

2017 Christian Legal Society Annual Conference
Representing Churches & Other Nonprofit Entities Workshop

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So you want to help your Church “pro bono”?

Louis Milicich is a member of the 8,500 lawyer global law firm Dentons (<http://www.dentons.com>), which is now the world’s largest firm. Louis has been the Head of the Dentons CEE/SEE Desk in Chicago. He is presently Head of the Dentons SEE Initiative, where he has responsibility for developing the South Eastern Europe/ex-Yugoslavia market for Dentons, and where his work is wide-ranging, running the gamut from general corporate transactions to compliance matters.

Please consider the Q&A exchange below, which addresses common issues related to performing legal service for churches.

Attorneys should always consult their state’s Rules of Professional Conduct before doing any pro bono work!

Q: What are the ABA and State Bar Associations’ guidelines for pro bono service?

A: ABA Model Rule 6.1 provides:

“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. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) 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 which 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.”

http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html

Links to all 50 states' pro bono rules and guidelines can be found here:

http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html

Q: Who qualifies for pro bono assistance?

A: The American Bar Association provides guidance on qualification for legal assistance and links to various legal service providers around the country:

http://apps.americanbar.org/legalservices/findlegalhelp/faq_freehelp.cfm#fedguides

Q: When an attorney wishes to represent a church pro bono, how is the attorney-client relationship formed?

A: Even though you might be providing services pro bono, you should draft an agreement which defines the attorney-client relationship.

Q: What requirements for competency must an attorney meet when providing pro bono service?

A: ABA Model Rule 1.1 sets forth a basic competency requirement:

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Most states have similar rules.

Q: Can I provide pro bono or reduced-fee service in areas in which I don't normally practice?

A: If they personally do not meet the competency requirement in their state, attorneys should work under the direction of a competent supervising attorney, either at their own law firm or at another law firm or at an agency that provides pro bono services.

Q: May an attorney provide limited-scope pro bono service without taking on full representation?

A: Yes, if the rules governing such work, including client consent, are carefully followed. Since 2000, ABA Model Rule 1.2 has provided:

“A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.”

The ABA Reporter's Explanation of Changes noted that this change was intended to expand the ability of attorneys to provide limited pro bono or reduced fee service:

“The Commission recommends that paragraph (c) be modified to more clearly permit, but also more specifically regulate, agreements by which a lawyer limits the scope of the representation to be provided a client. Although lawyers enter into such agreements in a variety of practice settings, this proposal in part is intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal services to low or moderate-income persons who otherwise would be unable to obtain counsel.”

Many states' Rules provide an exception for limited legal advice, including advice provided at a qualifying legal clinic. A list of State rules on limited-scope engagement can be found in this 2014 ABA white paper:

http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_white_paper_2014.authcheckdam.pdf

Attorneys should consult their state's current Rules of Professional Conduct. Local clinics should be able to provide information on compliance with the Rules in their jurisdiction.

Q: How can an attorney secure malpractice coverage for pro bono legal service?

A: Many law firms have a pro bono program through which malpractice coverage is provided if the attorney submits the matter to the firm for approval. Additionally, most legal aid groups provide malpractice coverage for matters accepted by volunteer attorneys.

Q: Can inactive attorneys provide pro bono service?

A: Inactive attorneys, including attorneys raising children, can be a valuable resource for churches seeking volunteer attorneys. Many states' Rules of Professional Conduct authorize inactive attorneys to provide limited pro bono service, e.g. one state authorizes inactive lawyers to provide legal services for legal services organizations, provided they have previously been admitted to practice, are approved to participate in the inactive pro bono lawyer program by the Bar's Office of Professional Conduct, do not receive compensation from clients, and receive approval from a supervising attorney with a legal services organization; and the legal services organization files a notice of authorization.

Q: How can I find organizations in my area with which I can form partnerships or provide support by performing pro bono or other service?

A: The American Bar Association's website maintains a list of organizations providing pro bono service in each state:

<http://apps.americanbar.org/legalservices/findlegalhelp/home.cfm>.

Q: What opportunities are available for providing service to those who do not qualify for free legal service?

A: Many state or local bar organizations have established "Modest Means" programs by which attorneys can assist clients at reduced rates.

Q: What if my firm does not support pro bono work?

A: If your firm does not provide malpractice coverage or otherwise support pro bono service, there are good reasons for the firm to do so. In addition to serving the local community and helping attorneys meet their ethical obligation, pro bono work often provides significant opportunities for court experience, negotiation, and direct client interaction, especially for newer attorneys. Such experience not only gives balance and fulfillment to attorneys, it can also improve their legal skills and prepare them to better serve the firm's regular clients.

Q: If I am providing pro bono services, do I still need to avoid conflicts of interest?

A: Yes, as demonstrated by a recent decision of the Maryland Bar Association:

The Maryland Bar Association Committee on Ethics has recently released an opinion regarding the appropriateness of an attorney who chairs a church's legacy committee preparing wills on a pro bono basis for parishioners who bequeath property to the church. The Ethics Committee ruled that parishioners taking advantage of the attorney's services, even though free, would be the attorney's clients; therefore, the attorney's continued participation on the legacy committee would constitute a conflict of interest under Maryland professional conduct rules. The Ethics Committee also believed that some parishioners would not be sophisticated enough to weigh the risks involved and therefore could not knowingly consent the attorney's representation. Therefore, the conflict could not be abrogated by waiver. The attorney would have to resign from the committee in order to represent parishioners in connection with their charitable planning.