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Pro Bono Feature

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CLE Credit for Pro Bono: An Innovative Pro Bono Strategy

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Delivery

Pro Bono

CLE Credit for
Pro Bono

From the Chair

For the past decade, certain states have permitted attorneys who take pro bono cases to earn credit toward mandatory continuing legal education (CLE) requirements. The purpose of these rules is to encourage more attorneys to take pro bono cases, to reward attorneys who serve the poor, and to acknowledge that many attorneys who take these cases receive practical training that can be comparable to what is taught in a typical CLE session. To date, there are six states that have adopted these rules. This article will review the basics of these rules, will discuss their overall benefit and will encourage individuals in other mandatory CLE states to consider the adoption of such rules.

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How and Why Do States Propose a CLE for Pro Bono Rule?

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In many states in which there is a CLE credit for pro bono hours rule, direct leadership from the court or the bar was instrumental in ensuring its passage. In Tennessee, a CLE Commission was appointed by the Supreme Court and one of its leaders promoted the rule as a way to recognize lawyers who do pro bono work. In New York, the rule was supported by the Chief Judge and approved by the Administrative Board of the Courts due to a survey the court system had done in 1998 which found that less than half of attorneys were doing pro bono for the poor, a primary reason cited being a lack of time. The judge felt that by passing the rule, more attorneys would be inclined to do pro bono. In Wyoming, the Board of CLE drafted the rule in a way to encourage pro bono participation among attorneys. After years of negotiation, the Board finally submitted the rule to the Supreme Court for approval and the Court accepted it without reservation.

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How Many Pro Bono Hours Does One Have to Complete to Receive CLE Credit?

The number of pro bono hours that an attorney has to complete to receive CLE credit varies depending on a state's particular rule. For example, states have designated one CLE credit for every five hours (CO, WY and TN) or for

every six hours (DE, NY). Washington State has a slightly different pro bono hour to CLE credit ratio—its rule states that attorneys can receive six hours of CLE credit if they complete two hours of training and four hours of pro bono representation in a given year. In addition, there are some states that have limits on the number of pro bono CLE credits an attorney can receive in a given year while there are others that do not.

How Does One Receive CLE Credit for Pro Bono?

In order to receive CLE credit for pro bono, states require that the attorney report the number of pro bono hours performed for CLE credit directly, or that the pro bono program with which the attorney worked reports the number of hours. For example, in Wyoming, attorneys receive an application form and are responsible for filling out the number of hours and returning it. The attorneys also have to provide documentation that supports their application- e.g. a notice of appearance- in order to confirm their pro bono work. In Tennessee, it is the responsibility of the entities for which the attorneys work to file the report of pro bono hours conducted. In New York, programs provide attorneys with a letter of participation, dates of assignment and the name of the providers which the attorney must then keep for four years. Attorneys must also provide a statement about the number of credits of pro bono they have performed and the programs have to maintain a list of attorneys who have participated in pro bono along with the number of hours and credits earned by each participant. The programs then have to submit a yearly report to the CLE Board with this information.

What is Qualifying Pro Bono Work for CLE Credit?

States also vary in terms of what may be considered as qualifying pro bono work. For example, in Colorado, to be eligible for CLE credit, the civil pro bono legal matter in which a lawyer provides representation must have been assigned to the lawyer by one of the following: 1) a court; 2) a bar association or local Access to Justice Committee-sponsored program; 3) an organized nonprofit entity - whose purpose is or includes the provision of pro bono representation to indigent or near-indigent persons in civil legal matters; or 4) a law school. Some states also allow CLE credit for pro bono in situations in which a lawyer mentors another lawyer who does pro bono work.

What are the Arguments for Adoption of a CLE for Pro Bono Rule?

It's a Recruitment Tool

Many states have experienced a positive attorney reaction to implementation of the rule and perceive it to be a good recruitment tool. States have experienced implementation of the rule as a way to incentivize attorney participation in pro bono, especially for those attorneys who feel unable to engage in pro bono due to a perceived lack of time. In Tennessee, for example, there has been over a 200% increase in the number of

attorneys who have participated in pro bono. Although it is not clear how much influence the rule has had on this rise in participation, there has been a clear increase over time in the number of attorneys who have received CLE credit for pro bono.

It's of Value to Individuals Already Doing Pro Bono

Having a CLE credit for pro bono rule can also act as a perk or additional benefit to those who already do pro bono. Implementation of the rule is an additional means of recognizing attorneys who do pro bono work, makes it less burdensome for these attorneys to obtain additional CLE credit, and recognizes the service that these attorneys provide. It also is a key retention tool as it keeps individuals who are already doing pro bono likely to continue to provide service.

What are the Arguments against Adoption of a CLE for Pro Bono Rule?

Potential for Abuse

Some states were reluctant to pass a CLE for Pro Bono Rule because of a concern about attorney reporting. In Wyoming, for example, which relies on attorneys' self-reports of their pro bono work, there was a concern that attorneys would be misleading in reporting the actual number of pro bono hours conducted. But, because attorneys are also responsible for filling out forms indicating the regular CLE training that they've received during the year, this reporting was ultimately seen as no different and the concern of the CLE Board was alleviated.

Lack of an Educational Component

Another obstacle to ensuring passage of a CLE for pro bono rule was the concern that there was no educational component involved in the conducting of pro bono for CLE credit. Washington is one state that encountered obstacles from the CLE Board for this reason. After much negotiation, the Board finally agreed to pass the rule by constructing an educational component in the regulation. For every six pro bono CLE credits, a mandated two hours of education is required. The other four hours are for the actual pro bono service.

How Does a State Promote its CLE Credit for Pro Bono Program?

Some states market their CLE programs by including language about CLE credit for pro bono on the attorneys' annual CLE statements. Other states provide this information as part of their overall pro bono recruitment strategy—including this information in materials and speeches about the availability of free malpractice insurance and in advertisements about other no-cost/low-cost CLE programs that are provided in exchange for pro bono

legal services, for example. In addition, some states have developed an on-line system to walk attorneys through the process of reporting and have also made sure that programs are aware of this option. States have also had to educate attorneys that pro bono service outside of programs often does not qualify under state rules. Other types of marketing have included providing information on the program placed in various bar news publications, on CLE licensing forms and on state bar licensing forms.

Conclusion

Providing CLE credit for pro bono is one of the more innovative tools that states have to encourage and support attorneys who are interested in doing pro bono work. It allows attorneys who are pressed for time to obtain CLE credit while also fulfilling their professional responsibility to provide pro bono. It is also a particularly useful strategy for rural programs to recruit pro bono attorneys because attorneys in less populated areas often have less access to more formalized CLE programs and there tend to be fewer pro bono providers to meet the needs of the poor. The rule has led to an increase in participation in pro bono in many of the states in which it has been implemented and is viewed as an effective tool to address attorney barriers to providing pro bono and acknowledging the very important work of pro bono attorneys.

For more information about the specific state rules on CLE credit for pro bono, see <http://www.abanet.org/legalservices/probono/clerules.html>

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