

New York's 50-hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons

Presented by the ABA Standing Committee on Pro Bono and Public Service

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Introduction

New York is the first jurisdiction in the United States to require pro bono service as a condition for bar applicants to become licensed for law practice. Section 520.16(a) of New York's Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law states, in relevant part:

“Fifty-hour pro bono requirement. Every applicant admitted to the New York State bar on or after January 1, 2015...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.”¹

The 50-hour Rule has sparked discussion in all corners of the legal community -- among law students, professors, and administrators, as well as bar and judicial officials, and among stakeholders in the pro bono arena. The ABA's Standing Committee on Pro Bono and Public Service applauds all efforts to educate tomorrow's lawyers on the value of pro bono and other forms of law-related public service. The Standing Committee is particularly grateful for the leadership and energy which New York Chief Judge Jonathan Lippman has brought to the issue of narrowing the justice gap.

Regarding the 50-hour Rule, the Standing Committee has some concerns about an unintended impact on the core definition of “pro bono” which could dilute its meaning. The 50-hour Rule uses a definition of “pro bono service” which is broader than both Model Rule of Professional Conduct (MRPC) 6.1 and New York's own professional conduct standard on pro bono. Is “pro bono,” then, the right term to describe what is a broader, law-related service requirement? This paper will explore this question, and will also review other potential benefits and drawbacks of the 50-hour Rule. In addition, it is noteworthy that law practice regulators in other states are considering whether to follow suit with similar pro bono/service requirements of their own. This paper will be updated regularly to provide overviews of activity in other states across the country considering preadmission pro bono service.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and therefore should not be construed as representing the policy of the American Bar Association.

¹ New York Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.16(a), <http://www.nycourts.gov/ctapps/520rules10.htm#B16>. (The Rule is also attached as an appendix.)

The paper is composed of the following sections:

1. A Proposal to Narrow the Justice Gap & Train Tomorrow's Lawyers
2. Initial Debate and Discussion
3. The Advisory Committee: Deliberation & Recommendations
4. Analysis: Potential Benefits & Drawbacks
5. Making Waves: Developments Outside of New York
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Whatever one may think of the 50-hour Rule, and whatever forecasts may be made for its effectiveness and impact, the Rule is a groundbreaking development in law practice regulation. The Rule may shape the bar-admission landscape inside and outside of New York State, and will certainly change the way that many law students across the nation are introduced to pro bono and public service.

A Proposal to Narrow the Justice Gap & Train Tomorrow's Lawyers

In his Law Day remarks on May 1, 2012, New York's Chief Judge Jonathan Lippman announced: "[T]oday... we turn over a new page in the bar admission process in New York -- by requiring each and every applicant for admission to contribute 50 hours of participation in law-related or uncompensated pro bono service before they can practice in New York State."² Chief Judge Lippman articulated two motivations driving the proposal. He noted that with about 10,000 people passing New York State's bar exam annually, the 50-hour requirement could produce 500,000 yearly hours of pro bono service. He continued, "[W]e will not only benefit the clients who are in dire need of legal assistance but... we will also be helping prospective lawyers to build valuable skills and acquire the hands-on experience so crucial to becoming a good lawyer."³

Chief Judge Lippman's Law Day announcement laid out only a general framework for the 50-hour Rule's implementation. About three weeks later he announced the formation of an advisory committee to guide the Rule's development.⁴ The few months following the Law Day announcement marked a period of formal and informal debate about the idea's value, potential impact, and how it would be implemented.

Initial Debate & Discussion

The *New York Times* reported the Law Day announcement on May 1, 2012. The article noted that while Chief Judge Lippman "has made New York a national model and has been praised in the legal profession" for his focus on access-to-justice issues, this new proposal "may prove more controversial... because it wades into a fierce debate among lawyers over whether mandatory pro bono service is the right solution -- and because it could hit the pocketbooks of

² Chief Judge Lippman, "Law Day 2012" (speech, May 1, 2012), State of New York Unified Court System, <http://www.nycourts.gov/whatsnew/Transcript-of-LawDay-Speech-May1-2012.pdf>.

³ *Id.*

⁴ State of New York Unified Court System, "Chief Judge Names Advisory Committee on Pro Bono Bar Admission Requirements," *Press Release* (May 22, 2012), http://www.courts.state.ny.us/press/pr2012_03.shtml.

young lawyers at a time when they are struggling to find jobs.”⁵ Also on May 1, a *Times* editorial expressed support for the new rule as a “step in the right direction.”⁶

The first piece of broadly-circulated pushback on the 50-hour Rule came from Professor Ben Trachtenberg at the University of Missouri School of Law. In a May 14, 2012 letter to the *New York Times*’ editor, Trachtenberg wrote that while mandatory pro bono is “a good idea”, the 50-hour Rule was “deeply flawed.”⁷ Trachtenberg cited the facts that those required to do service would 1) have little practice experience and 2) themselves be struggling with financial burdens and possible job insecurity.⁸

David Udell, executive director of the National Center for Access to Justice at Cardozo Law School, countered the Trachtenberg piece in a letter published on May 29, 2012.⁹ Udell argued that law students could make valuable contributions in serving clients while at the same time receiving practical training. The *New York Times* then called for more reader responses, and ultimately published those as a “Sunday Dialogue” compendium, on June 2, 2012.¹⁰

Many other outlets ran news stories and opinion pieces on the rule. But all observers were waiting to see what proposal the advisory committee would formulate and how the Court would craft and implement a rule.

The Advisory Committee: Deliberation and Recommendations

The Advisory Committee appointed by Chief Judge Lippman worked into September, 2012, when it submitted a report.¹¹ The report documented the Advisory Committee’s work and offered a draft rule, as well as implementation recommendations.¹²

Noteworthy among the Advisory Committee’s recommendations is the broad scope of work that would count toward satisfying the 50-hour Rule:

“[W]e recommend the 50-hour requirement inculcate law students with core values of the legal profession through qualifying law-related work (i) in the traditional pro bono

⁵ Anne Barnard, “Top Judge Makes Free Legal Work Mandatory for Joining State Bar,” *New York Times*, May 1, 2012, http://www.nytimes.com/2012/05/02/nyregion/new-lawYERS-IN-NEW-YORK-TO-BE-REQUIRED-TO-DO-SOME-WORK-FREE.HTML?_r=2&.

⁶ New York Times Editorial Board, “A New Lawyer’s Duty,” *New York Times*, May 1, 2012, [http://www.nytimes.com/2012/05/02/opinion/a-new-LAWYERS-DUTY.HTML?_r=2&](http://www.nytimes.com/2012/05/02/opinion/a-new-lawYERS-DUTY.HTML?_r=2&).

⁷ Ben Trachtenberg, “Rethinking Pro Bono,” *New York Times*, May 13, 2012, <http://www.nytimes.com/2012/05/14/opinion/a-better-pro-bono-plan.html>.

⁸ *Id.*

⁹ David Udell, “Invitation to a Dialogue: Pro Bono Requirement,” *New York Times*, May 29, 2012, http://www.nytimes.com/2012/05/30/opinion/invitation-to-a-dialogue-pro-bono-requirement.html?_r=0.

¹⁰ “Sunday Dialogue: Public Service for Lawyers,” *New York Times*, June 2, 2012, <http://www.nytimes.com/2012/06/03/opinion/sunday/sunday-dialogue-public-service-for-lawyers.html?pagewanted=all>.

¹¹ 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, <http://www.nycourts.gov/attorneys/probono/ProBonoBarAdmissionReport.pdf>.

¹² *Id.*

areas of legal services for the poor and unrepresented, (ii) in the traditional areas of public service throughout the levels of federal, state and local government and the judiciary, and (iii) in the service of not-for-profit institutions.”¹³

Analysis: Potential Benefits and Drawbacks

The 50-hour Rule was ordered into effect by Chief Judge Lippman in September 2012¹⁴ and is codified in Section 520.16 of New York’s Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law.¹⁵

Plain English: What are the Basics of the 50-hour Rule?

Aside from the text of the Rule itself, the court released a set of Frequently Asked Questions (FAQs) to help explain the Rule’s scope and contours.¹⁶ Here is a breakdown of how the 50-hour Rule is constructed and what it says:

- Subsection 520.16(a) lays out the 50-hour pro bono requirement, and defines who is responsible to fulfill the requirement. The requirement applies to 1) individuals who are not licensed in another jurisdiction (e.g. recent law graduates) and 2) those who are licensed elsewhere but are not eligible to become licensed in New York via reciprocity rules.
- Subsection 520.16(b) defines “pro bono service” and the FAQs offer further explanation. Some important points:
 - o The pro bono service must be “law related,” which is explained in the FAQs as involving “the use of legal skills or law-related activities that are appropriate for lawyers-in-training not yet admitted to practice.”¹⁷
 - o The Rule employs a broad definition as to what type of services may count as “pro bono.” The definition includes the type of work which qualifies as pro bono service under MRPC 6.1 -- services rendered free of charge to/for persons of limited means and/or organizations that serve persons of limited means. Language in the answer to FAQ 11 offers non-binding guidance by noting that “you should seek pro bono work with programs or entities that aim to improve access to justice, are engaged in the representation of low-income or disadvantaged individuals or provide government services in furtherance of these

¹³ *Id.* at 5.

¹⁴ New York Court of Appeals, Order *In the Matter of The Amendment of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, September 14, 2012, http://www.courts.state.ny.us/attorneys/probono/Rule520_16.pdf.

¹⁵ New York Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.16(a), <http://www.nycourts.gov/ctapps/520rules10.htm#B16>.

¹⁶ State of New York Unified Court System, “New York State Bar Admission: Pro Bono Requirement FAQs (August 26, 2013 rev.),” <http://www.nycourts.gov/attorneys/probono/FAQsBarAdmission.pdf>.

¹⁷ *Id.* at 8 (FAQ 11).

objectives.”¹⁸ But the scope of qualifying work is more expansive, including, for example, all government work.¹⁹

- o Some credit-bearing work, such as the work performed via a qualifying law-school clinical program, would qualify as “pro bono service.”²⁰
- o Work that is grant- or stipend-funded may still qualify as “pro bono service.”²¹

The Rule’s remaining subsections provide further detail, including that “pro bono service” can be performed basically anywhere in the world and that bar-admission applicants must submit an affidavit of compliance, with supervisor signatures, attesting to the service performed.²² Finally, while the issue of a waiver from completing the requirement is not covered in Section 520.16, the FAQs note that “[o]nly applicants with exceptional circumstances will be considered for a hardship waiver. Part-time law studies, full-time employment, status as an LL.M. student, family obligations or other responsibilities, out-of-state or foreign residence and other commonly experienced situations will not qualify for a hardship waiver.”²³

Potential Pros and Cons

The 50-hour Rule’s **potential upsides** are perhaps more obvious than its potential downsides, so this analysis begins with the “pros.”

1. *Serving low-income clients and communities.* One of the main reasons Chief Judge Lippman offered in announcing the Rule was to serve those in dire need. As he noted, 10,000 aspiring attorneys performing 50 hours of pro bono leads to 500,000 hours of service.²⁴ Granted, the broad definition of “pro bono service” -- which could include work for a government agency that is several degrees removed from service to low-income clients - ensures that not all of the envisioned 500,000 hours would directly benefit individuals in need. And since subsection 520.16(d) allows pro bono service to be performed essentially anywhere, it is certain that not all benefits flowing from this service will inure to New Yorkers. But while the definition is broad and service can be performed anywhere, undoubtedly many New Yorkers will benefit by virtue of the rule.
2. *Inculcating a service ethic among tomorrow’s lawyers.* Introducing nearly every new attorney to law-related public service will offer exposure and education that many would

¹⁸ *Id.*

¹⁹ *Id.* at 8-9 (FAQ 12 offers examples of qualifying work, including “Externship or internship placements with a judge or a court system...” and with a “federal, state or local government agency or a legislative body.”)

²⁰ *Id.* at 8-10.

²¹ *Id.* at 10.

²² New York Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.16, <http://www.nycourts.gov/ctapps/520rules10.htm#B16>.

²³ *Id.* at 15. Law school administrators remain concerned about LL.M. students who completed their pre-LL.M. legal studies abroad, and who did not complete 50 hours of pro bono because they did not know of the requirement and/or did not know they would later be seeking a New York law license. Does one year of LL.M. study allow these students enough time and exposure to the nonprofit/government legal arena to complete the pro bono hours?

²⁴ Chief Judge Lippman at 4, <http://www.nycourts.gov/whatsnew/Transcript-of-LawDay-Speech-May1-2012.pdf>.

not otherwise receive. In some cases it will lead attorneys to become pro bono practitioners and to remain engaged in legal aid or other matters of civic importance.

3. *Providing hands-on practice experience for lawyers in training.* In 2007, the Carnegie Foundation report entitled *Educating Lawyers: Preparation for the Profession of Law* concluded that legal education should be infused with more experiential learning opportunities.²⁵ In the wake of the Great Recession, the call for law schools to graduate more “practice-ready” attorneys has intensified. The 50-hour Rule could catalyze learning opportunities and practice experiences for would-be attorneys. Given the broad definition of “pro bono service”, those performing it could be exposed to the full panoply of law and judicial practice, from research and litigation to rulemaking and deal-making.²⁶
4. *Yielding data to analyze the service impact.* The 50-hour Rule requires bar applicants to submit an affidavit of compliance.²⁷ The affidavit form²⁸ could be a source of several important data points about the pro bono service being performed, and its impact. The affidavit could provide data on:
 - a. when, between starting law school and applying for admission, the applicant completed pro bono service;
 - b. where the service was completed;
 - c. for what kind of organization - e.g. nonprofit law office, government law office - the service was completed;
 - d. how many pro bono service hours were performed; and,
 - e. the type of the work performed (via a section on the form which requires applicants to “provide a description of the nature of the pro bono work completed”).²⁹

Over time, the data pool created by these affidavits may allow for a useful longitudinal analysis of the rule’s effectiveness, and of how client communities, bar applicants, and the profession as a whole may be benefiting.

²⁵William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law*, San Francisco: Jossey-Bass, 2007. (Abstract and related information available at <http://www.carnegiefoundation.org/publications/educating-lawyers-preparation-profession-law>.)

²⁶ For more on the rule’s potential benefits as well as the possibility of it having a positive effect on law school pro bono programs, see Liz Tobin Tyler and David Udell, “Is the New York 50 Hour Requirement Changing the Future of Law Student Pro Bono?”, Bloomberg Law, January 28, 2013, hosted at: <http://ncforaj.files.wordpress.com/2013/02/tyler-udell-bloomberg-law-law-student-pro-bono.pdf>.

²⁷ New York Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.16(f), <http://www.nycourts.gov/ctapps/520rules10.htm#B16>.

²⁸ State of New York Unified Court System, “Application for Admission to Practice As An Attorney And Counselor-at-Law in the State of New York,” http://www.nycourts.gov/attorneys/probono/AppForAdmission_ProBonoReq_Fillable.pdf.

²⁹ *Id.*

In addition to the possible benefits, there are **potential drawbacks** to the 50-hour Rule's implementation.

1. *Inadvertently diluting the definition of "pro bono."* The 50-hour Rule refers to "pro bono service", but its broad "pro bono" definition could have the unintended effect of lessening the importance of traditional pro bono work, i.e. direct, uncompensated service to poor people and their communities. While the 50-hour Rule does require work to be "law-related," it may be performed, for instance, in an adequately funded government agency that plays little or no role in serving low-income populations. Some credit-bearing and stipend or grant-funded work also qualifies to satisfy the 50-hour Rule.

While the FAQ language is clearly designed to encourage that the requirement be met via service to those most needing it, the scope of qualifying "pro bono service" is ultimately broader. This is an expansion on some conventionally accepted "pro bono" definitions. MRPC 6.1³⁰ prioritizes pro bono work with a recommendation that a substantial majority of service consists of providing legal services to people of limited means or to organizations that serve people of limited means. Likewise, the New York Rule of Professional Conduct defining "pro bono legal services" is tailored more narrowly than the 50-hour Rule.³¹

Other prevailing definitions of "pro bono" -- including those used by the Pro Bono Institute³² and *The American Lawyer*³³ -- also contemplate a narrower scope of activities.³⁴ Tomorrow's lawyers could enter the profession with a notion of "pro bono" that is inconsistent with the time-honored concept that has evolved -- a means of service to those on society's margins. Put differently, one of the main goals Chief Judge

³⁰ American Bar Association, Model Rule of Professional Conduct 6.1: Voluntary Pro Bono Publico Service, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service.html.

³¹ New York State Bar Association, New York Rule of Professional Conduct 6.1: Voluntary Pro Bono Service, <http://nycourts.gov/rules/jointappellate/Rule6.1.pdf>.

³² The Institute regards pro bono as the delivery of legal services to persons of limited means or organizations that serve them, provision of legal assistance to civil rights and related organizations, and provision of legal assistance to nonprofit or government entities when those entities would be unduly burdened by paying legal fees. (See Pro Bono Institute, "What Counts?", 2008, <http://www.probonoinst.org/wpps/wp-content/uploads/what-counts-2008.pdf>.) Along these lines it is noteworthy that the Association of Pro Bono Counsel recommended in June, 2012 that the 50-hour Rule use the PBI "pro bono" definition. (APBCo, "APBCo Recommendations: New York State Proposed Pro Bono Admission Requirement," June 1, 2012, hosted at http://www.probonocounsel.org/library/item.432064-APBCo_Recommendations.)

³³ *The American Lawyer*, "Ranking the Firms' Pro Bono Work," June, 2013. Available at: <http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202608682486>. ("We define pro bono work as legal services donated to organizations or individuals that could not otherwise afford them. We do not include work done by paralegals or summer associates, nor time spent on bar association work, on nonlegal work for charities, or on boards of nonprofit organizations.")

³⁴ The Standing Committee recognizes that a current Interpretation in the ABA Standards and Rules of Procedure for Approval of Law Schools (i.e. the "accreditation standards") pertaining to law school pro bono programs also contemplates a broad scope of qualifying activity. See ABA Standards and Rules of Procedure for Approval of Law Schools, Chapter 3, Interpretation 302-10, available at: http://www.americanbar.org/groups/legal_education/resources/standards.html. The Standing Committee supports narrowing the scope of this Interpretation so that it is more firmly rooted in the pro bono definition of MRPC 6.1.

Lippman articulated in his May Day speech was to deliver legal services to those who most need them. Because “pro bono” is defined so broadly, however, the benefit to those needy client communities will be lessened because bar applicants will be able to perform 50 hours of service that delivers no direct benefit to the most needy clients.

2. *Placing an administrative burden on nonprofit and government law offices.* These offices have been substantially impacted by the Great Recession. Many nonprofits have gone through layoffs, resulting in fewer staff members assuming more responsibilities. Government offices have likewise experienced the effects of fiscal austerity. They may not have the capacity to supervise large groups of law students who are, by definition, inexperienced and who will have varying levels of motivation to perform well.
3. *Placing an administrative burden on law schools and students.* The 50-hour Rule could negatively impact law schools and their student bodies in at least two ways. First, with declining student enrollment numbers, most schools are confronting revenue declines. Some schools may not be in a position to support their students’ efforts to comply with the 50-hour Rule. This is especially so for schools far outside of New York, which may not be able to efficiently accommodate small numbers of students who wish to practice there.

Secondly, the 50-hour Rule’s “pro bono” definition could create a confusing inconsistency in schools that use a different definition for purposes of their internal programs -- some of which require pro bono service as a condition for graduation, and many of which already have administrative infrastructure in place to track service performed under their own definitions. Even though the 50-hour Rule places the onus for performing and documenting pro bono service solely on students, students and law school administrators will undoubtedly deal with problems related to recording hours and addressing definitional inconsistencies.

4. *Imposing a mandate to perform “volunteer” service.* The 50-hour Rule’s implementation stirs the pot in the long-running debate about “mandatory volunteerism.” New York’s Nassau County Bar Association, located on Long Island, cited the mandatory nature of the rule as it came out in opposition in September, 2012: “[T]he Association opposes pro bono service that is mandatory, regardless of whether the attorney is already admitted to practice or just completing law school.”³⁵

³⁵ Nassau County Bar Association, “Nassau Bar Association Opposes Mandatory Pro Bono Service,” NewsLI.com, September 20, 2012, <http://www.newsli.com/2012/09/20/nassau-bar-association-opposes-mandatory-pro-bono-service/>. There are compelling arguments for and against the notion of requiring pro bono service. For an exploration of this question, see Deborah L. Rhode, *Access to Justice*, Oxford University Press, 2004, pp. 148-152. Professor Rhode writes that “the effectiveness of pro bono requirements is difficult to predict”, but she is generally sympathetic to the notion that attempting mandatory pro bono programs is worth the potential benefits when weighed against potential downsides.

Making Waves: Developments Outside New York

The 50-hour Rule's rollout has caused other jurisdictions to consider placing a similar requirement on bar applicants, and also spurred a push to build a pro bono requirement into the ABA's law school accreditation standards.

Activity in the States

In at least four states there has been some consideration of a pro bono/public service requirement. But the progress in those states has taken different courses, and in one has stalled for the present.

California

In California, the State Bar's Task Force on Admissions Regulation Reform has been exploring broad-based legal education model changes that would emphasize experiential learning. In June, the Task Force released a "Phase One Final Report" containing reform recommendations that will be considered by the State Bar's Board of Trustees,³⁶ possibly as early as October.³⁷

The Task Force report "recommends requiring 50 hours of legal services in the pro bono or modest means areas. The 50 hours would have to be carried out in a Bar-certified Pro Bono Program/Modest Means Program, or under the supervision of a Bar-certified Mentor. In addition to addressing the justice gap and increasing core competencies, the breadth of this requirement -- by including low bono as well as pro bono -- is designed to expose more new lawyers to the possibilities for developing law practices geared to clients who are not indigent but are of limited means. The 50 hour requirement may be satisfied in whole or in part at any point during law school, post-graduation, and during the first year of licensure. It must be completed no later than the end of the first year of practice."³⁸

The Task Force referred favorably to New York's 50-hour Rule, and Chief Judge Lippman's emphasis on pro bono service as an integral professional value.³⁹ One difference between the California proposal and the 50-hour Rule is that the California requirement could be satisfied up to one year after a new attorney is licensed.⁴⁰ And the inclusion of the "modest means" component is another contrast. On this, the Task Force wrote: "Modest means

³⁶ State Bar of California Task Force on Admissions Regulation Reform, "Phase One Final Report," June 11, 2013, <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000010717.pdf>.

³⁷ Karen Sloan, "Largest State Poised to Require Practical Skills Training," *National Law Journal*, June 13, 2013, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202604163297>.

³⁸ State Bar of California Task Force on Admissions Regulation Reform, p. 17. (This "pro bono/modest means" requirement is one of three recommendations which the Task Force offered in order to boost practical skills training and promote professionalism. Another of the recommendations pertains to a pre-admission "competency skills training requirement." In some circumstances, work performed towards the competency skills requirement would also count to satisfy the pro bono/modest means requirement. See pp. 16-17.)

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 17.

representation...may introduce many young lawyers to an area of private, for-pay law practice focused on a [middle-class client population] that has long been underserved....”⁴¹

The Task Force report does not define “pro bono” work for purposes of meeting the proposed requirement. Earlier in the spring, one law school dean had expressed concern about this. In an April 2013 *National Law Journal* article, Santa Clara University School of Law Dean Donald Polden asked, “What is pro bono? Is it cleaning up a California beach though [sic] an environmental law group, or is it actually sitting down with clients and addressing their legal problems?”⁴²

Connecticut

In Connecticut, a February, 2013 report prepared for the state’s Access to Justice Commission recommends that the “Connecticut Judicial Branch should convene a task force...to consider whether to implement a pro bono requirement for applicants to the Connecticut bar.”⁴³ But, as reported in April, “...judicial leaders were inclined against the idea, said Superior Court Judge William Bright Jr., chairman of the judicial branch’s pro bono committee. ‘We’re probably not going to pursue that right now,’ Bright said. ‘I think we want to take a more measured approach and work with the individual law schools to look for ways to get students involved in pro bono’.”⁴⁴

Montana

“In October 2012, the Montana Supreme Court ordered the state’s Access to Justice Commission to “consider and make written recommendations to the Court, by no later than July 1, 2013, concerning the proposal that applicants to the Montana bar be required to complete fifty hours of pro bono service within three years before their admission to the Bar.”⁴⁵ Janice Doggett, Equal Justice Coordinator of the Montana State Bar Association, notes that, “A working group of the Commission has been active in gathering feedback and data on the proposal from students, law school faculty, and Bar members. The survey results provided the working group with valuable information about how proactive the state’s school of law had been in promoting pro bono and other service activities for students. The working group requested additional time to further tailor a proposal to the needs of the school, the Courts and the community. The Commission requested

⁴¹ *Id.* at 10.

⁴² Karen Sloan, “Pro Bono Mandate Gains Steam,” *National Law Journal*, April 22, 2013, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202596770850&Pro_Bono_Mandate_Gains_Steam&slreturn=20130504142231.

⁴³ Melanie B. Abbott, Leslie C. Levin and Stephen Wizner, “Report to the Connecticut Judicial Branch Access to Justice Commission,” February 15, 2013, hosted at: <http://ncforaj.files.wordpress.com/2013/03/report-2-15-13-to-the-access-to-justice-commission-2-15-13.pdf>. (Notably, on page 20 the recommendation diverges from the New York rules as follows: “...if a pro bono requirement were adopted, it would be important to define pro bono less broadly than it is defined in New York so that it actually generates substantial additional legal assistance for persons of limited means.”)

⁴⁴ Sloan, “Pro Bono Mandate Gains Steam.”

⁴⁵ Supreme Court of the State of Montana, Order *In re the Access to Justice Commission*, October 9, 2012, hosted at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_atj_order_pro_bono_service_proposal.authcheckdam.pdf.

and the Court granted an extension to December 31, 2013 for the Commission to present its proposal.”⁴⁶

New Jersey

“In October 2012, Chief Justice Stuart Rabner, on behalf of the Supreme Court, formed a Working Group charged with the task of determining if New Jersey should establish a preadmission pro bono requirement for applicants to the New Jersey Bar and, if so, the parameters of such a program.... One of the factors involved in the Working Group’s creation was the establishment of a program by New York’s Chief Judge to require aspiring lawyers to perform 50 hours of broadly defined pro bono service before admission to the Bar. Recognizing the significant number of law students who take both the New York and New Jersey bars and the on-going effort to increase pro bono participation, the Chief Justice established this Working Group to explore the question of whether New Jersey should implement a similar type of program....”⁴⁷

The Working Group’s primary recommendation, issued in April, is as follows:

“The Working Group proposes adopting a preadmission pro bono requirement for applicants for a plenary license to the New Jersey Bar. The primary goals of this program are to increase the number of pro bono hours available to underserved populations, give law students real-world work experience, and instill in future attorneys a desire to continue pro bono work throughout their legal careers -- the habit of doing good.”⁴⁸

Several weeks before the Working Group issued its report and recommendations, the New Jersey State Bar Association (NJSBA) came out in opposition to the idea of a preadmission pro bono requirement:

“[NJSBA] finds the proposal for mandatory *pro bono* service by individuals who have not yet been admitted to the Bar to be unnecessary, unworkable and an affront to consumers who expect experienced practitioners to provide legal services. The New Jersey State Bar Association, therefore, urges the New Jersey Supreme Court that the Court reject the proposal and recognize and appreciate the extraordinary *pro bono* service provided by the Bar and to work in conjunction with the New Jersey State Bar Association to identify any need for additional programs or services to assure the prompt and effective delivery of legal services to all citizens of the State.”⁴⁹

⁴⁶ Janice Doggett, email to Steve Grumm, Assistant Committee Counsel to the ABA Standing Committee on Pro Bono and Public Service, June 4, 2013.

⁴⁷ Working Group on the Proposed Preadmission Pro Bono Requirement, Report to the Supreme Court of New Jersey, April 30, 2013, p. 1, hosted at: <http://ncforaj.files.wordpress.com/2013/05/nj-report-on-50-hr-rule.pdf>.

⁴⁸ *Id.* at 6.

⁴⁹ New Jersey State Bar Association, Resolution, February 15, 2013, <http://www.njsba.com/images/content/1/0/1006369.pdf>

The Accreditation Push

Outside of the state-by-state developments, and propelled by the 50-hour Rule's momentum, a group including Equal Justice Works, the National Center for Access to Justice at Cardozo Law School, the National Legal Aid & Defender Association, and the Society of American Law Teachers urged the American Bar Association to add a pro bono requirement to its "Standards and Rules of Procedure for Approval of Law Schools" (known more commonly as "law school accreditation standards"). But as reported by the *National Law Journal* in November, 2012: "...that idea got a chilly reception from the committee at its...meeting on Nov. 16 and 17."⁵⁰

Most recently, David Udell of the National Center for Access to Justice and Stanford Law School Professor Deborah Rhode co-authored a *National Law Journal* opinion piece, again urging the Council of the ABA's Section on Legal Education and Admissions to the Bar to adopt an accreditation standard requiring pro bono:

"Pro bono service is certainly within the mission of legal education and offers an opportunity for the ABA...to show that it understands the reality of our justice system. [I]f the ABA does not embrace a national approach to pro bono service, individual states will likely move to establish their own rules, extending differing bar admission requirements to...graduating law students. That possibility is nearer to becoming a reality, as [officials] in New Jersey and...California [consider] bono service bar admission requirements that differ from one another, and from the requirement...in place in New York."⁵¹

Conclusion

The Standing Committee on Pro Bono and Public Service supports innovation and creative approaches to enabling more law students to perform pro bono and law-related public service. We agree with Chief Judge Lippman that such service may benefit clients and help train the next generation of attorneys, and we commend Chief Judge Lippman's many efforts to promote increased access to justice. But with respect to the 50-hour Rule, the Standing Committee believes that by broadening the conventional understanding of pro bono's scope, the Rule risks diluting the concept of pro bono. Promoting broader, experiential service-learning is itself a valuable undertaking. But it can and should be distinguished from pro bono service as defined in MRPC 6.1. If a state is going to follow the New York approach, the qualifying service should be described as "pro bono or law-related public service" to best reflect this important distinction.

⁵⁰ Karen Sloan, "Law Student Pro Bono Requirement Gets Chilly Response from ABA," *National Law Journal*, November 21, 2012, hosted at: http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202578997474&Law_Student_Pro_Bono_Requirement_Gets_Chilly_Response_From_ABA&slreturn=20130312124059.

⁵¹ Deborah Rhode and David Udell, "Clock's Ticking on ABA Pro Bono Requirement," *National Law Journal*, August 6, 2013, hosted at: <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202614134383&thepage=1&slreturn=20130730095528>

**PART 520. RULES OF THE COURT OF APPEALS
FOR THE ADMISSION OF ATTORNEYS AND
COUNSELORS AT LAW**

§ 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.
