

Law School

Is the New York 50 Hour Requirement Changing the Future of Law Student Pro Bono?

By Liz Tobin Tyler and David S. Udell

Law students have long been key players in important pro bono legal assistance efforts. They engage in a range of access to justice activities—working with mentoring attorneys on pro bono cases, staffing court pro se assistance programs, providing community legal education, and more. But the announcement last spring by the New York Court of Appeals of a 50 hour pro bono requirement for applicants to the New York Bar has brought the role of law student pro bono work into the foreground like never before. What is the role of law student pro bono in addressing the growing justice gap? In providing law students with practical legal skills? In instilling a professional responsibility for pro bono service in new attorneys? The effect of the New York rule—on the focus and structure of existing and developing law school pro bono programs, on law school accreditation standards, and on other state access to justice reform efforts—remains to be seen, but a significant impact seems likely. This article describes current law school pro bono program goals and structures, highlights key elements of the New York pro bono rule, and posits some of the potential implications of this first-of-its kind rule.

The Expansion of Law School Pro Bono Programs

The number of formal and informal law school pro bono programs has increased dramatically in the past twenty years. While programs expanded in the 1980s and 1990s through the advocacy of students, faculty and administrators, it was the American Bar Association's (ABA) amendment of law school accreditation standard 302(e) in 1996 that escalated the momentum. The standard required law schools to "encourage . . . students to

participate in pro bono activities and provide opportunities for them to do so."¹ The standard was strengthened in 2006, requiring law schools to "offer substantial opportunities for . . . student participation in pro bono activities."² In 2012, the ABA's Standing Committee on Pro Bono reported 157 law schools with formal pro bono programs.³

Types of Law School Pro Bono Programs

Generally, a formal law school pro bono program is defined as an "administratively supported program that provides opportunities for law students to engage in unpaid, noncredit law-related assistance to underrepresented individuals or causes"; by contrast, informal programs are operated by students without administrative support from the school.⁴ Formal programs vary significantly with regard to whether the program is mandatory or voluntary, what type of work qualifies as "pro bono" and whether or not credit-bearing activities are counted. Programs fall into four general categories:

- Mandatory pro bono, for which students receive academic credit
- Mandatory pro bono which does not allow for credit bearing options
- Voluntary pro bono which is coordinated by a law school administrator who refers students to pro bono opportunities
- Voluntary pro bono which offers administrative support for student-coordinated group projects⁵

Mandatory programs require a certain number of pro bono hours for graduation. Program requirements range from 20 to 70 hours.⁶ There is continuing debate about whether law schools should require pro bono by students or whether they should instead strongly encourage it through administratively coordinated or supported voluntary programs. Nonetheless, there is generally more comfort with requiring pro bono in law school than for

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practicing attorneys.⁷ The current ABA Model Rule 6.1 sets an aspirational goal of 50 hours of pro bono service per year for practicing attorneys.

There has also been disagreement about whether credit-bearing work, such as law school clinics or externships, and financially supported work, such as summer internships (or school term internships) in which the student receives a stipend, should be eligible for fulfillment of pro bono requirements. Live-client law school clinics offer students the opportunity to work directly on cases, most often on behalf of indigent clients, under the supervision of a faculty member. Because student attorneys are generally responsible for their own caseload, clinics provide excellent opportunities for students to learn what is involved in addressing the needs of low-income clients. Similarly, externships and internships place students under the supervision of attorneys in the field and provide hands-on opportunities to serve underrepresented clients and communities. But some argue that including credit-bearing or financially supported work, like clinics and externships, undermines the idea that law school pro bono work should not be for credit, pay or other self-interested purposes, but rather part of instilling students with a commitment to serving the community. Just as pro bono work for attorneys is “a professional duty discharged outside the normal course of billable practice,”⁸ law students need to learn to juggle a busy work schedule in order to fit the voluntary provision of legal assistance into their professional lives.⁹

Finally, law school programs vary significantly in terms of what type of work they count as pro bono. Some include a broad array of public interest work—government, prosecution and criminal defense, non-profit advocacy, legislative policy, as well as civil legal services for low-income clients. Others adhere to a stricter requirement that the work must directly serve individuals who cannot otherwise afford legal representation. This question reflects the tension between goals for law school pro bono programs. If the goal is primarily to educate students about the value of public service by ensuring that all students have a public interest law-related experience, then a broader definition makes sense. If the goal is primarily to educate students about the unmet legal needs of underrepresented individuals and communities, and to enlist students to use their skills to help address those unmet needs, then a narrower definition makes sense.

The Benefits of Law School Pro Bono

One of the main benefits of an increased focus on law school pro bono is that students learn about a defining feature of our justice system, often omitted from the law school curriculum—that millions of people annually proceed in their cases without the assistance of a lawyer, frequently against an opposing party that has counsel. But there are a number of additional benefits.

– Access to Justice

First, law students can help respond to the access to justice crisis. Approximately 20% of legal needs of low-income people are met by government funded legal services;¹⁰ while there is one legal aid attorney for every 6415 individuals who qualify for federally funded legal assistance, there is one private attorney for every

429 Americans in the general population.¹¹ Law student pro bono assistance helps to fill this enormous gap by offering the time, skills and passion of students in the form of actual service to otherwise unrepresented clients and communities.

– Instilling a Commitment to Pro Bono

Second, pro bono experiences during law school instill a commitment in law students to continue to provide pro bono assistance in practice. While the research on the effect of law school pro bono programs on graduates’ propensity to engage in pro bono work as professionals is mixed, it does indicate some encouraging findings. In one study “many respondents indicated that the (mandatory) pro bono program opened their eyes to poverty, heightened their understanding of the legal system, and improved their legal skills.” Half responded that “their law school pro bono affected their commitment to pro bono in practice.”¹²

– Pro Bono as Experiential Education

Third, pro bono experiences are good for students in that they teach and develop practical legal skills, thus providing an important experiential education opportunity. Particularly with the nation’s economic downturn and the contraction of jobs in the legal market, educators and students, as well as courts and employers, want to be sure that graduates are prepared for the legal workplace. Pro bono experiences offer students the opportunity to work with a mentoring attorney, and to engage with “real world” legal cases, live clients and the problems that affect clients’ communities. Most significantly, pro bono offers students a valuable opportunity to acquire specific skills of the profession that include: interviewing clients, analyzing and developing facts, interpreting law and drafting affirmative and responsive pleadings, presenting oral argument, carrying out legal research, interpreting and explaining legal documents, educating the public about the requirements of the law, and understanding the operation of justice system institutions.

Best Practices

While there is still debate about how law schools should encourage and teach students to engage in pro bono work—mandatory or voluntary, credit-bearing or non-credit-bearing, financially supported or unpaid, broadly defined public service or narrowly defined work focused on access to justice—there are some key best practices that have emerged from the literature:

- Prepare students for their pro bono experience with appropriate training
- Involve students in developing pro bono opportunities that reflect their passions and interests
- Ensure that students have quality supervision from a mentoring attorney
- Provide opportunities for reflection about the pro bono experience
- Integrate the pro bono experience into the greater curriculum

- Track and recognize student pro bono work.¹³

Adoption of the New York Pro Bono Rule

Against this backdrop, the development of a new statewide pro bono service requirement for persons seeking admission to the New York bar, the first law of its kind in the nation, is significant. On May 1, 2012, New York's Chief Judge, Jonathan Lippman, announced that commencing with applications for admission that are submitted on or after January 1, 2015, all bar applicants would be required to have completed 50 hours of pro bono service. The Chief Judge described the new requirement as responding to a growing crisis in the state's courts—vast numbers of litigants proceeding *pro se* (“for themselves,” without legal representation). He explained that the requirement would also afford students an opportunity to acquire legal skills, while teaching them about the professional responsibility to help assure equal justice. In the Chief Judge's words:

If pro bono is a core value of our profession, and it is—and if we aspire for all practicing attorneys to devote a meaningful portion of their time to public service, and they should—these ideals ought to be instilled from the start, when one first aspires to be a member of the profession. The hands-on experience of helping others by using our skills as lawyers could not be more of a pre-requisite to meaningful membership in the bar of our state.¹⁴

Features of the New York Rule

In adopting the 50 hour rule, the New York Courts took a position on many of the questions described above that have long been debated in legal education circles and within the organized bar. The rule is mandatory in that it both applies to everyone and designates a specific number of hours that must be performed. The rule opts for a broad definition of pro bono service, including categories beyond the provision of assistance to the poor, and includes activities performed in law school clinics, externships and other settings (even if done for credit or pay, so long as the other requirements of the rule are met). Here is additional detail about the rule:

- Definition of pro bono - The rule relies on a broad definition of pro bono, focusing on “law-related” activity that: i) assists in the provision of legal services without charge for persons of limited means; not for profit organizations; or individuals, groups or organizations seeking to secure or promote access to justice; or, ii) assists in the provision of legal assistance in public service for a judicial, legislative, executive or other governmental entity. Clinics, externships, internships, fellowships, even paid or stipend-supported positions, may qualify, so long as the client isn't charged, and other requirements are met.
- Exclusions - The rule excludes student-supervised projects, research done for a law professor unless on a pro bono project, partisan political activities, and all activities that are not “law-related.”

- Timing - The rule requires completion of 50 hours of pro bono service by all persons seeking admission to the New York bar on or after January 1, 2015.
- Who is covered - The rule extends to all persons seeking admission to the New York Bar. Its coverage will annually include many thousands of people who will have attended law school and performed pro bono services outside New York. The rule also applies to part time and LLM students seeking admission to the New York Bar.
- Definition of supervision - The rule counts activities only if performed under the supervision of: i) a law school faculty member, including adjunct faculty and instructors; ii) an attorney admitted to practice and in good standing in the jurisdiction where the work is performed; or, iii) in the case of a clerkship or externship in a court system, a judge or attorney employed by the court system.
- Waiver - Waiver is available in exceptional circumstances for people who show undue hardship; however the court has said that part-time legal studies, full-time employment, family obligations, and “other commonly experienced situations” will not qualify.
- Certification - The rule requires applicants to submit an Affidavit of Compliance in which they attest to having satisfied the requirement. They must also submit an official certification form completed by each supervisor.
- Clarifications - The court has invited the public to communicate additional questions to the court via email to probonorule@nycourts.gov, or by calling 1-855-277-5482.¹⁵

Implications of the New York Rule

Initial reaction to the new rule was mixed in New York and nationally, with some critics applauding the goal but opposing the means and questioning the details.¹⁶ Yet, by the time the Court's blue ribbon Advisory Committee issued its report (four months after the Chief Judge's initial announcement), the focus in New York among deans, students, the Legal Aid Society of New York, and the State Bar, was on moving ahead with effectuation of the rule.¹⁷ The legal services bar and other stakeholders in New York have begun developing new concepts for structured placements able to accommodate the expanded number of students seeking to fulfill the 50 hour requirement.¹⁸

In announcing the rule, the Chief Judge stated: “It is my hope that New York will serve as the trendsetter nationally in requiring pro bono service for admission to the bar and in recognizing that it is an essential part of what it means to be a lawyer.”¹⁹ Of necessity, courts, states, law schools and other stakeholders across the country are now considering the implications of the New York rule. For the first time, students, regardless of where they live, must complete the 50 hours and document their pro bono service if they are planning on bar admission in New York. Indeed, in at least two states, California and New Jersey, formal initiatives are underway to evaluate whether those states should, themselves, adopt their own statewide pro bono learning requirements.²⁰ In

an op ed in the *National Law Journal* (December 2012), Dean of the University of California Irvine School of Law, Erwin Chemerinsky, calls on all states to replicate the New York model.²¹

And, in a related development, the ABA has been asked to incorporate a 50 hour rule into the ABA's standards for law school accreditation. This approach would establish, as a nationwide expectation of law schools, that all students perform pro bono service as part of their legal education. If adopted, it would have the virtue, among others, of reducing, if not eliminating, the prospect of divergent state-by-state standard-setting, thereby reducing the compliance challenge that would otherwise confront every person unsure of where he or she might ultimately practice after law school. The ABA committee reviewing the ABA's accreditation standards has so far declined to give serious consideration to the proposal for a national 50 hour standard, but the review process will move forward with next rounds in which it seems inevitable that the proposal will receive more attention.²²

Other possibilities for reform are now in play. The New York Unified Court System, in steps that appear to flow naturally from the 50 hour rule, is recommending additional changes to strengthen law student pro bono and increase access to justice in New York.²³ While the national impact of these new recommendations is difficult to gauge at this time, the recommendations are notable for such concepts as: i) ensuring the development of technology that will help to match students to open pro bono positions and that will systematize tracking and reporting of students' pro bono service; ii) ensuring that schools offer coursework that will prepare students for their required pro bono service, and iii) ensuring that law schools and other justice system stakeholders (the legal services bar, courts, and others) meet together annually so that schools are apprised of areas of greatest unmet need in the justice system.

Whether it is the call of New York's Chief Justice for reform, the pressure of the nation's justice gap, the demand of students for more experiential learning, the economics that are limiting hiring in legal services programs, courts and law firms, or other factors, one thing is clear: law student pro bono is receiving more attention now than ever before.

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¹ Office of the Consultant on Legal Education, Standards for Approval of Law Schools and Interpretations, 1996 ABA Section on Legal Education and Admissions Bar 31.

² Office of the Consultant on Legal Education, Standards for Approval of Law Schools and Interpretations, 2006 ABA Section on Legal Education and Admissions Bar 18.

³ American Bar Association, Standing Committee on Pro Bono and Public Service and the Center for Pro Bono, Chart of Law School and Pro Bono Programs, (http://apps.americanbar.org/legalservices/probono/lawschools/pb_programs_chart.html).

⁴ Cynthia Adcock, *Shaped by Educational, Professional and Social Crises: The History of Law Student Pro Bono Service*, in *Private Lawyers & the Public Interest* 25 (2009).

⁵ *Id.* at 40.

⁶ There are twenty-one law schools that require a particular number of hours of pro bono service for graduation. American Bar Association, Standing Committee on Pro Bono and Public Service and the Center for Pro Bono, *Chart of Law School and Pro Bono Programs*, (http://apps.americanbar.org/legalservices/probono/lawschools/pb_programs_chart.html).

⁷ See e.g., Ester Lardent, *Is it Time for Mandatory Pro Bono?* *The National Law Journal* (September 13, 2011).

⁸ Scott Cummings, *The Politics of Pro Bono*, 52 *UCLA Law Review* 4 (2004).

⁹ Association of American Law Schools, *Learning to Serve: The Findings and Proposals of the AALS Commission on Pro Bono and Public Service Opportunities* (1999).

¹⁰ Legal Services Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low Income Americans* 2-3 (Sept. 2009).

¹¹ *Id.*

¹² Deborah Schedemman, *Priming for Pro Bono: The Impact of Law School on Pro Bono Participation in Practice*, in *Private Lawyers & the Public Interest* 81 (2009) (citing study by Robert Granfield).

¹³ See *Id.*; Melanie Kushnir, *Building and Sustaining an Effective Law School Pro Bono Program with a Baker's Dozen Tips*, American Bar Association Section on Legal Education and Admission to the Bar, *Syllabus*, Vol. 39, No. 2 (Winter 2008); Consortium for the Advancement of Public Service in Law Schools (CAPSILS) and the National Association for Law Placement's (NALP) Public Service Section, *Guide to Public Service Experiential Learning Programs in Legal Education* (November 2011).

¹⁴ Hon. Jonathan Lippan, Law Day Speech (May 1, 2012), <http://www.courts.state.ny.us/whatsnew/Transcript-of-LawDay-Speech-May1-2012.pdf> (last accessed December 20, 2012).

¹⁵ Readers are encouraged to review the text of the rule itself, 22 NYCRR 520.16 (http://www.nycourts.gov/attorneys/probono/Rule520_16.pdf), as well as the Advisory Committee's Report (<http://www.nycourts.gov/attorneys/probono/ProBonoBarAdmissionReport.pdf>), and Frequently Asked Questions memorandum (<http://www.nycourts.gov/attorneys/probono/FAQsBarAdmission.pdf>).

¹⁶ See e.g., Joel Stashenko, *While Pro Bono Goal Applauded, Questions About Details Abound*, *New York Law Journal* (May 7, 2012); Ben Trachtenberg, *Rethinking Pro Bono*, *The New York Times* (May 13, 2012); David Udell, *Sunday Dialogue: Public Service for Lawyers*, *The New York Times* (June 2, 2012).

¹⁷ Joel Stashenko and Christine Simmons, *Lippman Unveils Rule Detailing Bar Admission Pro Bono Mandate*, *New York Law Journal* (September 20, 2012).

¹⁸ *Id.*

¹⁹ Hon. Jonathan Lippman, Law Day Speech, 2012, at 6, (<http://www.nycourts.gov/whatsnew/Transcript-of-LawDay-Speech-May1-2012.pdf>).

²⁰ See Amy Yarborough, *Academics Urge State Bar to Hold Law Schools*

Accountable for Training, California Bar Journal (December 2012), available at <http://www.calbarjournal.com/December2012/TopHeadlines/TH2.aspx>; David Gialinella, *N.J. Court Weighs Requiring Pro Bono for Bar Applicants*, New Jersey Law Journal (October 19, 2012), <http://www.law.com/jsp/nj/PubArticleNJ.jsp?id=1202575594487>.

²¹ Erwin Chemerinsky, *Require Pro Bono for Bar Admission*, National Law Journal (December 17, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202581505806&Require_pro_bono_for_bar_admission.

²² Karen Sloan, *Prospects Dim for Nationalized Law Student Pro Bono Mandate*, National Law Journal (November 19, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202578824177&Prospects_dim_for_nationalized_law_student_pro_bono_mandate_.

²³ 2012 Report of the Task Force to Expand Access to Civil Legal Services in New York (November 2012) http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf.