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## Verbatim

# Delivering Pro Bono Services in New Jersey: What, Why and How?

By Peter G. Verniero

**W**hat is pro bono? Wikipedia posts more than a full screen on this topic. Here are the first two sentences: “Pro bono publico (often shortened to pro bono) is a phrase derived from Latin meaning ‘for the public good.’ The term is sometimes used to describe professional work undertaken voluntarily and without payment, as a public service.”

In general terms, that’s a concise definition. It’s consistent with a definition in an informative paper published in 2005 by the American Bar Association’s Standing Committee on Pro Bono and Public Service. According to that paper, pro bono includes “representation of charitable organizations, civil rights work, activities for improving the legal system, and legal services for religious, civic, community, governmental and educational organizations.”

Justice Ruth Bader Ginsburg has made a similar point, that pro bono is not limited to one type of case or activity. In a 2001 lecture at the University of the District of Columbia,

*Verniero, a former N.J. Supreme Court justice and state attorney general and now a partner with Sills Cummis & Gross, spoke Wednesday at the State Bar Association’s first annual Pro Bono Conference in New Brunswick. These are excerpts of his remarks.*

she reminded us that: “Lawyers serve the public interest in diverse domains. A devoted district attorney, who resists the lure of private practice, and instead pursues prosecutions vigorously but fairly, is also a pro bono lawyer, using his or her skills not just for personal gain but for the good of the public. The same may be said of the criminal defense lawyer at the other counsel table, putting the government to its proof, and protecting the rights of the accused against overzealous police and prosecution.”

The justice cited other examples, making clear her view that pro bono work encompasses a range of activities, including not only defense of individual rights or civil liberties but of certain business or commercial interests as well. As she put it: “Competition can be a healthy thing in the pro bono sphere as elsewhere. Our system of justice works best when opposing positions are well represented and full[y] aired.”

There’s a more client-specific definition, of course, that we need to keep in mind as we gather at this important conference. Pro bono frequently means the representation of clients who lack sufficient resources to pay for necessary legal counsel. The ABA’s model Rule 6.1 encompasses both the broad and client-specific definition of pro bono, and also recommends that lawyers “voluntarily contribute financial support to organizations that provide legal services to persons of limited means.”



PHOTO BY CARMEN NATALE

**REAL NEED: Verniero stressed that, despite New Jersey’s areas of wealth, a large number of residents live in poverty and must contend with the state’s high cost of living.**

I’m not here to endorse or favor one definition of pro bono over any other; only to note that various perspectives or elements appear in the literature.

Let me turn now to why I believe pro bono services are necessary in New Jersey. Initially, some might think that there isn’t much need for pro bono in this state. In many quarters, New Jersey is thought of as a wealthy place. Indeed, the median income of Garden State residents in some counties is among the highest in the country.

But that’s not the whole story, by far. Although we enjoy much prosperity here, there is also much poverty. According to a report by the Legal Services of New Jersey Poverty Research Institute, the poverty rate in this state grew almost a full percentage point between 1989 and 1999, representing the sixth largest poverty rate increase for that period in the U.S.

That same report concludes that, “A large percentage of those living

in poverty in New Jersey experienced extreme deprivation. Of the state's poor, 49 percent lived in severe poverty, meaning they had incomes of less than half the federal poverty level."

We also must consider the cost of living in New Jersey or what is sometimes referred to as the "self-sufficiency standard" — a measurement of income adequacy, related to the cost of basic necessities in a given location. For example, according to a 2005 Legal Services report, a single adult living in Hudson County, which includes Jersey City, requires a self-sufficiency wage higher than what would be needed in counties with moderately sized cities located in many other states. Of the studied areas, only two counties had higher costs — those that included Boston and San Francisco.

The bottom line is that, despite our areas of wealth, a large number of New Jerseyans live in poverty and must contend with the state's high cost of living. The need for pro bono services in this state is real — and growing. In light of that need, delivering pro bono services is the right thing to do.

In New Jersey, such services are reflected, in part, in our so-called *Madden* obligation, as outlined in the state Supreme Court's 1992 decision in *Madden v. Delran*, 126 N.J. 591 (1992). In that case, the Court sought to reduce the risk that some attorneys would be assigned pro bono matters disproportionately. It did so by establishing a pro bono assignment program with limited exemptions.

Indeed, we were one of the first jurisdictions not only to recognize a right to counsel but to provide such

counsel to those who could not afford it. New Jersey's constitution of 1776 provided that defendants "shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are or shall be entitled to." A legislative act of 1795 stated, "That the court before whom any person shall be tried upon indictment, is hereby authorized and required to assign to such person, if not of ability to procure counsel, such counsel, not exceeding two, as he or she shall desire, to whom such counsel shall have free access at all reasonable hours."

Beyond what might be required of us by our constitution and laws, there are other considerations that drive our work. Again, I quote Justice Ginsburg. At remarks given earlier this year at a Pro Bono Institute reception, she observed that: "Law cannot rank as a true and learned profession if its practitioners are merely skilled artisans, performing their craft for hire. All who recognize that law is a public calling understand this: Members of the legal profession have an abiding obligation to ensure that people unable to pay for legal services can obtain, when needed, the assistance of well-trained lawyers to help them access the justice system."

As suggested by the justice, a social compact exists between the bar and public. In exchange for the social and economic benefits that result from a law license, we have an obligation to improve the legal system itself. We do so, in part, by making it more accessible to those of limited means. Pro bono activities, in broad and client-specific forms, are indispensable to

those efforts. These activities also provide benefits to those who volunteer and handle pro bono matters, as one of the panels today will highlight. Simply stated, pro bono work is a laudable pursuit of an honorable profession.

That summarizes the "what" and the "why" of pro bono services. In my remaining time, I'd like to briefly answer the question, "how?" The short answer is: there are many ways to engage in this important work.

As one example, Legal Services of New Jersey has had a longstanding history of partnerships with corporate law departments, especially with Merck, one of the sponsors of today's conference. Legal Services also provides a range of support services, including initial intake and screening of cases, substantive training and mentoring services by Legal Services staff attorneys.

As another example, the American Civil Liberties Union has a well-known program, which includes representing individual clients directly as well as drafting amicus briefs on a range of subjects. The ACLU's cases often are constitutional in nature and precedent setting in their reach.

In closing, let me say again that pro bono work can come in many forms. There's a real need for these services in New Jersey. In addition to being the right thing to do, delivering pro bono services can provide an opportunity for lawyers to gain experience while serving the public good. Pro bono work improves the legal profession, makes the legal system more accessible, and represents a valuable public service. ■