

GUIDE TO SELECT RULES FOR PRO BONO PRACTICE

This resource provides a summary of select practice and other ethics rules that apply to pro bono legal services by lawyers in the United States. The rules are described in brief below, followed by a comprehensive chart providing information about requirements in all fifty U.S. states and the District of Columbia. Sources with more detailed information about each topic are referenced in the chart.

This guide addresses issues frequently encountered in pro bono practice but is not intended to cover all applicable ethics and practice rules; attorneys should consult the rules in their jurisdictions for more information.

In-House Practice Rules

Numerous in-house attorneys, though admitted and in good standing in one or more U.S. jurisdictions or in a foreign country, are not licensed in the states in which they currently work. The practice rules in all states except Hawaii permit in-house counsel licensed in other U.S. jurisdictions to represent their in-state employer. The practice rules in about half of U.S. jurisdictions also permit in-house counsel licensed in a foreign country to represent their in-state employer. While some U.S. jurisdictions require non-locally licensed in-house counsel to apply for registration or certification to work for their in-state employer as in-house counsel, others permit non-locally licensed in-house counsel to practice under an authorization exception to the jurisdiction's rules on the unauthorized practice of law.

Pro Bono Practice Rules

Pro Bono by Non-Locally Licensed In-House Counsel

While most jurisdictions permit non-locally licensed in-house counsel to represent their in-state employer, permission to engage in pro bono legal services has been restricted. Many jurisdictions place onerous requirements on pro bono service by non-locally licensed in-house counsel (*e.g.*, requiring supervision by a locally licensed attorney and/or association with an approved legal services organization). Other jurisdictions do not expressly permit non-locally licensed in-house counsel to practice in pro bono matters. Only four jurisdictions permit foreign lawyers who are registered in-house counsel to engage in pro bono, subject to restrictions.

Pro Bono by Out-of-State Attorneys

A number of jurisdictions allow attorneys who are licensed out-of-state, regardless of practice or employer, to provide pro bono. Out-of-state lawyers in jurisdictions that do not expressly permit their pro bono participation under another rule (*e.g.*, in-house counsel rule) may practice under these provisions. However, many of these rules place numerous restrictions on pro bono, including requiring that legal services be provided in "association with" or "affiliation with" approved legal services organizations and/or that the out-of-state attorney works under the supervision of a locally licensed attorney, as well as time limitations (as short as 18 months).

Pro Bono by Emeritus Attorneys

The rules concerning the qualification to become an “emeritus” attorney vary among jurisdictions, including how many years the attorney has practiced and how old the attorney must be. In some jurisdictions, out-of-state attorneys on active, inactive, or retired status may be included in the definition of an “emeritus” attorney, permitting such attorneys to provide pro bono service. Thus, in some states, the emeritus rule is the out-of-state attorney rule. Emeritus rules generally include restrictions such as requiring supervision by an active locally licensed attorney or requiring association with an approved legal services organization.

Legal Services Following Determination of Major Disaster

Following Hurricane Katrina, many evacuees sought pro bono legal assistance from attorneys in states to which they had evacuated. Additionally, many local attorneys were displaced and legal aid organizations faced overwhelming need. Pro bono attorneys from around the country sought to meet the need by providing assistance to displaced evacuees and coming to the Gulf Coast states to volunteer their legal services. In the intervening years, many jurisdictions have implemented “Katrina” rules that permit out-of-state attorneys to provide pro bono services following a major disaster. These rules often place restrictions on the pro bono work that the attorney can do. Currently, over a quarter of the jurisdictions have “Katrina” rules.

CLE

Some states permit pro bono service to count toward mandatory CLE requirements. The calculation of how many hours of pro bono service is equivalent to 1 CLE credit and the cap on the number of credits that may be earned through pro bono service vary among jurisdictions. Currently, a little less than half of the jurisdictions with a CLE mandate allow pro bono service to count towards CLE requirements.

Pro Bono Hours Goal

A majority of U.S. jurisdictions have an aspirational, annual pro bono hourly goal for attorneys practicing in that state. The American Bar Association (ABA) Model Rule of Professional Conduct 6.1 on Voluntary Pro Bono Service sets an aspirational goal of 50 hours annually, and many states have followed suit, adopting either a version of Model Rule 6.1 or a unique rule specifying the pro bono goal.

Limited Scope Representation

ABA Model Rule of Professional Conduct 6.5 modifies the rules concerning conflict checks when an attorney provides short-term, limited legal services to a client under the auspices of a program sponsored by a nonprofit organization or a court. The conflict rules only apply if the attorney knows that the representation of the client involves a conflict of interest, or knows that another lawyer associated with the attorney in a law firm is disqualified with respect to the matter. Relaxing the conflict rules for such short-term limited representations enables attorneys to participate in legal advice clinics and similar pro bono programs without screening for conflicts of interest.

Reporting Pro Bono Hours

A majority of U.S. jurisdictions have mandatory or voluntary reporting requirements for pro bono service by lawyers licensed to practice in the jurisdiction.

Ghostwriting

Ghostwriting is a form of limited scope representation that addresses the extent to which attorneys may engage in the drafting process of a pro se litigant's filing of a court document. The ABA adopts the position that ghostwriting is permitted and does not require the identity nor level of attorney assistance given to a pro se litigant. Pursuant to the competing arguments on both sides regarding the possible ethical concerns ghostwriting, jurisdictions have adopted permissive rules, binding rules, or have issued ethics opinions aligning or deviating with the ABA's approach. These rules detail the level of attorney assistance or attorney identity disclosure required, if any. Currently, 10 U.S. jurisdictions have not adopted ghostwriting rules. The remaining 41 U.S. jurisdictions have taken a position on ghostwriting, either formally through binding rules or non-binding advisory opinions.

Summary of Pro Bono Rules By Stateⁱ

State	In-House Practice Rules		Pro Bono Practice Rules					CLE	Limited Scope Representation	Pro Bono Hours		Ghostwriting
	Registration Requirement for In-House Practice By Out-of-State Attorneys	Registration Requirement for In-House Practice by Foreign Attorneys	Registered In-House Counsel (Out-of-State Attorneys)	Registered In-House Counsel (Foreign Attorneys)	Out-of-State Active Attorneys	Emeritus Attorneysⁱⁱ	Legal Services Following Major Disasterⁱⁱⁱ	CLE Credit for Pro Bono Service	Eases Conflict Check Requirements	Annual Pro Bono Hours Goal	Required or Voluntary Reporting of Pro Bono Hours	Rules or Ethics Opinions Governing Ghostwriting
Alabama	Yes	No			Limited Exception	X		X	X		Mandatory	Opinion
Alaska	No*	No*				X	X (temporary order for aid related to 2018 earthquakes)		X	50		Opinion
Arizona	Yes	Yes	X	X	X	X	X	X	X	50	Voluntary	Opinion
Arkansas	No*	No			X	X		X	X	50		Rule
California	Yes	No	X			X			X	50	Voluntary	Rule
Colorado	Yes	No	X		X	X	X	X	X	50		Rule
Connecticut	Yes	Yes	X	X		X	X		X		Voluntary	Rule
Delaware	Yes	Yes	X	X		X	X	X	X			Opinion
District of Columbia	No*	No*			X	X		No CLE mandate	X	50		Opinion
Florida	Yes	Yes	X			X			X	20	Mandatory	Opinion
Georgia	No*	No*			X	X	X	X	X	50	Voluntary	
Hawaii	No	No				X			X	50	Mandatory	
Idaho	Yes	No	X		X	X	X		X	50	Voluntary	
Illinois	Yes	Yes	X		X	X	X		X		Mandatory	Rule

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Indiana	Yes	Yes	X		X	X			X	50	Mandatory	
Iowa	Yes	Yes	X		X	X	X		X	50		Rule
Kansas	Yes	Yes	X			X			X			Rule
Kentucky	Yes	No	X			X			X	50	Voluntary	Opinion
Louisiana	Yes	No				X	X	X	X	50	Voluntary	Opinion
Maine	No*	No				X			X		Voluntary	Opinion
Maryland	No*	No			X	X		No CLE mandate	X	50	Mandatory	Opinion
Massachusetts	Yes	Yes	X			X		No CLE mandate	X	25		Rule
Michigan	Yes	No						No CLE mandate	X		Voluntary	Rule
Minnesota	Yes	Yes	X			X	X	X	X	50	Mandatory	
Mississippi	Yes	No			X	X	X		X	20	Mandatory	Opinion
Missouri	Yes	Yes	X	X		X	X		X		Voluntary	Rule
Montana	No*	No*				X			X	50	Voluntary	Rule
Nebraska	Yes	No	X						X	50		Rule
Nevada	Yes	No	X		X	X		X	X	20 (or 60 at reduced fee)	Mandatory	Opinion
New Hampshire	No*	No*				X	X		X	30		Rule
New Jersey	Yes	Yes	X		X	X	X		X		Mandatory	Opinion
New Mexico	No*	Yes			X	X		X	X		Mandatory	Opinion

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New York	Yes	Yes	X	X		X	X	X	X	50	Mandatory	Opinion
North Carolina	No*	No*	X		X	X	X (temporary order for aid related to Hurricane Florence; expired 1/16/19)		X	50	Voluntary	Opinion
North Dakota	Yes	Yes			X	X	X	X	X		Voluntary	Rule
Ohio	Yes	No	X			X		X	X	50	Voluntary	
Oklahoma	Yes	No							X			Rule
Oregon	Yes	Yes	X		X	X	X	X	X	80	Voluntary	Rule
Pennsylvania	Yes	No	X			X		X	X			Opinion
Rhode Island	Yes	No	X						X	50		Rule
South Carolina	Yes	No	X			X	X		X		Voluntary	
South Dakota	No*	No				X		No CLE mandate	X			
Tennessee	Yes	Yes	X			X	X	X	X	50	Voluntary	Opinion
Texas	Yes	Yes			X	X	X		X		Voluntary	
Utah	Yes	No	X			X	X	X	X	50		Opinion
Vermont	No*	No			X	X			X	50		

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Virginia	Yes	Yes	X			X	X		X	At least 2% of lawyer's professional time	Voluntary	Opinion
Washington	Yes	Yes	X			X	X	X	X	30	Voluntary	Opinion
West Virginia	No*	No*			X	X		X	X			Opinion
Wisconsin	Yes	Yes	X	X		X	X	X	X	50		Rule
Wyoming	No*	No				X		X	X	50		Rule

ⁱ Some rules include additional restrictions. See the text of the actual rules for complete information.

ⁱⁱ See American Bar Association, Commission on Law and Aging, “State Emeritus Pro Bono Practice Rules,” (May 2019), https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-emeritus-probono-practice-rules.pdf.

ⁱⁱⁱ See Legal Aid Disaster Resource Center, “Pro Bono Assistance Deployment and the Katrina Rule,” (November 2022), <https://www.ladrc.org/wp-content/uploads/2023/03/LADRC-Guide-Pro-Bono-Assistance-Deployment-Katrina-Rule.pdf>.

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