

STATE BAR OF MONTANA PRO BONO FREQUENTLY ASKED QUESTIONS

*Created by the Justice Initiatives Committee
and approved by the Executive Committee*

1. What defines *pro bono publico* under [Rule 6.1 of the Montana Rules of Professional Conduct](#) and what are some examples that would qualify under the definition?

Rule 6.1 states: Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least (50) hours of pro bono publico legal services per year.

The rule can most easily be explained as a “tiered” approach to describing pro bono publico service.

*Under 6.1(a) a lawyer should provide a **substantial majority** of the (50) hours to*

*(a)(1) **persons of limited means,***

Examples:

1. Representing a person of limited means in a family law matter without an expected fee.
2. Representing a disabled client referred by a pro bono program in a Social Security overpayment.
3. Providing legal advice to a an individual living in poverty at a free neighborhood legal clinic

OR

*(a)(2) to charitable, religious, civic, community, governmental and educational organizations that address **the needs of persons of limited means.***

Examples

1. Preparing incorporation documents for a new nonprofit health care clinic for low income persons
2. Assisting a church in acquiring a zoning variance for a homeless shelter

Note: Serving on the board of a local civic organization would ordinarily *not* qualify under Rule 6.1.

Under 6.1 (b) a lawyer should provide additional services as follows:

(b)(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;

Examples:

1. Representing low-income/elderly persons before the Public Utility Commission regarding a need for lifeline utility services
2. Lobbying the Montana legislature for comprehensive educational services for the disabled

Note: Appearing at the Montana legislature on behalf of an organization at no charge would ordinarily *not* qualify under Rule 6.1, unless that organization's primary purpose is to benefit persons of limited means.

(b)(2) delivery of legal services at a substantially reduced fee to persons of limited means

Examples:

1. Representing a person of limited means in a landlord-tenant issue at a pre-defined rate substantially less than what you would otherwise charge the client in your normal practice.

Note: Providing services to a friend or colleague at a reduced fee would normally *not* qualify, unless that friend or colleague is a person of limited means.

(b)(3) participation in activities for improving the law, the legal system or the legal profession.

Examples:

1. Developing an ADR program designed for Montanans living in poverty
2. Developing a pro bono CLE or mentoring program for new lawyers
3. Serving on the Board of Montana Legal Services Association or another legal nonprofit
4. Recruiting attorneys or raising money for a pro bono program

2. Who are “persons of limited means”? *Rule 6.1 does not specifically define this phrase. That decision is left to the individual program or attorneys. Many programs, such as those funded by the Legal Services Corporation or the Montana Justice Foundation, people living in poverty or “person of limited means” refers to those within 125% of [federal poverty guidelines](#)¹. Clients referred by an organized pro bono project generally have been screened for income eligibility according to the local guidelines. Attorneys accepting independent pro bono cases are encouraged to use the poverty guidelines, but they may also use their own judgment regarding who is a person living in poverty.*

3. Do legal services staff attorneys, public defenders, county attorneys and prosecutors count their work time as pro bono, since they provide free legal services to people living in poverty? *No. Although the services are free to the clients, the attorneys are paid for their work at salaries or with benefits they have accepted. However, if these attorneys provide volunteer legal assistance to the people living in poverty outside their regular work, they may report those hours as pro bono service.*

4. Do legal services to people living in poverty need to be provided through an organized pro bono project to qualify? *In most cases, services do not have to be provided through an organized pro bono project to qualify as pro bono. Many attorneys provide substantial amounts of qualifying pro bono legal services to people living in poverty on an independent basis. There are some situations*

(e.g. Emeritus status) in which pro bono services must be provided to a “qualified” pro bono program.

5. Why is the standard 50 hours? *The 50-hour goal is based on the pro bono standard established by the American Bar Association in 1988. 50 hours represents a little over 2% of an annual full time job.*

6. What happens if an attorney does not satisfy the 50-hour expectation? *Each Montana attorney is expected to provide 50 hours of qualifying services each year. To date, no attorney has faced discipline for failure to comply. For more information about pro bono opportunities, please visit the Montana Supreme Court’s [pro bono webpage](#).” Will be linked.*

7. Are attorneys expected to report their pro bono hours? How is this done?? *There is an annual voluntary pro bono reporting system and each attorney is encouraged to report qualifying hours. Attorneys are asked to report their pro bono service and financial contributions on-line in conjunction with the mandatory IOLTA Compliance Certificate due December 1 of each year. Links to online reporting can be found at the Montana State Bar website at www.montanabar.org.*

8. If substantially reduced fees are received directly from low income clients, do the services provided still qualify under Rule 6.1? *The Rule provides that the **substantial majority** of your pro bono hours should be without expectation of fee. But additional hours providing substantially reduced fee work for people of limited means is included in the second “tier” of the definition. Free and reduced fee services are separated for reporting purposes.*

9. What is the definition of “substantially reduced fee”? *The Rule does not specifically define “substantially reduced fee.” However, Lawyer Referral Services – including Montana - that offer reduced fee panels for people living in poverty, often use \$50-60/hour as the maximum that panel lawyers may charge. Lawyers doing reduced fee*

¹ Federal Poverty Measures - Department of Health and Human Services

work may use that fee or may use their own judgment in setting the fee.

10. Are there services in addition to representing a criminal defendant for free or for a substantially reduced fee that criminal law attorneys may count as pro bono? *Yes, criminal law attorneys can play an important role in “preventive law.” Many pre-teens, juveniles and their families are unfamiliar with the juvenile justice system until they are involved in the system. Community education, e.g., speaking at schools, community centers, etc., about the juvenile justice system counts as pro bono, so long as the audience is predominately comprised of people living in poverty.*

11. What if I accept a client on a fee-paying basis and later determine that, due to the client's income, services should be provided on a pro bono basis? *The definition includes legal services provided “without an expectation of fee.” Attorneys must use their discretion to determine what services are provided “without an expectation of fee.”*

12. What if my employer prohibits outside practice of law? *While some employers still prohibit the outside practice of law in pro bono matters, many employers, such as various government employers, are relaxing such restrictions. The State Bar attempts to work with those who have such restrictions to encourage them to remove or modify them. Attorneys whose employers currently prohibit the outside practice of law are encouraged to participate in the kinds of services that do not constitute the practice of law, such as those included under part (b) of the definition. No attorney is expected to comply with the Rule if absolutely prohibited by the employer. You may not be aware that your employer does in fact have a policy permitting pro bono and outlining the parameters in providing those services. If you aren't sure, check with your employer or visit the [Court's pro bono page](#)² and*

²

http://courts.mt.gov/cao/ct_services/probono/default.mcp

follow the attorney link for available or published policies.

13. Transactional attorneys often provide legal assistance to non-profit organizations such as schools, churches, and social service agencies by doing such things as drafting by-laws, handling contract negotiations, and providing legal advice. Do these services count under the definition? *Yes, where the population benefiting from or comprising the non-profit organization is serving predominately low income people and families. Examples may be legal services provided to Head Start educational program or a provider of social services to the homeless or persons of limited means as outlined under (c) of the Rule.*

14. Are there any other non-litigation services that transactional and other attorneys can provide that count as pro bono under the definition? *Yes. There are many kinds of pro bono opportunities that do not involve litigation or court work that would qualify as direct legal services to people living in poverty. Included are various real estate transactions (such as assistance with clearing title), explaining the terms of a contract drafting a will or other estate planning documents, probating a will, appealing the denial of SSI or other public benefits. Most pro bono programs provide volunteer attorneys with specialized training, materials and mentors to help guide volunteer attorneys through simple family law matters. Participation in a legal clinic or free legal seminar for the public, such as a legal awareness for the elderly clinic, also qualifies as pro bono so long as the audience is primarily comprised of people living in poverty. Simply providing free legal advice over the phone to a person of limited means qualifies, as does conducting intake interviews through organized pro bono programs.*

15. Legal services provided to other kinds of non-profit organizations and non-legal volunteer services provided to a non-profit organization or a low-income person are not included in the definition. Why not? *Montana attorneys provide countless hours of civil services in various kinds of community activities. The legal profession should*

be commended for its voluntary contributions to society. However, the Rule contemplates that lawyers have a special talent and license to provide a unique service that non-lawyers are prohibited from providing. The Rule history reflects that the legal needs of people living in poverty are only minimally being met and that it is an attorney's responsibility to provide equal access to justice to even our lowest income level citizens or residents. Montana Rules of Professional establish an ethical obligation of Montana attorneys to provide pro bono services to those otherwise unable to pay.

16. Do mediation services provided by an attorney count under the Rule? *Mediation services provided at no cost when at least one party is low-income qualify pro bono definition under the Rule.*

17. Can an attorney contribute money to a legal services program in lieu of providing 50 hours of pro bono legal services to people living in poverty? *The Rule provides "In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means." While the Rule does not outline a contribution in lieu of providing hours, the value of your time is equal to what you would otherwise charge a client for 50 hours of the work performed. Financial contributions to other nonprofit organizations that do not provide legal services to person of limited means do not appear to be contemplated by the Rule.*

18. Do law related lectures/education to the public count as pro bono activity? *When the law related lecture/education is provided to an audience of people of limited means, it is likely a pro bono activity under the "substantial majority" tier one. Other presentations, such as those for Bar-specific activities, are contemplated under lower tiers as "additional" hours.*

19. When pro bono work is done by one attorney at the request or direction of another, who should count the hours? *In the case of a subordinate attorney doing pro bono work as part of his/her job, at the direction of a supervising attorney, either attorney may count the hours, as long as the*

work is not reported twice. In the case of a law firm system whereby designated attorney/s do all of the firm's pro bono work as part of their job, the firm should equitably allocate the reportable hours amongst firm attorneys, making sure not to count such services twice. If one attorney pays another attorney to perform legal services to people living in poverty and assures that the work is done competently, the referring attorney may claim the pro bono hours. Of course, the paid attorney may not.

20. What if an attorney provides more than 50 hours of pro bono legal services? *Many Montana attorneys do provide more than 50 hours of pro bono legal services each year. These attorneys should be highly commended for their outstanding efforts. Many local bar associations present annual pro bono awards for outstanding efforts and the State Bar of Montana annually presents one or more pro bono service awards from a statewide pool of nominations.*

21. How can an attorney find out about local pro bono opportunities? *Many communities in the state of Montana have at least one organized pro bono project that can assist attorneys in identifying clients that need their services. Montana Legal Services Association is the largest referring entity in the state and often work with partnering local pro bono programs to refer eligible clients to willing attorneys. Visit the [Court's pro bono opportunities page](#) to find a recognized program in your area. One of the important benefits of one of the organized pro bono programs is the provision of primary or secondary professional liability insurance.*