COMMITTEE ON PRO BONO AND LEGAL SERVICES

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Hon. Jonathan Lippman
Chief Judge of the State of New York
230 Park Avenue, Suite 826
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May 24, 2013

Dear Judge Lippman:

The Committee on Pro Bono and Legal Services of the New York City Bar Association (the "Committee") congratulates you and the Presiding Justices of the Appellate Division's four departments on approving revisions to the lawyers' biennial registration form under 22 NYCRR Part 118 (the "Rule") to require lawyers to disclose the number of pro bono hours they provided during the reporting period. The Committee enthusiastically supports the adoption of the pro bono reporting requirement and views it as having tremendous potential for increasing the amount of pro bono legal services provided to deserving and underserved individuals and nonprofit organizations.

However, we are troubled that the laudable goal of encouraging an increase in pro bono work through the reporting requirement has been jeopardized by fashioning the Rule in such a way that only pro bono service defined as "unpaid pro bono legal services to the underserved and to the poor" is included, importantly excluding legal services provided to nonprofit organizations that offer non-legal assistance to poor people or communities. We write to respectfully request that the Office of Court Administration instead adopt the definition of pro bono legal services provided in Rule 6.1 of the Rules of Professional Conduct (22 NYCRR Part 1200) ("Rule 6.1") for the following three primary reasons:

1) <u>The reporting standard as expressed on the revised biennial lawyer registration form and through the "frequently asked questions" guidance offered by the New York courts is inconsistent with the established and effective definition of pro bono services under New York Rule 6.1.</u>

Under Rule 6.1, lawyers registered in New York are strongly encouraged to aspire to provide at least 50 hours of pro bono legal services inclusive of "professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons"—extending pro bono services requested of New York lawyers well beyond direct legal services to the poor. This definition fosters and accounts for work critical to nonprofits serving the crucial needs of our disadvantaged communities and poor persons in need of non-legal, but equally essential services. The guiding and governing definition of pro bono in New York beneficially encompasses the voluntary contributions of transactional attorneys through their legal advice to nonprofit organizations that provide non-legal services to low-income individuals. Rule 6.1 recognizes these contributions as being valuable to our long-established tradition of public service in the same way that we appreciate vital direct legal services for people who are unable to afford counsel.

When the revision to Rule 6.1 was enacted, increasing the number of hours of legal services that lawyers are encouraged to provide from 20 to 50, the Court sent the message that pro bono work performed under the definition offered in the Rule was valued by and necessary to New York. The recommendations of the Task Force to Expand Access to Civil Legal Services in New York (the "Task Force") were cited as the basis for this change. (See Press Release, Hon. A. Gail Prudenti, May 1, 2013.)[1] In proposing that increase in the aspirational goal, the Task Force recommended a corresponding change to the biennial attorney registration form to require reporting of the number of pro bono hours performed under Rule 6.1. (See Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York, pp. 34-35 (2012) ("Task Force Report").) Allowing lawyers to now only report a number of hours that is not reflective of their true contribution to New York and is less than what is requested under court-promulgated Rule 6.1 is confusing and communicates to many lawyers that some pro bono contributions are not as valuable as others.

2) Excluding from the reporting definition work done on behalf of nonprofit organizations that provide non-legal services to low-income individuals and communities will decrease the amount of pro bono work done by transactional attorneys.

The Committee is hopeful that the reporting requirement will increase the amount of pro bono legal services provided in New York, but is concerned that the current narrow understanding of what is reportable will ultimately discourage some lawyers, transactional lawyers in particular, from undertaking pro bono work that is truly needed in our communities. Transactional attorneys are often best situated to effectively provide legal services that address corporate governance, tax, real estate and other business needs to nonprofit organizations. Not only is this type of work most appropriately provided by transactional attorneys, it is necessary to the successful operation of nonprofit organizations that serve struggling communities.

Nonprofit organizations that are the usual beneficiaries of pro bono services by transactional attorneys reach beyond the legal needs of poor persons and underserved communities to address equally essential life needs related to education, public benefits,

[1] Notably, in the Court's press release about the reporting requirement, the ABA survey of pro bono participation was cited as revealing that the average attorney in New York performs 66 hours of pro bono each year. This finding was based on work that met the definition of Rule 6.1. (Task Force Report, Appendix 16 (2012).)

housing and community development, among others. These organizations do require legal services and the reporting requirement holds the promise of connecting more attorneys with transactional expertise with the organizations that need their help—the promise of not just providing more lawyers, but more effective representation by lawyers who are using their expertise in the service of those who cannot afford their counsel. By sending the message that these services do not count for the mandatory reporting requirement, the lawyers who perform these valuable services are at best not encouraged to do this work and more likely are disincentivized from performing indispensable legal work in support of significant community needs.

In addition to deterring the work of transactional attorneys on behalf of organizations that provide non-legal services to the poor, the current standard also excludes litigation work and other professional services performed for the benefit of these nonprofits and ultimately for the communities that they help. These pro bono litigation and other professional services contributed to organizations that would not be reportable under the Rule advance important institutional goals and the capacity of those organizations. The Rule may very well result in discouragement of these services as well.

We are also apprehensive about long-term effects on the legal services organizations that leverage pro bono attorney work to serve their nonprofit clients. Without the pro bono services of the attorneys that work with these organizations, because they have been discouraged from providing free legal services entirely or have been steered exclusively toward pro bono work that will count under the reporting scheme, legal services organizations that have become integral to the improvement of life in low-income communities may be destabilized.

3) <u>Decreased pro bono work for the benefit of nonprofit organizations that serve the non-legal needs of poor communities and people will harm the intended beneficiaries of the reporting requirement.</u>

The greatest misfortune that we are concerned about is that the very people and communities that we all hope will gain from the remarkable efforts to increase pro bono services may suffer if a reduction in legal assistance to certain categories of nonprofits is realized. The Committee believes that Rule 6.1 gets it right where it does draw the line—that the beneficiaries of pro bono legal services should be "persons who are financially unable to compensate counsel" <u>and</u> nonprofit organizations "designed predominantly to address the needs of poor persons."

The needs of poor people reach far beyond their legal needs, and while certainly as lawyers, we are aptly positioned to focus on legal needs, use of our skills to assist the organizations that address other essentials of life is well-spent time. The needs of low-income people are not often siloed or discrete, but rather overlapping and complex—recognizing and supporting nonprofit organizations that address these non-legal needs should be counted as valuable and counted as reportable. We strongly urge that the Office of Court Administration consider the probable effect on already underserved communities and people of redirecting pro bono work done on behalf of these types of organizations.

In conclusion, the reporting requirement is a powerful step in the direction of increased access to justice and the overall betterment of the lives of low-income people and poor communities. For the reasons discussed above, we ask that the definition of pro bono

legal services under Rule 6.1 be affirmatively adopted as the standard for reportable pro bono services.

Respectfully,

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The Committee on Pro Bono and Legal Services
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