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Judicial Support for Pro Bono Legal Service

JUDICIAL SUPPORT FOR PRO BONO LEGAL SERVICE

JUSTICE GREGORY J. HOBBS, JR.[†]

Access to justice is the single most compelling reason for a legal profession. The day we take our oath as attorneys, we swear never to refuse the cause of the defenseless or the oppressed.¹ A core value of the legal profession is to provide legal services without fee to persons of limited means and organizations serving their needs.

Colorado Rule of Professional Conduct 6.1 recognizes this core value for lawyers and judges alike: “Each lawyer has a professional responsibility to provide legal services to those unable to pay.”² In addition, judges “should fulfill their pro bono publico responsibility by performing services or participating in activities . . . for improving the law, the legal system or the legal profession.”³

Judicial support for pro bono legal service is thus housed within Colorado Rule of Professional Conduct 6.1 and enjoys the unstinting assistance of the Colorado Bar Association and local bar associations.⁴ Lawyer suggestions for rule changes have resulted in a number of new or amended rules adopted by the Colorado Supreme Court, along with chief justice directives, to aid attorneys in performing their pro bono responsibilities.⁵

† Justice, Colorado Supreme Court. Justice Hobbs has served on the court since his appointment by Governor Roy Romer in 1996. Prior to his appointment, Justice Hobbs practiced at Hobbs, Trout & Raley P.C. and Davis, Graham & Stubbs; served as the First Assistant Attorney General, Natural Resources Section, State of Colorado, as an Enforcement Attorney with the United States Environmental Protection Agency; and as a law clerk for Judge William E. Doyle of the United States Tenth Circuit Court of Appeals. Justice Hobbs also previously taught sixth grade in New York City and served in the Peace Corps in South America.

1. In accordance with Colorado Rule of Civil Procedure 201.14, a Colorado licensed attorney swears an Oath of Admission administered by the Colorado Supreme Court that states “I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed.” *Colorado Attorney Oath of Admission*, COLO. BAR ASS’N, <http://www.cobar.org/index.cfm/ID/1653/CETH/Colorado-Attorney-Oath-of-Admission/> (last visited Apr. 1, 2012); see also Greg Hobbs, *Access to Justice—The Single-Most Compelling Reason for a Legal Profession*, COLO. LAW. APR. 2011, at 59, 59, available at http://www.cobar.org/tcl/tcl_articles.cfm?articleid=6982.

2. COLO. RULES OF PROF’L CONDUCT R. 6.1 (2011).

3. *Id.*

4. *Id.*

5. Outstanding examples of lawyers who helped steer major rule changes through the Colorado Supreme Court committee rulemaking process include Jon Asher and Dianne Van Voorhees in regard to Colorado Rule of Civil Procedure 11(b) (limited scope representation rule); Ilene Bloom in regard to the commentary to Colorado Rule of Professional Conduct Rule 6.1, Sara Crocker, *Profile of the New DBA President: A New President in Bloom*, DOCKET, July–Aug. 2011, at 4, 4, available at http://www.cobar.org/docket/doc_articles.cfm?ArticleID=7142; and John Gleason in regard to the Pro Bono Emeritus rule in Colorado Rule of Civil Procedure 223, JoAnn Vogt, *New Rule Allows*

LIMITED SCOPE REPRESENTATION RULES

Colorado attorneys are authorized by the Colorado Rules of Civil Procedure and the Colorado Rules of Professional Conduct to undertake limited representation of self-represented parties, pro bono or for a fee.⁶

Under Colorado Rules of Civil Procedure 11(b) and 311(b), attorneys may provide drafting assistance to self-represented parties who file pleadings in court proceedings.⁷ The pleading filed by the self-represented party must identify the assisting attorney.⁸ The attorney's assistance in preparing the pleading does not constitute an entry of appearance.⁹ Without the necessity of any disclosure, attorneys may assist self-represented parties to fill out pre-printed and electronically published forms issued through the Colorado Judicial Branch for use in court.¹⁰

Under Colorado Rule of Civil Procedure 121 Section 1-1(5), attorneys may make limited appearances in court on behalf of self-represented parties in specified proceedings with consent of those parties.¹¹ Leave of court is not required for the attorney to make or complete the limited appearance.¹² In addition, the consent, notice of limited appearance, and completion of limited appearance forms are available at the web page of the Colorado judicial branch.¹³

Retired and Inactive Lawyers to Provide Pro Bono Legal Services, COLO. LAW., Sept. 2007, at 75, 75, available at http://www.cobar.org/tcl/tcl_articles.cfm?articleid=5228.

6. COLO. R. CIV. P. 11(b); COLO. R. CIV. P. 311(b); COLO. RULES OF PROF'L CONDUCT R. 6.1.

7. COLO. R. CIV. P. 11(b); COLO. R. CIV. P. 311(b).

8. *Id.*

9. *Id.*

10. *Id.*

11. COLO. R. CIV. P. 121 § 1-1(5); see also Adam J. Espinosa & Daniel M. Taubman, *Limited Scope Representation Under the Proposed Amendment to C.R.C.P. 121, § 1-1*, COLO. LAW., Nov. 2011, at 89, 89, available at http://www.cobar.org/tcl/tcl_articles.cfm?articleid=7300 (discussing the reasons for adopting of the now-effective COLO. R. CIV. P. 121 § 1-1(5)).

12. COLO. R. CIV. P. 121 § 1-1(5).

13. *Judicial Department Form 630: Notice of Limited Appearance by Attorney with Consent of Pro Se Party Under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Civil Matter*, COLO. STATE JUDICIAL BRANCH (Oct. 2011), <http://www.courts.state.co.us/Forms/renderForm.cfm?Form=795> (general civil matter form); *Judicial Department Form 631: Consent to Limited Appearance by an Attorney Under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Civil Matter*, COLO. STATE JUDICIAL BRANCH (Oct. 2011), <http://www.courts.state.co.us/Forms/renderForm.cfm?Form=796> (general civil matter form); *Judicial Department Form 632: Notice of Completion of Limited Appearance under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Civil Matter*, COLO. STATE JUDICIAL BRANCH (Oct. 2011), <http://www.courts.state.co.us/Forms/renderForm.cfm?Form=797> (general civil matter form); *Judicial Department Form 1334: Notice of Limited Appearance by an Attorney with Consent of Pro Se Party under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Family Law Matter*, COLO. STATE JUDICIAL BRANCH (Oct. 2011), <http://www.courts.state.co.us/Forms/renderForm.cfm?Form=798> (domestic relation matter form); *Judicial Department Form 1335: Consent to Limited Appearance by an Attorney under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Family Law Matter*, COLO. STATE JUDICIAL BRANCH (Oct. 2011), <http://www.courts.state.co.us/Forms/renderForm.cfm?Form=799> (domestic relation matter form); *Judicial Department Form 1336: Notice of Completion of Limited Appearance under C.R.C.P. 11(b) and 121, Section 1-1(5) in a Family Law Matter*, COLO. STATE

Colorado ethical rules allow attorneys and clients to agree upon limited scope representation for all types of legal service regardless of whether a court appearance occurs. Colorado Rule of Professional Conduct 1.2(c) provides that “[a] lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.”¹⁴ Under Colorado Rule of Professional Conduct 1.0(e), “informed consent” requires the lawyer to communicate “adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”¹⁵ Furthermore, clients and attorneys must enter into a limited-scope-representation and fee agreement. For the protection of both parties, prudence suggests this should be done in writing.¹⁶

The Colorado Supreme Court, working with its Judicial Advisory Council, adopted the limited representation rules (also known as the “unbundling” rules) because, for example, 75% to 85% of domestic civil cases filed in Colorado trial courts involve at least one pro se party, many of whom presumably are persons of limited means who cannot afford an attorney and need pro bono assistance.¹⁷ Others cannot afford the full range of legal services an attorney can provide. Colorado trial and appellate judges agree that it would be better for all parties to be represented, but, failing that, some attorney help is preferable to no help.¹⁸

COURT RULES TO ASSIST PRO BONO LEGAL SERVICE

Colorado Rule of Professional Conduct 6.1 sets forth a goal of fifty hours of pro bono legal service per year by each Colorado licensed attorney.¹⁹ A “substantial majority of the fifty hours” should be “without fee or expectation of fee to persons of limited means or charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means.”²⁰

The Commentary to Rule of Professional Conduct 6.1 contains a recommended pro bono policy for all Colorado licensed attorneys and firms.²¹ Without intending to be restrictive, the Commentary identifies

JUDICIAL BRANCH (Oct. 2011), <http://www.courts.state.co.us/Forms/renderForm.cfm?Form=800> (domestic relation matter form).

14. COLO. RULES OF PROF'L CONDUCT R. 1.2(c) (2008).

15. *Id.* R. 1.0(e).

16. Adam J. Espinosa, *Ethical Considerations When Providing Unbundled Legal Services*, COLO. LAW., Sept. 2011, at 75, 75, available at http://www.cobar.org/tcl/tcl_articles.cfm?articleid=7208.

17. Memorandum from Veronica Marceny, Office of the State Court Administrator, Colorado State Judicial Branch, to author (on file with author).

18. During his sixteen years as a member of the Colorado Supreme Court, the author has consistently heard this from trial judges throughout the state.

19. COLO. RULES OF PROF'L CONDUCT R. 6.1 (2008).

20. *Id.*

21. *Id.* R. 6.1 cmt.

categories of matters qualifying as pro bono service.²² It also suggests how a small, medium, or large law firm might establish procedures for administering its pro bono program.²³

Colorado Rule of Civil Procedure 260.8 provides for attorneys to receive up to nine hours of Continuing Legal Education credit per three-year reporting period for uncompensated pro bono representation or mentoring of another lawyer or law student providing the representation.²⁴

Chief Justice Directive 98-01 provides for a waiver of filing fees and certain costs for indigent persons in civil cases.²⁵ When an attorney receives a pro bono case from a legal services provider, the provider makes the indigency determination, and the attorney taking the case effectuates the filing fee and cost waiver by signing and filing the applicable judicial branch form.²⁶ Legal services providers typically have malpractice insurance that covers pro bono attorneys,²⁷ but an attorney taking an individual matter from such a provider should verify this, if she or he does not carry suitable coverage.

Colorado has a pro bono emeritus program for attorneys who choose not to engage in the practice of law other than pro bono work for indigent or near-indigent clients. Under Colorado Rule of Civil Procedure 223, for a small one-time administrative fee of \$50, the Colorado Supreme Court waives annual registration fees for otherwise inactive attorneys who take pro bono cases for indigent persons under the auspices of a legal services provider.²⁸ Attorneys in good standing who are licensed in other states are eligible to practice for pro bono clients in Colorado under this type of registration.²⁹

Chief Justice Directive 06-03 addresses interpreter services in court-related proceedings.³⁰ This directive has been amended to introduce a

22. *Id.*

23. *Id.*

24. COLO. R. CIV. P. 260.8.

25. Michael L. Bender, *Chief Justice Directive 98-01: Costs for Indigent Persons in Civil Matters*, SUPREME CT. COLO. (Aug. 2011), http://www.courts.state.co.us/Courts/Supreme_Court/Directives/98-01Amended8-12-11withAttachmentAREvised3-12.pdf.

26. The legal services provider and the attorney sign JDF Form 203. *Judicial Department Form 203: Certification of Determination of Indigency*, COLO. STATE JUDICIAL BRANCH (Aug. 2011), <http://www.courts.state.co.us/Forms/renderForm.cfm?Form=140>. The legal services provider maintains and fills out JDF Form 205. *Judicial Department Form 205: Motion to File Without Payment of Filing Fee or Waive Other Costs Owed to the State and Supporting Financial Affidavit*, COLO. STATE JUDICIAL BRANCH (Aug. 2011), <http://www.courts.state.co.us/Forms/renderForm.cfm?Form=142>.

27. *See Volunteer with MVL*, METRO VOLUNTEER LAW., <http://209.240.137.109/volunteer-with-mvl/> (last visited Apr. 7, 2012).

28. COLO. R. CIV. P. 223.

29. *Id.*

30. Michael L. Bender, *Chief Justice Directive 06-03: Directive Concerning Language Interpreters and Access to the Courts by Persons with Limited English Proficiency*, SUPREME CT. COLO.,

more comprehensive provision of language services, not only for indigent persons, but all persons involved in Colorado court proceedings.³¹ The Colorado Judicial Branch website maintains a large variety of self-help forms and information for use in court proceedings, available to the public without charge.³²

COLORADO SUPREME COURT PRO BONO RECOGNITION PROGRAM

Through its Pro Bono Recognition Program, the Colorado Supreme Court asks all law firms, in-house counsel groups, and government attorney groups, whatever their size, to commit to an average of fifty hours of pro bono legal services per Colorado licensed attorney annually across the firm or group, prorated for part-time attorneys.³³ This averaging mechanism recognizes that some attorneys in the firm or group might have more than fifty hours, offsetting those who have less. A substantial majority of these hours should be for indigent persons or organizations that serve the indigent.³⁴

Each year, the Colorado Supreme Court recognizes those law firms, in-house counsel groups, and government attorney groups that commit to this goal and the firms that achieved this goal in the prior calendar year. These firms self-report their commitment and achievement to the court. At a presentation ceremony, the court presents a certificate of pro bono commitment and service to each of these firms and groups, signed by the seven justices. In addition, members of the court travel to local bar association events to award these certificates and recognize attorneys receiving local bar association awards for their pro bono work.

The commitment list has grown from 45 firms in 2006 to 211 firms, in-house counsel groups, and government attorney groups in 2012.³⁵ Of these 211 firms and groups, 163 achieved the 50-hour per attorney goal, on the average, across the firm or group in calendar year 2011.³⁶ The Colorado Judicial Branch website publishes the Colorado Supreme Court's pro bono recognition list and it is updated on a continual basis.³⁷ *The Colorado Lawyer*, the Colorado Bar Association's monthly publica-

1 (June 2011), http://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2006-03%20amended%2006-11.pdf.

31. *Id.* at 2.

32. *Forms*, COLO. STATE JUDICIAL BRANCH, <http://www.courts.state.co.us/Forms/Index.cfm> (last visited Apr. 28, 2012).

33. Chief Justice Mary J. Mullarkey, *Chief Justice's Invitation to Participate in Pro Bono Commitment and Annual Recognition of the Commitment's Achievement*, COLO. STATE JUDICIAL BRANCH, http://www.courts.state.co.us/userfiles/File/SupCtCJInviteProBonoLegalSvcsRecogProg_1.pdf (last visited Apr. 28, 2012).

34. *Id.*

35. *Colorado Supreme Court Pro Bono Legal Service Commitment and Recognition Program RPC 6.1*, COLO. STATE JUDICIAL BRANCH, (Feb. 27, 2012), http://www.courts.state.co.us/Courts/Supreme_Court/Pro_Bono.cfm.

36. *Id.*

37. *Id.*

tion, also publishes this list.³⁸ Annually, in the last week of October, the chief justice issues a proclamation honoring pro bono week in connection with the American Bar Association's annual observance.³⁹

A pro bono civil appeals appellate program has been established, with forty lawyers signing up thus far, to take cases in the Colorado Court of Appeals and the Colorado Supreme Court for unrepresented parties who qualify for pro bono assistance.⁴⁰

COLORADO ACCESS TO JUSTICE COMMISSION

The Colorado Supreme Court and the Colorado Bar Association have jointly chartered an Access to Justice Commission and local Access to Justice Committees across the state. Their purpose is to work with the Judicial Advisory Council, attorneys, the courts, community organizations, Colorado Legal Services, Metro Volunteer Lawyers, other local legal service providers, the Colorado Legal Aid Foundation, Colorado General Assembly, the American Bar Association, the Legal Services Corporation, and the U.S. Congress, among others, to help design, implement, and fund legal services, and pro bono and self-help programs for indigent persons and self-represented parties.⁴¹ The chief justice of the Colorado Supreme Court appoints four members to the twenty-member Commission: a county court judge, a district court judge, a court of appeals judge, and a supreme court justice.⁴²

The Commission has helped to obtain approximately \$500,000 in appropriations annually from the Colorado General Assembly to the judicial branch for grants to legal service providers in aid of persons and families who suffer domestic abuse.⁴³ Nevertheless, based on testimony the Commission received at hearings throughout the state, up to 90% of indigent persons qualifying for representation by paid legal service attorneys are turned away for lack of adequate staff.⁴⁴ Pro bono attorney services and financial contributions to funding legal service providers are in desperate demand throughout the state. In May of 2012, at the request of

38. Supreme Court of Colo., *Colorado Supreme Court Pro Bono Legal Services Commitment and Recognition Program*, COLO. LAW., Apr. 2012, at 102, 102, available at http://www.cobar.org/tcl/tcl_articles.cfm?articleid=7517.

39. See Press Release, Colorado Judicial Branch, Colorado Chief Justice Proclaims Pro Bono Week (Oct. 25, 2010) available at http://www.courts.state.co.us/Media/Press_Docs/pro%20bono%20proc%20PR%20FINAL.pdf.

40. See Katayoun A. Donnelly & Geoff Klingspom, *Colorado's New Pro Bono Program for Civil Appeals*, COLO. LAW., Sept. 2011, at 15, 15, available at http://www.cobar.org/tcl/tcl_articles.cfm?articleid=7196.

41. See Colo. Access to Justice Comm'n, *Commission Bylaws*, COLO. BAR ASS'N art. I-II (2007), <http://www.cobar.org/index.cfm/ID/3218/DPWAJ/Commission-Bylaws/>.

42. *Colo. Access to Justice Commission*, COLO. BAR ASS'N (2012), <http://www.cobar.org/index.cfm/ID/3213/DPWAJ/Access-to-Justice-Commission/>.

43. Colorado Access to Justice Commission, *The Justice Crisis in Colorado, A Report on the Civil Legal Needs of the Indigent in Colorado*, COLO. BAR ASS'N 5 (Jan. 2008), http://www.cobar.org/repository/Access%20to%20Justice/08ATJ_FULLReport.pdf.

44. *Id.* at 10.

the Colorado Access to Justice Commission and the Board of Governors of the Colorado Bar Association, the Colorado Supreme Court approved short term emergency funding for Colorado Legal Services in the amount of \$1,500,000.00 over the next two years from Attorney Regulation Funds held by the court.⁴⁵

FAIR FIELD FOR DECISION

The coin of the legal profession is time, money, and faithful service. Colorado Rule of Professional Conduct 6.1 encourages attorneys and judges to honor all three by contributing financially to legal services and providing, or assisting in the provision of, pro bono legal services to those who cannot afford attorneys to solve the legal quandaries that others face in and out of court.⁴⁶

Judicial rules and canons recognize that a self-represented party pitted against a represented party should have a fair field for decision. Pro bono representation, limited representation of self-represented parties for a fee, and self-help instructional materials support access to justice, the single most compelling reason for a legal profession.⁴⁷

The Colorado Code of Judicial Conduct, Comment to Canon 2, Rule 2.2, Impartiality and Fairness, states that “[i]t is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.”⁴⁸

The Comment to Canon 2, Rule 2.6, Ensuring the Right to Be Heard, recites some steps that a judge may take to ensure that self-represented litigants’ rights are heard:

(2) The steps that are permissible in ensuring a self-represented litigant’s right to be heard according to law include but are not limited to liberally construing pleadings; providing brief information about the proceeding and evidentiary and foundational requirements; modifying the traditional order of taking evidence; attempting to make legal concepts understandable, explaining the basis for a ruling; and making referrals to any resources available to assist the litigant in preparation of the case. Self-represented litigants are still required to comply with the same substantive law and procedural requirement as represented litigants.⁴⁹

The Colorado Supreme Court has not adopted mandatory pro bono service or reporting rules. Whenever the imposition of one or both has been raised as a possibility, the Colorado Bar Association, a voluntary

45. Order of Chief Justice Michael Bender (May 17, 2012).

46. COLO. RULES OF PROF’L CONDUCT 6.1(b)(3) (2008).

47. See Justice Greg Hobbs, *Access to Justice: The Single Most Compelling Reason for a Legal Profession*, OKLA. BAR J., Mar. 12, 2011, at X, Y.

48. COLO. CODE OF JUDICIAL CONDUCT Canon 2 R. 2.2 cmt. 4 (2010).

49. COLO. CODE OF JUDICIAL CONDUCT Canon 2 R. 2.6. cmt. 2 (2010).

bar association, has urged the court not to do so. At the same time, it has dedicated considerable efforts, staffing, and funds to supporting pro bono legal services by attorneys. The supreme court asks all firms and groups to commit to the pro bono commitment and recognition program.

Both of Colorado's law schools, the University of Colorado Law School and the University of Denver Sturm College of Law, expect their students to perform pro bono legal services in cooperation with Colorado licensed attorneys.⁵⁰ We know from experience that new attorneys who we swear into the bar want an interesting professional livelihood that includes pro bono service for those who cannot afford an attorney. Let's meet the oath to which we all subscribed! Do pro bono.

50. See *Academic Requirements*, UNIVERSITY OF DENVER STURM COLLEGE OF LAW, <http://www.law.du.edu/index.php/registrar/course-information/required-courses/academic-requirements> (last visited Apr. 28, 2012); *Overview*, UNIVERSITY OF COLORADO LAW, <http://www.colorado.edu/law/about/mission.htm> (last visited Apr. 28, 2012).