

# NEW YORK'S PRO BONO SERVICE PRE-ADMISSION REQUIREMENT: A GROUNDBREAKING RULE

*by Bryan R. Williams*

**T**he increasing number of citizens unable to afford legal services is a widespread concern shared by those both inside and outside of the legal community. This lack of access to civil legal representation can have serious consequences beyond issues relating to equal access to justice. The weak economy has prompted an increase in pro se litigation in actions involving, among other things, evictions, mortgage foreclosures, and demands for access to health care services, creating a burden for the courts. Meanwhile, providers of free legal services are turning away eligible low-income clients because of a lack of resources.

In New York, the Court of Appeals has taken steps to address what has been termed the “gap in legal services” by encouraging a commitment to pro bono service in the legal profession. In May 2012, Chief Judge Jonathan Lippman of the New York Court of Appeals announced an innovative plan that, beginning in 2013, will require prospective attorneys to spend 50 hours performing pro bono work as a requirement for admission to practice law in New York State.

## NEW RULE SOUGHT TO SERVE MULTIPLE GOALS

The pro bono requirement arose primarily to respond to a crisis in access to justice; the overriding purpose of the requirement is to enhance the provision of legal services to people who would otherwise

not be able to access or afford legal assistance.<sup>1</sup> In announcing the plan, however, the Court stressed its belief that such a requirement could not only address the State’s urgent access-to-justice gap, but also help prospective attorneys build valuable skills and imbue them with the idea of working toward the greater good. In addition, because the pro bono work must be performed under the supervision of members of the legal profession, the requirement underscores to new lawyers that lawyering is a mentoring profession.

## Addressing the Access-to-Justice Crisis

As emphasized by Chief Judge Lippman, it has become increasingly difficult to provide equal access to justice for all New York citizens:

We are facing a crisis in New York and around the country. At a time when we are still adjusting to the realities of shrinking state coffers and reduced budgets, more and more people find themselves turning to the courts. The courts are the emergency rooms of our society—the most intractable social problems find their way to our doors in great and increasing numbers. And more and more of the people who come into our courts each day are forced to do so without a lawyer.<sup>2</sup>

In announcing the plan, Chief Judge Lippman emphasized the profession’s responsibility to the

public in promoting greater access to justice: “As far back as judges and lawyers have existed, the pursuit of equal justice for all, rich and poor alike, has been the hallmark of our profession.”<sup>3</sup>

### **Instilling Important Values in New Lawyers**

In addition to addressing the access-to-justice crisis, the rule is meant to provide prospective lawyers with the opportunity to build valuable skills while instilling in them the idea of working for the greater good. With this rule in place, it is believed that law students will be exposed to the pressing needs of those less fortunate and gain a deeper understanding of the problems confronted by those segments of society that have little access to legal resources and institutions.

Moreover, students will learn of the opportunities for lawyers in the public sector and recognize that lawyering is a mentoring profession.<sup>4</sup> It is hoped that the implementation of this rule will allow law students to better understand the value of their work and make pro bono work a regular part of their professional lives.<sup>5</sup>

By way of tying together the goal of assisting the poor and underrepresented with the benefit of instilling in current and new lawyers a sense of responsibility for service in the profession, Chief Judge Lippman stated that “[t]he critical need for legal services for the poor, the working poor, and what has recently been described as the near poor could not be more evident” and mandated the active engagement of those in the legal profession:

Those who are privileged to call ourselves lawyers have a special duty as the gatekeepers of justice to participate in preserving what we hold

so dear . . . . It is the legal profession’s commitment to equal justice and to the practice of law as a higher calling that has made service to others an intrinsic part of our legal culture.<sup>6</sup>

In making his comments, Chief Judge Lippman also acknowledged the continuing positive influence that early pro bono work will have on practicing attorneys:

If pro bono is a core value of our profession, and it is—and if we aspire for all practicing attorneys to devote a meaningful portion of their time to public service, and they should—these ideals ought to be instilled from the start, when one first aspires to be a member of the profession.<sup>7</sup>

### **HOW THE RULE WAS DEVELOPED**

The outline for the pro bono rule came from a recommendation by the Advisory Committee on Pro Bono Bar Admission Requirements, which was appointed by the Court of Appeals in May 2012 to study the possibility of such a requirement. Before making recommendations to the Court, the committee took into account the views of law schools, attorneys, law students, providers of legal services, and other interested parties.

The committee was composed of one of the Associate Judges of the Court of Appeals, a former chair of the Legal Aid Society, the Deputy Chief Administrative Judge for the New York City Courts, current and former state and local bar leaders, a former Justice of the Appellate Division, a current and former law school dean, and representatives of legal service providers throughout the State of New York.

In the four months from its formation in May 2012 until the issuance of its report in September 2012, the committee worked on a daily basis. In fact, the committee continues in existence today in order to assist in answering questions and finding solutions to issues surrounding the implementation of the rule. Prior to issuing its report, the committee held three all-day meetings in June, July, and August 2012 to provide a forum for discussion with groups that would be directly affected by the rule, such as the law schools, the New York State Bar Association, legal service providers, government law offices, the Association of Pro Bono Counsel, and the New York State Board of Law Examiners. In September 2012, the New York Court of Appeals adopted Section 520.16, Pro Bono Requirement for Bar Admission, to Part 520 of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law. (See the sidebar on page 11 for the rule.)

## WHOM THE RULE APPLIES TO

The 50-hour pro bono requirement took effect on January 1, 2013, and applies to any applicant seeking admission to the bar in New York after January 1, 2015. Therefore, any student commencing legal studies in the fall of 2012, or anytime thereafter, is required to satisfy the pro bono requirement before admission to the New York Bar. Those applicants who pass the bar exam and are admitted to the New York Bar before January 1, 2015, are not subject to the pro bono requirement. This typically includes those who were second- or third-year law students when the rule was recommended in May 2012; however, if for any reason such a graduate's admission occurs after January 1, 2015, then that graduate will need to comply with the pro bono requirement. The requirement need not be fulfilled before the law student

applies to take the bar examination, but it must be completed before filing an application for admission.

In New York, there is a two-part process in which the application for taking the bar examination and the application for admission are submitted at different times. Applicants cannot apply for admission to the bar until they have successfully passed the bar examination. The New York State Board of Law Examiners administers the bar examination and is responsible for creating and grading the exam, as well as for making policy decisions relating to the examination. Outside of the administration of the bar examination, the Board of Law Examiners will not have a role in the implementation of the rule.

After bar examination passage, candidates apply to one of four Appellate Divisions of the New York Supreme Court for admission. The Appellate Division reviews the applications, investigates character and fitness issues, and approves candidates for admission to the bar. The 50-hour pro bono requirement must be completed before the candidate applies to the appropriate Appellate Division for admission. The Appellate Division is responsible for verifying that the applicant has satisfied the pro bono requirement.

The rule also applies to applicants who qualify to take the bar examination based on a foreign law degree or on a foreign law degree together with a qualifying LL.M.<sup>8</sup> The rule applies as well to those candidates who did not graduate from an ABA-approved law school, and to those candidates who qualify based upon their successful completion of one year at an ABA-approved law school and a clerkship at a New York law office. The pro bono requirement does not apply to attorneys who seek admission to the New York Bar on motion or who are admitted pro hac vice.

## § 520.16 Pro Bono Requirement for Bar Admission

**(a) Fifty-hour pro bono requirement.** Every applicant admitted to the New York State bar on or after January 1, 2015, other than applicants for admission without examination pursuant to section 520.10 of this Part, shall complete at least 50 hours of qualifying pro bono service prior to filing an application for admission with the appropriate Appellate Division department of the Supreme Court.

**(b) Pro bono service defined.** For purposes of this section, pro bono service is supervised pre-admission law-related work that:

(1) assists in the provision of legal services without charge for

(i) persons of limited means;

(ii) not-for-profit organizations; or

(iii) individuals, groups or organizations seeking to secure or promote access to justice, including, but not limited to, the protection of civil rights, civil liberties or public rights;

(2) assists in the provision of legal assistance in public service for a judicial, legislative, executive or other governmental entity; or

(3) provides legal services pursuant to subdivisions two and three of section 484 of the Judiciary Law, or pursuant to equivalent legal authority in the jurisdiction where the services are performed.

**(c) Supervision required.** All qualifying pre-admission pro bono work must be performed under the supervision of:

(1) a member of a law school faculty, including adjunct faculty, or an instructor employed by a law school;

(2) an attorney admitted to practice and in good standing in the jurisdiction where the work is performed; or

(3) in the case of a clerkship or externship in a court system, by a judge or attorney employed by the court system.

**(d) Location of pro bono service.** The 50 hours of pro bono service, or any portion thereof, may be completed in any state or territory of the United States, the District of Columbia, or any foreign country.

**(e) Timing of pro bono service.** The 50 hours of pro bono service may be performed at any time after the commencement of the applicant's legal studies and prior to filing an application for admission to the New York State bar.

**(f) Proof required.** Every applicant for admission shall file with the appropriate Appellate Division department an Affidavit of Compliance with the Pro Bono Requirement, describing the nature and dates of pro bono service and the number of hours completed. The Affidavit of Compliance shall include a certification by the supervising attorney or judge confirming the applicant's pro bono activities. For each position used to satisfy the 50-hour requirement, the applicant shall file a separate Affidavit of Compliance.

**(g) Prohibition on political activities.** An applicant may not satisfy any part of the 50-hour requirement by participating in partisan political activities.

*Source:* State of New York, Court of Appeals, Section 520.16, Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, Pro Bono Requirement for Bar Admission.

## HOW THE RULE IS SATISFIED

A candidate can commence the pro bono work at any time after the start of his or her legal education. To accommodate the thousands of candidates who take the New York Bar Examination each year but did not obtain their legal education in New York, the 50 hours of pro bono work may be performed anywhere, including in other states and foreign countries, so long as the work complies with all aspects of the pro bono requirement.

In order for pro bono work to be counted toward the 50-hour requirement, the work must satisfy a number of criteria.

- First, the qualifying work must be law-related. The work must involve the use of legal skills or law-related activities. Examples of eligible activities include assisting an attorney with trial preparation, helping litigants prepare for court appearances, helping people complete court forms, participating in community legal education projects, or engaging in legal research.
- Second, the qualifying work must be performed under the supervision of a law school faculty member or instructor, an attorney admitted to practice and in good standing with the bar where the work is performed, or a judge or attorney employed by the court system. Once the work is complete, the person who provided the supervision must certify the hours spent on the work by completing a section of an affidavit that the candidate is required to submit with his or her admission application as proof of compliance with the pro bono requirement. A separate affidavit must be submitted for each pro bono project completed. The candidate

is responsible for securing and maintaining the documentation needed to complete the affidavit(s).

- Third, qualifying work should be performed in the service of low-income or disadvantaged individuals who cannot afford legal counsel. Qualifying work can also be performed for a not-for-profit organization or the court system. Examples of qualifying work are
  - law school–sponsored clinics that provide legal assistance to those who cannot afford it;
  - externships or internships with not-for-profit providers of legal services for the poor and low-income individuals, law firms handling pro bono matters, not-for-profit organizations if the work is related to a legal matter for which no fee is being paid, judges, legal aid services organizations that serve low-income clients, public defenders, U.S. Attorneys, District Attorneys, State Attorneys General, or government agencies;
  - law school–sponsored projects that serve the poor or disadvantaged;
  - law-related work for not-for-profit organizations providing free legal services to low-income individuals, providing criminal legal services for the indigent, or serving the poor or disadvantaged or otherwise promoting access to justice;
  - law-related work in connection with a pro bono matter undertaken by a member of a law school faculty;

- work in law school clinics for course credit as well as work performed in a salaried position, so long as the work performed otherwise complies with the definition of qualifying work; and
- legal research for a law professor, if the research relates to the professor's pro bono legal services (legal research related to scholarship or a law journal article does not qualify).

Unsupervised student-directed pro bono projects, as well as volunteer work on a political campaign, or community work that is not law-related, will not qualify.

## LISTENING TO THE CONSTITUENCIES

In making its recommendations, the Advisory Committee was especially sensitive to the concerns of the New York law schools. For instance, the schools stressed that because of the intensive training and supervision that law school clinics provide, participation in clinical courses taken in law school should be eligible to satisfy the rule, even if academic credit was received by the student.<sup>9</sup> Accordingly, the committee recommended that work in law school clinics, even that performed for academic credit, should qualify.

The law schools also made clear that because adoption of the rule was likely to occur after classes would have begun for class of 2013 graduates, and because assisting those 2013 graduates to comply with the new rule would create an administrative burden, 2013 graduates should be relieved of the requirement.<sup>10</sup> Accordingly, the committee recommended that the rule commence to apply with the law school graduation class of 2014 seeking admission to the bar after January 1, 2015.

The input of legal service providers was also helpful, as they explained to the committee various ways in which law students could be used to provide legal services to the poor. The committee also studied the views of bar associations and their desire that this requirement not result in the establishment of mandatory legal services for practicing attorneys.<sup>11</sup>

## CONCLUSION

The pro bono requirement was conceived to serve several purposes, primary among them to dedicate more resources to low-income people who are unable to afford legal services. However, the rule is expected to be equally important in creating the opportunity to expose bar applicants to the real-life problems confronting the poor, with the hope that they will recognize a responsibility to help others.

To date, there is no comparable rule in any other state.<sup>12</sup> It is hoped that if the pro bono rule proves successful in providing services to the underrepresented in New York, other states will consider similar initiatives. ■

## NOTES

1. Advisory Committee on New York State Pro Bono Bar Admission Requirements, Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments (September 2012).
2. Jonathan Lippman, Chief Judge, New York Court of Appeals, Law Day Remarks (May 1, 2012).
3. *Id.*
4. Advisory Committee on New York State Pro Bono Bar Admission Requirements, *supra* note 1.
5. *Id.*
6. Lippman, *supra* note 2.
7. *Id.*
8. New York tests more foreign-educated candidates than any other state (in 2012, 4,675 foreign-educated candidates took the New York Bar Examination, representing approximately one-third of the testing population in New York), and it has been a leader in establishing the criteria for the admission of foreign-educated candidates.

9. Advisory Committee on New York State Pro Bono Bar Admission Requirements, *supra* note 1.
10. *Id.*
11. *Id.*
12. *Editor's Note:* Such a proposal is under consideration in California. In 2012, the State Bar of California authorized a Task Force on Admissions Regulation Reform to explore whether the State Bar should develop a regulatory requirement for a pre-admission practical skills training program. The Task Force recently issued a report recommending, in part, 50 hours of pro bono or modest means legal service pre- or post-admission. See page 25 of this issue for an article about the Task Force's recommendations.



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