

# The Ethics of Making Legal Services Affordable and Making the Legal System More Accessible to the Public

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Canon Two of the Code of Professional Responsibility recites that a lawyer should assist the profession in fulfilling its duty to make legal counsel available and should render pro bono services. Regardless of whether lawyers consider this axiomatic norm to be an aspirational goal or a "duty" as the Canon states, consumers and legislatures are forcing the organized bar to compete with pre-paid legal services plans, pro se help centers, small claims courts, certified non-lawyer mediators, registered non-lawyer real estate settlement agents, and courthouse assistance projects. In addition, the Internet and software companies have provided the consumer with a variety of self-help resources including legal research and legal forms or documents. Some members of the bar insist that the mandatory bars should "crack down" on this intrusion using the unauthorized practice of law (UPL) rules.

Recently, in a case styled *Unauthorized Practice of Law Committee v. Parsons Technology Inc.*, 1999 WL 47235 (N. D. Tex. 1999) the State Bar of Texas did just that, convincing a federal court to enjoin the sale of "Quicken Family Lawyer '99'." The software manufacturer, which also produces other financial self-help programs such as "Turbo Tax," is appealing the decision. "Quicken Family Lawyer" contains more than 100 legal forms from real estate leases to employment contracts to prenuptial agreements, with instructions on how to fill out and execute these legal documents. The program is interactive as it "interviews" the user to determine which state's laws apply and proceeds with a series of questions needed to select the "right" form and complete the blank spaces. Although the software has a disclaimer that it is not "giving legal advice" and suggests that the user consult with an attorney, it is likely that consumers ignore the warnings, having purchased the product as a substitute for an attorney.

The Texas UPL Committee is also pressing UPL charges against a California-based company, Nolo Press/Folk Law, Inc., that distributes self-help legal books and software in Texas. This resurgence in UPL enforcement is curious particularly following the organized bar's defeat in the celebrated case won by Norman Dacey, author of *How to Avoid Probate*. The reasoning of the New York Court of Appeals was that an essential element of the "practice of law" is "the representation and advising of a particular person in a particular situation." Since Dacey's book was for the general public, and not intended to advise a particular individual, Dacey's activity therefore was not UPL. *New York County Lawyers' Ass'n v. Dacey*, 21 N.Y.2d 694, 287 N.Y.S.2d 422, 234 N.E.2d 459 (1967).

Recently, a Pennsylvania court threw out the state's case against Allstate Insurance Company which distributed a flyer to accident victims with potential claims against its insureds. The state's case stated that since 1995 Allstate has contacted individuals having claims against its policy holders advising that they do not need to hire an attorney to settle their claims with the insurance company. The

flyer promised fair compensation and the possibility of a settlement much faster than a claim handled by a lawyer. The court found that nothing contained in Allstate's flyer entitled "Do I Need An Attorney?" could be construed as the company giving legal advice nor making any legal judgements as to the merits of any claim. The court did allow the state to go forward on consumer protection claims based on alleged misleading statements in the material. *Commonwealth v. Allstate Ins. Co.*, No. 1009 M.D. 1998 (4/13/99). *But see In re Unauthorized Practice of Law Complaint v. Allstate Ins. Co.*, Case No. 001-97 (W. Va. State Bar Committee on Unlawful Practice, 9/22/97) (Allstate's distribution of flyer "Do I Need An Attorney?" is UPL because recommending, advising, or attempting to persuade and individual to retain or not to retain an attorney is giving legal advice).

The *Parsons Technology* decision, may be overturned on freedom of speech grounds, unless the appellate court agrees with the lower court's assessment that the interactive nature of Quicken "Family Lawyer" and its modification of the content of the forms based on the user's response to questions, amounts to "practicing law." This interactive component distinguishes it from the garden variety self-help books protected under the free speech doctrine.

The organized bar's resistance to nonlawyers providing, and consumers receiving, free or inexpensive legal advice, information or service conflicts with the ethical precept that the legal profession should strive to increase access to justice and the legal system. The current ethics and UPL rules which restrict or prohibit non-lawyer involvement in the delivery of law-related services are now regarded by some as archaic and paternalistic with little or no empirical evidence of consumer harm to support their enforcement.

There is no doubt that the organized bar feels threatened by the rampant consumerism that is rapidly changing the competitive legal environment within which lawyers practice. But the statistics bear out that the unmet legal needs of the poor and middle-class are severe. The most significant finding of the 1994 Comprehensive Needs Study published by the American Bar Association (ABA) is that nearly two-thirds of Americans with identified legal needs either live with their problem or try to resolve it themselves without seeking the assistance of a lawyer. In August 1995, the ABA issued its report *Non-lawyer Activity in Law-Related Situations*, recommending, *inter alia*:

1. The American Bar Association, state, local and specialty bar associations, the practicing bar, courts, law schools, and the federal and state governments should continue to develop and finance new and improved ways to provide access to justice to help the public meet its legal and law-related needs;
2. The American Bar Association should examine its ethics rules, policies and standards to ensure they pro-

mote the delivery of affordable competent services and access to justice.

3. With regard to the activities of all other nonlawyers, states should adopt an analytical approach in assessing whether and how to regulate varied forms of non-lawyer activity that exist or are emerging in their respective jurisdictions. Criteria for this analysis should include the risk of harm these activities present, whether consumers can evaluate a provider's qualifications, and whether the net effect of regulating these activities will be a benefit to the public. . . .

### Self-Help Resources

More people are turning to legal resources that will assist them in handling simple or routine legal matters without having to hire a lawyer. Across the country, courts, legal communities and nonprofit groups have organized self-help legal information centers to assist people in handling, for example, uncontested divorces, landlord-tenant disputes, name changes and adoptions. Since 1996, for example, the Fairfax County Public Law Library set up three "workstations" or carrels of books and pamphlets for pro se litigants. One station addresses family law and another provides information about employment law. The third provides information on bankruptcy, wills, landlord-tenant and taxes. Other self-help resources are now available on the Internet and are described below.

### Internet Resources

The People's Law Library of Maryland ([www.peopleslaw.com](http://www.peopleslaw.com)) has information on several topics such as divorce, child custody, landlord-tenant, and wills. The site provides some legal forms which you can download or print out. The site also has links to an online dispute mediation service, courses for non-lawyers and a forum where attorneys will answer posted questions.

The American Pro Se Association ([www.legalhelp.org](http://www.legalhelp.org)) provides detailed instructions on how to file and answer complaints, counterclaims, serve a summons and make legal motions. A site called "FreeAdvice.com" ([freeadvice.com](http://freeadvice.com)) provides answers to thousands of commonly asked questions on legal topics ranging from accidents, bankruptcy, business, employment, estate planning, family law, immigration, insurance, intellectual property, litigation, real estate and tax.

At the Divorce Law Information Service Center ([www.divorcelawinfo.com](http://www.divorcelawinfo.com)) one can order "self-help divorce kits" online for \$25. The site also provides information and answer pages about local divorce laws. Finally, The Pro Se Law Center ([www.pro-selaw.org](http://www.pro-selaw.org)) provides lists and links to legal software, legal information and training sites, as well as legal aid programs.

Good Internet resources will inform the consumer or member of the public that the law is often different in each state and advise the consumer to consult with a lawyer in his or her state. In addition, it is improper and illegal for these self-help legal centers to provide legal advice as opposed to legal information. Legal advice, as contrasted with legal information, is given whenever a person attempts to apply

legal skills, judgment and knowledge to provide a solution to another's particular legal problem. Therefore, the public should be cautioned not to look to these self-help centers to provide a solution to a specific legal problem, but rather as a starting point in recognizing and identifying their legal needs. But differentiating between "legal advice" as opposed to "legal information" is as easy as "nailing Jell-O to a tree." Statements declarative of the law are regarded by some as "legal advice" while others believe such statements are merely "legal information" which a non-lawyer may lawfully provide.

As we move into the new millennium, more states and organizations will have primary legal material on the Internet. Hundreds of organizations are already there. The federal government has taken the lead with a goal of making all government information available electronically. This includes agency rules and regulations as well as cases and statutes. The states are lagging behind, but many jurisdictions have started to place appellate decisions on the Internet.<sup>1</sup> State and local governments must put useful electronic and interactive resources on the Internet for citizens to access cases, statutes, regulations, ordinances, public notices, land records and other government forms and documents.

### Courthouse and Bar Association Sponsored Pro Se Self-Help Service Centers

The Fairfax County Bar Association and the Fairfax County Clerk's Office have collaborated to make life a little easier for pro se litigants by creating form pleadings and brochures to assist in certain types of cases such as Petitions for Adoption, Name Change, Reinstatement of Driving Privilege, Appointment of Church Trustees. Informational brochures explain, for example, how to file for a divorce in Virginia and include a bibliography prepared by a law librarian setting out what resources are available in the bar's public law library for pro se patrons. Another brochure explains adoption procedures. Still another explains all of the major procedures for civil cases and provides general legal information on the process of obtaining a civil judgment. By providing information about laws and civil and criminal procedure, Fairfax County has taken a large step toward providing citizens with meaningful access to justice.

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1 Here is a listing of some Internet addresses for federal and state resources:

<http://www.law.cornell.edu/statutes.html>  
<http://www.law.cornell.edu/regs.html>  
<http://www.law.cornell.edu/supct>  
<http://www.law/cornell.edu/supct/cases/historic.htm>  
<http://www.fedworld.gov/supcourt/index.htm>  
<http://www.willamette.edu/law/longlib/fedjud.htm>  
<http://www.findlaw.com>  
<http://www.urich.edu/jolt/e-journals>  
<http://www.hg.org>  
<http://www.llrx.com>

Perhaps the most comprehensive collection of law-related sites can be found at Leigh Webber's site which is <http://www.knowhow.com/bookmark.htm>

The Virginia State Bar's Home Page also has a useful collection of legal links located at <http://www.vsb.org/links.htm>

One of the best search tools for finding legal materials on the Internet is the "LawCrawler" which can be found at <http://www.lawcrawler.com>. Using AltaVista's search engine, LawCrawler searches only sites known to contain legal information and is therefore more efficient and accurate than general search tools on the Internet such as Yahoo or Infoseek.

Other jurisdictions have experienced the pressure created by an ever increasing number of pro se litigants. Courthouse and pro se assistance projects have developed, for example, in the District of Columbia, Florida, Maricopa County, Arizona, and Hennepin County, Minnesota. These types of programs typically provide pro bono assistance by volunteer lawyers, law student externs, court clerical personnel and paralegals who provide information to pro se litigants on procedural matters, and provide regular classroom seminars on substantive areas of the law such as family law, spousal and child abuse, landlord-tenant, debt collection and other matters commonly brought to court by unrepresented parties. Self-help workbooks assist in form completion. Bar or court supervised law libraries are expected to provide more user-friendly resources and court personnel are trained to assist pro se litigants in completing necessary form pleadings. Pro se litigants are taught how to prepare exhibits and evidence in a form acceptable for presentation in court. These courthouse pro se self-help service centers are new and expanding but at the very least provide information about court processes and procedures and direct the user to other legal information resources. With proper intake, immediate referrals can be made to other community organizations including battered women's shelters, legal aid clinics, community mediation centers, protective services and lawyer referral services.

### **Unbundling of Legal Services: Another Alternative?**

Some legal commentators have spoken in favor of "unbundling" legal services, i.e. a lawyer contracts with his or her client to perform specific discrete legal tasks, leaving other tasks for the client to perform, thus providing something less than full representation. "Unbundling" offers, perhaps, affordable legal work when the client could not otherwise afford a "full representation." While touted as a new concept, some "unbundling" has probably occurred for quite some time. A wife may ask a lawyer to review a separation agreement prepared by her husband's attorney. If the agreement is acceptable, she plans on having her husband's attorney proceed with the uncontested divorce. Of course, the lawyer reviewing the agreement prepared by the husband's attorney is at an inherent disadvantage in not being counsel of record in the divorce case. The attorney may be incapable of verifying the marital assets and other information necessary to assess the fairness of the proposed agreement. The "full service" lawyer would consider serving written discovery on husband's lawyer before passing judgment on the proposed agreement. Lawyers are understandably fearful, on ethical and malpractice grounds, about providing "piecemeal" legal services to clients. The concept of "unbundling" is commonly employed in transactional work, estate planning, or mediation. In mediation, for example, the mediator will facilitate a settlement but may instruct the disputants to seek the services of counsel to prepare the final settlement agreement.

However, "unbundling" seems to have hit a snag when it comes to litigation. Attorneys who have "ghostwritten" pleadings for pro se litigants have been chastised or reprimanded by courts who have labeled such conduct as unethical and improper. The practice of "ghostwriting" simply

involves an attorney who agrees to prepare, for example, a lawsuit which the client will file as a pro se litigant. The complaint or motion for judgment does not reveal who prepared or assisted in preparing the lawsuit. In *Laremont-Lopez v. Southeastern Tidewater Opportunity Center*, 968 F. Supp. 1075 (E.D. Va. 1997) the court, after learning that the pro se plaintiffs' complaints had been drafted by attorneys, issued a rule to show cause why they should not be held in contempt. Though the court did not sanction the attorneys, finding that they did not intentionally mislead the court, Judge Morgan opined:

Nevertheless, the Court considers it improper for lawyers to draft or assist in drafting complaints or other documents submitted to the court on behalf of litigants designated as pro se.

968 F. Supp. at 1077. The court observed that the attorneys were paid a flat fee for their limited representation of the plaintiffs. The court's rationale was that pro se pleadings are held to a less stringent standard than attorney-drawn complaints, when tested by a Rule 12(b)(6) motion to dismiss under federal case law. In addition, pro se pleadings are granted a greater degree of indulgence, than pleadings prepared by attorneys, when motions for sanctions under Rule 11 are made that such pleadings are frivolous. When the pro se plaintiff's complaint is drafted by an attorney, this places the opposing party at an unfair advantage. In addition, who should/can the court sanction if the complaint proves to be legally or factually frivolous? The court observed that the practice of "ghostwriting" complaints defeats or undermines the court's rules concerning withdrawal with leave of court. The court recommended that if an attorney wishes to limit his or her representation of a plaintiff to the drafting of the original complaint, the attorney should sign the pleading as having prepared it and simultaneously file a motion to withdraw. However, the court did not say whether such a motion would be well-received.

"Ghostwriting" pleadings for a pro se litigant was similarly condemned by Judge Doumar in *Clarke v. United States*, 955 F.Supp. 593 (E.D. Va. 1997) as unethical and contemptuous: a deliberate evasion by the attorney of his obligations under the Federal Rules of Civil Procedure, Rule 11 to investigate and determine that the pleading is well grounded in fact and in law. Another court held that such a practice was also deceitful as a misrepresentation of the pro se litigant's status. *Johnson v. Bd. of County Commissioners*, 868 F. Supp. 1226 (D. Colo. 1994), *aff'd as modified* 85 F.3d 489 (10th Cir. 1996). Finally, the Virginia State Bar Standing Committee on Legal Ethics has opined that the practice of "ghostwriting" pleadings for pro se parties is improper and violative of DR 7-105 (A), DR 7-102 (A) (3) and DR 1-102 (A) (4). Legal Ethics Opinion 1592 (1994). See also ABA Informal Op. 1414 (1978) (undisclosed counsel who renders substantial assistance to pro se litigant is participating in the pro se litigant's misrepresentation of his status to the court, thus violating DR 1-102).

More problems arise with unbundling in the context of litigation. Consider this hypothetical:

Sally Jones, a widow living on social security and a very small pension, advises you that the county placed a certificate of inhabitation on her house because her roof

leaks and is in a state of ill-repair. She contracted with a roofing company to repair the roof for \$3500. She executed a contract and a note for the \$3500, and, unbeknownst to her, a deed of trust on her property securing the amount. After two weeks of work, the roofing contractor left, but the roof still leaks. Acting on her neighbor's advice, Sally refused to pay the contractor the agreed amount. The contractor has filed suit on the note. Sally has been served and comes to your office with the papers that were served on her and tells you that she appeared in court today and got the case continued by telling the court she wanted to hire a lawyer. An answer is due two weeks after the contractor has filed a bill of particulars and a trial date has been set. Sally would like to hire a lawyer, but because of her limited income, she does not think she can afford one. She wonders if she can hire you for a limited representation, consisting of preparing an answer that she may file on her own behalf. She thinks, with some consultation with you, she can then defend herself alone in court and explain to the judge why she did not pay the contractor's bill.

A lawyer should have some serious concerns about entering into an arrangement of this sort. Numerous questions are raised and need to be answered. Is the client capable of resolving his or her own legal problem? Will the limited service provided by the lawyer accomplish the client's objective? What will the lawyer or client do if the limited service does not fix the client's problem? What if the legal matter continues unresolved and the client needs more assistance from the lawyer? What if the client has no more funds with which to pay the lawyer? May the lawyer refuse to further assist the client? How will the client fare in court on the issues? Does the client have access to adequate resources to do research, if needed? Does the jurisdiction have a pro se litigant self-help service center to assist the client after the lawyer's work is finished? If the lawyer indicates, as some courts will require,<sup>2</sup> that the pleading was prepared by the lawyer, how will this affect the client, given that the court may not allow the liberal pleading interpretation and assistance often afforded other pro se litigants? What if the responsive pleadings, in the lawyer's professional judgment, requires the inclusion of affirmative defenses and counterclaims in order to adequately protect the client's position? Can the lawyer provide a less than complete responsive pleading and call that competent representation?

Starting January 1, 2000, lawyers practicing in Virginia must follow the new Rules of Professional Conduct. Rule 1.1 provides:

**A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.**

Those who support "unbundling" of legal services look to Rule 1.2:

## **RULE 1.2 Scope of Representation**

- (a) **A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.**
- (b) **A lawyer may limit the objectives of the representation if the client consents after consultation.**
- (c) **A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.**
- (d) **When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.**

Further support for "unbundling" may be found in the commentary. Comment 4 under Rule 1.2 provides:

[4] The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

At the very least, a lawyer considering an engagement to provide limited discreet task representation has an ethical duty to do sufficient inquiry and analysis of the factual and legal aspects of the client's problem. Comment 5 under Rule 1.1 provides:

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

The fact that the client and lawyer have agreed to a limited representation should not in any way reduce the

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<sup>2</sup> As stated earlier, some courts will prefer or require that attorneys indicate on the pleadings that the document was drafted with the assistance of an attorney and attorneys should inquire first about the court's policy or practice about "ghostwritten" pleadings.

lawyer's obligation to be thorough and competent. All of the ethical requirements in a "full" representation apply to discreet task work. This includes good intake and screening for conflicts before accepting even limited representation. Malpractice exposure for providing unbundled services cannot be overlooked. Therefore, the lawyer must disclose to the client the risks and benefits of limited representation, especially in litigated matters, before performing such tasks. Many clients cannot be served by limited representation and the burden is on the lawyer to determine which clients are capable of, and what types of cases are appropriate for, unbundled legal services. Obviously a written retainer agreement or engagement letter in these types of situations is essential, even if not required under the Rules of Professional Conduct. Such an agreement must do more than recite the lawyer's fees and should describe what tasks the lawyer will perform and which tasks the client will do without the lawyer's assistance. The agreement should also include a paragraph in which the client acknowledges the specific risks and benefits of the limited representation, and that the lawyer has carefully compared those risks and benefits with a "full" representation. In the case of *Nichols v. Keller*, 19 Cal. Rptr. 2d 601 (Cal. App. 1993), a legal malpractice case, the court concluded that despite the limited contract between lawyer and client on a workers' compensation claim, the lawyer had a duty to advise the client of the availability of other remedies. The duty to advise is proactive and includes the duty of the attorney to volunteer professional opinions when necessary to further the client's objectives. 19 Cal. Rptr. 2d at 608.

Although "unbundling" may have been practiced for a long time in business and transactional work, discreet task representation for the individual client in litigation and other personal legal services is innovative and troubling for the practitioner. Therefore, there is a need for caution in providing discreet task representation to middle and low-income clients. "Unbundling" must not be seen as a panacea for the current problem of unmet legal needs, but only another tool among many to address this severe and critical problem. Moreover, a lawyer may not enter into an agreement for a limited representation if to do so would provide less than competent and zealous representation.<sup>3</sup>

### Foreign Attorneys Providing Pro Bono Legal Services in Virginia

A fair number of attorneys live and work in Virginia although they are licensed to practice in some state other than Virginia. Some of these non-Virginia licensed attorneys may be in-house counsel for a corporation with offices in Virginia. See UPL Op. 178 (1994) (general counsel employed by a corporation in Virginia need not be licensed to practice in Virginia). However, such attorneys are engaged in the unauthorized practice of law if they undertake, on behalf of another, to draft legal instruments or appear before a tribunal<sup>4</sup> even if such services are provided on a pro bono basis. UPL Op. 119 (1988). This restriction limits non-Virginia attorneys working for corporations or in government in the fulfillment of their pro bono responsibilities.<sup>5</sup> It is unclear whether foreign attorneys may give legal advice on a pro bono basis to members of the public. The giving of legal advice *for direct or indirect compensation* is considered the practice of law, and thus the unauthorized practice of law when such activity is performed by persons not authorized to practice in Virginia.

Va. S. Ct. R. Pt. 6, § I (B) (1). The in-house corporate attorney, though not licensed in Virginia, may nevertheless advise his or her regular corporate employer on legal matters affecting the corporation. UPL Op. 178, *supra*. But if a corporate counsel who is not admitted to practice in Virginia gives legal advice to indigent clients on a pro bono basis, the question becomes whether such an attorney is being compensated indirectly by the corporation, particularly if the corporation sponsors the pro bono program. This question is not addressed in any unauthorized practice rules or opinions.

In addition, a lay corporation must be careful in setting up a pro bono legal services program. Generally, a lay corporation is not authorized to practice law and cannot render legal services to the public, even if the lay corporation employs Virginia-licensed attorneys to do so. UPL Op. 60 (1985) *citing Richmond Ass'n of Credit Men v. Bar Ass'n of City of Richmond*, 167 Va. 327, 189 S.E. 153 (1937). Thus, even if the corporation uses Virginia-licensed attorneys to provide pro bono legal services to the general public, the current unauthorized practice rules seem to prohibit this activity. Some factual distinctions can be drawn in the cited authorities. A lay corporation using licensed attorneys to provide legal services to its paying customers or patrons is distinguishable from a lay corporation that wishes to provide pro bono legal services to persons who are not patrons or customers. The economic interests or profit motivation of the corporation drives the former situation, but not the latter. But the unauthorized practice of law definitions, rules and opinions adopted by the Virginia Supreme Court (except possibly as to giving legal advice) are not based upon the corporation collecting a fee or making a profit. The purpose of the prohibition is to prevent the lay corporation from controlling the delivery of legal services to a client in such a way as to impair the lawyer from exercising independent professional judgment and to insure that all persons, corporate or individual, providing legal services are subject to professional regulation by the organized bar. Arguably, these goals are met when a Virginia-licensed attorney is accountable to a pro bono

3 Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1's requirements of competency and thoroughness in preparation. Rule 1.2, Comment 5.

Some courts have held, for example, that a lawyer and client may agree that the lawyer will handle only certain claims and not others. *Delta Equip. & Constr. Co. v. Royal Indemn. Co.*, 186 So.2d 454 (La. Ct. App. 1966). Yet other courts have insisted on a "fish or cut bait" approach. See *Johnson v. Bd. of County Commissioners, supra* (lawyer cannot enter a "limited appearance" on behalf of public official who is sued in official and individual capacities in civil rights case, representing the defendant only as to claims made against him in his official, but not individual capacity).

4 Foreign attorneys may appear before certain administrative agencies or public bodies, to the extent that non-lawyers are authorized by state or federal law to represent others before such agency or public body. Examples include the Internal Revenue Service and the Virginia Employment Commission. Such agencies or public bodies are not considered a "tribunal" as defined in the unauthorized practice rules. Va. S. Ct. R, Pt. 6 § I, UPR 1-101; UPC 1-1.

5 Such attorneys may also be prohibited by company or governmental rule or policy from engaging in any outside legal activity. For such attorneys, direct financial support of programs that provide direct delivery of pro bono legal services is an appropriate alternative for fulfilling the lawyer's pro bono responsibility. Va. Rules of Prof. Conduct, Rule 6.1 (c); Comment [8].

client under the ethics rules to the same extent he or she would be in representing a paying client, including the rule prohibiting an attorney from allowing the interests of non-clients who pay for the legal services to exercise influence over the lawyer's professional judgment on behalf of the client.

### **Conclusion**

Attorneys who wish to provide pro bono services need to be mindful that all of the rules of professional responsibility apply and that there are no exceptions for attorneys providing legal services on a pro bono basis. Some of the ethical and unauthorized practice considerations that restrict the delivery of legal services or legal information are worth reexamining to insure that an appropriate balance has been struck between protecting the public and increasing access to legal services to those who cannot afford them. Ethics Counsel and his staff welcome questions or problems of an ethical nature involving the rendition of pro bono legal services. The best time to call is *before* undertaking an activity. ⚖️