Is Pro Bono Work 'Self-Serving' and 'Anti-Social'?

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Is Pro Bono Work ‘Self-Serving’ and Anti-Social?

By Lawrence K. Hellman

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We should probably just chalk this spat up to the exhausted emotions of the long, long election campaign. Nevertheless, an address by a prominent jurist has ignited a controversy over the social utility of attor- neys’ pro bono representations.

The controversy is surprising because pro bono work has long been held up as one of the “core values” of the American legal profession. The Preamble to the ABA’s Model Rules of Professional Conduct reflects this view when it states, “A lawyer should be mindful of the importance of equal access to the courts and of the responsibilities of his profession toward the public interest.” As a result, most law schools have developed pro bono programs, participation is high. For example, since its infancy, Oklahoma Lawyers for Children has had a stream of volunteer stu- dents from OU CULAW to support the vital work of the scores of pro bono attorneys in our community who offer free legal services to children who have been removed from their homes because they are suspected of having been neglected or deprived. At a hunchen just last month, almost 100 OU CULAW students received recognition for their pro bono work over the past year.

The endorsement in the Model Rules and the ABA’s accreditation standards has long seemed unremarkable. These docu- ments reflect aspirations that have character- ized American lawyers for more than a cen- tury. It was in the latter quarter of the 19th Century when local bar associations throughout the nation created legal aid soci- eties to provide legal assistance for the poor and defenseless in civil legal matters. Harper Lee’s fictional character Atticus Finch, To Kill a Mockingbird, is universally admired for his willingness to accept an unpopular pro bono assignment in a criminal case in pre-Gideon Alabama. Generations of law students have been taught to admire the story of Finch’s courageous representation of the accused rapist Tom Robinson against all odds in a hostile environment.

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In the context of Oklahoma’s version of Rule 6.1 omits the ABA’s suggested target of 50 hours per year per lawyer, but it retains the principle that lawyers have a “special responsibility to provide public interest legal service.” Comments [2] and [3] to Oklahoma’s Rule 6.1 further endorse the professional value of pro bono work by stating, “The ideal role of attorneys and other professionals is to provide free legal services to those unable to pay. Attorneys should therefore be willing to work without charging for their time and services. . . . Jacobs’ comments reflect his misun- derstanding of the tremendous good that lawyers do every day by helping those who cannot afford legal services. There arecount- less examples of this. Many of the nation’s largest law firms are representing detainees in Guantanamo Bay, Cuba, doing their best to ensure that the rule of law is upheld. Voluntary public interest lawyers and law students have spent innum- erable hours helping victims of Hurricane Katrina receive compensation for their losses. Across the country, there are many lawyers volunteering their time to represent those on death row who have no right to an attorney in their federal court proceedings. Chemerinsky went on to re-fute Judge Jacobs’ suggestion that pro bono work fur- thers a “liberal” agenda. “Implicit in Jacobs’ remarks is the assumption that pro bono work is inherently liberal. That is just wrong. Much pro bono work has no ideological con- tent, such as in helping a victim of domestic violence get an essential restraining order or assisting a child with learning disabilities receive an adequate education. Sometimes, pro bono work is in a direction conservatives applaud, such as in representing the property rights of homeowners who want to challenge a city’s use of its eminent domain power. Sometimes, it is in a more liberal direction.”

For the political junkies among us who are worried what they will do until the pres- idential debates for the campaign of 2012 begin (probably in a few weeks), this sur- prising controversy may offer a solution. Dean Chemerinsky has challenged Judge Jacobs to a debate on this issue. Stay tuned.


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