

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 11-0765

NOV 26 2013

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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IN RE THE RECOMMENDATION FOR	)	REPORT AND
A PRO BONO REQUIREMENT FOR	)	RECOMMENDATION OF THE
ADMISSION TO THE MONTANA BAR	)	ACCESS TO JUSTICE COMMISSION

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In accordance with this Court's order of September 9, 2012, the Access to Justice Commission (ATJC) designated a committee to study a proposal to establish a requirement that applicants to the Montana bar must complete fifty hours of pro bono service within three years before they are admitted to the Bar. The Committee included representatives of the ATJC, a student and a member of the faculty of the University of Montana School of Law, members of the judiciary and court staff, legal staff of the Montana Legal Services Association, and representatives of the State Bar of Montana.

Over the course of the year, the Committee has gathered extensive information from other states that have adopted or have considered adopting a similar requirement; reviewed the curricula and clinical programs of the University of Montana and the pro bono service requirements of other law schools; researched current pro bono and self-help support efforts and programs operating in Montana; conducted a survey of law school students and faculty; and participated in discussions with the Commission on Character and Fitness, the Board of Bar Examiners, and the State Bar staff. The Committee also obtained and considered a white paper presented in October 2013 by the ABA Standing Committee on Pro Bono and Public Service regarding the potential pros and cons of New York's 50-hour preadmission pro bono rule.

After thorough analysis and numerous meetings, the Committee presented its recommendation to the ATJC at its November 25, 2013 meeting. Following discussion, the ATJC voted unanimously to approve the recommendations and to present them to the Court for an appropriate period of public comment and consideration at a public meeting of the Court. The recommendations are attached to this report and submitted herewith.

In summary, the ATJC has concluded that the paramount twin goals of serving Montanans' unmet legal needs and establishing in law school a culture of service that will endure throughout a lawyer's career will best be met by taking an approach different from that adopted in New York. The ATJC proposes an alternative approach that it believes will promote pro bono service by bar applicants, will bring emphasis to the professional responsibility each lawyer has to provide legal services to those unable to pay, and will help build, on a sustainable basis, a bridge from law school to law practice so that students begin with productive pro bono experiences and proper training before they are asked to do it on their own. The attached recommendation includes a reporting requirement, rather than a service requirement, coupled with a signature program at the University of Montana School of Law to be developed under the auspices of a standing committee of the ATJC working in partnership with the law school and others.

The experience of New York and other states convinces the ATJC that simply imposing a 50-hour requirement will not meet the objectives of the Court or best serve the administration of justice for several reasons, among which are the following.

First, implementation of New York's rule has resulted in a very broad definition of "pro bono service" that encompasses nearly all clinical and volunteer work of a law student, and even some paid work. Most Montana law students already would meet a 50-hour service requirement if the rule were adopted with similar definitions here, thereby accomplishing little while inadvertently diluting the definition of "pro bono publico" reflected in Rule 6.1 of the Rules of Professional Conduct.

Second, simply adopting the requirement without making sure that bar applicants have the education and opportunity to provide meaningful service could result in frustration among law students unable to find appropriate means by which to fulfill the requirement; could impose a new burden on the law school without making sure the school is prepared to meet it; and could tax the resources of existing legal services programs—especially those based in Missoula, where the law school is located—who already are experiencing funding shortfalls and may not be able to assume the additional administrative responsibility of supervising a host of law students. For law students to enter the practice of law with


enthusiasm for pro bono service, they will need to have productive and positive experiences with the pro bono work they perform in law school.

Finally, it would ill-serve the public if students are inadequately prepared or mentored in their pro bono work, and failing to tailor the service to the goals of Rule 6.1 will not achieve the goal of delivering legal services to those who most need them. The ATJC also recognizes that persons not yet admitted to the bar cannot practice law, and that a system needs to be in place for those persons to perform meaningful law-related public service that will serve the objectives of the rule.

With these views in mind, the ATJC commends its working group for developing a recommendation tailored to the needs and opportunities that exist in Montana. The Commission submits the attached recommendation for the Court's consideration and approval.

DATED this 26<sup>th</sup> day of November, 2013.

For the Access to Justice Commission,

  
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Chair

**FINAL RECOMMENDATIONS OF THE ACCESS TO JUSTICE COMMISSION ON PRO  
BONO REQUIREMENTS FOR NEW BAR ADMITTEES**

**November 2013**

The Access to Justice Commission of the Montana Supreme Court makes the following recommendations to the Court to achieve two specific goals: (1) to assist in creating a culture of volunteerism in future members of the Bar by providing students with opportunities to work with clients in a supervised pro bono setting, and (2) to serve the unmet legal needs of Montanans. Implementation of these recommendations should be done in a manner that furthers these goals.

Every lawyer has a professional responsibility to provide legal services to those unable to pay. The Commission recommends that the Court determine that this professional obligation begins in law school. The Commission recommends that law students should be expected to render at least 50 hours of pro bono publico law-related services during their legal education, prior to applying for admission to the State Bar of Montana. This service should meet the spirit of Rule 6.1 of the Rules of Professional Conduct, with some accommodation to account for the fact that a law student is not licensed to practice law.

**I. Law Student Pro Bono Publico.**

In meeting the professional obligations of a student practitioner over the three-year term of law school, consistent with Rule 6.1, the student should:

- (a) provide a substantial majority of the student's law-related 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 which are designed primarily to address the needs of persons of limited means; and
- (b) provide additional law-related services through:
  - (1) delivery of law-related services to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and education 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; or
  - (2) participation in activities for improving the law, the legal system or legal profession.

For reporting purposes by student bar applicants, "law-related services" include:

- (a) Direct legal services under supervision of a licensed attorney or legal services provider;
- (b) Similar volunteer law-related services that do not constitute the practice of law, provided that such services are designed primarily to address the legal needs of persons of limited means. Examples of qualifying service include, but are not limited to, services as a volunteer for a self-help legal clinic, domestic violence program, Court Appointed Special Advocates (CASA) program, or providing community legal education; or

- (c) Services provided to and under the direct supervision of a court-based program designed to facilitate the resolution of cases involving self-represented litigants of limited means.

## **II. Mandatory Reporting for Bar Applicants.**

The Commission recommends that the Court adopt a rule requiring all applicants for admission to the Bar to submit reports of their pro bono publico law-related services. Reporting by law students should be available beginning in their first year of law school. All applicants for admission to the Bar should be required to submit a report of all pro bono services performed during the three-year period preceding their admission. The report will be required for bar applicants even if they have no hours to report. The reporting form should be developed by the State Bar in coordination with the Montana Board of Bar Examiners, the Supreme Court's Commission on Character and Fitness, and the Supreme Court's Pro Bono Coordinator.

## **III. Character and Fitness.**

Reports of law student and bar applicant pro bono publico legal services will be referred to the Character and Fitness Commission for incorporation into the Character and Fitness review process for admission to the Montana State Bar. The Character and Fitness Commission would not be required to verify independently the information reported, but would have the discretion to make further inquiry based on the information submitted.

## **IV. Law School Signature Program.**

The Supreme Court should direct the Access to Justice Commission to work in conjunction with the University of Montana School of Law, the Student Bar Association, the State Bar of Montana, the Supreme Court's Pro Bono Coordinator, and legal services providers to develop a signature program to pair Montana attorneys with law students to work on Rule 6.1 pro bono matters that are eligible to be reported as pro bono hours by both the attorney and the student. This program should be developed and in place before any student or bar applicant reporting requirement commences, but the Commission recommends that the reporting requirement begin no later than the July 2017 bar examination.

## **V. Access to Justice Commission Standing Committee.**

To facilitate the accomplishment of the goals and programs described above, the Access to Justice Commission has created a standing committee to work with the law school, law students, legal services providers, and the State Bar of Montana to develop and implement an ongoing program to expand and support pro bono opportunities for students and to recommend to the Commission any needed rules and procedures to suggest to the Court and to the State Bar of Montana. The Commission shall, on a regular basis, evaluate the effectiveness of the program and include its evaluation in the Commission's report to the Court.