

Negligence Law Section

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“MRPC 6.1 and the Proposed Changes”

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Are you aware that there is a rule that discusses Pro Bono Public Service in Michigan?

Michigan Rule of Professional Conduct (MRPC) 6.1, states:

Rule 6.1. Pro Bono Public Service.ⁱ

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. A lawyer may also discharge this 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.

The comments to the rule are helpful to understand the purpose behind the rule. Some key points of the commentary are as follows:

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.

Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged.

The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services.

Every lawyer should support all proper efforts to meet this need for legal services.

MRPC 6.1 was adopted in 1988. In 1990, the State Bar of Michigan adopted a Voluntary Pro Bono Standard to provide further guidance.ⁱⁱ The Standard recommended that lawyers provide civil legal services to three clients, provide 30 hours of service or contribute \$300 to programs providing civil legal services to the poor. The Voluntary Standard was amended in 2012 and raised the minimum recommended contribution level to \$500 per year for those lawyers whose income allows higher contribution.

Rationale to Amend the Rule

This rule has not been amended in many years. Many attempts have been made to amend the MRPC 6.1 over the years. The proposed amended rule seeks to clarify and expand the scope of the current rule. The amended rule would allow for a broader range of activities to count toward pro bono public service. Additionally, the amended rule provides for a specific financial contribution, which would be recognized as fulfilling the pro bono obligation. The amended rule would continue to emphasize the aspirational nature of the pro bono obligation and maintain that it is voluntary and not mandatory.

Proposed Amendment to MRPC 6.1

On January 29, 2025, the Michigan Supreme Court issued a Proposed Amendment of Rule 6.1 of the Michigan Rules of Professional Conduct (ADM File No. 2023-22).ⁱⁱⁱ

The proposed amendment provides that a lawyer may discharge this responsibility annually by:

- (a) providing legal representation without charge to a minimum of three low-income individuals;
- (b) providing at least 50 hours of legal representation or other services at no fee or at a substantially reduced fee to low-income individuals or to organizations that provide direct services to low-income individuals;
- (c) participating in at least 50 hours of unpaid activities for improving the law, the legal system, or the legal profession; or
- (d) contributing \$300 or more to non-profit programs organized for the purpose of delivering civil legal services to low-income individuals or organizations. Lawyers whose income allows a higher contribution should contribute more than \$500.

Some Additional Commentary to the Proposed Amendment

The commentary to the proposed amendment indicates that paragraphs (b) and (c) recognize that some lawyers may not be able to provide direct client representation and therefore allows alternative methods of service, including service on pro bono committees, boards of legal aid organizations, training lawyers, community legal education, bar association activities, and other efforts to improve the law, legal system, or profession.

The commentary further indicates that each year, the State Bar's Committee on Pro Bono Involvement will publish a list of eligible programs to which a lawyer may financially

contribute. A lawyer may also provide a combination of representation, services, activities, and financial contributions when fulfilling the responsibility to engage in pro bono efforts under this rule.

The State Bar of Michigan's Alternative Proposal

On April 29, 2025, the State Bar of Michigan proposed a rule differing from the Michigan Supreme Court's amended version of MRPC 6.1.^{iv} The amendments are supported by the Justice Initiatives Committee and Access to Justice Policy Committee with the State Bar, the Michigan State Bar Foundation, Access to Justice Steering Committee, Legal Services Association of Michigan and the State Planning Body. The State Bar's proposal states that in fulfilling the pro bono 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 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 at 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;

(2) delivery of legal services at no fee or 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; and

(c) in addition, the lawyer should voluntarily contribute financial support to the Access to Justice Fund or an organization that provides legal services to individuals of limited means. The Michigan State Bar Foundation will regularly determine and publish suggested annual donation amounts.

Some additional commentary to the State Bar's Alternative Proposal

The commentary is detailed and informative.

Paragraph one states:

[1] Every lawyer, regardless of professional prominence, or a professional workload, has responsibility to provide legal service to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in a lawyer's life. 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.

Paragraph nine states:

[9] Because the provision of pro bono services and financial contributions 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 over the amount recommended by the Michigan State Bar Foundation.

Public Administrative Hearing and Testimony

On September 25, 2025, the Michigan Supreme Court held a Public Administrative Hearing on the proposed amendment.^v Several speakers addressed the Court regarding the importance of pro bono service, financial support, and access to justice. Here is what some very knowledgeable speakers think about the changes to MRPC 6.1:

Jennifer Bentley, the Executive Director for the Michigan State Bar Foundation (MSBF), advised the Court about two key differences of the Supreme Court's Proposed Amendment and the State Bar's Alternative Proposal.

Ms. Bentley testified that the first difference is "The ABA model rule adopted in 1993 and the majority of states' rules say lawyers should aspire to provide pro bono services and contribute financially to support organizations." She emphasized the "and" rather than the "or" standard. The second major difference is that the State Bar's proposal was to have the MSBF charged "with the responsibility of regularly determining and publishing suggested annual donation amounts."^{vi}

Heidi Naasko, the partner in charge of pro bono at Dykema Gossett, testified, "It is important that the new rule encourages a majority of pro bono hours on service to those who cannot afford legal fees because it expands access to our courts regardless of income, and in turn expands access to our American democracy."^{vii}

Jennifer Grieco, a partner at Altior Law, PC and a former president of the State Bar of Michigan testified, "...only lawyers can fill, I believe that a rule that recommends that lawyers do both will result in lawyers doing more because they will understand that more is expected of them. When lawyers embrace both roles, we strengthen our profession's ability to make a broader impact to deliver justice and help more people in Michigan who are facing legal challenges."^{viii}

Ashley Lowe, Chief Executive Officer at Lake Shore Legal Aid testified as to the State Bar's Proposal regarding the amendment of MRPC 6.1. She testified, "We believe this proposed rule is flexible and balanced. It allows attorneys to focus their efforts on low-income people while still

allowing system-improving activities. And so these three organizations, the State Bar, LSAM (Legal Services Association of Michigan), and State Planning Body, are united in their support and we urge the court to adopt this proposal in order to increase access to justice.”^{ix}

All of the speakers did an excellent job advocating for the State Bar’s alternative to the Michigan Supreme Court’s Proposed Amendment to MRPC 6.1.

Conclusion

Former Michigan Supreme Court Justice Marilyn Kelly summarized the importance of this issue by stating the following at the public hearing in September: “You know, the justice gap is the difference between the haves and the have nots in matters of access to lawyers. Pro bono is, I believe, one of the major mechanisms available to us to close the justice gap.”^x

MRPC 6.1 has not been changed since it went into effect over thirty-five years ago. There have been proposals to change the rule over the years, but they have not been passed. The lawyers most knowledgeable have been heard. It is time to amend and modernize the rule, which means adopting the State Bar’s Alternative Proposal to MRPC 6.1.

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ⁱ Michigan Rules of Professional Conduct, Rule 6.1.

ⁱⁱ State Bar of Michigan, Voluntary Pro Bono Standard.

ⁱⁱⁱ Michigan Supreme Court, Proposed Amendment of Rule 6.1, ADM File No. 2023-22 (Jan. 29, 2025).

^{iv} State Bar of Michigan, Proposed Amendment of Rule 6.1 Re: ADM File No. 2023-22 (Apr. 29, 2025).

^v Michigan Supreme Court, Public Administrative Hearing on Proposed Amendment to MRPC 6.1 (Sept. 25, 2025).

^{vi} Jennifer Bentley, Executive Director, Michigan State Bar Foundation, testimony at Michigan Supreme Court Public Administrative Hearing (Sept. 25, 2025).

^{vii} Heidi Naasko, Partner, Dykema Gossett, testimony at Michigan Supreme Court Public Administrative Hearing (Sept. 25, 2025).

^{viii} Jennifer Greico, Partner, Altior Law, PC, former President of the State Bar of Michigan, testimony at Michigan Supreme Court Public Administrative Hearing (Sept. 25, 2025).

^{ix} Ashley Lowe, Chief Executive Officer, Lake Shore Legal Aid, testimony at Michigan Supreme Court Public Administrative Hearing (Sept. 25, 2025).

^x Marilyn Kelly, former Justice of the Michigan Supreme Court, testimony at Michigan Supreme Court Public Administrative Hearing (Sept. 25, 2025).