

AMERICAN BAR ASSOCIATION**ADOPTED BY THE HOUSE OF DELEGATES****February 13, 2006****RECOMMENDATION**

RESOLVED, That the American Bar Association urges all lawyers to contribute to the public good through community service in addition to exercising their professional responsibility to deliver pro bono service in accordance with Model Rules of Professional Conduct Rule 6.1, where applicable.

FURTHER RESOLVED, That the American Bar Association urges legal providers and other entities that employ lawyers to adopt policies and practices that afford lawyers the time and opportunity to engage in community service, and urges law schools and state, local and territorial bar associations to take all appropriate steps to facilitate and encourage lawyers to undertake such service.

REPORT

In his inaugural speech to the House of Delegates, ABA President Michael S. Greco issued a call for a "renaissance of idealism in the legal profession -- a recommitment to the noblest principles that define the profession: providing legal representation to assist the poor, disadvantaged and underprivileged; and performing public service that enhances the common good."¹

Many of today's young lawyers enter the practice of law expecting to find opportunities to engage in both *pro bono publico* and community service activities.² Yet many soon become disappointed and frustrated as the demands of their law practice severely limit the time and opportunities they have to contribute to society. For veteran lawyers as well, the pressures and pace of law practice often make it difficult to participate in the life of their communities.

If we are to change this situation, lawyers must be able to strike a better balance in their lives and law practices. The key to that balance is freeing up time -- in law firms, in government offices, in any setting where a lawyer practices law -- for lawyers to perform public and community service, to volunteer their legal training to those in need, to help improve their communities, and in the process to find greater fulfillment in their legal careers.

Goal X of the American Bar Association is "[t]o preserve and enhance the ideals of the profession and its dedication to public service."³ The ABA Model Rules of Professional Conduct carry this core value further in Model Rule 6.1 which provides that "Every lawyer has a professional responsibility to provide legal services to those unable to pay."⁴ Lawyers in America meet that responsibility every day by providing *pro bono* representation to victims of domestic violence, immigrant children, elderly residents in need of affordable housing and medical treatment, and small business owners struggling with legal problems.

The Model Rules of Professional Conduct do not, however, address the many other ways in which lawyers contribute their time and talents to the betterment of their communities: serving on local councils and nonprofit boards, donating their services as teachers, mentors, and coaches, and providing leadership and support to civic, religious and philanthropic organizations.

¹ Michael S. Greco Inaugural Speech, Annual Meeting 2005, Chicago, IL

² For purposes of this recommendation, "community service" is defined as volunteer activity that falls outside the scope of the services a lawyer has a professional responsibility to provide in accordance with Model Rule 6.1 (and the various equivalents adopted by the states). Those services include:

- (a) legal services provided at no fee to persons of limited means or to governmental or nongovernmental organizations in matters that address the needs of such persons; and
- (b) additional services provided through—
 - (i) delivery of legal services at no fee or substantially reduced fee to individuals or organizations seeking to secure or protect civil rights and civil liberties;
 - (ii) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (iii) participation in activities for improving the law, the legal system or the legal profession.

ABA Model Rules of Professional Conduct, Rule 6.1.

³ ABA Policy and Procedures Handbook 2004-2005, page 1

⁴ ABA Model Rules of Professional Conduct, Rule 6.1.

The ABA has adopted a series of policies that seek to reinforce the importance of pro bono services,⁵ but the Association has never adopted comparable policy encouraging lawyers to participate in other kinds of service to their communities. This recommendation seeks to remedy that omission, calling on lawyers to renew their commitment to the public good through engagement in community service activities. The recommendation further urges legal providers and employers to adopt policies and practices that make it possible for lawyers to fulfill that commitment and urges law schools and state, local and territorial bar associations to take all appropriate steps to facilitate and encourage lawyers to undertake such activities.⁶

The Legal Profession's History of Community Service

The call to service has deep historical roots in the American legal profession. As early as 1835, Alexis de Tocqueville observed that lawyers “assume[d] a responsibility for the common good through public life” and that they were particularly well suited to this role by their “training and cast of mind.”⁷ By the beginning of the twentieth century lawyers, like other professionals, had assumed more specialized roles in a society that was becoming industrialized, yet retained a unique status in public and private sectors as legislators, civic reformers, and leaders of non-profit institutions. As legal historian Robert Gordon has observed, “the entire leadership of the New York bar in the 1880’s and 1890’s ... were active in law reform, social reform, and political reform movements...”, including the creation of state commissions for regulating railroads, city subway construction, and public utilities.⁸

When Louis Brandeis gave his famous speech in 1905 on *The Opportunity in the Law* to the Harvard Ethical Society, he asserted that “the paramount reason why the lawyer has played so large a part in our political life is that his training fits him especially to grapple with the questions which are presented in a democracy.”⁹ As Professor David Luban has written, this “unique combination of abstract reasoning ability and empirical keenness, coupled with the necessity of reaching conclusions in real time, perfectly suit[ed] lawyers for public life.”¹⁰ Brandeis exhorted lawyers to advance the public interest through client counseling and engagement in reform activities.

The growth of government at all levels throughout the twentieth century, from the New Deal through the Great Society programs to the regulatory innovations of the 1970s, vastly expanded the

⁵ See, for example, ABA Model Rules of Professional Conduct Rule 6.1, 2/93, 2/03; Bar association promotion of pro bono, 8/95; Bar association legal services planning, 2/97; Military lawyers bar admission to do pro bono, 8/95.

⁶ In urging lawyers to engage in community service activities, the recommendation recognizes that such activities are not a substitute for the legal services which every lawyer has the responsibility to provide in accordance with Rule 6.1 (or applicable local rules).

⁷ Luban, David. “The *Noblesse Oblige* Tradition in the Practice of Law.” 41 *Vanderbilt Law Review* 717-740 at 719 (1988) and, Tocqueville, Alexis de. 1835. *Democracy in America* at 271-274, P. Bradley 1st ed. 1945.

⁸ Luban, 1988, p. 720; see also Gordon, Robert. 1983. “Legal Thought and Legal Practice in the Age of Enterprise, 1870-1920.” In Gerald Geison, ed., *Professions and Professional Ideologies in America*. Chapel Hill: University of North Carolina Press.

⁹ Brandeis, Louis B. 1914. “The Opportunity in the Law,” in *Business—A Profession* at 331-32. Boston: Small, Maynard & Company.

¹⁰ Luban 1988, p. 721.

opportunities for public service by lawyers.¹¹ The dramatic increase in the number of lawyers in the 1970s and 1980s reflected a growing demand for legal services and added to the capacity of the legal profession to serve an expanding set of roles in private practice and in public life.¹² Yet the growth in the profession also was associated with trends that raised heightened concerns about whether lawyers could fulfill their historic commitment as public citizens.

In 1986, the ABA's Stanley Commission¹³ investigated whether the rise in billable hours and the increasing commercialization of practice was leading to a decline in public spiritedness. The following year, Chief Justice Rehnquist voiced the worry that the demands of practice had made it increasingly difficult for lawyers to participate in bar associations and community activities.¹⁴ The pressures on lawyers' time reached new levels as the federal government began to restrict the growth in spending on social services, including legal services, creating a new imperative for non-governmental community service.

Despite these challenges, there is ample evidence that lawyers have managed to maintain their tradition of leadership within their communities. Research indicates roughly similar levels of participation in community organizations in 1995 as in 1975.¹⁵ Indeed, law firms, corporate legal departments, and law school clinics have forged new arrangements to extend community service beyond the traditional provision of pro bono legal services.¹⁶ In recent months, for example, we have witnessed the extraordinary outpouring of support within the legal profession for the people and businesses displaced by Hurricane Katrina. Yet as the demands of legal practice continue to increase, the leaders of the profession must develop creative responses that make it possible for lawyers to sustain and expand their engagement in their communities.

The Need for Community Service

At a time when our nation faces increasing poverty, illiteracy, teenage pregnancy, violence, and a long list of other social ills, lawyers possess the talents and skills to play a major role in strengthening communities, improving the lives of children and families, and helping others in need. In innumerable ways, attorneys across the country have used their skills and energies to help build a better society -- most recently and powerfully in their collective response to Hurricane Katrina. But much more needs to be done.

¹¹ See generally: Irons, Peter H. 1982. *The New Deal Lawyers*. Princeton: Princeton University; Johnson, Earl, Jr. 1974. *Justice and Reform: The Formative Years of the OEO Legal Services Program*. New York: Russell Sage Foundation; and, Heinz, John P., and Edward O. Laumann, Robert L. Nelson, and Robert H. Salisbury. 1993. *The Hollow Core: Private Interests in National Policy Making*. Cambridge, Massachusetts: Harvard University Press.

¹² Sander, Richard H., and Douglass Williams. 1989. "Why Are There So Many Lawyers? Perspectives on a Turbulent Market." 14 *Law and Social Inquiry* 431-79.

¹³ American Bar Association. 1986. *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*. Chicago: American Bar Association.

¹⁴ Rehnquist, William H. 1987. "The Legal Profession Today." 62 *Indiana Law Journal* 151-52.

¹⁵ Heinz, John P. and Robert L. Nelson, Edward O. Laumann, and Rebecca L. Sandefur. 2005. *Urban Lawyers: The New Social Structure of the Bar*. Chicago: University of Chicago Press.

¹⁶ American Bar Foundation. 2005. "New Approaches to Access to Legal Services: Research, Practice, and Policy." 16 *Researching Law* 1-12.

To understand the importance of volunteering in America, imagine a world without any volunteers. Based on government and academic research, roughly 30% of hospital support services would disappear; virtually all places of worship and the services they provide would cease to exist; roughly 60% of fire and emergency services would disappear; after school activities and tutoring programs would be drastically curtailed; and neighborhood nutrition programs, housing and other social services for the underserved would diminish by roughly half.

The government, religious institutions, businesses, and foundations play a valuable role in assisting those in need. But ultimately it is the individual who has the power to make the most difference to others through community service endeavors. Tocqueville saw in America a place where associating with others was central to what it means to be an American. He observed that, “[t]he health of a democratic society may be measured by the quality of functions performed by private citizens.” Through the adoption of this recommendation the ABA has the opportunity to remind lawyers of their role as citizens who are part of the greater fabric of American life.

Community Service Opportunities

Thousands of lawyers of all ages and backgrounds have enriched their legal careers by contributing volunteer services to their communities. Such services take many forms, including:

- Service on boards of directors of not-for-profit organizations.
- Election or appointment to unpaid positions in state, local or regional government.
- Coordinating community service programs, including employer and bar association sponsored activities such as youth mentoring programs, neighborhood nutrition programs, and programs that offer assistance and companionship to the old and infirm.
- Providing one-on-one assistance through community service programs, including service as a Big Brother or Big Sister, teaching adult literacy courses or English as a second language, serving as a hospital or hospice volunteer, or coaching a Special Olympics athlete.
- Participating in employer or bar association sponsored group volunteer activities on a one-time or periodic basis.

In addition to the countless examples of individual lawyers who engage in these kinds of volunteer activities on their own or through civic, religious, or philanthropic associations, there are many examples of organized efforts by law firms, bar associations and law schools that provide lawyers with the time and opportunity they need to engage in community service activities. They include the following, by way of illustration:

In 1988, the Louisiana law firm Adams and Reese embarked upon a course of strong community involvement by forming an employee volunteer program called H.U.G.S. (Hope, Understanding, Giving, and Support). Through this program, the firm has devoted thousands of hours and untold dollars to offer its communities "hands on"

activities and assistance to those less fortunate. This participation is not related to business or the law but is directed squarely to the human need. Adams and Reese is a recipient of the Excellence in Corporate Volunteerism Award given by the Points of Light Foundation in recognition of its community service work.

- In 1995, Holland & Knight initiated an employee volunteer program, Opening Doors for Children. Since its inception, employees have provided more than 35,000 volunteer hours to help 12,000 children in cities where the firm has offices. Nearly 60 percent of employees are involved in these activities, which include serving as tutors, mentors and literacy helpers. Holland & Knight works with numerous children's organizations and employees work with children in a number of venues -- public schools, community centers, Girl Scout and Boy Scout academic competitions, sports teams and even the firm's own offices, where students from partnership schools visit regularly.
- The ABA's Division for General Practice, Small Firms and Solo Practitioners has developed an education curriculum outreach community service project that has been implemented in all 50 states. Through this project a lawyer goes to a third grade classroom and, using a prepared curriculum, discusses hate-motivated behavior that leads to bullying, teasing and other acts of serious violence. This is a preventative program designed to establish a dialogue early on with these young students.

The objectives of the project are to help make elementary schools safe and welcoming for students, to tap the vision and energy of lawyers interested in helping to create such schools and to promote the positive community profile of lawyers while enhancing the quality of life for a school community. It is a perfect project for solo and small firm attorneys and others interested in making a difference in schools and with kids.

- For the past five years, Mississippi College School of Law has co-sponsored the funding and building of a Habitat for Humanity house. Regular participation has been possible because the law school has been fortunate to partner with a local law firm, several churches, and another academic institution. The students are involved in raising the money as well as providing labor to build the houses.

The Professional Case for Community Service

An enhanced commitment to community service affords a benefit to those who receive the service, but also to the lawyers, legal employers, bar associations and law schools who support these opportunities.

The empirical research on the personal effects of volunteerism is fairly limited. Nonetheless, studies have concluded that volunteering has significant health benefits, that it is related to longer life spans and that it contributes to improved mental health. Research has also indicated that volunteering makes a difference in achieving higher occupational prestige.¹⁷

¹⁷ See [John Wilson & Marc Musick, *The Effects of Volunteering on the Volunteer*, 62 *Law and Contemporary Problems* 141 \(Autumn 1999\).](#)

For lawyers who chose a legal career in the hope of “making a difference,” there is a strong correlation between professional satisfaction and engagement in community-oriented service activities. The American Bar Foundation’s “After the JD” Project (AJD) reported that the most satisfied lawyers were likely to be those who perform at least 10 hours of pro bono work per month. Among lawyers who are extremely satisfied, the AJD reported an even higher level of pro bono work. While the project did not consider the effects of community service activities on professional satisfaction, there is ample reason to expect a similar correlation.

By freeing up time for community service work, employers can improve job satisfaction -- and retention rates -- for the lawyers in whose recruitment and training they have made such a substantial investment. They can also build stronger relationships with their clients by collaborating on community service projects of mutual interest. And they can enhance their reputation and prestige within their communities and the overall image of the legal profession within society.

Conclusion

Lawyers across the nation build connections with their communities through a rich variety of community service activities. Such services enhance society and the well-being of the lawyers who perform them in innumerable ways, and should have a central place in the life and work of our profession. By answering the call to service, lawyers, legal employers, bar associations and law schools can truly bring about a renaissance of idealism in our profession and in the society we serve.

Respectfully submitted,

Mark D. Agrast, Chair
Commission on the Renaissance of Idealism in the Legal Profession
February 2006

GENERAL INFORMATION FORM

Submitting Entity: Commission on the Renaissance of Idealism in the Legal Profession

Submitted By: Mark D. Agrast, Chair

1. Summary of Recommendation(s).

This recommendation would fill a gap in existing ABA policy by urging all lawyers to contribute to the public good through community service in addition to their professional responsibility to deliver pro bono service in accordance with Model Rules of Professional Conduct Rule 6.1, urges legal providers and employers to adopt policies and practices that afford lawyers the time and opportunity to engage in community service, and urges law schools and state, local and territorial bar associations to take all appropriate steps to facilitate and encourage lawyers to undertake such service.

2. Approval by Submitting Entity.

This recommendation was unanimously approved by the ABA Commission on the Renaissance of Idealism in the Legal Profession on October 16, 2005.

3. Has this or a similar recommendation been submitted to the House or Board previously?

This recommendation has not been submitted to the House of Delegate or Board of Directors previously nor, to the knowledge of the Commission, has any other similar recommendation.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

No existing ABA policies would be affected by the adoption of this recommendation. There are a number of policy directives focused on individual attorney pro bono and public service activity that falls within the definition of ABA Model Rules of Professional Conduct Rule 6.1. Similarly, there are policies directed to various legal institutions – law firms, law schools, government attorney offices, corporate law departments – that encourage lawyer fulfillment of the ethical responsibilities under the Model Rules of Professional Conduct. There is no policy, however, that focuses exclusively on the importance of lawyers doing community service outside of their professional responsibility obligations.

5. What urgency exists which requires action at this meeting of the House?

N/A

6. Status of Legislation. (If applicable.)

N/A

7. Cost to the Association. (Both direct and indirect costs.)

None

8. Disclosure of Interest. (If applicable.)

N/A

9. Referrals.

A. Senior Lawyers Division: Referred 11/1/05; Approved by Council on 11/4/05

B. Standing Committee on Pro Bono and Public Service: Referred 11/9/05; Approved on 11/16/05

C. This proposal will also be submitted to all ABA entities and to state, local and territorial bars for consideration.

10. Contact Person. (Prior to the meeting)

Mark D. Agrast
Senior Fellow
Center for American Progress
1333 H Street, NW, Tenth Floor
Washington, DC 20005
Phone: (202) 682-1611
E-mail: magrast@americanprogress.org

Steven B. Scudder, Counsel
ABA Standing Committee on Pro Bono and Public Service
321 N. Clark
Chicago, IL 60610
Phone: 312-988-5768 Fax: 312-988-5483
E-mail: scudders@staff.abanet.org

11. Contact Person. (Who will present the report to the House.)

Mark D. Agrast
Senior Fellow
Center for American Progress
1333 H Street, NW, Tenth Floor
Washington, DC 20005
Phone: (202) 682-1611
E-mail: magrast@americanprogress.org

EXECUTIVE SUMMARY

1. Summary of Recommendation

To address the importance of lawyers becoming involved in their communities, the Commission on the Renaissance of Idealism in the Legal Profession and the Senior Lawyers Division offer a recommendation which urges all lawyers to contribute to the public good through community service in addition to their professional responsibility to deliver pro bono service in accordance with Model Rules of Professional Conduct Rule 6.1. The recommendation also urges legal providers and employers to adopt policies and practices that afford lawyers the time and opportunity to engage in community service, and urges law schools and state, local and territorial bar associations to take all appropriate steps to facilitate and encourage lawyers to undertake such service.

2. Summary of the Issue That the Recommendation Addresses

The resolution seeks to provide a clear and strong statement of the position of the Association on the role individual lawyers should play in performing community service activities and the critical role legal employers and providers, law schools, and bar associations play in encouraging and facilitating lawyer participation in this work. It also speaks to the importance of differentiating community service work from the pro bono and public service ethical responsibilities of lawyers set out in the Model Rules of Professional Conduct Model Rule 6.1

3. Explanation of How the Proposed Policy Recommendation Will Address the Issue

The proposed policy position reinforces and urges the expansion of the community service role of lawyers, legal employers, bar associations, law schools and the legal profession overall.

4. Summary of Any Minority Views of Opposition Which Have Been Identified

No known opposition or minority views have been identified.