

# TRIAL TALK

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## An Invitation to Offer Legal Services to Vulnerable Populations During the Pandemic

By Susan Minamizono

*If you can't feed a hundred people, then feed just one.*

~ Mother Teresa

The COVID-19 pandemic continues to widen socioeconomic gaps and disproportionately impact people of color, especially Black and Latinx communities, single-parent households, particularly those headed by women, blue-collar workers, migrants, and individuals lacking safety nets. According to Trevon Logan, an economics professor at Ohio State University, COVID-19 was the third-leading cause of death among African-Americans in 2020.<sup>1</sup> Black-owned businesses, which were more likely to be situated in COVID-19 hot spots, have been almost twice as likely as White-owned businesses to permanently shut down during the pandemic, according to a report prepared by Claire Kramer Mills and Jessica Battisto of the Federal Reserve Bank of New York.<sup>2</sup> Over two million American households claim they don't have enough to eat since the outset of the pandemic.<sup>3</sup> Overall, this health crisis "is not only exacerbated by the deprivation and vulnerabilities of those left behind by rising inequality but its fallout is pushing inequality higher."<sup>4</sup>

In Colorado, Black and Latinx residents have been reported as dying at a disproportionately high rate compared to their share of the population.<sup>5</sup> Twenty-eight percent of Latinx residents worry they won't be able to keep food on the table for their families, and 37 percent of Black Coloradans are afraid of losing their homes due to their inability to pay rent or mortgage.<sup>6</sup> There is a general distrust towards the medical establishment amongst members in these communities who oftentimes wait until their pre-existing medical conditions can no longer be controlled and finally admit themselves to emergency care.<sup>7</sup> Disparities in the rendering of health care services to communities of color and other disadvantaged populations have come to the forefront as our state government attempts to address the chasm, which community groups have already been actively working to bridge.<sup>8</sup>

Further, the pandemic has aggravated issues related to emotional health and social wellbeing for many people, especially those who lack social safety nets. Many have

been laid off from the restaurant/hospitality and service industries and are struggling to find safe and steady work. Others who are abused and trafficked are further isolated and forced underground, as they face the decreased availability of essential services and decreased likelihood of identification by law enforcement, while silently coping with the devastating effects of trauma.<sup>9</sup> Also, there is increasing concern that cases of child abuse and neglect are being significantly underreported as families cope with loss of employment and increased levels of stress and anxiety. In El Paso County, there were 5,000 fewer hotline calls in 2020, compared to 2019.<sup>10</sup> Mandatory reporters, such as teachers and other school professionals, make the majority of these calls, and with schools closed, there may be children who are left vulnerable at homes where abuse most frequently happens.<sup>11</sup> Incidents of intimate-partner violence appeared to have been underreported at the height of Colorado's lockdowns, but it is anticipated that the state could see a record number of reported cases as a result of the pandemic.<sup>12</sup> Longer periods of time at home spent with an abuser and having access to safe places significantly reduced during the pandemic are endangering the victims' safety and well-being.<sup>13</sup> Also, xenophobic political rhetoric during the pandemic have promoted a culture of "othering" and caused an increase in violent hate crimes against the Asian American and Pacific Islander communities.<sup>14</sup> Many members of these communities fear for their safety as subjects of scapegoating and stigmatization.<sup>15</sup>

These pronounced socioeconomic inequities, crimes committed against certain groups, and voids in available services highlight the potential legal needs of these populations in the areas of landlord-tenant disputes, contract negotiation, creditor's rights and bankruptcy, employment law and workplace safety, civil rights, family law, child dependency, insurance-related issues, and immigration law, among others. So, what can we as attorneys do to help our neighbors who are being devastated in more ways than one by this health

crisis? Each of us can strive to competently offer legal services without the expectation of compensation to at least one person this year.

### **A New Year's Goal to Offer 50 Pro Bono Hours... or Help One Person**

As the plaintiffs' bar, our days are laden with hours spent advocating for clients with limited means or whose lives took horrific turns for the worse due to someone else's bad choices. It's understandable to fall back on the notion that we don't need to do any pro bono work because offering legal services to individuals in vulnerable situations is what we do as a profession. But interestingly, Rule 6.1(a) of the Colorado Rules of Professional Responsibility expressly calls us to provide a "substantial majority" of the fifty hours of legal services rendered each year to clients of limited means or to organizations that directly address the needs of vulnerable populations "without fee or expectation of fee."

Rule 6.1 states, in pertinent part:

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

(a) provide a substantial majority of the fifty 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 legal or public services through:

(1) 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, 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.

You may be thinking that there isn't enough time in the day to get your regular work done, and it may feel out of the question to add cases to your workload that could take you away from earning money. Yet, there are many benefits of pro bono work, such as learning new areas of law and expanding your professional and social networks. Moreover, the emotional rewards that come with the work are substantial. If the scarcity of time is a crucial factor, pro bono work by limited representation is available at clinics sponsored by bar associations and volunteer legal organizations, which will oftentimes offer free CLEs for particular areas of law where help is mostly sought, namely, family law, landlord-tenant and creditor issues, and

immigration matters. The free training that these groups offer would also alleviate concerns about handling issues outside one's wheelhouse or comfort zone. Over the course of a year, it should be feasible for any attorney to offer hours of limited legal representation to those who are in dire need of it. The need for legal counsel is even more pressing during these times.

Also, in light of the dramatic decline in the number of jury trials,<sup>16</sup> and the delays caused by the pandemic foreclosing the speedy adjudication of civil cases, attorneys may find participating in pro bono work valuable. As trial work diminishes, working in a different area of law can provide opportunities that our primary practice area may not typically afford. For example, I have represented clients in deportation and asylum cases as a volunteer attorney with the ABA Immigration Justice Project and Rocky Mountain Immigrant Advocacy Network. After attending free CLEs and while receiving guidance from immigration attorneys, I was able to successfully assist my clients on their paths to citizenship. As a newly minted attorney, I represented one of my clients during a proceeding in immigration court, which was essentially a bench trial. At the time, I was a defense attorney who settled every case and spent minimal time inside a courtroom. The experience I obtained from presenting my client's case in immigration court built up my confidence and competency.

### **Considerations Before Taking a Pro Bono Case**

There are aspects of pro bono work that an attorney should consider while preparing to take a case. The Rules of Professional Conduct provide guidance related to some of these issues, including competency and conflicts of interest.

As in all things, an attorney must be competent in the representation of the client. “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”<sup>17</sup>

But see the comment to Rule 1.1 about competency:

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.<sup>18</sup>

Volunteering at legal clinics is a great way to help individuals in need of an attorney’s ability to navigate legal issues. An article published by the American Bar Association stated the following:

There is a general tendency for attorneys to avoid service in these clinics for fear that they will be recruited to provide advice in areas of the law with which they are not intimately familiar. Our experience suggests that these concerns are unfounded. Many individuals who

seek advice at these clinics are primarily in need of assistance in navigating life issues with legal underpinnings of a more generalized nature and they are empowered by a limited knowledge of the otherwise unfamiliar and daunting realm of the law. Regardless of your areas of focus, you are unquestionably qualified to provide advice in these areas, especially after going through whatever issue-specific training is provided by the relevant direct service organization.<sup>19</sup>

But as noted in Rule 1.1, it is important to take the time and care required for competent representation of the pro bono client. Legal research and, if necessary, consulting with an attorney who specializes in the practice area, is the minimum prerequisite for handling a pro bono case that is outside one’s practice area and to avoid potential malpractice suits. Even prestigious international law firms recognized for their pro bono advocacy can fall short by not taking easily accessible, rudimentary steps in providing quality legal services to their clients.<sup>20</sup>

Although malpractice policies typically cover clients’ claims for professional negligence without making a distinction between paying and pro bono clients, consult your insurance broker to ensure that your insurance policy does in fact cover all matters, including pro bono representation matters. Keep in mind that almost all of these policies are claims-made policies and may have a retroactive date of which you should be cognizant. Also, discuss with your broker the availability of other coverages, such as prior acts, extended reporting, or tail coverage.

Where representation extends beyond short-term limited legal services provided through legal advice hotlines, advice-only clinics, or pro se counseling

programs, conflict checks are essential, as in all other matters. The attorney must obtain the client’s informed consent to the limited representation.<sup>21</sup> On the other hand, Rule of Profession Conduct 6.5 acknowledges the practical challenges arising from the ability to check for conflicts of interest while, for example, proffering advice at a legal clinic with a revolving turnstile of clients. Specifically, compliance with Rules 1.7 or 1.9(a) is required only if the attorney has actual knowledge that the representation gives rise to a conflict of interest.<sup>22</sup> Also, compliance with Rule 1.10 is required only if the attorney has actual knowledge that another attorney at the same firm is disqualified due to a conflict.<sup>23</sup>

Additionally, in view of health and safety precautions taken during this pandemic, in-person meetings with clients are not occurring as frequently as before. But arguably, meetings with clients, especially those who reside outside your local area, may be easier to arrange if they have technological capabilities that enable them to use Zoom or other virtual meeting spaces. I recently appeared virtually at a protection order hearing on behalf of a pro bono client, who is a trafficking survivor. I was able to meet with her prior to the court hearing over Zoom, which allowed me to save time due to travel. Depending on the clients’ comfort level, I hope to conduct virtual meetings more frequently in the future, even after we return to our former “normal,” as it is an excellent tool to reach clients throughout the state without the time and effort spent for travel.

### Opportunities and Resources

The pandemic has caused logistical challenges to the intake of cases by legal and community clinics and the ability of attorneys to assist with these cases. But the need for legal assistance

is more critical than ever, and technological solutions can bridge the gap between attorneys and potential clients. For example, Denver-based organization ALIGHT (Alliance to Lead Impact in Global Human Trafficking) connects attorneys to community partners working with trafficking survivors in real-time by way of a mobile phone app.<sup>24</sup> Through ALIGHT's platform, survivors can request counsel and/or representation in matters involving family law (custody/visitation, domestic violence, divorce, and security issues), criminal law (criminal records, criminal defense, and criminal justice advocacy), and civil law (identity change, fraud, tenant's rights, employment, debtor's rights, and litigation).<sup>25</sup>

There are many other organizations seeking pro bono attorneys in various areas of law, and many of them offer free CLEs in those practice areas, as well as training to provide attorneys an understanding and sensitivity towards clients who are experiencing trauma or are in particularly unique predicaments. Volunteer opportunities are available with Colorado Legal Services, Colorado Lawyers Committee-sponsored Virtual Legal Nights, Rocky Mountain Victim Law Center, Rocky Mountain Children's Law Center, Rocky Mountain Immigrant Advocacy Network, and various local bar association-sponsored legal clinics and programs, such as Metro Volunteer Lawyers. The Colorado Bar Association also lists organizations state-wide with pro bono opportunities.<sup>26</sup> Some of these organizations send email notifications on a recurrent basis regarding cases in need of representation, allowing an attorney to select a case that won't unduly impose upon time commitments or a busy work schedule. Assisting a client by way of limited representation, even over the course of a 15-30 minute conversation, can help the client navigate the legal process and avoid detrimental

outcomes that could further devastate the client's already precarious situation. At minimum, an attorney can offer peace of mind to the client by intently listening to the issues presented and referring the client to other attorneys or services, if necessary.

In addition to the free CLEs and training offered by bar associations and legal organizations, there are various online resources for those interested in pro bono work. The Colorado Supreme Court offers FAQs regarding pro bono representation at <http://coloradosupremecourt.com/Probonoclinics.asp>. The ABA maintains a "knowledgebase" that contains helpful documents, especially for firms interested in establishing a pro bono participation program for their attorneys, at <https://www.americanbar.org/groups/center-pro-bono/>.

If you have time and resources, consider accepting court appointments for representation of *pro se* plaintiffs. Rule 6.2 governs court appointments and states as follows:

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 or otherwise oppressive 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.

In state court, attorneys with specific expertise can apply to be court appointed counsel for mental health, probate, guardian ad litem, criminal, and truancy cases,

among others.<sup>27</sup> Reduced attorney compensation and fee reimbursement schedules are provided by the court.<sup>28</sup> In federal court, Rule 15 of the Local Attorney Rules for the District of Colorado governs civil pro bono representation.<sup>29</sup> An attorney or law firm is required to submit to the Clerk of the Court an application to join the civil pro bono panel.<sup>30</sup> Reimbursement for non-expert costs is available for up to \$3,000 from the Faculty of Federal Advocates, and an additional reimbursement of up to \$7,500 for expert fees may be requested where expert witnesses are "reasonably required."<sup>31</sup> Further, Local Attorney Rule 15 allows attorneys to enter into a contingent fee agreement that complies with the Colorado rules governing contingent fees, or retain attorney fees if there is a recovery of attorney fees or a monetary award or settlement.<sup>32</sup> Limited representation of the client is also allowed.<sup>33</sup> The District Court of Colorado also provides on its website a list of cases that are available to any attorney for pro bono representation.<sup>34</sup>

## Let Us Be Beacons of Light

Over the years, I have benefited from learning new areas of law, expanding my professional network, and attaining emotional fulfillment through my pro bono work in fields of law outside my practice area. But I also have immensely enjoyed using my expertise in my practice area to help clients in need. In my role as an insurance lawyer, I recently helped a homeowner who lost her home to a fire to navigate property insurance issues. I've assisted a client in appealing the denials by her health insurance company for the hospitalization and rehabilitation of her husband who became a paraplegic due to a ski injury. Within the past few months, I provided counsel to a hate-crime victim who received uninsured motorist benefits

and convinced his health insurance company not to pursue a lien against the proceeds so that he could rebuild his and his family’s lives. I’ve evaluated insurance policies for small businesses and non-profits and provided opinions regarding coverage. All of this work was completed on a pro bono basis, and I am glad that I was able to offer a hand to those who could not compensate me for my time. I am also very grateful to my firm for its support over the years of my pro bono work in and outside the area of insurance law. My pro bono experiences have truly helped me keep in touch with why I chose to practice law in the first place—to help those who cannot help themselves.

In the words of youth poet laureate Amanda Gorman, “For there is always light if only we’re brave enough to see it, if only we’re brave enough to be it.”<sup>35</sup> Let us be the beacons of light that guide our vulnerable neighbors as they face what they consider insurmountable legal problems. Please do your part by providing pro bono legal services to even just one person this year. ▲▲▲

Susan is an attorney with the law firm of Levin Sitcoff Waneka, where she helps individuals and businesses recover insurance benefits that were wrongfully denied or delayed. She uses her experience as a former insurance defense attorney who specialized in product liability, construction defect, and personal injury law to advocate for her clients in insurance coverage disputes, bad faith litigation, and high-value personal injury claims. She has been recognized for her work by Colorado Super Lawyers in the area of insurance coverage since 2019. She is a member of Women Trial Lawyers Network and the CTLA Legislative Committee.

**Endnotes:**

<sup>1</sup> <https://www.barrons.com/articles/more-signs-coronavirus-exacerbates-economic-inequality-heres-how-51597442418>.

<sup>2</sup> *Id.*

<sup>3</sup> <https://www.weforum.org/agenda/2020/10/covid-19-is-increasing-multiple-kinds-of-inequality-here-s-what-we-can-do-about-it/>.

<sup>4</sup> <https://www.brookings.edu/research/tackling-the-inequality-pandemic-is-there-a-cure/>.

<sup>5</sup> <https://www.cpr.org/2020/09/10/communities-of-color-hit-hard-by-coronavirus-step-in-to-fill-the-gaps-in-the-governments-response/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See <https://www.un.org/ruleoflaw/wp-content/uploads/2020/05/Thematic-Brief-on-COVID-19-EN-ver.21.pdf>; <https://www.reuters.com/article/us-global-trafficking-expertview/how-are-human-traffickers-taking-advantage-of-the-pandemic-idUSKBN27300T>.

<sup>10</sup> <https://www.fox21news.com/top-stories/pandemic-report-child-abuse->

<neglect-hotline-sees-decrease-in-calls-officials-worry-of-unreported-cases/>

<sup>11</sup> <https://www.pbs.org/newshour/health/why-child-welfare-experts-fear-a-spike-of-abuse-during-covid-19>.

<sup>12</sup> <https://red.msudenver.edu/2020/covid-19-pandemic-adds-complexities-to-domestic-violence-in-colorado.html>.

<sup>13</sup> *Id.*

<sup>14</sup> <https://www.usatoday.com/story/news/nation/2021/02/12/asian-hate-incidents-covid-19-lunar-new-year/4447037001/>; <https://news.ucdenver.edu/anti-asian-hate-crime-during-the-covid-19-pandemic/>.

<sup>15</sup> *Id.*

<sup>16</sup> Shari Seidman Diamond and Jessica M. Salerno, *Reasons for the Disappearing Jury Trial: Perspectives from Attorneys and Judges*, 81 Louisiana Law Review 120 (2020).

<sup>17</sup> RPC 1.1.

<sup>18</sup> Comment [2] to Rule 1.1.

<sup>19</sup> <https://www.americanbar.org/groups/litigation/committees/commercial-business/>



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- spotlight/2017/justice-gap-pro-bono-legal/
- <sup>20</sup> See <https://www.abajournal.com/news/article/jones-day-sued-for-alleged-malpractice-by-pro-bono-clients-who-say-eviction-deal-left-them-homeless> and <https://www.law360.com/articles/1183644/jones-day-pro-bono-work-was-a-fiasco-ex-clients-claim> (allegations were made by pro bono clients that the first-year and summer associates who did the majority of the work did not conduct basic research related to the unlawful detainer action and that the law firm pushed for a “burdensome” settlement that left the clients homeless).
- <sup>21</sup> RPC 6.5 and Comment [2].
- <sup>22</sup> *Id.*, Comment [3].
- <sup>23</sup> *Id.*
- <sup>24</sup> <https://alightnet.org/our-solution/mobilizing-justice/>.
- <sup>25</sup> *Id.*
- <sup>26</sup> <https://www.cobar.org/For-Members/Pro-Bono-Opportunities/Statewide-Pro-Bono-Opportunities>.
- <sup>27</sup> See information and applications at <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=crtappcou>.
- <sup>28</sup> [https://www.courts.state.co.us/Courts/Supreme\\_Court/Directives/04-05\\_Amended%20Effective%20November%202019%20in%20response%20to%20HB%2019\\_1177%20Attach%20A%20April%202020.pdf](https://www.courts.state.co.us/Courts/Supreme_Court/Directives/04-05_Amended%20Effective%20November%202019%20in%20response%20to%20HB%2019_1177%20Attach%20A%20April%202020.pdf).
- <sup>29</sup> <http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/LocalRules/AttorneyRules.aspx>
- <sup>30</sup> See instructions and application at <http://www.cod.uscourts.gov/AttorneyInformation/CivilProBonoPanel-Details,andAvailableCases.aspx>.
- <sup>31</sup> [http://www.cod.uscourts.gov/Portals/0/Documents/AttInfo/USDC\\_Civil\\_Pro\\_Bono\\_2020.pdf](http://www.cod.uscourts.gov/Portals/0/Documents/AttInfo/USDC_Civil_Pro_Bono_2020.pdf).
- <sup>32</sup> *Id.*
- <sup>33</sup> *Id.*
- <sup>34</sup> The cases listed online were reviewed by at least four Civil Pro Bono Panel attorneys, who opted not to accept representation.
- <sup>35</sup> Gorman, Amanda. “The Hill We Climb.” Recited at the Presidential Inauguration Ceremony on Jan. 20, 2021.

## Arizona and California referral, co-counsel, and litigation relationships



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