

*essential to prevent permissible paralegal activities from crossing the line to giving legal advice, taking fees, or misleading clients and others who deal with the attorney's office.*

**Rule 5.6. RESTRICTIONS ON RIGHT TO PRACTICE.**

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement or as permitted by Rule 1.17 of these Rules; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

**COMMENTS:**

[1] *An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm or as allowed by Rule 1.17 of these Rules concerning sale of a law firm.*

[2] *Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.*

**Rule 6.1. PRO BONO SERVICE.**

A lawyer should aspire to provide at least 50 hours of pro bono services per year. In fulfilling this responsibility, the lawyer should:

(a) provide at least 25 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.

(c) In lieu of providing 50 hours of pro bono service, a lawyer may exercise his or her desire to provide pro bono services by contributing at least \$500 each year to the Hawai'i Justice Foundation, or an entity that provides legal services at no fee, or at a significantly reduced fee, to persons of limited means.

(d) In addition to performing pro bono services or contributing under subsection (c) each year, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

**COMMENTS:**

[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. This Rule urges all lawyers to provide a minimum of 50 hours of pro bono services annually. 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 at least 25 hours 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 or information through nonprofit or court-annexed programs such as court self help centers and access to justice rooms that are designated primarily to serve persons of limited means, 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 attorneys, 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 the government 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, programs, 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) and (b), to the extent that any hours of service remained unfulfilled, a monetary contribution in accordance with paragraph (c) replaces services described by (a) and (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 attorney 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 attorneys 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. Unlike the Model ABA Rule, paragraph (c) expressly allows a lawyer to exercise his or her desire to provide pro bono service through annual financial contributions to the Hawai'i Justice Foundation or other qualified entities for the support of organizations that provide free or significantly reduced fee legal services to persons of limited means. While the personal involvement of each lawyer in the provision of pro bono services is generally preferable, such personal involvement may not always be possible. The annual contribution alternative allows a lawyer to provide financial assistance to increase and improve the delivery of pro bono services when a lawyer cannot or decides not to provide pro bono services through the contribution of time. Also, there is no prohibition against a lawyer's contributing a combination of hours and financial support.

[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, there are organizations, programs, and projects that have been instituted to provide those services. Paragraph (d) encourages every lawyer to financially support organizations, programs, and projects that benefit persons of limited means, in addition to, and not as a substitute for, providing pro bono services, or making financial contributions annually to the

Hawai'i Justice Foundation or other qualified entities 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 the disciplinary process.

(Amended November 14, 2013, effective January 1, 2014.)

#### **Rule 6.2. ACCEPTING APPOINTMENTS.**

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

#### **COMMENTS:**

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1 of these Rules. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

#### **Appointed Counsel**

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the