

## GUIDE TO SELECT RULES FOR PRO BONO PRACTICE

This resource provides a summary of select practice and other ethics rules that apply to pro bono legal services by lawyers in the United States. The rules are described in brief below, followed by a comprehensive chart providing information about requirements in all fifty U.S. states and the District of Columbia. Sources with more detailed information about each topic are referenced in the chart.

This guide addresses issues frequently encountered in pro bono practice but is not intended to cover all applicable ethics and practice rules; attorneys should consult the rules in their jurisdictions for more information.

### **In-House Practice Rules**

Numerous in-house attorneys, though admitted and in good standing in one or more U.S. jurisdictions or in a foreign country, are not licensed in the states in which they currently work. The practice rules in all but two states permit in-house counsel licensed in other U.S. jurisdictions to represent their in-state employer. The practice rules in about half of U.S. jurisdictions also permit in-house counsel licensed in a foreign country to represent their in-state employer. While some U.S. jurisdictions require non-locally licensed in-house counsel to apply for registration or certification to work for their in-state employer as in-house counsel, others permit non-locally licensed in-house counsel to practice under an authorization exception to the jurisdiction's rules on the unauthorized practice of law.

### **Pro Bono Practice Rules**

#### ***Pro Bono by Non-Locally Licensed In-House Counsel***

While most jurisdictions permit non-locally licensed in-house counsel to represent their in-state employer, permission to engage in pro bono legal services has been restricted. Many jurisdictions place onerous requirements on pro bono service by non-locally licensed in-house counsel (*e.g.*, requiring supervision by a locally licensed attorney and/or association with an approved legal services organization). Other jurisdictions do not expressly permit non-locally licensed in-house counsel to practice in pro bono matters. Only four jurisdictions permit foreign lawyers who are registered in-house counsel to engage in pro bono, subject to restrictions.

#### ***Pro Bono by Out-of-State Attorneys***

A number of jurisdictions allow attorneys who are licensed out-of-state, regardless of practice or employer, to provide pro bono. Out-of-state lawyers in jurisdictions that do not expressly permit their pro bono participation under another rule (*e.g.*, in-house counsel rule) may practice under these provisions. However, many of these rules place numerous restrictions on pro bono, including requiring that legal services be provided in "association with" or "affiliation with" approved legal services organizations and/or that the out-of-state attorney works under the supervision of a locally licensed attorney, as well as time limitations (as short as 18 months).

## ***Pro Bono by Emeritus Attorneys***

The rules concerning the qualification to become an “emeritus” attorney vary among jurisdictions, including how many years the attorney has practiced and how old the attorney must be. In some jurisdictions, out-of-state attorneys on active, inactive, or retired status may be included in the definition of an “emeritus” attorney, permitting such attorneys to provide pro bono service. Thus, in some states, the emeritus rule is the out-of-state attorney rule. Emeritus rules generally include restrictions such as requiring supervision by an active locally licensed attorney or requiring association with an approved legal services organization.

## ***Legal Services Following Determination of Major Disaster***

Following Hurricane Katrina, many evacuees sought pro bono legal assistance from attorneys in states to which they had evacuated. Additionally, many local attorneys were displaced and legal aid organizations faced overwhelming need. Pro bono attorneys from around the country sought to meet the need by providing assistance to displaced evacuees and coming to the Gulf Coast states to volunteer their legal services. In the intervening years, many jurisdictions have implemented “Katrina” rules that permit out-of-state attorneys to provide pro bono services following a major disaster. These rules often place restrictions on the pro bono work that the attorney can do. Currently, over a quarter of the jurisdictions have “Katrina” rules.

## **CLE**

Some states permit pro bono service to count toward mandatory CLE requirements. The calculation of how many hours of pro bono service is equivalent to 1 CLE credit and the cap on the number of credits that may be earned through pro bono service vary among jurisdictions. Currently, less than a quarter of the jurisdictions allow pro bono service to count towards CLE requirements.

## **Pro Bono Hours Goal**

A majority of U.S. jurisdictions have an aspirational, annual pro bono hourly goal for attorneys practicing in that state. The American Bar Association (ABA) Model Rule of Professional Conduct 6.1 on Voluntary Pro Bono Service sets an aspirational goal of 50 hours annually, and many states have followed suit, adopting either a version of Model Rule 6.1 or a unique rule specifying the pro bono goal.

## **Limited Scope Representation**

ABA Model Rule of Professional Conduct 6.5 modifies the rules concerning conflict checks when an attorney provides short-term, limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or a court. The conflict rules only apply if the attorney knows that the representation of the client involves a conflict of interest, or knows that another lawyer associated with the attorney in a law firm is disqualified with respect to the matter. Relaxing the conflict rules for such short-term limited representations enables attorneys to participate in legal advice clinics and similar pro bono programs without screening for conflicts of interest.

## **Reporting Pro Bono Hours**

A minority of U.S. jurisdictions have mandatory or voluntary reporting requirements for pro bono service by lawyers licensed to practice in the jurisdiction.

### Summary of Pro Bono Rules By State<sup>i</sup>

	In-House Practice Rules		Pro Bono Practice Rules					CLE	Pro Bono Hours (Rule 6.1) <sup>ii</sup>	Limited Scope Representation (Rule 6.5)	Reporting Pro Bono Hours
State	<a href="#">Registration Requirement for In-House Practice By Out-of-State Attorneys<sup>iii</sup></a>	<a href="#">Registration Requirement for In-House Practice by Foreign Attorneys<sup>iv</sup></a>	<a href="#">Registered In-House Counsel (Out-of-State Attorneys)<sup>v</sup></a>	<a href="#">Registered In-House Counsel (Foreign Attorneys)<sup>vi</sup></a>	<a href="#">Out-of-State Active Attorneys<sup>vii</sup></a>	<a href="#">Emeritus Attorneys<sup>viii</sup></a>	<a href="#">Legal Services Following Major Disaster<sup>ix</sup></a>	<a href="#">CLE Credit for Pro Bono Service<sup>x</sup></a>	<a href="#">Annual Pro Bono Hours Goal</a>	<a href="#">Eases Conflict Check Requirements<sup>xi</sup></a>	<a href="#">Required or Voluntary Reporting of Pro Bono Hours<sup>xii</sup></a>
Alabama	Yes	No			Limited Exception	X		X		X	
Alaska	No*	No*				X			50	X	
Arizona	Yes	Yes	X		X	X	X	X	50	X	Voluntary
Arkansas	No*	No			X				50	X	
California	Yes	No	X			X			50	X	
Colorado	Yes	No	X		X	X	X	X	50	X	
Connecticut	Yes	Yes	X	X		X				X	Voluntary
Delaware	Yes	Yes	X	X		X	X	X		X	
District of Columbia	No*	No*			X	X			50	X	
Florida	Yes	Yes	X			X			20	X	Required
Georgia	No*	No*			X	X	X		50	X	Voluntary
Hawaii	No	No				X			50	X	Required
Idaho	Yes	No	X		X	X			50	X	
Illinois	Yes	Yes	X		X	X	X			X	Required
Indiana	Yes	Yes								X	Required

State	In-House Practice Rules		Pro Bono Practice Rules					CLE	Pro Bono Hours (Rule 6.1) <sup>ii</sup>	Limited Scope Representation (Rule 6.5)	Reporting Pro Bono Hours
	<a href="#">Registration Requirement for In-House Practice By Out-of-State Attorneys<sup>iii</sup></a>	<a href="#">Registration Requirement for In-House Practice by Foreign Attorneys<sup>iv</sup></a>	<a href="#">Registered In-House Counsel (Out-of-State Attorneys)<sup>v</sup></a>	<a href="#">Registered In-House Counsel (Foreign Attorneys)<sup>vi</sup></a>	<a href="#">Out-of-State Active Attorneys<sup>vii</sup></a>	<a href="#">Emeritus Attorneys<sup>viii</sup></a>	<a href="#">Legal Services Following Major Disaster<sup>ix</sup></a>	<a href="#">CLE Credit for Pro Bono Service<sup>x</sup></a>	<a href="#">Annual Pro Bono Hours Goal</a>	<a href="#">Eases Conflict Check Requirements<sup>xi</sup></a>	<a href="#">Required or Voluntary Reporting of Pro Bono Hours<sup>xii</sup></a>
Iowa	Yes	Yes	X		X	X	X		50	X	
Kansas	Yes	No	X			X					
Kentucky	Yes	No	X			X			50	X	Voluntary
Louisiana	Yes	No					X	X	50	X	Voluntary
Maine	No*	No				X				X	
Maryland	No*	No			X	X			50	X	Required
Massachusetts	Yes	Yes	X			X			25	X	
Michigan	Yes	No							30	X	
Minnesota	Yes	Yes	X			X	X	X	50	X	
Mississippi	No	No			X	X			20	X	Required
Missouri	Yes	Yes	X	X			X			X	
Montana	No*	No*				X			50	X	Voluntary
Nebraska	Yes	No	X							X	
Nevada	Yes	No			X	X			20 (or 60 hours at reduced fee)	X	Required
New Hampshire	No*	No*				X	X		30	X	
New Jersey	Yes	Yes	X		X	X	X			X	
New Mexico	Yes	No			X	X			50	X	Required
New York	Yes	Yes	X			X	X	X	50	X	Required

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North Carolina	No*	No*	X		X	X			50	X	
North Dakota	Yes	No			X	X	X	X		X	
Ohio	Yes	No	X			X		X		X	Voluntary
Oklahoma	Yes	No								X	
Oregon	Yes	Yes	X		X	X		X	80 (including at least 2 cases or 20-40 hours in direct legal services to the poor)	X	Voluntary
Pennsylvania	Yes	No	X			X		X		X	
Rhode Island	Yes	No	X						50	X	
South Carolina	Yes	No	X			X	X			X	
South Dakota	No*	No				X				X	
Tennessee	Yes	No	X			X	X	X	50	X	Voluntary
Texas	Yes	Yes			X	X			50		Voluntary
Utah	Yes	No	X			X			50	X	
Vermont	No*	No			X	X			50	X	
Virginia	Yes	Yes	X			X	X		2% of professional time	X	Voluntary

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Washington	Yes	Yes	X			X	X	X	30	X	Voluntary
West Virginia	No*	No*			X	X				X	
Wisconsin	Yes	Yes	X	X		X	X	X	50	X	
Wyoming	No*	No				X		X	50	X	

<sup>i</sup> Some rules include additional restrictions. See the text of the actual rules for complete information.

<sup>ii</sup> Some states have an aspirational pro bono hours requirement that does not appear in Rule of Professional Conduct 6.1 *See, e.g.*, California (Board of Governors, State Bar of Cal., Pro Bono Resolution (2002)); Michigan (State Bar of Mich., Voluntary Pro Bono Standard (2012)); New Mexico (N.M. Bar R. 24-108 (2016)), Oregon (Or. State Bar Bylaw 13.1 (1989)); Texas (State Bar of Tex. Resolution (2000)).

<sup>iii</sup> *See* Corporate Pro Bono, “Multijurisdictional Practice in the U.S.: In-House Counsel Pro Bono” (2019), <http://www.cpbo.org/wp-content/uploads/2019/02/MJP-Guide-2019-2.12.19.pdf>, and Corporate Pro Bono, “Interactive Map,” (2018), <http://www.cpbo.org/initiatives/multijurisdictional-practice/interactivemap/> (collectively, “CPBO MJP Resources”).

\* These states allow non-locally licensed in-house counsel to practice for their employer without registering, pursuant to the exception in the rule of professional conduct governing the unauthorized practice of law.

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- <sup>iv</sup> See Corporate Pro Bono, “Foreign Lawyer In-House Counsel Practice and Pro Bono” (2018), <http://www.cpbo.org/wp-content/uploads/2018/10/Foreign-Lawyer-In-House-Rules.pdf> (“CPBO Foreign Lawyer Guide”).
- <sup>v</sup> See CPBO MJP Resources.
- <sup>vi</sup> See CPBO Foreign Lawyer Guide.
- <sup>vii</sup> See CPBO MJP Resources; American Bar Association, Commission on Law and Aging, “State Emeritus Pro Bono Practice Rules Chart,” (August 2018), [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2017\\_nov\\_emeritus\\_rules.docx](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2017_nov_emeritus_rules.docx) (“ABA State Emeritus Rules Chart”).
- <sup>viii</sup> See ABA State Emeritus Rules Chart.
- <sup>ix</sup> See American Bar Association, “State Implementation of ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster,” (Sept. 8, 2017), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/katrina\\_chart.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/katrina_chart.authcheckdam.pdf).
- <sup>x</sup> See American Bar Association, “CLE Rules,” (May 2018), [https://www.americanbar.org/groups/probono\\_public\\_service/policy/cle\\_rules.html](https://www.americanbar.org/groups/probono_public_service/policy/cle_rules.html).
- <sup>xi</sup> See Corporate Pro Bono, “Limited Scope Representations, Conflict Checks, and Pro Bono” (2019), <http://www.cpbo.org/wp-content/uploads/2019/02/Limited-Scope-Rules-Guide.pdf>.
- <sup>xii</sup> See American Bar Association, “Pro Bono Reporting” (Feb. 28, 2018), [https://www.americanbar.org/groups/probono\\_public\\_service/ts/pbreporting.html#required](https://www.americanbar.org/groups/probono_public_service/ts/pbreporting.html#required).

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