

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 11-0765

IN RE THE RECOMMENDATION FOR A)
VOLUNTARY PRO BONO REPORTING)
PROCESS BY APPLICANTS FOR)
ADMISSION TO THE MONTANA BAR)

O R D E R

Following this Court’s directive at its February 15, 2014, public meeting, the Access to Justice Commission (ATJC)’s Standing Committee on Law School Partnerships re-evaluated the ATJC’s November 2013 recommendation regarding reporting of pro bono activity by applicants for admission to the Montana Bar. The Committee reviewed the comments that had been submitted to the Court regarding the prior proposal, met with representatives of the Character and Fitness Commission and the State Bar of Montana, and explored alternatives to the proposal in light of the Court’s concerns. Following consideration at its October 1, 2014, meeting, the ATJC approved the Committee’s proposal and submitted its recommendation to this Court. The Court opened a public comment period for sixty days and received four written comments. A public meeting was held December 16, 2014, to consider the proposal. The Court extends its thanks to the members of the ATJC and its Committee on Law School Partnerships for the time and efforts expended on this proposal, and to those who have submitted comments.

Forty years ago, when this Court approved the Application of the President of the Montana Bar Association to adopt a unified bar for the State of Montana, we observed that “[t]he practice of law exists to provide a needed service to the public.” This purpose, we noted, is accomplished by the requirement that those admitted to practice meet required standards of character, education, knowledge, ability, and ethical conduct. “Equally important is the continuing nature of these obligations and standards throughout the professional life of an attorney—hence rules are required governing the conduct of those

engaged in the legal profession.” *In re Application of the Mont. Bar Ass’n Pres.*, 163 Mont. 523, 525, 518 P.2d 32, 33 (1974).

Among the rules governing a lawyer’s conduct is Rule 6.1 of the Rules of Professional Conduct, which states in part, “every lawyer has a professional responsibility to provide legal services to those unable to pay.” This Court places a high value on the thousands of hours that are donated by Montana lawyers every year to meet the legal needs of Montanans who cannot afford legal services. Through the joint efforts of the Court’s Statewide Pro Bono Coordinator and the State Bar of Montana, Montana attorneys are afforded the opportunity to report their *pro bono publico* services voluntarily each year. For the calendar year 2013, more than 2,000 Montana attorneys reported 157,463 hours of free and reduced fee legal services—a value exceeding \$19.8 million in donated services. The reporting rate in Montana has increased by 150 percent since 2001, and hours reported have increased as well. Total hours reported in 2013 grew by 10.4% over hours reported in 2012. Reporting has been a key component both in evaluating efforts to improve statewide pro bono services and in promoting and advancing pro bono initiatives and awareness.

The data shows that most attorneys, particularly those newly in practice, provide services only when they are made aware of available opportunities and have been provided appropriate training. Extending a voluntary reporting tool to aspiring Montana lawyers will facilitate the exchange of information regarding the interests and needs of new lawyers and will assist the Court and the Bar in evaluating pro bono activities generally, in planning and implementing better training and educational efforts for law students and lawyers alike, and in reaching out to successful bar applicants with opportunities to assist in closing the justice gap in Montana.

Having reviewed the provided sample of the Voluntary Law-Related Pro Bono Activity Statement developed by the Standing Committee with input from the State Bar staff, the Court approves of the general process envisioned by the ATJC for this voluntary reporting process and directs its staff to work with the State Bar of Montana to ensure that

the reporting form is compatible with the existing bar admissions process and with the reporting process now in place for attorneys already admitted to the State Bar of Montana.

IT IS THEREFORE ORDERED that this Court's Statewide Pro Bono Coordinator and the State Bar of Montana shall develop a process to give all applicants for the bar examination the opportunity to submit voluntarily a statement of any pro bono law-related activities they have performed as of the date of their application. Neither the information provided in the statement nor an applicant's choice not to submit a statement will be allowed to affect the applicant's candidacy for admission to the Montana bar in any way. The reporting period for student applicants should cover the three years prior to the application, and the reporting period for lawyer applicants should cover at least one year prior to the application.

The voluntary statement should serve three purposes:

1. To inform bar applicants of the high value Montana places on the obligation imposed by Rule 6.1 of the Rules of Professional Conduct and to notify them that admitted attorneys are encouraged to submit similar reports annually;
2. To gather non-identifying information and data about pro bono opportunities available to law students and about volunteer services already being provided by bar applicants in order for the Court and the State Bar to evaluate pro bono activities generally and to develop resources for pro bono attorneys; and
3. To provide bar applicants with an opportunity to indicate their interest in receiving information about training and their willingness to be contacted about pro bono opportunities upon admission to the bar.

IT IS FURTHER ORDERED that the State Bar of Montana monitor any costs associated with this activity and report any recommendations to the ATJC for further report to and consideration by this Court.

IT IS FURTHER ORDERED that the reporting process shall be implemented beginning with the February 2016 Montana Bar Examination.

The Clerk is directed to give notice of this Order to the Montana Board of Bar Examiners, to the State Bar of Montana, to the Access to Justice Commission, to the Commission on Character and Fitness, to the Dean of the University of Montana School of Law, and to the Montana Law Library for posting on this Court's website.

DATED this 16th day of December, 2014.

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ MICHAEL E WHEAT
/S/ JAMES JEREMIAH SHEA
/S/ PATRICIA COTTER

Justice Jim Rice, dissenting.

I dissent from the Court's order.

I support efforts to educate law school students about Rule 6.1 and the professional obligation they will undertake as lawyers to provide bono services. I also support efforts to provide information about pro bono opportunities to students and bar applicants and encourage them to participate. However, the professional obligations of a lawyer and the aspirations of a bar applicant are two different things. I see a critical distinction between asking admitted lawyers to voluntarily report the kind and hours of pro bono services they provide, and requesting that individuals do the same at the point they are applying for admission to the bar. I believe the latter moves beyond the laudable goal of encouragement and creates a coercive implication that the provision and reporting of pro bono services is an expectation for admission. The pro bono reporting forms created in this proposal will now

be given to bar applicants to be completed in conjunction with the mandatory admission forms, furthering that implication.¹

The process of completing the requirements of legal education and bar admission is complicated and exhaustive already, and this program would make it more burdensome and intrusive. Even if not mandatory, this program will present another issue for applicants to address in their effort to obtain admission to the bar.

The costs of this program, whatever they are, will be underwritten by the State Bar from dues paid by admitted lawyers. Those monies are certainly not paid on a voluntary basis. This program will contribute to the continuing larger issue of the State Bar's ability and obligation to provide support for this Court's commissions.

I do not believe this is an appropriate method of promoting the important goal and duty of providing pro bono services.

/S/ JIM RICE

Justice Laurie McKinnon joins in the dissenting Order of Justice Rice.

/S/ LAURIE McKINNON

¹ Although this Court has not been asked to approve the forms that are proposed to be used in the bar application packet, several points are notable. The instructions with the form entitled "Voluntary Law-Related Pro Bono Activity Statement" state that "[t]he provision of pre-admission pro bono services is not a condition to become licensed for law practice in Montana." That point is clear, but it is not so clear whether the applicant's *reporting* of pro bono activities is also voluntary, about which the instructions are silent. If the *reporting*, and not just the provision, of pro bono services is also intended to be voluntary, then notice of that point should likewise be clearly provided in the instructions so that an applicant can readily see and understand it.