



Trends in State Courts 2013

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A nonprofit organization improving justice through leadership and service to courts.

KEYNOTE

NEW YORK'S PRO BONO REQUIREMENT:

The Whys and Hows of Building a Culture of Service in Future Lawyers

Hon. Jonathan Lippman

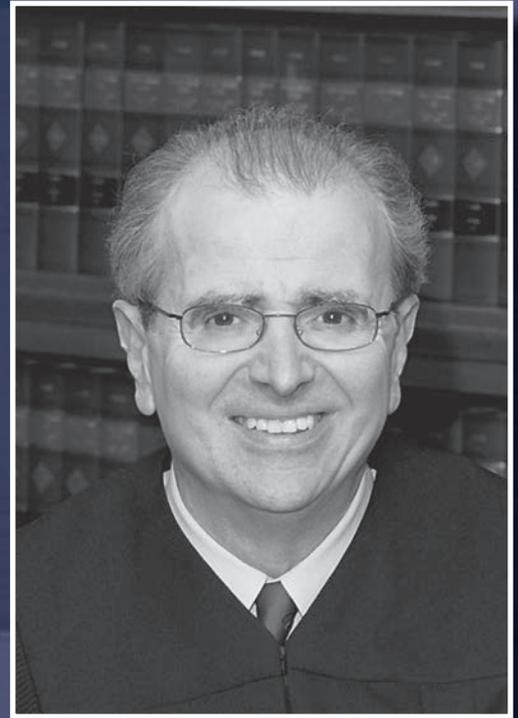
Chief Judge of the State of New York and Chief Judge of the Court of Appeals

In January 2013, New York became the first state in the country to require applicants to the state bar to perform 50 hours of pro bono work before they are admitted to practice law. This new rule arose as part of New York's response to the continuing crisis in access to justice. Understanding why it was conceived and how it moved from idea to reality are critical to grasping the rule's value and may be illustrative for other states that are considering a similar rule.

THE PROBLEM

The context for the new rule is the troubling justice gap between the need for legal representation for the poor and near poor and the resources available to meet that need. The greatest challenge to delivering equal justice in this country continues to be the number of unrepresented litigants in our courts. Each year, millions of people who cannot afford a lawyer find themselves caught up in our justice system as they struggle to protect the essentials of life—the roof over their heads, the custody of their children, freedom from abuse by their intimates, relief from predatory lenders, and the like. In New York State's courts alone, there are more than 2 million unrepresented litigants each year. They include the most vulnerable members of society: the elderly on fixed incomes, single parents, the disabled and mentally ill, abuse victims, and so many more. Many of our courtrooms are standing room only, filled with frightened litigants who are without anyone to help guide them through a process that is totally unfamiliar and intimidating.

Regrettably, despite the wonderful and committed work of New York's providers of free legal services, only a small fraction of people in need are lucky enough to be represented by one of their lawyers. For example, in New York City, eight of nine people seeking assistance from the Legal Aid Society have to be turned away because of a lack of legal resources.



The Honorable Jonathan Lippman, Chief Judge of the State of New York and Chief Judge of the Court of Appeals

"But even if we were to require every Texas lawyer to represent at least one indigent client, we would serve less than 40% of the poor who seek help. We must do more, not to preserve the judiciary, but to keep the courthouse doors open for all of our neighbors."

Chief Justice Wallace B. Jefferson, Texas Supreme Court, 2013 State of the Judiciary Address

Proceeding without a lawyer has a profound impact on the lives of these litigants. Moreover, the problem is not just confined to unrepresented litigants; it affects the represented parties adverse to them, overloads our already busy courts, and damages the state's economy. New York is not alone: state courts around the country continue to be challenged by the problem of unrepresented litigants.

THE SOLUTIONS

Rather than wring our hands, wait for help to come, and hope that things get better, New York's judiciary has confronted this crisis head on. No one knows the effects of this crisis better than the judiciary, and no institution has a greater stake in alleviating it. Access to justice is not tangential to what we do in the judiciary; it goes to the very heart of our constitutional mission to provide equal justice. The judicial branch must take a leadership role in measuring the problem and spearheading solutions.

In New York, we use a multipronged strategy. Since 2010, I have presided over annual hearings on civil legal services in each of New York State's four judicial departments. I also appointed the Task Force to Expand Access to Civil Legal Services in New York in 2010, headed by Helaine Barnett, former head of the Legal Service Corporation. The task force has studied the problem and issued three annual reports since its founding that contain numerous recommendations for action. Foremost among these is that the courts include funding for civil legal services in the judiciary budget. The task force recognized that without reliable and substantial public funding, we cannot hope to fill the justice gap.

The success of the judiciary's efforts has been due in part to our relationships with our partners in government. We have reached out to the legislative and executive branches on this issue and worked with them. We have explained the extent of the need and the dire consequences of inaction. At the same time, the judiciary is keenly aware of the difficult economic conditions we face in New York, and we have remained committed to fiscal prudence. Our partners in government have responded with their support. The two houses of the New York State Legislature issued a joint resolution applauding the civil-legal-services hearings and recognizing that "the fair administration of justice requires that every person who must use the courts have access to adequate legal representation." In the resolution, the Senate and the Assembly requested that the chief judge report annually to the governor and the legislature on the hearings and the work of the task force. With the support of the other branches, the judiciary obtained funding for civil legal services in our budget for the last two years: \$27.5 million in 2011-12, \$40 million in 2012-13, and \$55 million in 2013-14.

Despite this significant increase in public funding for legal service providers, however, it is not enough to fix the problem. We also depend on pro bono work by lawyers in New York to help ease the crisis. Lawyers enjoy an exclusive franchise to practice law and are in a privileged position. That position carries with it an ethical obligation to use our skills and status to help those most in need. The American Bar Association has long maintained that “every lawyer has a professional responsibility to provide legal services to those unable to pay.” State Rules of Professional Responsibility from around the country, including New York’s, echo the ABA’s Model Rules in strongly encouraging lawyers to provide pro bono legal services to benefit poor persons.

The efforts of the bar have played a key role in New York. To their credit, so many lawyers in our state have embraced a culture of service. According to a recent survey, nearly three-quarters of New York’s lawyers provided pro bono legal services in 2012. On average, these attorneys contributed 66 hours of pro bono work, with the majority exceeding the 20-hour goal set by the New York Rules of Professional Conduct.

These lawyers recognize that an obligation to help others is a core value of the profession and a long-standing tradition among lawyers. Their generosity is inspiring and makes a tremendous difference in the lives of those they assist.

But, for all the valuable work of so many lawyers who selflessly answer the call, there is more to be done. In New York, although we have made great progress, we know that at best we are still only meeting 20 percent of the need for civil legal services in our state.



Lori Van Buren,
Times Union (Albany, N.Y.)

THE PRO BONO BAR ADMISSION REQUIREMENT

A requirement that prospective lawyers perform pro bono work before they join the bar was, to me, the logical next step. It is vital that we instill values of public service in the next generation of lawyers. If lawyers entering the profession already carry with them the experience of using their skills to help others, they are more likely to see pro bono work as part of their professional lives and more likely to set aside time for pro bono work throughout their careers. Performing legal work for the poor will give them an invaluable window into the real world. And contact with people so desperately in need of assistance can only help build empathy and understanding, which are among the strongest factors that motivate lawyers to do pro bono work.

In addition to helping others, prospective lawyers can help themselves by doing pro bono work. Getting a chance to learn real-world skills and apply them outside the classroom can make students so much more practice-ready and marketable to potential employers. As one student said, law school taught him to think like a lawyer; pro bono work taught him to be a lawyer. Some even find their life's work through their pro bono experience.

Announcement and Implementation. With all this in mind, I announced on Law Day 2012 that prospective attorneys would soon be required to do 50 hours of pro bono work before they would be admitted to the bar. It is most often the best practice to reach out to the wider community, receive feedback, and marshal support before taking action. In this instance, the judiciary did solicit outside input, but not before announcing the rule. In New York, the authority to make this kind of change to the bar admission rules belongs to the Court of Appeals, New York's highest court. Rather than allow the proposal to stall out in the course of debate, I chose to move forward as chief judge with the support of my colleagues on the Court of Appeals. What was most effective in this case was to choose what to do, announce that we were doing it, and then discuss how precisely it would be implemented, taking into account the views of those affected most by the rule. To me, this step was fundamental to my own responsibility to exercise leadership and respond to the deep crisis in civil legal services for the poor. I firmly believe that the judiciary and the profession must be bold and proactive to ensure that equal justice is a reality in our jurisdictions and our nation.



Once the rule was announced in broad strokes, we took in the views and concerns of the legal community. We formed a broad-based advisory committee to facilitate the implementation and make recommendations. The committee worked through the summer, convening roundtable discussions; communicating with our State Board of Law Examiners; receiving input from lawyers, students, and law schools in New York and around the country; meeting with the leadership of state and local bar associations; hearing presentations from legal service providers and government law offices; and engaging in extensive discussions with Esther Lardent, the head of the Pro Bono Institute in Washington, D.C. The *New York Times* devoted a large space to letters of criticism and praise, all of which informed the work of the

committee. In crafting its recommendation to me, the committee took into account the views of a wide range of groups while maintaining the goal of inculcating newly minted lawyers with the tenets of our profession, of which service to others is so much a part.

On September 20, 2012, with the benefit of the advisory committee's recommendation, I announced the new section 520.16 of the Rules of the New York State Court of Appeals, effective January 1, 2013. In short, under the rule, prospective lawyers must satisfy the 50-hour pro bono requirement through qualifying law-related work if they plan to be admitted to the New York Bar. The requirement was immediately applicable as of January 2013 to

students in their first and second years of law school. We listened to feedback from the law schools and exempted current third-year students. These students nearing graduation had already registered for classes without knowing the particulars of the requirement. Moreover, the law schools told us that they needed time to build the infrastructure to help match students with volunteer opportunities.

The Contours of the Rule. The rule defines qualifying law-related work broadly. The committee carefully considered whether to limit pro bono work to the traditional pro bono area of legal service for the poor and unrepresented or to allow greater flexibility, with strong proponents on either side. Government lawyers, in particular, made a compelling argument that the rule be broad enough to include public service of other types. In the end, we concluded that the traditional definition would be too narrow for these purposes and might make it difficult for law students to find projects meeting the requirement. Accordingly, we opened up qualifying work to service with the federal, state, or local government or the judiciary and to legal service with not-for-profit institutions. While I expect that the great majority of students will choose to help the poor and the disadvantaged directly, I believe that law-related public-service and public-interest work are properly under the pro bono umbrella for the purposes of this rule.

To qualify, the work must be law related. It may include performing research and drafting, assisting with trial preparation, engaging in community legal education, and helping low-income clients complete forms. For example, building houses for Habitat for Humanity would not qualify, though it is a laudable activity. But reviewing contracts or conducting legal research for Habitat for Humanity, on the other hand, would likely fall under the rule. The key is whether the work is legal in nature. Moreover, the service provided must be free *to the recipient*. Pro bono work may qualify under the rule if it is part of a summer job, an internship, or an externship, including a judicial clerkship or other government service, even if the student receives a stipend or salary. A summer associate's work on a pro bono case as part of a paying job at a law firm may also qualify, provided the client receives services free of charge.

Another issue the committee took up was whether the work could be done at a student's law school in a clinical or similar experiential program for which the student receives academic credit. Law schools with pro bono requirements for students sometimes do not count clinical programs as pro bono. However, for our purposes, the law-school infrastructure is a perfect vehicle to make opportunities available to students through clinics and other venues. Throughout the country, law-school clinics are well established, they are supervised, and they provide a first-rate experience for students. After careful examination, the committee concluded and the Court of Appeals agreed that clinics or for-credit, law-school-based pro bono work would meet our pro bono requirement.

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Wherever it is performed, it is critically important that the work be supervised. This rule is not intended to send people who are not yet fully credentialed as lawyers into situations they are not prepared to handle. That would be unfair to them, potentially harmful to clients, and contrary to New York's existing rules on student practice. Instead, depending on the nature of the project, the pro bono work must be supervised by a lawyer, a law-school faculty member or instructor, or a judge.

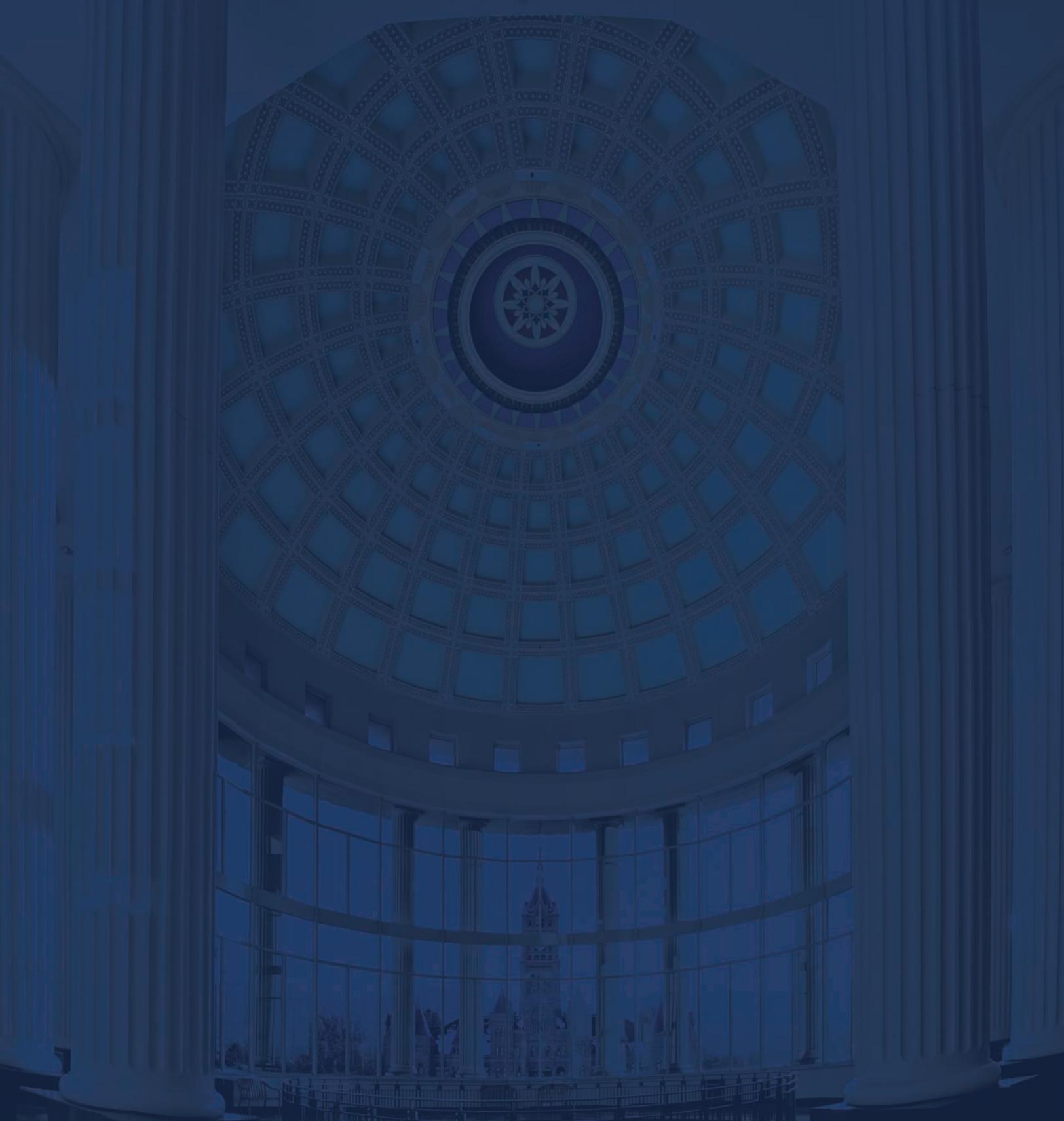
As for the physical location, the work does not have to be done in New York. About 15,000 people sit for the New York State Bar Exam every year. Between nine and ten thousand of those who take the exam are admitted, but only about a third of those graduate from our 15 New York State law schools. Another third are from law schools outside of New York, and the rest are from foreign jurisdictions. Some out-of-state law students who intend to practice in New York may well choose to complete their pro bono work in New York during their summer employment or in the period between law-school graduation and the bar exam. But to require them to come to New York to fulfill the requirement would result in inconvenience and expense that would detract from the purpose of the rule. Legal assistance to those in need obviously does not stop at state lines.

As to when the work must be done, applicants have until the moment they actually submit their application for admission. Doing 50 hours of pro bono work, approximately seven work days, over three-and-a-half years should not be onerous or burdensome to law students, regardless of their situation.

CONCLUSION

I look forward to the first group of new lawyers joining the profession with an outlook that is informed by the experience of pro bono service. And I expect that many of them will not stop at 50 hours. Once they get involved in helping people and feeling the satisfaction that comes with that, they will want to do more. Think of how many people in need that thousands of soon-to-be lawyers can reach—people who are at risk of losing their homes, victims of domestic violence facing deportation, or individuals who have been denied the disability or unemployment benefits they desperately need to get by.

The next generation of lawyers must understand that pro bono service is a core value of our noble profession. Performing 50 hours of pro bono work will inspire a spirit of serving others that they will carry with them throughout their years in the legal profession. It is my hope that New York's new rule will play a significant role in eliminating the justice gap in our society between the resources available and the civil-legal-services needs of the most vulnerable among us.



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