

**Law's Timeless Service:**

**Reforming Rule 6.1**

**By: Jordan Luber**

Lawyers have an obligation to uphold and perfect the rule of law and the equal protections of all in their societies. The ABA should require lawyers to provide 70 meaningful hours of pro-bono service annually. Along with corresponding adjustments, the ABA should amend its Model Rules of Ethics Rule 6.1 in two main ways: “should aspire to” should become “must,” and “50” should become “75.” Without doubt, this would be a dramatic and impactful revision of the rule. This would create big changes for most lawyers. But reform—wholesale change to the status quo in the name of better serving society, whether an old injustice tolerated or a new peril unfronted—is intrinsic to the emergence, history, and profession of law itself.

Two strong reasons justify this reform. First, equal access to and protection of the law is critical for everyone,<sup>1</sup> yet extremely far from the social reality. Second, every lawyer can and should contribute a little time to close the gap. From white collar defense lawyers to small-town prosecutors to public defenders to in-house commercial counsel, every lawyer has the ability to personally be the wholesale difference between exclusion and justice, unprivileged or equal before the law, for someone. The ability to be that change for a single human being matters because law is about the right of the individual. Therefore, every lawyer has that social obligation. With the ability and the responsibility, this general change makes sense for the profession and is an urgent need for society.

With this reform, just 70 hours from every lawyer in the country per year, universal justice and equal protections will no longer be so insurmountably restricted and confined to only a segment of the population. This reform is practical and not burdensome for lawyers, will make a world of a difference in society, will instrumentally contribute to finally upholding the rule of law, and is a common-sense solution to a calamitous crisis.

---

<sup>1</sup> *Equal Protection*, LEGAL INFORMATION INSTITUTE (accessed Mar. 29, 2022), <https://www.law.cornell.edu/constitution/amendmentxiv>.

## Why This Reform

Lawyers provide the instrumental role of legal advisor and legal advocate for their clients.<sup>2</sup> No one, no matter their intelligence, training, and resources, will find their rights consistently secured without legal counsel.<sup>3</sup> Whether in a court of law or in outside practice such as negotiation or arbitration or refinancing their home loan, a person in a legal dispute or conducting a legal matter without a lawyer will not secure the rights the legislature has affirmed for them in law. Justice is not accessible: it is an island surrounded by stormy seas through which only lawyers have the experience to captain the boat. Without justice, rights become meaningless—our Framers and our legislators are silenced—because the rights are violated and not enforced.

Lawyers do something critical for people. When, for example, a person is arrested for an alleged crime, made a victim of discrimination or abuse, injured by another private party, made a victim of corporate negligence, enforcing a contract, interpreting laws to decide on operations, trying to secure access to drinking water, or settling a family dispute about assets and children, people need lawyers. When one side has a lawyer and its opponent does not, the represented side will virtually always triumph. Vulnerability and harm—bad deals, abuse, and unchecked violations of rights and privileges—are unavoidable without lawyers. Lawyers do not provide a service like an accountant, painter, or office worker: they protect fundamental rights of due process. Without lawyers, there is no enforcement of the law and the rights it bears, and our society would be more arbitrary than Medieval England or Nero's Rome.

---

<sup>2</sup> *Model Rules of Professional Conduct: Preamble & Scope*, ABA (accessed Mar. 29, 2022), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preamble\\_scope/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/)

<sup>3</sup> *Basic Principles on the Role of Lawyers*, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Sept. 7, 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

Even a doctor is notable in the public mind, because their work is the difference between life and death. Yet lawyers do more. Lawyers are often also the difference between life and death too. Water poisoning, abusive households, mold in low-income private-run housing, dangerous working conditions, or death penalty cases all are matters of life or death.<sup>4</sup> Not coincidentally, these are also examples of the kinds of cases which studies shows most often involve indigent people who cannot afford skilled, or even adequate or competent, or even any, representation. Beyond these cases—and they are not irregular—lawyers are also the difference between dignity and abuse. A small business can be robbed through an unfair or unperformed contract, an abuse victim may get no fair compensation in a divorce, or a university may be subject to indirect yet impactful government academic interference without lawyers to advise, negotiate, draft, and also advocate before a judge.

There are many people who need pro-bono counsel because many people need legal representation but cannot afford it. The only institutionalized and required pro-bono service are public defenders. But pro-bono defenders are almost universally underfunded and insufficient for the needs of their communities.<sup>5</sup> Moreover, sometimes certain governments seemingly abuse the system on purpose to secure convictions and target certain individuals or groups.<sup>6</sup> Furthermore, public defenders are only available for criminal defense cases. Indigent people need representation as plaintiffs or defendants in civil cases, but they can get it only if they are lucky. And beyond cases going to court, people need lawyers as they try to live their lives while

---

<sup>4</sup> *As need for legal aid grows, vulnerable are least able to afford it*, MEMPHIS AREA LEGAL SERVICES (May 4, 2020), <https://malsi.org/2020/05/as-need-for-legal-aid-grows-vulnerable-are-least-able-to-afford-it/>.

<sup>5</sup> Phil McCausland, *Public defenders nationwide say they're overworked and underfunded*, NBC (Dec. 11, 2017), <https://www.nbcnews.com/news/us-news/public-defenders-nationwide-say-they-re-overworked-underfunded-n828111>.

<sup>6</sup> Charles Bethea, *Is This the Worst Place to Be Poor and Charged with a Federal Crime? The Southern District of Georgia does remarkably little to provide for indigent defendants*, THE NEW YORKER (Nov. 5, 2021), <https://www.newyorker.com/news/us-journal/is-this-the-worst-place-to-be-poor-and-charged-with-a-federal-crime>

exercising their full rights and dignity. “Life, liberty, and the pursuit of happiness” are irrelevant and impossible if indigent people cannot always access counsel, in civil, criminal, and any legal matters.<sup>7</sup>

Little pro-bono options exist for people beyond criminal defense. The pro-bono system for criminal defense is systemically underfunded and inadequate for fair representation. Government protections right now are not enough: there is nothing for civil claims, and little for criminal defense. Civil claims are key because so many rights, arguably even more than criminal defense, require enforcement through civil claims. Great social revolutions like the end of segregation, local salvation like health measures for an elementary school knowingly built on top of a toxic landfill, and personal crises like insurance, homeownership, or employment equality, all require civil plaintiff enforcement.<sup>8</sup> And indigent clients have nothing promised them for these critical cases. A segment of the populations has its rights regularly violated because they cannot access the civil legal system because they cannot afford a lawyer and there are no other options.

When an indigent pregnant woman is fired from her job in the masculine world of construction, for example, if she is not the rare person receiving pro-bono civil help, her life is ruined because she was at the mercy of arbitrary and illegal conduct and had no realistic chance to invoke the law and secure enforcement of her rights through the courts.

Why require mandatory pro-bono hours from all lawyers rather than creating new access-to-counsel infrastructure and better funding all government pro-bono programs, both civil and criminal? First, clearly that will not happen. Even if it does, it will not happen today. Until the government ensures all people can access counsel, it is the ABA’s responsibility to step up.

---

<sup>7</sup> *Civil Rights*, LEGAL INFORMATION INSTITUTE (accessed Mar. 29, 2022), [https://www.law.cornell.edu/wex/civil\\_rights](https://www.law.cornell.edu/wex/civil_rights).

<sup>8</sup> *Landmark Legal Cases to Secure Clean Water and Clean Air as a Right For All*, EARTH JUSTICE (Sept. 15, 2021), <https://earthjustice.org/features/landmark-cases/air-water>.

Given so much latitude to advocate both for the profession and for the people the profession serves, in the interest of rule of law and equal access to justice society needs this, at least right now.

There are also serious reasons to make this a clear 70 hours from every barred lawyer. For one, it ensures the system can never be neutralized by inadequate funding predation from legislatures, whether it is intentional or a purely financial motivation. Second, it ensures there is no talent brain drain to private and pro-business practice. With starting salaries near or over \$200,000, and the average law student hundreds of thousands of dollars in debt, the best young lawyers often go to these firms. This brain drain, and the inequitable reverberations it creates throughout society, should stop. Moreover, this is the responsibility of all lawyers. All lawyers make their living from the justice system. The justice system is not commerce: it is an ancient and treasured pillar of human civilization. By entering the legal field, lawyers consent to at least a small level of a career in public service, even if they are the in-house counsel for a tobacco manufacturer. No lawyer can reasonably claim they did not sign up for this.

Additionally, this reform will spread the obligation for and respect of public service. Lawyers will increasingly see the impact they can have, and few will be emotionally or intellectually immune to the gravity and righteousness of the difference they can make. Other than just for lawyers, this will spread a spirit of public service in society: society will not ignore this grand undertaking. Appreciation for lawyers is good for the profession, and that will rise. More importantly, faith in the rule of law will skyrocket by all lawyers giving this two-billable-hour weeks of pro-bono service a year. That impact is good for the rights of all, and for the enforcement and observation of law in society. Finally, this public spirit, even if small and partial, will contribute to a more democratic, cohesive, respectful, tolerant, and open society. A

better life for all in their everyday life, and a greater capacity for political and social reform—it will not solve every problem, but this rule change will make a noticeable difference.

Lastly, inclusion means fairness and strength. All lawyers providing pro-bono service means the service will be both available and top-notch for all. All people having access to counsel means rights will be protected, and laws enforced rather than violated with impunity or lapsing in irrelevance. Similarly, requiring all lawyers to serve like this will help avoid the bias traps which can harm pro-bono clients.

When so many people are victims of injustice, society is obligated to respond forcefully. Therefore, the ABA and all barred lawyers are responsible for providing legal service to people who need counsel but cannot afford it. Enforcing the law and upholding the rights is the basic function of every lawyer. This problem needs a solution immediately, and lawyers can solve it.

#### How to Reform Rule 6.1

Many probably support these sentiments, and maybe even the aspirations for the reform. But beyond the fraction of lawyers dedicated to public service and pro-bono work, the anxiety remains. How can this actually work? Surprisingly, there are plausible and common-sense ways to make a 70-hour pro-bono requirement of every US-barred lawyer practical and non-disruptive for all lawyers and law-practicing organizations.

Currently, Rule 6.1 is titled “Voluntary Pro Bono Publico Service.”<sup>9</sup> “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,” it says.<sup>10</sup> The ABA says “The American Bar Association urges all lawyers to provide a minimum of 50 hours

---

<sup>9</sup> *Rule 6.1: Voluntary Pro Bono Publico Service*, ABA (April 17, 2019), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service/).

<sup>10</sup> *Id.*

of pro bono services annually,” in Comment 1.<sup>11</sup> Beyond that however, the ABA explains its reasoning: “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.”<sup>12</sup> Furthermore, the ABA “recognize[s] the critical need for legal services that exists among persons of limited means,” in Comment 2.<sup>13</sup> A plain language reading shows the ABA considers pro-bono service a responsibility of all lawyers, and the ABA would endorse further action. Some seeds of that action are already provided in the comments.

Serious arguments against this reform exist. The obvious response is this is unfair to lawyers: what other profession requires public service, and two weeks of it at that? There should be a right to study and practice law without becoming a public servant. Another argument says this is the responsibility of the government to solve. Our legislators and executives need to expand access to law for all people. After all, as any lawyer knows, practicing law is about upholding, not modifying or going beyond, the decisions of the elected officials. Moreover, even those concerned about the public’s access to counsel and justice say this will not fix the problem. How can an in-house expert on aviation law, for example, help someone with an inadequate housing claim? Or how could an intellectual property specialist assist with discrimination or civil suits? Bad service for clients would be counterproductive, they rightly warn. Moreover, even if the counsel would be effective, maybe some lawyers would resent this law. Unwilling service

---

<sup>11</sup> *Rule 6.1: Voluntary Pro Bono Publico Service – Comment*, ABA (April 17, 2019), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service/comment\\_on\\_rule\\_6\\_1/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service/comment_on_rule_6_1/).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

could be even worse than incompetent service. Finally, there is a somewhat surprising but in fact applicable claim that this is forced labor and violates the 13th Amendment.

These arguments are not frivolous. Despite their plausibility, these arguments fail. Additionally, taking certain steps in structuring this reform would avoid these pitfalls.

At the start, it is noteworthy the Comments to rule 6.1 already include some clear principles for lawyers taking appropriate action to open the locked gates to the palace of justice. First, Comment 9 explains lawyers can contribute to organizations which provide pro-bono service.<sup>14</sup> Second, Comment 8 assures pro-bono service is good for the legal profession, as it “recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession.”<sup>15</sup> Next, Comment 10 admits more pro-bono service and infrastructure is needed, including from the government, to truly make law accessible and ensure there is rule of law and equal protection.<sup>16</sup> Finally, Comment 11 calls on law firms to take reasonable steps to allow lawyers to fulfil their pro-bono responsibilities.<sup>17</sup> Already the ABA clearly envisages a need from society and opportunity for lawyers beyond the limited request for action by current Rule 6.1.

If it is comprehensive, then this reform would succeed. Changing rule 6.1, increased support from firms, increased government support, a publicity campaign, and expanding the definition of pro-bono service will prove a relatively seamless change for lawyers and the ABA and an unimaginably positive benefit for segments of society. Any of these steps not directly within the ABA’s power—for example, increasing government funding—is not required to make

---

<sup>14</sup> *Rule 6.1: Voluntary Pro Bono Publico Service – Comment*, ABA (April 17, 2019), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service/comment\\_on\\_rule\\_6\\_1/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service/comment_on_rule_6_1/).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

the basic change right now, but something which would only further help down the line, and is also something the ABA can work toward by calling for these acts in the reformed rule and by using its considerable influence to privately and publicly press for it. The ABA has the power to create a successful reform now.

The ABA should change the language of Model Rule 6.1 to say “lawyers must provide (70) hours of pro-bono service to clients unable to pay a year.” Like the current Rule 6.1, this should offer various ways to do this, and clarify those issues.<sup>18</sup> The reformed rule should also clearly explain why this matters: the ABA should unequivocally affirm lawyering is always a quasi-judicial/public service, even if in private or corporate practice, and should emphasize the value of the rule of law, the need for expanded access to counsel to ensure equal protection, and the duty of all lawyers to contribute to closing this gross and harmful gap. Finally, the ABA should adopt this rule only after an expansive, transparent, and inclusive study process.

Ultimately the rule should pass regardless of feedback from lawyers, but the ABA should at least solicit and consider comments and testimony from lawyers. More importantly, the ABA should also an intense study campaign, organize fact-finding missions with judges, legislators, public defenders, indigent people, and other relevant parties, ultimately producing a complimentary study on the gap in attaining counsel and accessing justice in the United States.

The rule should also emphasize not every lawyer must provide 70 hours of client pro-bono work, but detail a definition of pro-bono work which assists indigent communities and individuals while also ensuring lawyers’ talents are not wasted or they provide unnecessary direct service. A certain portion of the hours, the rule should say, could be other pro-bono service which makes law more accessible beyond client service. This could include, for example,

---

<sup>18</sup> *Contra Rule 6.1.*

speaking to middle and high school students in underprivileged communities about how to become a lawyer, mentoring excluded undergraduate students as they navigate their pre-law journey, or formally lobbying state legislators to expand access to the law. The study and input with lawyers, activists, and indigent communities should decide exactly how much of the 70 hours could be these kinds of services, and what kinds of services the ABA should recommend in reformed Rule 6.1's comments. These additional services will change everything.

For example, Latinos make up under 4% of lawyers, and Latinas less than 2%.<sup>19</sup> My journey would have been easier, and I would not be one of very few in this profession from my community, if we had had this kind of outreach from lawyers as children, teens, and young adults. This problem matters for the obvious reason that no community should be de facto excluded from anything, especially something as important as the practice of law. Moreover, because lawyers like me will remember our communities and go back and create a positive cycle, helping others follow our path and providing our services to our desperate communities, the positive effects will be exponential. We remember and experienced what the inability to secure counsel and access the courts—what unequal protection of the law—means for families, small businesses, the accused, and our people's futures. Reformed Rule 6.1 would help this problem greatly.

Another key component of the rule should be the ABA obliging legal companies to adopt and conduct all necessary and reasonable actions to ensure this minimum of 70 hours of annual pro-bono service does not burden lawyers. The specifics should be figured out after a broad and inclusive fact-finding mission and study on how companies can support the implementation of

---

<sup>19</sup> Raul A. Reyes, 'Where Are All the Latino Lawyers?': Hispanics Scarce in the Legal Profession, NBC (Oct. 18, 2017), <https://www.nbcnews.com/news/latino/where-are-all-latino-lawyers-hispanics-scarce-legal-profession-n809141>.

this reform. Ultimately, there should likely be some detail of tailoring how lucrative and large a firm is with how much it contributes to pro-bono service and national reform. Corporate firms which officially or de facto require certain annual hours benchmarks should subtract two weeks' worth of hours from the lawyer's duties and expectations. The money firms pay should be spent supporting small and medium-sized law offices to ensure all their lawyers can spend two weeks of the working year—while decreasing their hours requirements correspondingly—fulfilling this obligation. Not surprisingly, this reform is tied with other issues. This presents an opportunity for lawyers, the ABA, society, and the government to begin fixing the critically damaged billable hours system, which harms lawyers, the profession, clients, and society.

The ABA should push for government support for indigent access to justice by 1) explicitly calling for this in the reformed Rule 6.1 and 2) using its considerable power of influence to push for legislative change at both state and national levels. The reformed rule should, after detailing this severe social issue and why the ABA is taking this drastic measure, should then emphasize the government must be part of the solution, calling for the government to mandate access to counsel for those unable to pay for all claims, creating offices to provide this service, and for funding, pledging to eternally fund, and undertaking regular studies to ensure there is always in practice sufficient funding for public defenders and the new public civil lawyers. Overall, the government needs to create rights, create offices, fund the new and existing offices, and commit to regular action to make itself perpetually accountable and proactive to ensure this systemic failure of the access to justice—which has created unequal representation, which has nullified the constitutional rights of due process and rule of law in this country—is fixed quickly and does not breakdown or fail again. By calling on the government to do this and lobbying state and national legislatures, the ABA could make a practical difference in

moving toward the achievement of this governmental reform, which would go far in solving this crisis of injustice.

Moreover, the reformed Rule 6.1 should allow international pro-bono services to count too. The Rule should even encourage this, and the ABA should create committees and associations to facilitate this. A family in Paraguay may need counsel because their landlord is abusing them. A working in Bulgaria may need a lawyer to take their case of labor abuse to the European Court of Human Rights. A Syrian woman who was interned in a concentration camps and raped over years may want to share their story and press a claim against Bashaar and Putin.<sup>20</sup> Our society is not the only one with injustice, nor the only one with a bouncer—a lawyer’s fees and the limited availability of por-bono counsel—preventing a crowd of people, many of them the ones who need it most, entering the courthouse. This would be especially righteous and beneficial for two reasons. 1) The law protects humanity, not Americans, so this should be the ABA’s commitment. 2) Lawyers serving these cases will gain perspective, experience, contacts, knowledge, skills, and motivation which will improve their ability to advocate for their clients and enforce the law in their normal work here. No lawyer will return from a partnership with a foreign lawyer helping a client in a different country without having new ideas, perspectives, and tricks which enrich and improve their service to their clients in the US.

On a similar note, the ABA should publicize this reform. There are two severe problems this publicized reform campaign will address. 1) Americans hate lawyers.<sup>21</sup> 2) American justice needs systemic reforms. Publicizing this Rule 6.1 reform will improve American society’s views

---

<sup>20</sup> Zach Beauchamp, “*All you see is blood*”: life at a death camp where Assad has slaughtered thousands, VOX (Feb. 7, 2017), <https://www.vox.com/world/2017/2/7/14532540/saydnaya-syria-amnesty-international>.

<sup>21</sup> Staci Zaretsky, *Lawyers: The Most Despised Profession in America*, ABOVE THE LAW (July 15, 2013), <https://abovethelaw.com/2013/07/lawyers-the-most-despised-profession-in-america/>.

of lawyer. A myriad of real and comprehensive benefits will arise from that change. And publicizing this crisis and the ABA's decisive response will, like a conductor of electricity, generate wider social engagement, conversation, and activism for the government to legislatively make positive systemic changes to law, because people will realize the power of law, the urgency to reform the system, and the possibility of doing so if they act.

### Conclusion

After consideration, this reform is a no-brainer. It will change lawyering and society in positive ways. the apparent downsides can be critically mitigated, and the benefits are infinite and worth the small remaining price. If the ABA does not do this, then, I am sure, my Generation Z lawyers will soon enough, once we are at the table. Because of our passion for law and equality and freedom, we see the problem and we will fix it. Hopefully the ABA and current lawyers can now, because until my generation can make this change, people still need help and are experiencing arbitrary treatment and the utter deprivation of their rights and legal guarantees.