

Rule 16-601: Voluntary Pro Bono Publico Service

Adopted by the New Mexico Supreme Court Order No. 08-8300-005, effective March 15, 2008

The legal profession has a responsibility to provide legal services to those unable to pay. In fulfilling this responsibility, a lawyer should aspire to:

- A. provide 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; or
- B. provide legal services at:
 - (1) a substantially reduced fee to persons of limited means;

or

- (2) no fee or a 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; or

- C. participate in activities for improving the law, the legal system or the legal profession; or

- D. contribute financial support to organizations that provide legal services to persons of limited means or promote improvement of the law, the legal system or the legal profession.

N. M. R. Prof'l. Cond. 16-601

As amended, effective 1/1/1997; as amended by Supreme Court Order 08-8300-05, effective 3/15/2008.

COMMITTEE COMMENTARY

Every lawyer, regardless of professional prominence or professional work load, should aspire 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 New Mexico Supreme Court has adopted Rule 24-108 NMRA, which sets forth minimum pro bono goals and reporting requirements.

Subparagraphs (1) and (2) of Paragraph A 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. Such services consist of the full range of legal 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.

Eligible persons 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 who, 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.

Because service should 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 Subparagraphs (1) and (2) of Paragraph A. 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. 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.

The aspirational standard of Rule 16-601 NMRA of the Rules of Professional Conduct can be met in a variety of other ways as set forth in Paragraphs B, C and D of the rule.

Subparagraph (1) of Paragraph B covers instances in which the lawyer agrees to and receives a modest fee for furnishing legal services to persons of limited means. Participation in judiciary programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are examples.

Subparagraph (2) of Paragraph B 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 subparagraph 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.

Paragraph C 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 examples of the many activities that fall within this paragraph.

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 within the contemplation of Rule 16-601 NMRA of the Rules of Professional Conduct. 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.

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.

Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by Rule 16-601 NMRA of the Rules of Professional Conduct.

The responsibility set forth in Rule 16-601 NMRA of the Rules of Professional Conduct is not intended to be enforced through disciplinary process.

Rule 24-108: Pro Bono Publico Service

Approved by the New Mexico Supreme Court Jan. 22, 2008

A. Professional Responsibility. In attempting to meet the professional responsibility established in Rule 16-601 of the Rules of Professional Conduct, a lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. The substantial majority of the fifty (50) hours of service should be provided as indicated in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 of the Rules of Professional Conduct. Additional services may be provided as indicated in Paragraphs B or C of Rule 16-601 of the Rules of Professional Conduct.

B. Financial Contribution. Alternatively or in addition to the service provided under Paragraph A of this rule, a lawyer may fulfill this professional responsibility by:

- (1) contributing financial support to organizations that provide legal services to persons of limited means in New Mexico, in the amount of five hundred dollars (\$500) per year; or
- (2) provide a combination of pro bono hours and a financial contribution as suggested in this table:

Pro Bono Hours	0	5	10	15	20	25	30	35	40	45	50+
Suggested Contributions	\$500	\$450	\$400	\$350	\$300	\$250	\$200	\$150	\$100	\$50	Attorney Discretion

C. Pro Bono Certification. Each lawyer of the bar shall annually certify whether the lawyer has satisfied the lawyer's professional responsibility to provide pro bono services to the poor. Each lawyer shall certify this information through a form that is made a part of the lawyer's annual membership fees statement that shall require the lawyer to report the following information:

- (1) the number of hours the lawyer dedicated to pro bono legal services, and
- (2) if the lawyer has satisfied the obligation by contribution or part contribution, the amount of that contribution.

COMMENTARY

The provisions of Rule 24-108 of the Rules Governing the New Mexico Bar are an affirmation of the lawyer's professional responsibility, as provided in Rule 16-601 of the Rules of Professional Conduct and are not mandatory nor do they constitute a basis for discipline under the Rules Governing Discipline for the State Bar of New Mexico. However, the reporting requirements of Paragraph C of Rule 24-108 of the Rules Governing the New Mexico Bar are mandatory and the failure to report this information shall be treated in the same manner as failure to pay dues or comply with mandatory continuing legal education. The information provided pursuant to this rule is designed for statistical purposes only and shall be used by the State Bar of New Mexico and distributed only in statistical form. Individual attorney responses shall remain confidential.

While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 of the Rules of Professional Conduct, to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in the variety of ways as set forth in Paragraphs B, C and D of Rule 16-601 of the Rules of Professional Conduct. Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in Subparagraphs (1) and (2) of Paragraph A of Rule 16-601 of the Rules of Professional Conduct. Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in Paragraphs B, C and D of Rule 16-601 of the Rules of Professional Conduct.

Attorneys licensed in New Mexico who reside outside of New Mexico may fulfill their pro bono responsibilities in their own state or provide monetary contributions to organizations providing assistance in New Mexico.

To facilitate the goals of this rule the Supreme Court adopted an order on April 28, 2006, establishing district court pro bono committees in each judicial district. Under the Pro Bono Plan adopted by the Court, a local pro bono committee convened by the chief judge and comprised of local lawyers, judges, legal service providers and other interested participants shall establish a local pro bono plan. The time deadlines and content for local pro bono plans shall be recommended by the Supreme Court's Access to Justice Commission and established by further administrative order of the Supreme Court.