

A Short List of Entirely Selfish Reasons to do Free Work: Or How Icky Vegetables Can Be Tastier than You Think

I was asked for a title, and I didn't really have one, just a path that I was planning to explore, so I used the one above as a working title, and I guess it stuck.

This is to be given at the University of Iowa Law School November 7, 2014, but it's recorded earlier, and is probably somewhat different than the talk I'll actually give there.

I think that I was asked to speak because I was unexpectedly the recipient of the Rolland Grefe Pro Bono Publico Award in 2014. When I was told I'd be receiving it, I went through the list of past honorees¹ and read as much as I could about them in past Iowa Lawyer magazines. I'm honored to be in their company, so to speak, although I've honestly done a great deal less than most of them. I think I may be a stand-in to recognize a great part of the bar who do quiet and mostly unrecognized things and so, ironically, the bit that I do gets recognized. I know so many Iowa lawyers who devote far more time and treasure than I do to the public good -- serving on nonprofit boards, performing in community theater, cleaning roadsides, settling disputes before they become court cases, serving in soup kitchens. Many of those efforts, and many of those hours, are simply untracked. I'm painfully aware from serving on the local Legal Aid advisory board that when we ask Iowa lawyers to devote additional time to pro bono work, we are asking those already very generous people to do still more. I'm also thrilled that often, that's exactly what they do.

I have the advantage working with the Dubuque Iowa Legal Aid office, which makes taking Volunteer Lawyer's Project cases unbelievably simple for me. At the end of 2005 when the latest bankruptcy reform act went into effect², a number of lawyers who had previously taken pro bono bankruptcy cases, but otherwise rarely did bankruptcies, stopped taking these cases because of the complexity of the law changes. The Dubuque Office of Iowa Legal Aid sent more of these cases to me, and I began sending more clients to them to verify income eligibility. That left us both doing things that we do well -- Iowa Legal Aid are experts at quickly determining income eligibility, but really don't have the number of lawyers and resources that they'd need to handle bankruptcies. Income eligibility is awkward and out of place as the first thing to discuss with a client for me, and I needed experience with cases under the new bankruptcy law. The clients who were eligible needed a much shorter interval between when they talked to Iowa Legal Aid and the time they were able to talk to a lawyer to have their problems addressed. When Iowa Legal Aid could refer clients without spending days or weeks verifying that they had a lawyer to take the cases, everyone came out better.

¹ 2005: Marti Nerensfone; 2006: Diane Kutzko; 2007: Don Wine; 2008: Behnaz Soulati; 2009: Robert M. "Bob" Holliday; 2010: Thomas G. Fischer; 2011: Phil Garland; 2012: Scott Buchannan; 2013: Robert Oberbillig

² The "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" (Public Law No. 109-8) which mostly applies to cases filed October 17, 2005 and after.

Over a fairly short time the Dubuque Office also began doing the referrals directly -- that is to say without involving the Des Moines office to coordinate sending documents on the cases. They adapted my standard input worksheet so that clients came to me with some of the information already filled out. The net result was that everyone involved spent a lot less time and frustration on these cases, but more people could be helped.

So for me pro bono work is a hugely positive experience, referred by people I trust and like working with, generating clients who don't feel as though they've been through a painful and incomprehensible system getting to me. Sadly, I don't think that's the norm.

Too often I'm afraid that pro bono work becomes that plate of cold and despised veggies, impossible to eat, but standing between us and something else wonderful we'd like to be doing. So for when that's the reality, I've put together a few simple, and entirely selfish reasons for doing these cases, quite removed from the good they may do, and the pleasure of helping folks without the resources to pay for your services.

Reason 7: Because the Iowa Supreme Court considers pro bono service a mitigating factor in attorney discipline cases.

Let me first say, please, don't ever put yourself in a position where you have to rely on this reason. Still, a complete list of selfish reasons to do pro bono work is incomplete without this one.

That said, I have to admit that it is difficult to figure out what impact this has in reported cases. It does not have any part in determining whether an infraction has occurred, and it shouldn't. Instead, it is among the many factors considered by the Court in determining the penalty imposed³. The Court takes the position that each case is determined on its individual merits, that no formula can be applied, and that decisions in past cases are no more than useful

³ An example of this is *Iowa Supreme Court Atty. Disc. Bd. v. Boles*, 808 NW 2d 431, 442-443 (Iowa 2012), where the Court says: "Boles' trust account problems were not isolated. The Board has shown extensive problems with four clients in this matter. A pattern of misconduct is an aggravating factor. Boles admits his billing and accounting practices in these matters were unsatisfactory. Importantly, however, Boles has corrected his practices to avoid reoccurrence. He has invested in new technologies, employed additional administrative help, and exercised more self-discipline in routinely recording his time. The record contains no evidence Boles has had any trust account problems since 2008. These corrective measures do not absolve his past problems, but are a mitigating factor. Importantly also, Boles has cooperated with the Board throughout this process. "We have repeatedly emphasized how important it is for an attorney to cooperate with disciplinary authorities when a complaint has been filed against the attorney." *Another significant mitigating factor in this case is Boles' admirable record of volunteer community service to local youth programs and his extensive pro bono practice.* Boles' fitness to practice law at this time is unquestioned. We also consider the lack of harm to his clients apart from the delayed refunds. After careful consideration of the record, precedent, mitigating factors, and the need to motivate attorneys to maintain proper trust account and billing practices, we conclude a thirty day suspension is appropriate." [Citations omitted, emphasis added.]

guidelines in their decision. Stated otherwise, the Court applies a Zen consciousness, individualized approach that considers many factors in a non-mathematical, non-formula process and derives a concrete number for the penalty. On that basis, we basically have only their word that pro bono actually enters into the calculation of a penalty. Still, it is one of only two ways that the Court actually encourages pro bono work, and no small matter if you are in the unhappy position to need the Court's good graces.

Reason 6: Free advertising.

This reason may seem hard to believe, but it produces a beautiful synergy. Most folks' easy and cynical response is that pro bono work is good advertising indeed -- for more pro bono work. In fairness, that can happen. Mostly that's going to happen if the most important thing that you and your client remember about the case is that your work was free. But that's a bit like saying that putting your advertising in the phone book under waste management produces calls but no business. For pro bono work to be good advertising, you need to be doing your best work for the client, and doing work that produces the best result, within the bounds of what will serve the client in the long term. That chance to show what you do well advertises to everyone involved in the case why work should be referred to you -- advertising to your client, to other lawyers, to other lawyer's clients, to judges, to witnesses, and to anyone else involved. And the best part is that all of that the same good work that impresses all those people is exactly what benefits your client.

Compared to "lead generation," "targeted advertising," "purchased credentials," and the whole cornucopia of glossy, wallet-sucking exercises constantly pitched to lawyers, this is incredibly cheap and effective advertising.

Reason 5: Because "rust never sleeps," or perhaps because a lawyer "not busy being born is busy dying."

These phrases are stolen, respectively, from Neil Young⁴ and Bob Dylan⁵, and I steal just a bit more from the Neil Young movie of that name by noting that all lawyers rust -- if you look closely you can see rust forming at the corners of our mouths when we unhinge our jaws, and notice streaks of reddish brown when we leaf through vast piles of pages we laughingly call "briefs" and "summaries."

⁴ "Rust Never Sleeps" is the title of both an album and a movie by Neil Young & Crazy Horse, both released in 1979.

⁵ Taken from "It's Alright, Ma (I'm Only Bleeding)," copyright 1965 by Warner Bros. Inc.. The full stanza reads:

Pointed threats, they bluff with scorn
Suicide remarks are torn
From the fool's gold mouthpiece the hollow horn
Plays wasted words, proves to warn
That he not busy being born is busy dying

Probably the phrase from Bob Dylan is less intimidating to law students than to folks closer to my age. After all, strengthening the herd by eliminating the diseased and the lagging clears a space for the strength and energy of new graduates, and that's simply the way of nature. I have no rational argument to the contrary, except that you will find this one turning around to bite you as the years pass.

Still, for all of us, staying current with a kaleidoscopically changing professional landscape requires constant effort, and 15 hours of continuing legal education in a year is an incomplete solution for the rusting that we all do. Pro bono cases aren't a total solution either, but doing work for a different audience, with different needs, strengthens your understanding of the job. It forces you to look again at why you solve problems as you ordinarily would, and makes you take a look at how the whole system works for those who haven't the money to make the wheels turn. And somewhere in there it may get you to learn what has changed since you last thought hard about the task, and how you might change and adapt the tools you have to make the system work better for a client that doesn't quite fit the usual assumptions. All of which benefits you and paying clients. In effect, pro bono work can be the real world clinical component of CLE, which is the way that most of us learn best anyway.

And from my own experience, when legislative and judicial change substantially alters the playing field, pro bono cases are an ideal way to explore a frightening new landscape.

Reason 4: Because explaining your approach to a client's case in a sentence that doesn't include "because you can't afford it" is an invaluable skill.

For good or for evil, a lot of things that lawyers do are measured by billable hours. It may or may not be the best of systems, but it's hard to ignore, and for many of us, it becomes the first thought we have when we talk to clients about why we structure our work the way we do, and the ultimate rebuttal to why what they perceive as a cost cutting move doesn't work as they think. Why, for example, would I not call the IRS general information toll free number to get an answer to their tax question? Partly because they can't really afford to have me sit on hold for 45 minutes while a billing clock is running. But also because I get an answer that I can't trust, and that the IRS isn't bound to. Still, if asked, I'd probably just mention the clock.

And that answer often satisfies, or at least turns the conversation and lets me not go to the mental effort of explaining why I think my process works. But sometimes that lets me not improve or think through what I do, in the service of *'cause I've always done it that way*. And I suspect that nearly always it annoys the client by suggesting that my time is more valuable than theirs, and by suggesting that I'm far too arrogant to listen when they're confused about what I do.

So the perspective of giving an answer requiring thought to a pro bono client, who isn't paying by the hour, about why I do what I do, and sometimes figuring out by thinking through the

answer that I should actually do things differently, is hugely valuable to me and to all my clients. Often, it even forces clients to think through to other and better examples of why I seem arrogant and don't listen to them, and that's probably good for all of us.

Reason 3: Because balancing Karma requires at least a few good habits.

My life is full of bad habits, some of which actually impact my law practice, and don't just annoy my beloved spouse. I am, for example, a diligent and stubborn procrastinator. Likewise, I am resolved to bring my desk to a state of pristine neatness on the first occasion that I am able to say for sure that it exists under the pile of stuff I have on top of where I think it's located in my office.

By contrast, and thanks to the Dubuque Office of Iowa Legal Aid, I also have a pro bono habit. I don't have to seek out these cases, they just come in and get completed much like any other case, and often in less time and with fewer hassles because Iowa Legal Aid has done their magic before the client arrives.

I have no idea how Karma scales these things, but I'm hopeful that my one or two good habits count for something.

Reason 2: Because it's good to be a lodge member.

As lawyers we have an enforced legal monopoly on a particular form of dispute resolution involving judges and courts. We have a strong habit of taking that as a given, but we shouldn't. American Bar Association model rule 6.1 exists for a very good reason -- if enough people can't get access to our services, the market will find a way to make us unneeded. In part the market is already beginning to do that for some traditional legal services for some people. Pro bono work is how we lower that barrier and provide access so we can continue to exist as a profession.

Every lawyer has some days when they really question whether there isn't some much easier way to make a living, but very few of us question whether clients are better served by professionals with training, instead of a market that maximizes profit. Pro bono is part of what makes that possible.

Reason 1: Because doing pro bono cases may make you live longer.

I admit that it sounds a bit silly, and you do have to connect some dots to get there, but the research supports it. In general, happy people tend to have fewer chronic diseases and lower

stress⁶. Two of the known generators of happiness are altruism⁷ and social networking⁸, both of which are heavily present in pro bono work. So it seems likely that lawyers taking pro bono cases live longer lives, all other things (their proximity to buses and meteors, for example) being equal.

As a matter of full disclosure, no study that I'm aware of actually documents that taking pro bono cases will make you live longer. Then again, the most studied groups in psychology experiments are lab rats and undergraduate students, and lawyers are poorly represented in both groups. So if you find yourself taking vitamins, avoiding salt, or reluctantly exercising because, after all, "it can't hurt," you may want to add pro bono cases to that list.

Etc.: There are just a few more things that I want to add that I noticed working through this topic. I've attached as an appendix the ABA rules which have instructed on pro bono service through the years, starting with the Canons of Professional Ethics, going through the Model Code of Professional Responsibility, and ending with the Model Rules of Professional Conduct. Each gets longer as it gets newer, and I think that the three sentences devoted to pro bono in the Canons are arguably the most elegant:

A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration. [...] In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

A second point is that the aspirational standard of 50 hours of pro bono work in a year is actually a fairly significant number. In September and October Nick Critelli and David Beckman presented an Iowa State Bar Association webinar on "How to Set an Ethical Fee."⁹ One of David Beckman's contributions was an estimate of available billable hours after "overhead time" is factored into the time spent at the office. David was careful to stay within a

⁶ "Happiness & Health," Harvard School of Public Health Magazine, Winter, 2011 [<http://www.hsph.harvard.edu/news/magazine/happiness-stress-heart-disease/>].

⁷ Stephen G. Post, "Altruism, Happiness and Health: It's Good to Be Good," International Journal of Behavioral Medicine, 2005, Vol. 12, No. 2, 66–77 [<http://stephengpost.com/wp-content/uploads/2012/05/Altruism-Happiness-and-Health-IJBM-2005-pdf.pdf>].

⁸ Fowler, James H. and Nicholas A. Christakis. 2008. Dynamic spread of happiness in a large social network: longitudinal analysis over 20 years in the Framingham Heart Study. British Medical Journal 337, no. a2338: 1–9 [<http://dash.harvard.edu/handle/1/3685822>].

⁹ The presentations were September 17 and October 15, 2014, but the recorded sessions and the materials remain available as of this writing at: [<http://www.critellilaw.com/how-to-set-an-ethical-fee-webinar-calculating-cost-of-producing-one-legal-service-unit>].

number of working hours that actually allows a productive day¹⁰, and to add four weeks of vacation to the year.¹¹ Based on that, he figured a reasonable and productive year probably held roughly 1030 actually billable hours. In fairness, David was assuming that pro bono was a part of the many important things done in “overhead time,” but if we’re even more conservative than David and assume that pro bono actually subtracts from billable time, that would amount to just shy of 5% of the available billable time. Certainly that’s a non-trivial number.

But going back to selfish reason 1, we have a choice when we do these cases to view them as a tax on law practice, or to see them as a gift freely given. Since the rules are aspirational, and the possible ways of fulfilling them incredibly broad, I prefer to see them as a gift, albeit a selfish one.

¹⁰ There’s lots of science behind this, but for a unique view on this see Chris Bailey’s entry “10 huge productivity lessons I learned working 90-hour weeks last month” [<http://ayearofproductivity.com/10-productivity-lessons-working-90-hour-weeks/>] from his site “A Year of Productivity” [<http://ayearofproductivity.com/>].

¹¹ Admittedly also an aspirational standard for many of us, but it probably shouldn’t be.

Appendix

ABA Ethical Rules

and Pro Bono Service

ABA Model Rule 6.1 (Iowa Rules of Professional Conduct 32:6.1)

Public Service

Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a

lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions

apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

ABA Model Code of Professional Responsibility (1969)

Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees

EC 2-24 A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.³⁹

EC 2-25 Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need.⁴⁰ Thus it has been necessary for the profession to institute additional programs to provide legal services.⁴¹ Accordingly, legal aid offices,⁴² lawyer referral services, and other related programs have been developed, and others will be developed, by the profession.⁴³ Every lawyer should support all proper efforts to meet this need for legal services.⁴⁴

39. "As a society increases in size, sophistication and technology, the body of laws which is required to control that society also increases in size, scope and complexity. With this growth, the law directly affects more and more facets of individual behavior, creating an expanding need for legal services on the part of the individual members of the society As legal guidance in social and commercial behavior increasingly becomes necessary, there will come a concurrent demand from the layman that such guidance be made available to him. This demand will not come from those who are able to employ the best legal talent, nor from those who can obtain legal assistance at little or no cost. It will come from the large 'forgotten middle

income class,' who can neither afford to pay proportionately large fees nor qualify for ultra-low-cost services. The legal profession must recognize this inevitable demand and consider methods whereby it can be satisfied. If the profession fails to provide such methods, the laity will." Comment, *Providing Legal Services for the Middle Class in Civil Matters: The Problem, the Duty and a Solution*, 26 U. PITT. L. REV. 811, 811-12 (1965).

"The issue is not whether we shall do something or do nothing. The demand for ordinary everyday legal justice is so great and the moral nature of the demand is so strong that the issue has become whether we devise, maintain, and support suitable agencies able to satisfy the demand or, by our own default, force the government to take over the job, supplant us, and ultimately dominate us." Smith, *Legal Service Offices for Persons of Moderate Means*, 1949 WIS. L. REV. 416, 418 (1949).

40. "Lawyers have peculiar responsibilities for the just administration of the law and these responsibilities include providing advice and representation for needy persons. To a degree not always appreciated by the public at large, the bar has performed these obligations with zeal and devotion. The Committee is persuaded, however, that a system of justice that attempts, in mid-twentieth century America, to meet the needs of the financially incapacitated accused through primary or exclusive reliance on the uncompensated services of counsel will prove unsuccessful and inadequate A system of adequate representation, therefore, should be structured and financed in a manner reflecting its public importance We believe that fees for private appointed counsel should be set by the court within maximum limits established by the statute." REPORT OF THE ATT'Y GEN'S COMM. ON POVERTY AND THE ADMINISTRATION OF CRIMINAL JUSTICE 41-43 (1963).

41. "At present this representation [of those unable to pay usual fees] is being supplied in some measure through the spontaneous generosity of individual lawyers, through legal aid societies, and—increasingly—through the organized efforts of the Bar. If those who stand in need of this service know of its availability and their need is in fact adequately met, the precise mechanism by which this service is provided becomes of secondary importance. It is of great importance, however, that both the impulse to render this service, and the plan for making that impulse effective, should arise within the legal profession itself." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1216 (1958).

42. "Free legal clinics carried on by the organized bar are not ethically objectionable. On the contrary, they serve a very worthwhile purpose and should be encouraged." *ABA Opinion* 191 (1939).

43. "Whereas the American Bar Association believes that it is a fundamental duty of the bar to see to it that all persons requiring legal advice be able to attain it, irrespective of their economic status "Resolved, that the Association approves and sponsors the setting up by state and local bar associations of lawyer referral plans and low-cost legal service methods for the purpose of dealing with cases of persons who might not otherwise have the benefit of legal advice" *Proceedings of the House of Delegates of the American Bar Association*, Oct. 30, 1946, 71 A.B.A. REP. 103, 109-10(1946).

44. "The defense of indigent citizens, without compensation, is carried on throughout the country by lawyers representing legal aid societies, not only with the approval, but with the commendation of those acquainted with the work. Not infrequently services are rendered out of sympathy or for other philanthropic reasons, by individual lawyers who do not represent legal aid societies. There is nothing whatever in the Canons to prevent a lawyer from performing such an act, nor should there be." *ABA Opinion* 148 (1935).

ABA Canons of Professional Ethics (amended September 30, 1937)

Canon 12. Fixing the Amount of the Fee.

In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In determining the customary charges of the Bar for similar services, it is proper for a lawyer to consider a schedule of minimum fees adopted by a bar association, but no lawyer should permit himself to be controlled thereby or to follow it as his sole guide in determining the amount of his fee.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.