

Voluntary Pro Bono Reporting FAQs

Originally approved on February 27, 2018, and updated on March 13, 2020, the Rules of the Supreme Court of Virginia, Part 6, Section IV, now include a new provision, Paragraph 22, that requests each active and associate VSB member report their pro bono hours and/or financial contributions in support of pro bono legal services on their annual dues statement.

1. When does the amended rule go into effect?

December 1, 2018 (original rule)

May 15, 2020 (updated)

2. When will I see it on my annual dues statement?

The July 2019 dues statement for the 2020 bar year was the first to incorporate voluntary pro bono reporting. The new reporting form (Section 5) will be included as a separate insert in the dues statements mailed out by the VSB to active and associate members and the form will be available to active and associate members renewing online.

3. If I plan to report on my annual dues statement, when should I begin tracking my pro bono contributions?

Attorneys can report contributions made during the 12 months prior to the annual dues statement. As a practical matter, attorneys should start tracking their hours and financial support starting on July 1 of the year prior to the annual dues statement on which they plan to report. They should continue tracking through June 30 of the current year's dues statement. For example, attorneys who wish to report on their July 2020 dues statement should track and report their pro bono contributions from July 1, 2019 and through June 30, 2020.

4. What membership classes are subject to voluntary pro bono reporting?

The rule requests that active and associate members voluntarily supply information regarding pro bono service and financial contributions.

5. Does the rule allow me to opt out if I don't wish to report my pro bono hours and/or financial contribution?

Yes. The new rule sets forth voluntary, not mandatory, pro bono reporting. Active and associate members who wish to opt out of reporting should select option 3: Decline to Report.

6. Does the new rule mean that I must perform pro bono service?

No. The new voluntary pro bono reporting rule is meant to complement the aspirational goals of Rule 6.1 of the Virginia Rules of Professional Conduct. This new rule is an opportunity for active Virginia bar members to report their contributions to pro bono and to provide the Bar with data to assess the extent of the justice gap and respond with programming to help close it.

7. What types of pro bono service hours can I include in my report?

Legal services for which you should track and report your hours include the following four categories taken from Rule 6.1(a) and its comments:

1. Providing low bono or pro bono legal assistance to someone who lacks the financial resources to hire a lawyer (**poverty law**). Examples in this category include but are not limited to providing advice or representation to low-income clients through legal aid and the independent pro bono programs in the [Free and Low Cost Legal Resources in Virginia pamphlet](#), or through partnership programs like the [Triage Project](#), or answering client questions on Virginia.freelegalanswers.org. This type of service involves direct practice, so should only be performed by active members in good standing.
2. Providing nominal fee or free legal assistance to assert or protect the rights of individuals in which society has an interest (**civil rights law**). Examples in this category include but are not limited to providing advice or representation to [veterans](#), [ACLU clients](#), and [people with disabilities](#). This type of service involves direct practice, so should only be performed by active members in good standing.
3. Providing pro bono or sliding scale legal services to religious, charitable or civic groups (**public interest law**). Examples in this category include but are not limited to providing advice or representation to non-profit organizations through the [Greater Richmond Bar Foundation's Pro Bono Clearinghouse](#) or the [Fairfax Law Foundation](#). This type of service involves direct practice, so should only be performed by active members in good standing.
4. Engaging in **volunteer activities** to increase the availability of pro bono. Examples in this category include but are not limited to training and mentoring lawyers who have volunteered to take legal aid referrals, helping recruit lawyers for pro bono referral programs, developing informational materials that provide pro bono legal services information to the public or promote pro bono programs, joining the [VSB Special Committee on Access to Legal Services](#) or other boards, committees or bodies that increase access to pro bono services on the state or local level. This type of service does not involve the direct practice of law, so it is a great way for associate members to engage in Rule 6.1 service that doesn't implicate UPL.

8. Can I report hours devoted to court-appointed criminal defense work performed for a statutory fee?

No. Court-appointed criminal defense work where the attorney is awarded a statutory fee, even though the fee is low, does not qualify as pro bono under the current rule. This is true even if the funding for the fee cap waiver runs out and the court-appointed attorney is aware of this fact before starting work on a case.

8a. What if I waive my fee?

Yes. Court-appointed criminal defense work where the attorney's fee is waived does qualify as pro bono. Comment 1 defines pro bono legal services as "any professional

legal services for which the lawyer would ordinarily be compensated." Court-appointed criminal defense attorneys are ordinarily paid for this work, although the statutory flat fee is very low. Additionally, there must be a connection between the pro bono legal services being provided and one of the pro bono categories outlined under Rule 6.1 (a). In this case, the court-appointed criminal defense attorney is performing pro bono services in the "poverty law" category by providing uncompensated legal representation to a person who does not have the financial resources to pay for an attorney.

9. Can I report hours devoted to court-appointed GAL work performed for a fee?

No. Court-appointed GAL work for a fee, even though the hourly rate is very low, does not qualify as pro bono under the current rule.

9a. What if I waive my fee?

Yes. Comment 1 defines pro bono legal services as "any professional legal services for which the lawyer would ordinarily be compensated." Attorneys are ordinarily paid for GAL work, so if the GAL services are being provided for free and to meet the needs of at least one the pro bono categories outlined under Rule 6.1 (a), it counts as pro bono.

10. Can I report volunteer time spent on client intake and screening work for legal aid or other Qualified Legal Services Providers?

Yes. Volunteer attorney time spent on client intake and screening work for legal aid or other Qualified Legal Services Providers counts as pro bono under Rule 6.1 (a) as a "volunteer activity designed to increase the availability of pro bono legal services" because such work aids in identifying qualified clients to receive free legal services through these organizations and the pro bono attorneys serving them.

11. What about volunteer time spent drafting or editing substantive legal content for self-help materials or informational materials designed to educate the public on the law?

Yes. Time spent assisting a civil, religious, or charitable organization in drafting substantive legal content to create brochures and other informational resources (printed, video, online, etc.) containing legal information of interest to the public qualifies as pro bono "public interest law" under Comment 4 so long as the activity is a professional service for which an attorney would ordinarily be compensated.

12. Can I report hours spent preparing and presenting an informational legal clinic to the public (i.e. no direct legal advice is provided)?

Yes. Volunteer time an attorney spends preparing and presenting an informational legal clinic to the public counts as pro bono if the attorney is performing the service to meet one or more of the needs described in Rule 6.1 (a) and the activity is a professional service for which an attorney would ordinarily be compensated.

13. Does time an attorney spends as a volunteer arbitrator on behalf of a public service program run by a religious, civic or charitable group count as pro bono?

Yes. Time spent volunteering as a third-party neutral is a reportable contribution if an attorney would ordinarily get paid for this type of work and the dispute resolution program serves the public interest consistent with Comment 4.

14. What about time spent giving free legal consultations?

Time spent assisting a civil, religious, or charitable organization in drafting substantive legal content to create brochures and other informational resources (printed, video, online, etc.) containing legal information of interest to the public qualifies as pro bono "public interest law" under Comment 4 so long as the activity is a professional service for which an attorney would ordinarily be compensated.

15. Can I report hours that I have discounted or written off in retrospect because the client couldn't or didn't pay my fees? What about hours related to losses associated with contingency fee cases?

No. Comment 6 to Rule 6.1 requires that the free or nominal fee nature of the legal work must be established in advance of engaging in the work for it to be considered pro bono under the rule – i.e., no writing off fee losses and no contingency fees.

16. What types of financial contributions can I include in my report?

Active bar members should report direct financial support of programs that provide direct delivery of legal services to meet the needs outlined in Rule 6.1 (a). Donations to legal aid and other nonprofit Qualified Legal Services Providers that provide direct legal representation to low-income persons (poverty law) counts under the Rule.

17. Do donations to nonprofits serving a quasi-legal services function count?

Yes, these kinds of donations count if the financial contribution supports the program providing the direct legal services work. If the donation isn't earmarked to the legal services program and the donor can't otherwise determine how much of the donation goes to the legal services program, it doesn't count.

18. What about donations to non-legal services organizations that provide informational legal materials or informational legal clinics to the public?

No. Donations count under Rule 6.1 (c) only if the financial contribution directly supports a program that provides direct delivery of legal services designed to meet the needs described in paragraph (a). Programs are not engaged in the direct delivery of legal services simply by providing the public with access to informational legal materials or informational legal clinics. As such, donations to these organizations do not count. Please note, although organizations providing these legal informational materials and clinics to the public are not providing direct

legal services under the Rule by doing so, attorneys assisting in these efforts may be entitled to pro bono credit (see FAQ # 11 and 12).

19. Can I report the purchase price of tickets to legal aid and other QLSP fundraising events?

Yes, if the ticket proceeds support programs that provide direct delivery of legal services to meet the needs described in Rule 6.1 (a). Like the approach under the IRS rules related to charitable donations, the amount claimed as pro bono should be the price paid for the ticket minus the value of the ticket to the purchaser (food, entertainment, etc.). Lawyers purchasing tickets to these types of events should contact the organization to get a tax receipt.

20. Can time spent traveling to/from client meetings and court appearances on pro bono cases be counted as pro bono time?

Yes, if travel time is something for which you would “ordinarily be compensated.” If you would typically bill and get paid for travel time on paying cases, hours devoted to travel on pro bono cases can be counted and reported. Similarly, if you typically account for travel time in establishing the amount to charge for flat-fee work, you can count your travel time on pro bono matters involving the same type of work. *See* Rule 6.1, Comment 1.

21. What about hours traveling to/from pro bono committee meetings or legal aid board meetings? Can this time be counted as pro bono?

Yes. You can count this travel time as pro bono if such travel is reasonable and necessary for you to engage in “volunteer activities designed to increase the availability of pro bono.” For example, if you are a volunteer member of a pro bono committee and your physical presence at the meeting is required or is the preferred attendance method, you can report the time traveling to and from those meetings as pro bono hours.

22. If a contingency case is set up for a nominal fee (like 5%, instead of 33 - 40%), can that count as 6.1 pro bono, under the "nominal fee" provision?

No. Work on this matter cannot be considered nominal fee pro bono. Rule 6.1 requires that “the free or nominal fee nature of the work be established in advance.” Because the monetary amount of the award is unknown prior to performing the legal work, it is impossible to know the amount of fees the attorney will receive, which is necessary to determine whether it is truly a nominal fee. *See* Rule 6.1, Comment 2 and 3.

23. If we know a case would cost at least \$100,000 to handle, but we agree in advance to handle the entire case for \$20,000, due to the client's limited funding, can that count as 6.1 pro bono?

No. Although discounting a fee in advance based on the client’s ability to pay is admirable and serves to advance access to legal services in Virginia, this situation would not qualify as pro

bono. The Rule 6.1 “nominal fee” language is interpreted very narrowly. For example, the legal services performed by court-appointed attorneys for the very low fees designated by statute do not qualify as “nominal fee.” A \$20,000 fee, even though it represents a significant discount as compared to the standard rate of \$100,000, would certainly be too high to be considered “nominal fee” under Virginia Rule 6.1.

24. Our firm does a lot of "pro bono" work for non-profits, where the organization could pay, but it's a charity (church, et al.). Does that count for pro bono?

It depends. “Public interest law” is one of the four categories of pro bono service specifically named in Rule 6.1(a). Although this category is not defined in the rule itself, Comment 4 to Rule 6.1 says, “free or nominal fee provision of legal services to religious, charitable or civic groups in efforts such as setting up a shelter for the homeless, operating a hotline for battered spouses or providing public service information would be examples of ‘public interest law.’” “While there is no requirement that the religious, civic or charitable group is unable to afford an attorney, the examples outlined in Comment 4 illustrate a necessary connection between the legal services being performed and a public-interest being served by the organization in addressing the needs of low-income or otherwise vulnerable community members. If legal work is being done to directly facilitate such a public service, it will certainly count. Additionally, if this type of public interest work is part of the nonprofit’s core mission, then free or nominal fee legal work being provided to the organization in furtherance of its mission will also qualify as pro bono under this category, including reviewing and drafting bylaw, articles of incorporation, or other governance documents of the nonprofit. However, if the work is being performed to address legal issues unrelated to the mission, such as defending against allegations of wrong-doing, the legal services will not qualify as pro bono, even if the mission of the organization meets the criteria set forth above. Keep in mind, however, that if the organization cannot pay for the needed legal work, legal services provided to the organization without fee or expectation of fee will fall under the “poverty law” pro bono category; this is true even if the organization is not serving the public interest as described above. *See* Rule 6.1, Comment 4.

25. What about time a court-appointed criminal defense attorney devotes to post-conviction collateral matters requested by the indigent client more than 30 days after the completion of all proceedings? At this point the voucher has been submitted to the court and the statute does not provide a rate for “post-conviction collateral matters,” so a new voucher cannot be filed. Therefore, the court-appointed attorney takes on this work knowing she will not get paid for it. Do these hours count as pro bono?

Yes. The work qualifies as Rule 6.1 “poverty law” because the court-appointed attorney is providing free legal service to an indigent client and the work is being done without expectation of payment. Rule 6.1, Comment 2 requires that “the free or nominal fee nature of the work is established in advance.” Court-appointed work is not considered pro bono because the attorney expects to be compensated for the work by the court. In this situation, however, the request from the client is being made after the voucher has been turned in, and the lawyer has no mechanism to even request an allowance from the court for this work. Therefore, the attorney is commencing these post-conviction legal services knowing she will not get paid. However, if the attorney was

re-appointed by the court to handle such post-conviction matters, it would not count, nor would filing a notice of appeal even if such notice was filed after the voucher was submitted or after the 30 days. *See* Rule 6.1, comment 2.

26. Can public defenders, legal aid attorneys, and staff attorneys employed by other nonprofit legal service organizations count the hours they work above and beyond those required by their employment contract as pro bono?

No. The hours public interest attorneys spend working for their organization and its clients, even if it goes beyond what is expected of them or required by contract, do not count as pro bono because the attorney is paid a salary for this work. However, if the public interest attorney is engaged in other pro bono service outside of their employment, those hours can be counted so long as it meets the criteria under Rule 6.1 and its comments. For example, if a public defender is serving on a pro bono or access to justice committee for an outside organization and such service is not part of his job responsibilities, the hours serving in such capacity can be reported as “volunteer activities designed to advance the availability of pro bono.” Additionally, if a legal aid attorney is providing free advice to low-income clients on Virginia Free Legal Answers the time she spends engaged in this service will count as pro bono “poverty law.” *See* Rule 6.1, Comment 2 and 4.

27. If statutory attorneys’ fees are awarded to a lawyer on a pro bono case, does that disqualify the work as pro bono?

Yes. Rule 6.1, Comment 6 states, “service in any of the categories described is not pro bono publico if provided on a contingent fee basis. Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free or nominal fee legal services is essential. Accordingly, services for which fees go uncollected would not qualify.” It is not improper to seek statutory attorneys’ fees on a case originally taken as pro bono, but if such fees are awarded then the work can no longer be considered pro bono.

28. What if the statutory attorneys’ fee award is given to a legal services organization and not kept by the private attorney, can the hours and the contribution of the fee award be considered pro bono?

Yes. If the attorney agrees in advance to donate any awarded fees to a Qualified Legal Services Provider (QLSP) and, if awarded, donates them as promised, then the free legal services provided still qualify as pro bono because the legal services are being provided without fee or expectation of fee. The attorney can also count the amount of the award donated to the QLSP as a pro bono financial contribution.

29. I am renewing my dues and reporting my pro bono contributions by mail. The voluntary pro bono reporting form (Section 5) asks for my circuit of record. What do I do if I don't know it?

Please refer to your printed dues statement for your circuit information. Your circuit of record is printed in small font directly below the numbered boxes on your paper dues statement.

Additionally, you'll find a list of circuits and corresponding counties/cities on the back of the voluntary pro bono reporting form itself. Please note, however, Circuit 33 is not listed on the back of the form. If you are an active member with an out-of-state address of record, you are in Circuit 33. **If you are renewing and reporting online, you do not need to enter your circuit information.**

30. I am a government attorney with restricted practice rules, an associate member of the VSB, or otherwise prohibited from providing pro bono legal services. However, I do donate to legal aid and I serve on the pro bono committee of my local bar association. Do these contributions count as pro bono? If so, how should I report them?

Your time serving on the pro bono committee counts as a “volunteer activity designed to increase the availability of pro bono services” under Rule 6.1 (a). Additionally, your donations to legal aid count as pro bono financial contributions under Rule 6.1 (c). If you have pro bono contributions you are willing to report, please provide that information under option 1 and/or option 2 on the form. We also encourage you to explain more about your specific type of practice and any pro bono restrictions you might face by filling out the “Tell Us More” section at the bottom of the form.

31. I am a member of the Virginia State Bar as a Virginia Corporate Counsel. Can I perform pro bono legal services under Rule 6.1 (a)?

Yes. Active and in good standing Virginia Corporate Counsel members, licensed in accordance with the Rules of the Supreme Court of Virginia, Rule 1A:5, Part I, are permitted and, indeed, are encouraged to provide voluntary pro bono publico services in accordance with Rule 6.1 of the Virginia Rules of Professional Conduct. This includes direct legal services in the areas of poverty law, civil rights law, and public service law. However, if you were not qualified to practice before the Supreme Court of Virginia, you cannot appear before or file any pleadings in any court of the Commonwealth on behalf of your employer or pro bono client, other than the court in the jurisdiction in which you were admitted.¹

Unlike their counterparts licensed under Part I, Corporate Counsel Registrants under Part II may not engage in pro bono legal representation or represent their employer in court unless they associate with a Virginia admitted attorney and move for admission pro hac vice. Part II attorneys may, however, contribute to pro bono in Virginia by making financial contributions consistent with Rule 6.1 (c) or by engaging in other volunteer services that advance the availability of pro bono service as described in Rule 6.1 (a), Comment 5.

We also encourage Part I and II Corporate Counsel to select the corporate counsel box under the “Tell Us More” section at the bottom of the form.

¹ If you desire to seek qualification before the Supreme Court of Virginia, corporate counsel admission motions are entertained in Richmond periodically. The next available date can be obtained from the Office of the Clerk of the Supreme Court.

An electronic version of this document with live links is available online at http://www.vsb.org/site/members/voluntary_pro_bono_reporting_faqs