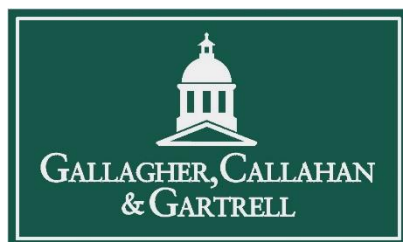


# INNS OF COURT

## The Public's Perspective of the Legal Profession

**April 6, 2016**

By: Hon. Julie Introcaso, Samantha Elliott,  
Caroline Leonard, Mike Delaney, Jane Schirch,  
Brendan Mitchell, Quinn Kelley, Melissa St. Cyr,  
and Lynne Sabeau



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## THE JUSTICE GAP: A STUDY OF THE LEGAL NEEDS OF LOW-INCOME RESIDENTS OF NEW HAMPSHIRE

**The Scope of the Problem:** The three main New Hampshire legal services organizations were able to offer assistance in 2010 in only 8,403 civil cases, despite a conservative estimate of 149,101 low-income residents who had legal needs.<sup>1</sup> That means legal needs were met in **less than 6%** of all cases. Since the beginning of the financial crisis in 2008, demand for services has risen and at the same time, resources have been cut dramatically.

**Those Most at Risk:** Women, disabled persons, and senior citizens are among the most overrepresented in the low-income population and are at greater risk for certain kinds of legal problems. In particular:

- Women represent 55% of the low-income population in New Hampshire and a majority of the legal-aid recipients. Many women face urgent legal problems because of sexual and domestic violence, and they disproportionately bear financial burdens for raising children and maintaining households on their own. In fact, 18% of children in New Hampshire are raised by single mothers. Housing and consumer cases fall most heavily on female heads of households in our state.
- Persons with disabilities represent 11% of New Hampshire's overall population but 22% of its low-income population. These persons are more likely to experience financial hardship. Although these individuals have rights and protections under federal and state law, legal representation often is needed to enforce these rights.
- Senior citizens are a substantial and growing portion of the population, representing 14% of New Hampshire residents. Seniors typically live on fixed incomes and have specific and unique legal issues that have profound economic consequences, including housing, health care, and debt collection harassment.

**Barriers to Justice:** Low-income New Hampshire residents face several barriers in addressing their legal problems, including, but not limited to:

- lack of available and affordable legal services;
- physical access issues;
- no knowledge that a legal remedy exists;
- lack of belief that the justice system can work for them; and
- fear of the repercussions of addressing the problem.

**Self-Representation:** The Justice Gap has led to a high rate of self-representation in New Hampshire state courts—an estimated 61% to 70% of cases overall. These individuals, many of whom lack basic reading and comprehension skills, are at a serious disadvantage and place a further strain on our already strained New Hampshire court system. The high percentage of self-represented parties slows down the litigation process, and creates more work for court staff and judges, who are concerned about treating pro se litigants fairly, while at the same time not offering legal advice.

**Solutions:** New Hampshire can take three pragmatic steps to close the Justice Gap:

- 1) Expanding access for civil legal services for low-income people, with increased resources as a key element to address court functioning;
- 2) Increasing and improving resources to assist self-represented litigants, such as offering case managers, service centers, and educational workshops, as well as providing educational materials and more support for access to experienced legal advice and on-site volunteer attorneys; and
- 3) Increasing coordination between service providers to this population to ensure, for example, that Community Action Program (CAP) workers, who encounter many low-income people, refer clients with legal needs accordingly.

---

<sup>1</sup> The three main providers of legal services are New Hampshire Pro Bono, New Hampshire Legal Assistance ("NHLA"), and the Legal Advice and Referral Center ("LARC"). New Hampshire Pro Bono's main emphasis is matching low-income individuals with volunteer attorneys. NHLA provides full legal representation by staff lawyers and paralegals in court and at administrative hearings through five local offices (two other offices closed in 2011 due to funding cuts). LARC handles a large volume of applicants for civil legal services by offering legal information, providing intake services to NHLA and Pro Bono and providing legal counsel and advice over the phone to self-represented litigants.

Equal Access  
to Justice  
for All



2014  
Annual Report

**NH** CAMPAIGN  
FOR LEGAL SERVICES

## About the Campaign

For 15 years, the Campaign for Legal Services has brought together New Hampshire's business, legal and philanthropic communities to support the civil legal aid work of the Legal Advice & Referral Center and New Hampshire Legal Assistance.

Through personal outreach and annual initiatives, including a popular kick-off breakfast featuring nationally-known speakers, the Campaign promotes awareness of civil legal aid's effect in the state and raises private contributions so LARC and NHLA advocates can spend their time ensuring all New Hampshire residents have equal access to justice.

New Hampshire Legal Assistance (NHLA) was founded in 1971 through the merger of two smaller non-profit legal aid organizations. Since then, NHLA has grown to five branch law offices with almost 30 staff members. NHLA attorneys and paralegals provide advice and counsel and represent low-income and elderly clients in all levels of state and federal court, and in front of many government agencies, helping them with civil, non-criminal cases dealing with housing, benefits, family law and employment security. NHLA also advocates at the state level for systemic changes to policies that affect their client populations.

In 1996, Congress implemented new restrictions on organizations funded by the federal Legal Services Corporation (LSC). Rather than abandoning systemic advocacy and other efforts now restricted, New Hampshire's legal aid community created the Legal Advice & Referral Center (LARC), which serves residents within LSC guidelines.

LARC provides free information, legal advice, and assistance over the phone to litigants who will represent themselves in court and in front of state and federal agencies. LARC attorneys and paralegals refer some cases to NHLA for further help, and in many cases advocate on behalf of clients. In addition to the call center, LARC also maintains a website to improve the legal system for all involved by educating pro se litigants of the process and their rights.



## From the Campaign Leadership Council Chair



Dear friends and fellow Campaign supporters,

I am honored to serve as the Chair of the 2015 Campaign for Legal Services, after supporting the Campaign since its inception in 2000. I am encouraged this year to see our staff and Council members strengthening our existing efforts and embarking on new projects, including this report to you about the Campaign's significant impact on the lives of New Hampshire residents.

Access to legal help is crucial in times of crisis, when legal aid clients need to protect their livelihoods, homes, health and families. The Campaign supports the advocates who serve New Hampshire's most vulnerable populations: domestic violence victims seeking safety, and families and seniors struggling to make ends meet and avoid homelessness.

Civil legal aid clients include veterans fighting new battles to access the care and benefits they've earned; parents working to get their children the educational supports they need; and people with disabilities navigating the complex bureaucracy of federal benefits programs.

All of us—we who work for the Campaign, and you who support us—want to ensure legal aid clients don't have to fight alone. We all benefit: The private, unrestricted funds raised by the Campaign help advocates secure federal benefits and child support for their clients, which generates cost-savings for our local communities by preventing homelessness and other crises. Your donation to the Campaign is a sound investment in our state's well-being. It's a way of saying you believe in our clients, and their ability to contribute to our New Hampshire community once their moment of crisis has passed.

Civil legal aid programs work to expand access to legal advice and representation for all people in our great justice system, not just for those who can afford it. But there are still people in our state who face legal crises alone, without support or guidance. If you are one of the more than 600 donors listed in this report who contributed to our efforts to change that reality, we are deeply grateful.

If you have not yet joined us, please read about our advocates' work, count up the amazing number of people our programs reach, and think about how you can help us move New Hampshire toward equal access to justice for all.

*Emily Gray Rice*

Emily Gray Rice, Chair

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## Our Programs



### Legal Advice & Referral Center ~ Concord

Back row: Karen Makocy Philbrick, Jeffrey Goodrich, Breckie Hayes, Ellie Boisvert, Jamie Rogers, and Beathan Regan. Front row: Steven McGilvary, Paula Foss, Connie Rakowsky, Audrey Logan, and Deb Stanley. (not pictured: Kim Flint, Dawn DiManna, Pat Gardner, Jim Marshall, Karl Durand.)



### New Hampshire Legal Assistance ~ Claremont

Ben Mortell, Mary Krueger and Karen Leahy



### New Hampshire Legal Assistance ~ Manchester

Back row: Elliott Berry, Dennis Labbe  
Front row: Vickie Brooks, Candace Gebhart, Megan Dillon, Carol Graham



### New Hampshire Legal Assistance ~ Berlin

Dona Larsen and Ruth Heintz



### New Hampshire Legal Assistance ~ Concord and Administration

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### New Hampshire Legal Assistance ~ Portsmouth

Michelle Wangerin, Kay Drought, Ruth Cartlidge, Erin Jasina



*"(Our advocate) took it on like it was her own problem. She gave me the legal support for me to push as hard as I needed to get Joanne home in an appropriate way at the right time."*

**Errol, Barrington**

Errol married his high school sweetheart Joanne in 1962, when they were both 20 years old. He is now Joanne's primary caregiver, after she suffered several silent strokes and the beginning stages of dementia.

Last spring, her needs became too intense for him to handle on his own, so Errol admitted Joanne to a nursing home until he could arrange for visiting nurses to help him with her care at home.

When he enrolled her in Medicaid to cover the high cost of her stay, the home scheduled her for discharge immediately, claiming there were no beds available for Medicaid patients at that time. An ally at the state Medicaid office told Errol to call New Hampshire Legal Assistance.

"Whatever I have to do for my family, I'll do it. But unless you've got some legal backing, it's hard to know if you're doing the right thing. Having legal assistance made me sure I was doing the right thing, and not saying something that could end up proving my case wrong."

With help from visiting nurses every day, Errol is caring for Joanne in their Barrington home again. He plans to care for her at home as long as he is able.

**Errol and Joanne**



*"After dealing with all of this, I realized I wanted to be able to help people who are in that same situation, who can't fight for themselves," she said. "I want to fight for them because someone fought for me."*

**Elizabeth, Plymouth**

Elizabeth was just 20 years old when her boyfriend, who had been abusing drugs, attacked her while she held their infant son. She knew she had to leave and get legal protections for herself and her son.

After she worked with an NHLA attorney through dozens of hearings, a judge ruled in Elizabeth's favor and granted her a final protective order barring her ex from contacting them for several years. Now, Elizabeth is studying at Plymouth State University, with hopes to be a public interest lawyer helping low-income clients, just like her NHLA advocate.

"I loved my son's father. So it was great that (my advocate) didn't only deal with the legal aspect of my case. When I was crying and saying I wanted to call him and drop the restraining order, she was there to tell me it would be okay and I could be strong. She was a huge support for me and my family. I might have done okay on my own, but I wouldn't know for a fact that my son is going to be safe."

**Elizabeth**





*"We had no where to go. It's a life saving thing. When you're so low and you've got no resources, when someone makes you think, 'I can get through this,' that just means the world."*

**Kelli, Lisbon**



*"I was confused, I was lost, I was nervous. I felt abandoned. But after talking to LARC, I felt like the weight on my chest had been lifted. I think it makes a world of difference. Getting advice is a step toward getting your sanity back."*

**Debra, Merrimack**

Kelli loved her work as a nurse, and loved being able to support her daughter and disabled mother, until she sustained severe brain damage in a stroke. The damage left Kelli unable to handle long-term critical thinking, like what to do after her landlord said he planned to kick her and her family out for not paying rent.

But she had always paid, in full and on time. Kelli believes he wanted her to leave because she complained about tripping in a hole he had left unfilled on the property. Not knowing what to do, Kelli called LARC, where an advocate found errors in the landlord's paperwork.

Kelli's advocate wrote a motion to help her get the case dismissed, and explained how she should present her case. Then Kelli went to court on her own and argued, successfully, against the landlord's experienced attorney.

"I wasn't even that scared," she said. "Before, I felt like I was all alone, like I had no teammates, and (my advocate) made it seem like I had a big team, even if it was just one person."

**Kelli**

Debra endured years of verbal abuse from her husband toward her and her son, who has Asperger's syndrome. One day, her husband attacked her son with a broomstick, and pushed her against a bannister, almost knocking her down the stairs. The abuse spurred her to petition for a restraining order. The next time they spoke, he said he wanted a divorce.

Debra suffers from bipolar disorder, and relies on her husband's insurance to cover her therapy and medication. Her treatment has allowed her to work part-time, but she doesn't get insurance, and her medication could lead to dialysis if she stops an expensive monitoring regimen. She also doesn't make enough to maintain their home on her own, and was worried her husband would stop paying for the mortgage and utilities, and leave her and her son stranded.

A case worker at Bridges, a Nashua-area resource for victims of domestic violence, told Debra to call LARC.

Attorneys at LARC reviewed Debra's case and found that she wouldn't be eligible for his insurance after a divorce. They recommended she pursue a legal separation instead, and Debra agreed.

"I'm glad I got this advice before I did anything," Debra said.

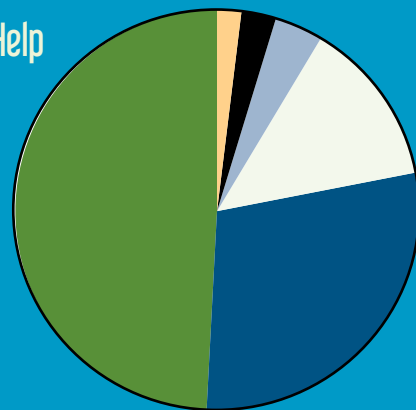
**Debra**

# Together, We Make A Difference



## How Our Programs Help

- 49% Housing Law
- 29% Family Law
- 13% Benefits Law
- 4% Consumer Law
- 3% Juvenile Law
- 2% Other



## Working together, NHLA and LARC helped

13,938 people, including  
 3,948 children  
 1,433 disabled people  
 649 seniors  
 417 veterans



## NHLA helped clients secure

More than \$10.7 million in federal benefits

Almost \$80,000 in unemployment benefits

More than \$23,000 in child support payments

## LARC received

300 hotline calls every day

690 volunteer hours, worth more than \$46,000

85,900 unique website visitors



# Your donation changes lives. Thank you.

*In 2014, 610 donors gave almost \$250,000 to the Campaign for Legal Services.*

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*"Those that are most vulnerable, those that are about to be evicted from their homes or are subject to domestic abuse, they don't have a voice and they don't know where to turn. They need legal aid. Without legal aid, what's life to them? And that affects all of us as a society and in the community."*

**Cathy Schmidt, CEO, McLane, Graf, Raulerson & Middleton**



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## NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT

### TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

#### Rule 4.3. Dealing With Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

#### 2004 ABA Model Rule Comment

##### **RULE 4.3 DEALING WITH UNREPRESENTED PERSON**

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(f).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

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**NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT**

**PUBLIC SERVICE**

**Rule 6.1. Voluntary Pro Bono Publico Service**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (30) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (30) hours of legal services without fee or expectation of fee 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.

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

**2004 ABA Model Rule Comment**

**RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE**

[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.

[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, 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 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.

[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.

[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).

[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.

[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.

[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 system or the profession 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 intended to be enforced through disciplinary process.

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## NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT

### PUBLIC SERVICE

#### Rule 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

#### 2004 ABA Model Rule Comment RULE 6.2 ACCEPTING APPOINTMENTS

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

#### Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rule.

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## **NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT**

### **PUBLIC SERVICE**

#### **Rule 6.3. Membership in Legal Services Organization**

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
- (b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

#### **2004 ABA Model Rule Comment**

##### **RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION**

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

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## NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT

### PUBLIC SERVICE

#### Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

#### Ethics Committee Comment

Rule 6.4 has been changed from the ABA model rule substituting the word "affected" for the word "benefitted" in the second sentence. Since situations may arise in which law reform activities may materially impinge on a client's interest in an adverse, as well as beneficial manner, the change was made to reflect that possibility.

#### 2004 ABA Model Rule Comment

#### RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

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**NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT**

**PUBLIC SERVICE**

**Rule 6.5. Nonprofit and Court-Annexed Limited Legal Service Programs**

(a) A lawyer who, under the auspices of a program sponsored by the New Hampshire Bar Association, a nonprofit organization or court, provides one-time consultation with a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

(c) Rules 1.6 and 1.9(c) are applicable to a representation governed by this Rule.

**Ethics Committee Comment**

1. New Hampshire's version differs from the Model Rule as follows:

a. Application of this Rule in (a) is limited to a "one time consultation with a client" instead of the ABA's version "short-term limited legal services to a client".

b. Section (c) is added.

2. The change in (a) is intended to give the attorney some clarity as to the scope of this Rule. This Rule relaxes certain of the normal conflicts limitations to allow this important pro bono service; this Rule applies only under circumstances where it is not reasonably possible for the attorney to otherwise comply with normal conflict of interest records checks procedures. Therefore, the situation where an attorney provides repeated services for the same client, and not a "one time consultation", would not permit any deviation from the normal conflicts rules.

3. The addition of Section (c) is intended simply to emphasize the attorney's continuing responsibility to maintain confidences under Rule 1.6, and the attorney's duties to a former client under Rule 1.9(c). This inclusion raises this language, already contained in ABA Comment [2], to Rule status.

4. The value of the services rendered to the public in this pro bono context is important enough to justify carving out a special exception to the normal conflicts rules applicable in general client representation. In this special context, not even the protective "screening" rules, such as those adopted in 1.11(b), were employed.

5. Should a lawyer participating in a one-time consultation under this Rule later discover that the lawyer's firm was representing or later undertook the representation of an adverse client, the prior participation of the attorney will not preclude the lawyer's firm from continuing or undertaking representation of such adverse client. But the participating lawyer will be disqualified and must be screened from any involvement with the firm's adverse client. See ABA Comment [4].

**2004 ABA Model Rule Comment**

**RULE 6.5 NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS**

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal

services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

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## Policies - State Pro Bono Ethics Rules

<a href="#">ABA Model Rule 6.1</a>	<a href="#">Table of State Ethics Rules</a>	<a href="#">Standards for Pro Bono Programs</a>	<a href="#">Emeritus Attorney Rules</a>	<a href="#">Pro Bono Reporting</a>
<a href="#">CLE Credit for Doing Pro Bono</a>	<a href="#">State-by-State</a>	<a href="#">Guide for Bar Leaders and Others</a>	<a href="#">Arguments in Favor and Against</a>	

## State-By-State Pro Bono Service Rules

\* See Appendix A, *STATES WITH OTHER PRO BONO POLICIES*, attached hereto.

† See Appendix B, *DEVELOPMENT OF ABA MODEL RULE 6.1: HISTORICAL TIMELINE*, attached hereto.

State	Compared to ABA Model Rule 6.1† (Adopted 1983, Revised 1993, Revised 2002)							Date	Specific Annual Goal	Financial Contribution Quantified?	Details or Comments	Link to State Rule
	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different					
AL					X			5/2/90	No	No	Rule 6.1	<a href="#">AL State Rule</a>
AK			X					7/15/93 Amended 4/03 Amended 4/09	50 hrs	No	Rule 6.1	<a href="#">AK State Rule</a>
AZ							X	12/1/90	50 hrs	No	Rule 6.1 Allows for carryover of excessive hrs.	<a href="#">AZ State Rule</a>
AR			X					12/16/85 revised 5/1/05	50 hrs	No	Rule 6.1	<a href="#">AR State Rule</a>
CA							X*		50 hrs	No	Resolution	<a href="#">CA State Rule</a>
CO				X				11/2/99, effective date 1/1/00 Amended 1/1/08	50 hrs	No	Rule 6.1. Judicial Advisory Counsel rejected mandatory service proposal in 3/99. Comment added encouraging law firms to adopt a pro bono policy.	<a href="#">CO State Rule</a>
CT					X			6/23/86	No	No	Rule 6.1	<a href="#">CT State Rule</a>
DE					X			9/12/85	No	No	Rule 6.1	<a href="#">DE State Rule</a>
DC						X*		amended 8/1/06; effective 2/1/07	50 hrs	\$750 or 1% income	Rule 6.1. Addition of Comment 6 which parallels ABA Model Rule 6.1 comment 11.	<a href="#">DC State Rule</a>
FL							X	6/23/93	20 hrs	\$350 to legal aid organization alternative	Rule 6.1. Excuses certain bar members and includes	<a href="#">FL State Rule</a>

											reporting requirement, allows for carryover of excess hours. Circuit pro bono committee system in place (see rule 4-6 5 - voluntary pro bono plan).	
GA		X						6/12/00, effective 1/1/01	50 hrs	No	Rule 6.1. Language added to ensure that mandatory pro bono reporting might only be adopted through court order.	<u>GA State Rule</u>
HI		X						Effective January 1, 2012	50 hrs (provide at least 25 hours of legal services to persons of limited means and to organizations in matters which primarily address the needs of persons of limited means)	No, but contribution suggested as alternative if lawyer is unable to provide pro bono service. In lieu of providing 50 hours of pro bono service, a lawyer should donate a minimum of \$500 to the Hawaii Justice Foundation.	Rule 6.1	<u>HI State Rule</u>
ID				X				9/3/86 Amended 7/1/2004	50 hours	No	Rule 6.1. Deletes end of (b) (1) after "in furtherance of their organizational purposes"	<u>ID State Rule</u>
IL								2/8/90			Preamble to Rules of Prof. Conduct states pro bono rule is inappropriate for disciplinary code. Separate mandatory reporting pro bono plan instituted via SC Rule 756. (passed 6/06)	<u>IL State Rule</u>
IN					X			adopted 9/30/04; effective 1/1/05; Amended 1/1/10	No	No	Rule 6.1. (Comments added to define pro bono and clarify what legal services	<u>IN State Rule</u>

											qualify.) Separate voluntary pro bono plan instituted via Rule 6.6	
IA			X					effective 7/1/05	50 hours	No	Rule 32: 6.1	<a href="#"><u>IA State Rule</u></a>
KS					X			1/29/88	No	No	Rule 6.1	<a href="#"><u>KS State Rule</u></a>
KY		X						Adopted 1/1/90; Amended 10/1/94	50 hrs	No but "financial support" encouraged.	Supreme Court Rule 3.130 (6.1). Includes optional reporting and recognition awards; <i>Comment</i> identical.	<a href="#"><u>KY State Rule</u></a>
LA		X						12/18/86; Revised 1/20/04	50 hrs	No	Rule 6.1. Omits <i>Comments</i> .	<a href="#"><u>LA State Rule</u></a>
ME							X	2/1/84	No	No	Rule 6.1. Rule does not distinguish between Tier I and Tier II pro bono.	<a href="#"><u>ME State Rule</u></a>
MD		X						effective 7/1/02	50 hrs For full-time practicing attorneys	No	Rule 6.1. Required reporting and State Committee and Action Plans also adopted. (Rules 16-901, 902 & 903).	<a href="#"><u>MD State Rule</u></a>
MA		X						1/4/99	25 hrs	\$250 to 1% annual taxable professional income encouraged	Rule 6.1.	<a href="#"><u>MA State Rule</u></a>
MI							X	Updated 1/12	30hrs	\$300 or \$500 if income allows	Voluntary Standard	<a href="#"><u>MI State Rule</u></a>
MN			X					Adopted 6/17/05; effective 10/1/05	50 hrs	No	Rule 6.1.	<a href="#"><u>MN State Rule</u></a>
MS							X	9/12/96; Amended 3/21/05	20 hrs	\$200	Rule 6.1. Includes mandatory reporting requirement. Allows for carryover of excessive hours.	<a href="#"><u>MS State Rule</u></a>
MO					X			Adopted 9/28/93; revised 7/1/2007	No	No	Rule 6.1.	<a href="#"><u>MO State Rule</u></a>

MT				X				Effective 4/1/04	50 hrs		Rule 6.1. Comments omitted.	<u>MT State Rule</u>
NC				X				Adopted 01/28/2010	50 hours	No	Rule 6.1 Adds "group or organizations seeking to secure..." sentence to the substantial majority hours (part a). Addition of comment 12 encouraging reporting.	<u>NC State Rule</u>
NE				X				2/14/96 Revised 9/1/05	No	No	Rule 6.1	<u>NE State Rule</u>
NV				X				Amended 4/7/06; effective 5/1/06	20 hrs @ no fee or 60 hrs @ reduced fee	\$500/yr to pro bono services org alternative	Rule 191. Includes mandatory pro bono reporting. Defines what does not qualify as pro bono. Establishes PB Committees by District Court.	<u>NV State Rule</u>
NH				X				01/01/2008	No	No	Rule 6.1 New rule proposed by Supreme Ct, unlike 6.1. 11/99 Rule 6.1 Only changes the number of hours.	<u>NH State Rule</u>
NJ					X			Adopted 7/17/84; caption and text amended and effective 1/1/04	No	No	Rule 6.1. <i>Minus Comment.</i> In 1992, S. Ct. decided <u>Madden v. Delran</u> , requiring 25 hrs mandatory assignments in municipal court for quasi-crim., crim and traffic offenses. In 4/00, S. Ct. rejected <i>Ad Hoc</i> Committee's 11/98 recommendation to alter or eliminate policy.	<u>NJ State Rule</u>
NM		X						1/1/97 Amended 3/15/08	50 hrs	\$500 or a combination of hours and financial contribution as defined by a table	Rule 16-601. See also Rule 24-108	<u>NM State Rule</u>  Rule 24-108 outlines the number of hours of service that



												should be provided as well as a suggested financial contribution
NY						X	04/01/2010	20 hrs	No		Rule 6.1 adopted 4/1/2009 - Similar in substance to EC 2-34	<u>NY State Rule</u>
NC											In preamble of The Revised Rules of Professional Conduct mentions that a lawyer should render public interest legal service.	
ND					X		Adopted 8/1/06	No	No		Rule 6.1. Added comment four mirroring ABA Model Rule Comment 11, to emphasize that law firms should encourage lawyers to do pro bono work.	<u>ND State Rule</u>
OH						X		No	No		Supreme Court Statement. No comparable rule.	<u>OH State Rule</u>
OK						X	Effective 7/1/88	No	No		Rule 6.1.	<u>OK State Rule</u>
OR						X*	3/10/88	80 hrs (2 cases or 20-40 hrs in direct legal services to the poor)	No		Oregon State Bar Board of Governor's Policy 13.1	<u>OR State Rule</u>
PA					X		10/16/87	No	No		Rule 6.1. Added comment four mirroring ABA Model Rule Comment 11, to emphasize that law firms should encourage lawyers to do pro bono work.	<u>PA State Rule</u>
RI			X				11/1/88	No	No		Rule 6.1.	<u>RI State Rule</u>
SC					X		1/9/90	No	No		Rule 6.1.	<u>SC State Rule</u>
SD						X	12/15/87	No	No		Rule 6.1. Nearly identical but recognizes "uncompensated service"	<u>SD State Rule</u>

											in public interest activities."	
TN				X				Effective March 1, 2003 Amended 9/10	50 hours	No		<u>TN State Rule</u>
TX							X*	9/22/00	50 hrs	No	State Bar Policy	<u>TX State Rule</u>
UT				X				Effective 11/1/05	50 hrs	\$10 alternative for each hour not provided.	Rule 6.1. Includes voluntary reporting.	<u>UT State Rule</u>
VT				X				Effective 9/1/2009.	50 hrs	No	Rule 6.1. Removes "aspire to" from second sentence.	<u>VT State Rule</u>
VA							X*	1/25/99, effective 1/1/00	2% of professional time	No, but contribution suggested as alternative.	Rule 6.1 (similar to ABA 6.1 1993 Revision). See also Rules 6.2 and 6.3.	<u>VA State Rule</u>
WA				X				Amended effective 9/1/03; 9/1/06	30 hours	No, but contribution suggested as alternative.	Rule 6.1. Includes voluntary reporting. Comments added to Rule 6.1 effective 9/1/05 Does not provide for a substantial majority of services to be provided without fee or expectation of fee.	<u>WA State Rule</u>
WV					X			1/1/89	No	No	Rule 6.1.	<u>WV State Rule</u>
WI			X					7/01/2007	50.	No	Supreme Court Rule 20:6.1.	<u>WI State Rule</u>
WY				X				Amended 4/11/2006 and Effective 7/1/2006	50 hours	\$500 alternative	Rule 6.1.	<u>WY State Rule</u>
Totals	4	11	5	6	15	3	5		29	8		

## APPENDIX A

## STATES WITH OTHER PRO BONO POLICIES

State	Form	Date of Adoption	Specific Annual Goal	Financial Contribution Quantified	Details
CA	Resolution	12/9/89, Revised 6/02	50 hrs	No	
DC	Resolution of Judicial Conferences of D.C. (2)	D.C. - 2009 and D.C. Circuit - 2010	50 hrs + 1 Ct appt.	Yes - \$750 or 1% of earned income	Rule 6.1 refers to these Resolutions in its <i>Comment 5</i>
OH	Preamble to the Ohio Rules of Professional Conduct	2007	No	No	The OH Supreme Court encourages each Ohio lawyer to participate in pro bono activities and describes ways for attorneys to get involved.

<b>OR</b>	Oregon State Bar Board of Governors' Policy 13.1	1988	80 hrs, of which 20-40 hrs of services to poor or 2 cases	No, but "comparable financial contribution" suggested as alternative.	
<b>TX</b>	State Bar Policy	9/22/00	50 hrs	No	
<b>VA</b>	Council of the Virginia State Bar Resolution	2/27/99	No	No	Bar agrees to: 1)provide periodic opps for attys to describe pb and other community svc work; 2)use info to inform public of work lawyers; 3)provide generic info and technical assistance upon request. Consistent with provisions in Rule 6.1

## APPENDIX B

**DEVELOPMENT OF ABA MODEL RULE 6.1: HISTORICAL TIMELINE**

**1969** : the ABA adopted the Code of Professional Responsibility, which addresses for the first time the responsibility of the lawyer to engage in pro bono work, in Ethical Consideration 2-25. It states among other things: " *Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged.*"

**1975** : the ABA House of Delegates adopted a resolution which formally acknowledges "*the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services*" (the "Montreal Resolution"). It defined pro bono in part by specifying areas in which the services should be rendered, namely: poverty law, civil rights law, public rights law charitable organization representation and the administration of justice.

**1983** : the ABA adopted Model Rule 6.1, which states that a *lawyer "should render public interest legal service."* It specifies certain ways a lawyer can discharge the responsibility: "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."

**1988** : the ABA adopted the "Toronto Resolution," which, among other things, resolves to "*[R]ecognize and support the professional obligation of all attorneys to devote a reasonable amount of time, but in no event less than 50 hours per year to pro bono and other public service activities that serve those in need or improve the law, the legal system or the legal profession.*"

**1993** : the ABA revised Model Rule 6.1 to include a quantified aspirational goal (i.e. at least 50 hours per year), a more refined definition of pro bono, and more specific ways to discharge the pro bono responsibility. The substantial majority of the 50-hour responsibility should be discharged through the provision of legal services to low-income people and groups that serve low-income people.

**2002** : the ABA revised Model Rule 6.1 to add a sentence at the beginning of the Rule to give greater prominence to the proposition that every lawyer has a professional responsibility to provide legal services to persons unable to pay. A new Comment [11] was also added that calls upon law firms to act reasonably to enable all lawyers in a firm to provide the pro bono legal services called for by this Rule.

Last Updated: 01/30/2012