



June 24, 2015

The Honorable Chief Judge Jonathan Lippman  
New York State Court of Appeals  
20 Eagle Street  
Albany, New York 12207

Dear Judge Lippman,

We write to highlight some challenges that we have experienced implementing the New York State pro bono requirement for bar admission, codified in Section 520.16 of the Judiciary Law (“the Rule”). We understand your Task Force is meeting this week and we are hopeful that they will consider our suggestions as the Task Force reflects on the first six months of the Rule’s implementation.

As a result of the passage of the Rule, law students around the world who plan to practice in New York have been making every effort to comply with its requirements, whether the students attend Albany Law School and plan to practice locally, or a California law school intending to practice law in a U.S. law firm’s Tokyo office, or whether they are already admitted to practice in Argentina and are enrolled in an LLM program at a Boston law school but seek to be licensed in New York.

We recognize and applaud the exciting efforts across the profession to make the work done pursuant to the Rule meaningful and to ensure that the work is of a caliber befitting future New York lawyers. Now that the Rule has been in effect for six months, we have identified some of the challenges in its implementation. We offer the following suggestions related to 1) the supervision requirement, 2) the importance of having clear and consistent standards of implementation across the state, and 3) the need for a definitive resource for ongoing questions about the pro bono requirement.

#### Supervision in a Global Profession

Section 520.16(c) establishes the standard for supervision of law graduates performing eligible pro bono work for purposes of bar admission. Section (d) of the rule alludes to the fact that in the global economy, qualifying pro bono work can be done in the law student’s New York neighborhood or in “any foreign country.” Lawyers practicing both in New York and around the world agree that proper supervision of law students in all matters must be provided.

Section (c)(2) of the Rule, which requires that “[a]ll qualifying pre-admission pro bono work must be performed under the supervision of ... an attorney admitted to practice and in good standing in the jurisdiction where the work is performed” has become problematic for some applicants. The problem arises not because proper supervision is lacking, but because the section excludes eligible pro bono work that is being supervised remotely, even though such supervision is both part of the standard practice of law in a global industry, and appropriate to student-provided pro bono services.

No longer is proper supervision limited to a lawyer’s office or conference room where a law graduate pulls up a chair to work on a document with the supervisor. Teams of lawyers from locations around the world use shared secured documents and video conferencing to work on drafting contracts. E-discovery allows document review to happen anywhere the lawyer can log in. Close physical proximity is no longer the mark of supervision in law firms or law schools. Section 520.16(c)(2) does not take this into account and though well intended, that exclusion is proving problematic for applicants seeking admission from outside the state. The signatories of this letter respectfully request that this section be reconsidered.

Some examples of the real world challenges posed by the Rule are provided below. In all of these examples, the remote supervision would render the otherwise eligible pro bono work ineligible under Section 520.16 (c)(2):

- Law students engaging in an immigration law clinic in New York, governed by federal law, receive training, mentoring and supervision from an experienced immigration lawyer via video and phone conferencing, phone calls and emails. The experienced immigration lawyer supervisor is in an office of the firm in a state other than New York.
- A law student working on research for her law school clinic does the research while at home over spring break in a state other than the state where her law school is located. The work is later reviewed by her professor in person or via email.
- The Tokyo office of a global firm requires all of its U.S. trained lawyers to be admitted to practice in New York. None of the lawyers in the Tokyo office are licensed to practice Japanese law; rather they are practicing U.S. law in Japan with permission from the Japanese government. A New York admitted partner in the Japan office supervises the law graduate in Japan on a pro bono research assignment. All work is completed while both the NY admitted lawyer and the law graduate are in Japan.
- A team of lawyers from one firm working on a multi-jurisdictional international law research project. The supervising lawyer is admitted in State A, not New York, and is located in an office in State A. Law graduates and associates at the firm admitted in jurisdictions other than New York join the team from firm offices in non-New York states and other countries. The research is being done on laws from countries where the firm does not have offices. The pro bono client, an NGO with a global focus, is made aware, in

the engagement letter, that the firm does not practice law in any of the jurisdictions involved in the research and recommends that the NGO engage local counsel should it require legal advice in those jurisdictions.

- A partner in New York is leading a large class action involving conditions in a corrections facility. The document review is being done electronically. A firm-wide team, with lawyers and law graduates from the firm's office throughout the U.S. and around the world come together to conduct the document review from their offices and work on drafting the discovery request responses. Initial instructions for the work are provided via email and conference call.
- Law students take a spring break pro bono service trip outside the U.S., under the supervision of a law school professor and in collaboration with an NGO in the foreign country, to work with local NGO volunteers on the ground in that country.

Under the Rule, the work described above would qualify if the applicant and the supervisor were in the same physical location. However, Section (c)(2) as it reads now would cause bar applicants in the above situations to assume that this work would not count toward their pro bono requirement. In all of the above cases, *the quality of the work and the level of supervision remain the same regardless of the location in which the work was performed.*

#### Consistent Application of the Pro Bono Requirement Rule

Another ongoing challenge created by the Rule is its inconsistent application by the various departments. We have received numerous reports that compliance forms with virtually the same information, or that contain similar statements, are being rejected in some departments (with requests for additional information), and accepted in other departments. In addition to the harm caused to the applicant when his or her bar admission is delayed because of a rejected compliance form, inconsistent, and unknowable interpretations of the Rule throughout the State are harmful to the goals of the program. The State's different treatment of applicants with the same pro bono project has caused and we believe will continue to cause dissatisfaction with what is otherwise likely a positive process of becoming a lawyer in New York.

Real examples of inconsistent application of the Rule include:

- Affidavits by law firm associates describing eligible projects from the law firm's pro bono program rejected in only one department because the affidavits did not contain a sentence stating that the clients were not fee generating clients.
- Same pro bono work accepted in one department and questioned in another. An additional affidavit was requested by department questioning the work.

- One department, but not others, requiring the organization where the volunteer did the work to execute both the pro bono compliance form and an employer affidavit.

### Pro Bono Requirement Information Resource

We are appreciative of the care with which the pro bono requirement and information about that requirement have been offered to bar applicants and others in the profession. The revisions to the FAQs and other online resources have already served to facilitate admission candidates' better understanding of the Rule. However, a need for a ready point of contact, who is fully versed in the rule and pro bono practice, remains.

New York law schools, legal services organizations and pro bono professionals at law firms are frequently called on to create opportunities for qualifying pro bono work, to answer questions about satisfying the Rule and to advise bar applicants on compliance. Many law graduates have little access to professionals in these roles. Designation of a leader within the Office of Court Administration who can serve as a guide to New York bar applicants would ensure the success of the Rule by clarifying and standardizing how to comply with the Rule and would improve consistency of its application across New York.

We, the undersigned, respectfully request the following with regard to 22 NYCRR Part 520:

- 1) The words "in the jurisdiction where the work is performed" be removed from Section 520.16(c)(2).
- 2) Training be provided for clerks and other personnel charged with accepting the forms mandated by this section. Uniform standards to be set by all departments regarding acceptance of forms and guidelines for requesting additional information.
- 3) Clarification that only the pro bono compliance form, and not an employer affidavit, be required from the supervisor if the supervisor is not in fact an employer of the applicant.
- 4) Creation of a statewide position for a full-time pro bono professional to be available to answer questions from the applicants, the departments and the character and fitness interviewers and to serve as the central repository for information about the rules and available opportunities.
- 5) Creation of an electronic version of the pro bono affidavit. This would not only streamline the process for applicants, but with some minor changes in the form (for example, a checkbox for substantive area of law); such a resource allows the court to collect crucial information on how and if the rule is in fact narrowing the justice gap.

We welcome the opportunity to work with you and the Task Force to discuss these suggestions.

Sincerely,



Harlene Katzman, President, Association of Pro Bono Counsel



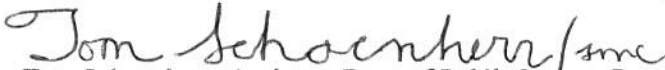
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cc: Honorable Judge Jenny Rivera  
Alan Levine, Esq.  
(Co-Chairs of the Advisory Committee on  
New York State Pro Bono Bar Admission Requirement)