

# PRO BONO OVER

## EXPANDING YOUR PRACTICE THROUGH

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ACCESS TO JUSTICE COMMISSION

The tightening economy has brought a revelation to many of Nevada's legal practitioners – pro bono can grow your practice. This is just one of many benefits of doing pro bono work, in addition to enhancing communities and the reputation of the legal profession.



The many advantages to performing pro bono service through a civil legal aid provider include malpractice coverage, mentoring, client screening and training programs available through the many pro bono programs offered to Nevada's most needy and disadvantaged.

Here are some basic facts about pro bono work in Nevada:

**Pro bono is not limited to family law.** While there are a good number of cases in family law, clients need assistance in a broad range of areas, including consumer law, bankruptcy, estate and trust, and real estate fraud.

**Pro bono cases can, and often do, provide court experience.** There are opportunities for pro bono lawyers who so wish to get court time.

**Volunteerism at all levels is valued.** There is a pro bono opportunity for every level of time commitment. From short-term time commitments such as Ask-A-Lawyer, teaching a clinic or manning a hotline, to complex, direct services cases, all volunteered time is valued.

**Experience is not a must.** Civil legal aid providers will provide training and a mentor in the areas of law covered by the practice. This presents a perfect opportunity to learn a civil practice area while helping out the community.

**Malpractice concerns are addressed.** Taking a case through a legal aid provider (including Ask-A-Lawyer) provides malpractice coverage through the sponsoring legal aid office. Further, direct services cases are screened for viability ahead of time, a valuable time-saver. Many law firms presented with potential indigent clients process those cases in cooperation with a legal aid office for just these reasons.

**Indigent status is recognized.** State courts automatically recognize the indigent status of clients of civil legal aid providers under NRS 12.015 through the filing of a Statement of Legal Aid Representation (SOLA). The SOLA is normally signed by the legal aid office's directing attorney and provides notice of pro bono representation and waiver of filing fees and most costs.

# REVIEW

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**Emeritus Certification is provided under SCR 49.2.** All retired attorneys, inactive Nevada attorneys and active or inactive out-of-state attorneys are eligible to be certified under SCR 49.2 to assist low-income clients, which are limited to services provided through approved emeritus legal services providers.

Current approved providers are the Legal Aid Center of Southern Nevada, Nevada Legal Services, Washoe Legal Services, Volunteer Attorneys for Rural Nevadans and Washoe County Senior Law Project.

Certification under this rule is done on a yearly basis through the State Bar of Nevada Admissions office at no fee to the applicant. CLE is limited to that required by the emeritus legal services provider. Once certified, the attorney is fully admitted for the purposes of handling cases through the approved legal services provider and may file documents and appear in court on those matters.

A complete application packet is available on the forms page of the State Bar of Nevada website at [www.nvbar.org](http://www.nvbar.org). Questions should be directed to Kristina Marzec, Access to Justice Commission Director, at [kristinam@nvbar.org](mailto:kristinam@nvbar.org) or (702) 317-1404.

## WHAT IS PRO BONO?

All lawyers are required to report whether or not they have provided pro bono services as part of the annual mandatory reporting that accompanies state bar annual dues statements.

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## PRO BONO CLIENT SPOTLIGHT

### Legal Aid Center of Southern Nevada:

**CHILDREN'S ATTORNEY PROJECT (CAP):** A six-year-old child came to LACSN after being diagnosed as bipolar, on so many medications he could barely function. Through the passionate advocacy of a CAP attorney, the court agreed to order a second opinion and that child is now out of a mental institution and in a loving home.

**MISTAKEN IDENTITY:** LACSN saved the home of a person who was up-to-date on his mortgage and whose mortgage company had actually mixed up his house with the home of a neighbor.

**GRATEFUL FOR EDUCATION:** A gentleman who attended one of LACSN's bankruptcy clinics conducted in Spanish took the time to call in and, with painstaking care, thank the staff, in English, for giving him the tools to help himself and regain his dignity and his hope. After taking the class, he finally had the correct information in terms he could understand to file his bankruptcy on his own and take care of his family.

**TABITHA:** At the age of 6, Tabitha and her two younger siblings, ages 4 and 1, came into Child Protective Services (CPS) custody when their mother suddenly died. The mother had met a man over the Internet, married him two weeks after meeting him in person, was admitted to the hospital the same day she married this man and died eight days later. The children were then placed together in a foster home, as they had no family member placements available to them. Their maternal grandmother was contacted by CPS and was not aware that she even had grandchildren and referred to the children as her "alleged" grandchildren. The natural father's whereabouts were unknown. Fortunately, the children had "fictive kin" grandparents who desired to have the children placed with them. Meanwhile, the new stepfather decided he wanted the children placed with him and filed for guardianship. The CAP attorney was able to determine that the true desire of the children was to be placed with the fictive grandparents. CAP successfully argued that the children had been through a great deal of turmoil and grief and immediately needed the familiarity, stability and love of their fictive grandparents. The court agreed and the children were placed with their fictive grandparents the same day. The court also ordered the stepfather to have no contact with the children pending further order.

**MARIA:** A victim of extreme domestic violence even while pregnant, Maria came to us seeking help with a divorce. After analyzing her case, we also realized she was eligible for protection under the Violence Against Women Act. She had married her abusive husband when she was 16 years old and they had two minor children together, one of whom was disabled due to beatings during her pregnancy. Her husband was an ex-felon who had served time for illegal possession

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This information is extremely helpful in identifying trends and gaps in service delivery throughout the state, a necessary component to effective coordination of statewide service delivery and procuring funding. This is especially important because Nevada recognizes categories of pro bono service in addition to direct services, and mandatory reporting is the only central repository for that information.

Rule of Professional Conduct 6.1 (Pro Bono Publico Service) defines pro bono and related reporting requirements, and provides the aspirational goal of 20 hours of direct no-fee services, 60 hours of reduced-fee services or a \$500 donation in lieu of services.

**Level one services** involve 20 hours of direct legal services without compensation or expectation of compensation to persons of limited means or to a public service, charitable group or organization in matters that are designed primarily to address the needs of persons of limited means.

- Legal aid providers provide an excellent resource for direct services. Of course, lawyers may and do also choose to provide pro bono services directly through the law firm and those hours count equally.

**Level two services** comprise 20 hours of delivery of legal services at no fee or a substantially reduced fee to:

- Individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, civic, community, governmental and educational organizations;
- Participation in activities for improving the law, the legal system or the legal profession; or
- Delivery of services in connection with law-related education sponsored by the State Bar of Nevada, the Nevada Bar Foundation, a county bar association or a court located in Nevada.

**Level three services** provide an alternative to direct no-fee services by completion of at least 60 hours at a substantially reduced fee to persons of limited means.

## What is a person of limited means?

Under rule 6.1, in private practice, the determination of whether a person is of limited means is left to the good faith judgment of the attorney providing services. By way of comparison, when services are performed through a legal aid provider, in most instances the income guidelines are based on 200 percent of federal poverty guidelines as shown in the chart below. Not all services are subject to income guidelines, such as services to senior programs and domestic violence victims, and some services have higher limits, up to 300 percent of poverty.

### 2009 Federal Poverty Guidelines for the 48 Contiguous States:

Persons in family	Poverty guideline
1	\$10,830
2	\$14,570
3	\$18,310
4	\$22,050
5	\$25,790
6	\$29,530
7	\$33,270
8	\$37,010

For families with more than 8 persons, add \$3,740 for each additional person.

## Fee agreements required

When pro bono legal service is performed for an individual without compensation or at a substantially reduced fee, RPC 6.1 mandates the fee shall be agreed to in writing at the inception of the representation and requires reference to the rule.

## What does NOT qualify as pro bono:

- Legal services written off as bad debts
- Legal services performed for family members
- Activities that do not involve the provision of legal services, such as serving on the board of a charitable organization

## WHY PRO BONO? Aren't there lawyers who do that?

Based on the most recent census information available, there was one civil legal aid attorney on average for every 4,700 indigent Nevadans statewide, resulting in about 20 percent of those in need qualifying to receive help:

Total attorneys by county and ratios of persons per attorney\*:

County	Total	Ratio of Total Population to Nevada Attorneys	Ratio of persons in poverty population to Nevada Attorneys	Total Number of Legal Aid Attorneys	Ratio of Persons in Poverty to Legal Service Providers
Clark	4,264	401	45	35	5,495
Washoe	1,237	316	32	15	2,645
Carson City	245	227	23	6	**
Balance of State	246	1,031	105	-	**
Reside out of state	1,227	-	-	-	

\* Statistics compare total active resident members of the State Bar of Nevada for 2008 and 2005 Census Persons in Poverty (SAIPE).

\*\* Ratio combines area of Carson City and the balance of state. It shows 5,256 persons per legal service attorney.

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# PRO BONO HONOR ROLL



The State Bar of Nevada Board of Governors and the Access to Justice Commission extend a special thanks to the following attorneys who generously accepted cases in January 2010 through the Legal Aid Center of Southern Nevada, Washoe Legal Services, Nevada Legal Services and Volunteer Attorneys for Rural Nevadans.

Alf, Nancy  
**Almase, Heidi**  
 Anderson, Peter  
 Balboni, Denise  
 Barnett, Meredith  
**Bonneville, Dan**  
 Bradshaw, Denise  
 Bragonje, John  
 Calvert, Lauren  
 Chengi Yen, Aaron  
 Chevalier, Yvette  
**Cramer, Michancy**  
 Ghandi, Nedda  
**Goldsmith, Dara**  
 Grellman, Jack  
 Hales, James  
 Harkess, Nancy  
 Henriod, Joel  
 Holley, Richard  
 Hughes, Rena  
 Ivie, Daniel

Jackson, Nancy  
 Luz Monje, Ofelia  
 Lynch, Michael  
 Mastin, Amy  
**McKellar, Mandy**  
 Miller, Rebecca  
 O'Mara, Bill  
**Provost, Katherine**  
 Richardson, Bradley  
 Robins, Jeremy  
 Sanders, Jennifer  
 Schwab, Christina  
 Takos, Zachary  
 Tyrell, Elyse  
 Van Lyde Graf, Lance  
 Whitbeck, Jill  
 Williams, Nikkya  
 Wirthlin, Brenoch  
 Wong Lackland, Lisa  
 Wysong, Magali

## ASK-A-LAWYER, CLINICS, AND OTHER BRIEF SERVICES

Blackham, Brian  
**Blau, Robert**  
**Carr, Chris**  
 Curran, William  
**Fenu, Mario**  
 Glennen, Robert  
 Hale, Christian  
 Hamilton, Ryan  
**Horner, Kim**

**Mann, David**  
**McKellar, Mandy**  
 Provost, Katherine  
**Rivera Rogers, Mariteresa**  
 Rose, Jason  
 Smith, James  
 Stafford, Thomas

**BOLD** honors multiple cases accepted and/or sessions conducted within the month.

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Strikingly, that number doesn't even include the working poor who don't qualify for civil legal aid under poverty income guidelines. Pro bono service from the private bar is therefore a critical component in helping to bring down that ratio. Every case counts.

When amendments to Supreme Court Rule 6.1 required Nevada lawyers to begin reporting pro bono hours back in 2005, a group of about 2,400 lawyers reported performing pro bono hours. That number has continued to grow every year (except 2008, which showed a decline of less than 2 percent, a relatively modest casualty of the economy). Hope springs eternal, however, as Nevada's legal services providers are reporting a banner year for pro bono service hours in 2009. Even so, help is only there for about 20 percent of people who qualify. As much as lawyers have given, so much more is desperately needed.

Pro bono service through a legal aid provider also provides opportunities for lawyers to gain experience in new practice areas, network in the legal community, take advantage of the mentoring and client screening services provided, and be eligible for awards and recognition.

## CHALLENGES FACING LEGAL AID AND PRO BONO LAWYERS

The obvious challenge is resources. Some legal aid providers are out of space. As budgets shrink, legal aid grants and funding sources are usually the first to be cut. The need for volunteer hours is ever-present as well; remember our 5000:1 client-to-legal aid attorney ratio and the fact that 80 percent of qualified people are being turned away for lack of resources, human and financial. However, there are other intrinsic challenges in the day-to-day provision of services.

One operational concern is that not all courts have dedicated substantive court days. Lawyers all know the value of motion day. While an impediment to all lawyers, it is especially problematic for a pro bono lawyer to spend several hours in court waiting to be heard on a single, often simple matter for an indigent client. Every hour spent waiting is an hour that could have been spent on another indigent client of the hundreds in queue.



Nevada's rural counties have unique challenges presented due to the vast distances and lack of infrastructure in many places. For a detailed perspective on rural pro bono service, see the article on page 29. Here's a brief overview of the challenges:

- **Distance:**  
Rural legal aid and pro bono attorneys spend a great deal of time on the road, routinely spending four or more hours in travel time for a single hearing.
- **Varying rules of procedure:**  
Not all rural courts allow appearances by phone or filing by fax. Coupled with the distance challenge, this can be an imposing obstacle to providing services over long distances.
- **Lack of infrastructure:**  
There are rural counties where the courts don't have the cable lines necessary to support even the most basic technology, such as voice mail. In many instances, the one Internet spot in town is a local community or senior center. Laying infrastructure is time- and cost-intensive, taking as long as two years or more to implement. For example, Nevada Legal Services spent almost two years (after gaining the needed funding) coordinating the installation of the necessary infrastructure in Pahrump to support a new video conferencing service. The Nevada Supreme Court Administrative Office of the Courts is in the second phase of a long-term project to bring technology to the rural courts, a critical investment in providing equal access. ■

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## PRO BONO CLIENT SPOTLIGHT

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of a firearm and domestic violence. The abuse she endured consisted of forced sexual intercourse, STDs, slapping and severe beatings with a stick and a plastic hanger.

As is typical with domestic violence clients, Maria's spouse continued his abuse by dragging out the legal process, fighting her on every issue and threatening to take away the children. This was never an option that the courts would have agreed with, but the threat itself kept her fearful throughout the proceeding. Her LACSN lawyer was at her side through every court appearance and every hearing until the judge finally handed down a final decree. Maria was awarded primary physical custody of the children, with the husband obtaining only daytime visits with no overnights. After his release from federal prison, her now ex-husband obtained a very good job, allowing the judge to order about \$1,250 per month in child support for our client and her children. She was able to collect on this for a period of time until he was arrested and returned to jail on an unrelated offense. She has since moved on with her life and is happy in a new relationship.

### City of Las Vegas Senior Law Project

**ESTATE PLANNING:** Husband and wife high-school sweethearts were married for 65 years. The husband handled all financial matters for the family and was recently diagnosed with Parkinson's disease. The wife asked for assistance with getting her affairs in order. A legal aid estate planning attorney reviewed house documents, insurance records and bank statements, prepared a will, a durable power of attorney for health care, a living will and a beneficiary deed to avoid probate.

**IDENTITY THEFT:** A 72-year-old man applied for a car loan and learned he was the victim of identity theft. He possessed three credit cards, each with a zero balance; credit reporting agencies reflected \$35,000 in consumer debt. A legal aid consumer attorney negotiated with the fraud division of each creditor to remove erroneous information from the senior's credit reports. After the credit history was corrected, legal aid reviewed the auto purchase contract with the senior.

### Nevada Legal Services

**E.B.:** E.B. was an 18-year-old suffering from recurrent brain cancer whose prescribed treatment was denied by Medicaid. E.B. had a history of cancer, which began with an initial misdiagnosis and ill-advised treatment of surgery and radiation. Due to the misdiagnosis, E.B.'s tumor

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soon resurfaced, and E.B.'s brain began to hemorrhage. E.B.'s mother then took her child to be treated by one of the most prestigious brain surgeons in the country, where E.B. was diagnosed with a rare brain tumor.

E.B.'s new physician at the Children's Hospital of Los Angeles prescribed a course of treatment which that doctor had been performing for a number of years on similar patients with great success. Unfortunately, E.B.'s prescribed course of treatment was promptly denied by Nevada Medicaid as "experimental." Incredulous, E.B.'s doctor made repeated requests that the prescribed treatment be reconsidered and supplied Nevada Medicaid's doctors with a number of publications on the subject, many of which were published by E.B.'s doctor, who was a leader in the field. Despite the doctor's efforts, the reviewing physician, who had no experience dealing with pediatric brain tumors, refused to approve the policy. The client's mother enlisted the assistance of numerous elected officials to lobby Nevada Medicaid for a more thorough and correct assessment of the requested procedure, to no avail.

E.B. sought out Nevada Legal Services, which corresponded with the client's treating physician and assisted in fostering communication between E.B.'s doctor and Medicaid's doctors. After a tremendous amount of work, multiple medical opinions and copious legal work, on the day of the hearing, after E.B.'s dedicated doctor had already boarded a plane to Las Vegas, Nevada Medicaid finally approved the treatment. This approval came after Nevada Medicaid's physicians consulted with a third physician proposed by Nevada Legal Services. The approval, a victory to be credited to a number of dedicated parties, namely E.B.'s mother and dedicated treating physician, served as a valuable lesson for E.B. on the importance of standing up for yourself and fighting to preserve your rights.

**SUSIE:** "Susie" had emigrated to the U.S. for the opportunity to make a better life for herself. She worked hard and was able to help members of her family come to the U.S. as well. After working hard for many years, she was laid off. She had to get food stamps and rely on friends to help her pay rent, buy gas and pay for other necessities. During this time, she was embarrassed and ashamed she could not support herself. When she found a job at a casino she was happy she would be able to

support herself and no longer need food stamps. After about a year of working at the casino, she had only good reviews from her supervisors. One day, a customer was incredibly rude to a new co-worker. After he left the area, Susie went over to the new co-worker and made a comment about how rude the customer had been, hoping to make her feel better. Instead, this co-worker reported Susie to a manager and Susie was fired. When she applied for unemployment benefits, she was denied because she had been fired for misconduct. Since she was no longer receiving any income, she had to go back on food stamps and Susie became very depressed. A friend brought her to NLS to see about appealing the decision. At the unemployment hearing, the hearing officer found she did not commit misconduct and was eligible for her unemployment benefits. She told the staff attorney who assisted her that whatever happened in the future, just knowing that when she was at her lowest, there was someone there to fight for her renewed her sense of hope.

**D.G.:** D.G. was one year old when his mother came to NLS for assistance because he had been denied SSI and, more importantly, the accompanying Medicaid coverage. D.G. was born with scoliosis, a congenital spine deformity, and underwent surgery when he was just over one year old. The doctors told his mom the surgery was necessary to avoid future heart and back problems. After the surgery, D.G. was in a body cast for approximately three months and still had an approximate 34-degree curve in his spine as well as several other related serious medical complications. Inexplicably, D.G. was denied SSI benefits after his initial application and again on reconsideration. NLS performed extensive research into his various conditions and provided the SSI Hearing Officer with a written brief extensively documenting his diagnoses and functional limitations. In February 2009, D.G. was finally awarded benefits which included a substantial payment in back benefits to assist the mother in providing appropriate care for her son. Even more importantly to his mother was her son's qualification for Medicaid, which would help her ensure that cost would not prevent her son from receiving the best medical care. ■