pro bono service providers in Virginia.
http://www.americanbar.org/groups/probono_public_service.html

COVID-19 Resources

- ▶ Virginia Poverty Law Center: <https://vplc.org/learn/covid-19-civil-legal-response-in-virginia/>
- ▶ Virginia State Bar
 - ▶ Updates and Safety Measures: https://www.vsb.org/site/news/item/covid_19_safety_measures
 - ▶ Legal Aid During COVID-19: https://www.vsb.org/site/news/item/legal_resources_for_virginians_covid_19
 - ▶ COVID-19 Volunteer Interest Form: <https://forms.gle/phjVntThR9RrxEzm9>
- ▶ ABA Task Force: https://www.americanbar.org/groups/legal_services/the-aba-coronavirus--covid-19--task-force/
- ▶ Legal Aid Disaster Resource Center (LADRC.org)

[LADRC.org](https://www.ladrc.org/) will serve as a national, multi-partner site to effectively meet the civil legal needs of disaster survivors.

The website also features a members-only help center that includes password-protected resources and a “Knowledge Bank” of experienced disaster legal aid attorneys. To access these features, you can visit the [LADRC Help-Center](https://www.ladrc.org/help-center/) and request an account.



Lawyers are Uniquely Positioned to Fill the Justice Gap

“Lawyers have a license to practice law, a monopoly on certain services. But for that privilege and status, lawyers have an obligation to provide legal services to those without the wherewithal to pay, to respond to needs outside themselves, to help repair tears in their communities.”

- The Hon. Ruth Bader Ginsburg

Any
Questions