

New Supreme Court Rule Allows CLE Credit for Pro Bono Representation

By Christy F. Kane, Jeffrey E. Richardson and Martin A. Stern

The Louisiana Supreme Court adopted a new rule on Feb. 25 that gives Louisiana attorneys the opportunity to earn CLE credit for pro bono legal representation. This important change was the result of a proposal by the authors of this article and other volunteers with Louisiana Appleseed, a nonprofit organization that works with attorneys and other professionals to increase access to education, opportunity and justice. With this new rule, which became effective on May 1, Louisiana joins the vanguard of states addressing the chronic and severe need for pro bono legal assistance.

The Need for Pro Bono

One of the most pressing societal problems is that legal services are priced beyond the reach of the disadvantaged. Nationally, it is reported that approximately 80 percent of the legal needs of the poor are unmet.¹ As the United States Supreme Court noted 50 years ago, "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." *Griffin v. Illinois*, 351 U.S. 12, 19 (1956). Increasing the number of pro bono hours worked by Louisiana lawyers would attack this problem at its root cause.

Louisiana Rules of Professional Conduct Rule 6.1 provides that every lawyer "should aspire to render at least 50 hours of pro bono publico legal services per year." This sentence was taken from, and is identical to, a sentence in the American Bar Association (ABA) Model Rule of Professional Conduct 6.1 (2002). The official comment to the ABA Model Rule explains the drafters' intent: "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."

Unfortunately, however, in 2012-13, less than 10 percent of Louisiana attorneys reported to the Louisiana State Bar Association (LSBA) that they had performed pro bono work. No state makes pro bono hours mandatory for every attorney,² but some states have explored creative ways to encourage attorneys to do more pro bono work.

Encouraging Pro Bono Through CLE Credit

One method of encouraging pro bono work (adopted by some states) is to give CLE credit to attorneys who perform such work. According to a survey by the ABA Standing Committee on Pro Bono and Public Service, the number one reason lawyers give for not performing pro bono work is a lack of time.³ Reducing the need to obtain CLE credit in exchange for pro bono work helps to address some of this burden.

Currently, 10 other states award CLE credit for pro bono representation. While the specifics of the rule vary from state to state, the general practice has been to give

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- ▶ Credit for teaching an approved CLE activity, ranging from three to six hours of CLE credit for each one hour of teaching. Rule XXX, Rule 3, Reg. 3.7.
- ▶ Serving as a bar examiner (eight hours of CLE credit) or an assistant bar examiner (six hours of CLE credit). Rule XXX, Rule 3, Reg. 3.10.
- ▶ Attending Louisiana State Law Institute meetings. One hour of CLE credit is awarded for two hours of participation, not to exceed 10 hours of CLE credit. Rule XXX, Rule 3, Reg. 3.12.
- ▶ Serving as a member of the Louisiana Legislature, Secretary of the Louisiana Senate or Clerk of the House of Representatives. Eight hours of CLE credit. Rule XXX, Rule 3, Reg. 3.15.
- ▶ Serving on the Attorney Disciplinary Board (four hours of CLE credit), the Judiciary Commission (four hours of CLE credit), the LSBA Ethics Advisory Committee (one hour of CLE credit) or the LSBA Legal Fee Dispute Resolution Program. Rule XXX, Rule 3, Regs. 3.16, 3.17, 3.18, 3.20.

about one hour of CLE credit for every five or six hours of pro bono work performed, often with a cap of three CLE credits per year.⁴ The approach taken by these 10 states served as a template for Louisiana's new rule.

Louisiana's Regulation 3.21

Louisiana's rules on continuing legal education for attorneys are found in Louisiana Supreme Court Rule XXX. Rule 3 of Rule XXX contains the requirement that each member of the Louisiana Bar obtain 12.5 hours of CLE credit each calendar year. There are many regulations corresponding to Rule 3. Effective May 1, 2015, the Supreme Court added Regulation 3.21:

Credit may also be earned through providing uncompensated pro bono legal representation to an indigent or near-indigent client or clients. To be eligible for credit, the matter must have been assigned to the Member by a court, a bar association, or a legal services or pro bono organization that has as its primary purpose the furnishing of such pro bono legal services and that has filed a statement with the Louisiana Committee on MCLE. A Member providing such pro bono legal representation shall receive one (1) hour of CLE credit for each five (5) hours of pro bono representation, up to a maximum of

three (3) hours of CLE credit for each calendar year. To receive credit, the Member shall submit MCLE Form 6 ("Application for CLE Credit for Pro Bono Services").

The goal of Regulation 3.21, like the similar rules in the 10 other states, is to provide an incentive to attorneys to perform pro bono work. By handling a pro bono matter, the attorney not only provides important legal assistance to the client that the client could not otherwise afford but also has three fewer hours of CLE to worry about (and saves the cost of attending another three hours of traditional CLE). It is a win-win, with the potential to help a large number of individuals in Louisiana who need but cannot afford legal representation.

The Louisiana Committee on Mandatory Continuing Legal Education has drafted MCLE Form 6, and lawyers should consult that form when seeking to take advantage of Regulation 3.21. Another excellent resource for Louisiana lawyers looking to undertake pro bono representation is the LSBA's Access to Justice Committee web page at: www.lsba.org/ATJ/.

But Isn't CLE for Learning?

As this proposal was being drafted, most of the feedback was positive. On the rare occasion that negative feedback was received, it typically came in the form of this question:

CLE is supposed to be for learning about being a better lawyer. By awarding CLE credit for something other than sitting in a classroom, does that take away from the value of CLE?

It is a reasonable question, but, to the contrary, Regulation 3.21 promotes the goals of CLE. While one can learn much in a classroom, one can learn at least as much by doing. As Aristotle wrote around 350 B.C.: "For the things we have to learn before we can do them, we learn by doing them, *e.g.*, men become builders by building and lyre players by playing the lyre; so too we become just by doing just acts, temperate by doing temperate acts, brave by doing brave acts."⁵ It is impossible for an attorney to handle a pro bono representation without learning to be a better lawyer. A lawyer often must either learn or refresh his/her knowledge of an area of the law in order to provide pro bono representation. Moreover, and especially for young lawyers, pro bono representation provides unique opportunities, *e.g.*, communicating directly with clients and explaining options to clients, examining a witness at trial, or otherwise appearing before a judge.

Additionally, although in-person attendance at CLE activities is the typical method of obtaining credits, Louisiana has long provided numerous alternatives. Some of these reflect less traditional ways to obtain legal education, while others are more oriented toward incentivizing lawyers to perform a function integral to the legal profession and its service of society as a whole.

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Like many of these, new Regulation 3.21 falls into both categories; it both represents an alternative way to obtain legal education, while at the same time incentivizing lawyers to perform a function integral to the profession and, indeed, to all of society.

Conclusion

In adopting Regulation 3.21, the Louisiana Supreme Court has provided an additional incentive for Louisiana lawyers to undertake pro bono representation. Louisiana attorneys are encouraged to take advantage of the new rule and, in doing so, assist the state's substantial population of indigent and near-indigent people needing legal services.

FOOTNOTES

1. Evelyn Nieves, "80% of Poor Lack Civil Legal Aid, Study Says," Wash. Post, Oct. 15, 2005.

2. New York has a mandatory pro bono program for new attorneys that went into effect this year. Every applicant to the New York Bar on or after Jan. 1, 2015, who will take the bar exam must complete 50 hours of qualifying, supervised pro bono hours prior to filing an application for admission. Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.16.

3. American Bar Association Standing Committee on Pro Bono and Public Service, "Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers" 25-30 (March 2013), available at: www.americanbar.org/groups/probono_public_service/publications.html.

4. Arizona Supreme Court Rule 45(a)(5), one CLE credit hour for every five hours of pro bono service, cap of five credit hours per year; Colorado Rule of Civil Procedure 260.8, one CLE credit hour for every five hours of pro bono service, cap of nine credit hours every three years; Rule 8(D) of Delaware's Rules of the Commission on Continuing Legal Education, one CLE credit hour for every six hours of pro bono service, cap of six credit hours every two years; Rule 6(D) of the Rules of the Minnesota State Board of Continuing Legal Education, one CLE credit hour for every six hours of pro bono service, cap of six credit hours every three years; 22 N.Y.C.R.R. part 1500.22(j), one CLE credit hour for every two hours of pro bono service, cap of 10 credit hours every two years; Policy 1.19 of Section 1 of the North Dakota CLE Commission Policies, one CLE credit hour for every six hours of pro bono service, cap of three credit hours every three years; Rule X § 5(H) of the Ohio

Supreme Court Rules, one CLE credit hour for every six hours of pro bono service, cap of six credit hours every two years; Tennessee Supreme Court Rule 21 § 4.07(c), one CLE credit hour for every five hours of pro bono service, cap of three credit hours every year; Regulations of the Washington State Board of Continuing Legal Education, Regulation 103(g), six CLE credit hours awarded each year for two hours of pro bono training and four hours of pro bono service; Rule 4(g) of the Rules for Continuing Legal Education of Members of the Wyoming Bar, one CLE credit hour for every five hours of pro bono service, cap of three credit hours each year.

6. Aristotle, *Nicomachean Ethics*, bk. II (W.D. Ross trans.), available at: <http://classics.mit.edu/Aristotle/nicomachaen.2.ii.html>.

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