



# PRO BONO

Lawyers  
lend a  
hand

## Should Pro-bono Legal Services be Mandatory?

**P**ro bono is derived from Pro bono publico which means "for the public good and for the welfare of the whole." And the phrase pro bono is used to describe legal and other professional work that is undertaken voluntarily and without payment, as a public service. According to Deborah Rhode Pro bono service can be traced to practices in the early Roman tribunals, medieval ecclesiastical courts, and to Scottish and English legal proceedings and under the Roman system the heads of patrician families represented their dependents free of charge. Essentially, pro bono services are designed primarily to assist the less fortunate in society gain access to good legal representation. One primary benefit of pro bono service schemes is that by providing pro bono legal services lawyers are fostering the core values of the legal profession which include securing justice and fostering the rule of law.

### Pro Bono legal services in Nigeria

Since its formation the Legal Aid Council has been charged with providing pro bono services in Nigeria and has recorded remarkable achievements. Only last year a Memorandum of Understanding was signed by the Council and the police in nine pilot states to ensure that awaiting trial inmates do not stay too long in prison. It was also reported that the legal aid council had in collaboration with the Japanese Social Development Bank launched an Access to Justice for the poor project in Kaduna State. Although these initiatives by the council are salutary, one must observe that certain factors have

slowed down the implementation of these projects i.e. funding and proper project implementation.

Notwithstanding these challenges the Government has shown a dedication to legal aid for indigent members of the society this was the idea behind the one day conference organised by the Governing Board and Management of the Legal Aid Council which resolved "that all lawyers, State and Federal Government agencies and other concerned corporate bodies and individuals should always partner with the Legal Aid Council in providing pro bono services to indigent Nigerians and that the Nigerian Bar Association should work closely with the Council to enhance the Access to Justice System through the proposed Pro Bono Units and Human Rights Committees to be established at all branches of the Association". At the state level the Lagos state government launched a pro bono legal services project in September 2012 in furtherance of its objectives a pro bono week was organised with the theme "building a culture of pro bono in Nigeria" and a pro bono fund was launched to strengthen the project. The office of the public defender was also established by the state to ensure access to justice by the indigent and to render free legal services to the poor and recently a Public Interest Law Partnership initiative was developed by the state. Mr. Ade Ipaye the Attorney General of Lagos State urged legal practitioners and Non-Governmental Organisations to sign on with the state's Public Interest Law partnership to help expand the scope and culture of free legal services to the poor.

### Ethics and Pro-bono Services

Is there an ethical duty to provide legal services? Section Rule 8 of the Rules of Professional Conduct stipulates that "a lawyer assigned as counsel for an

indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts on his behalf."

This means that lawyers approached by indigent prisoners have a duty to give them good representation. Lawyers also have a moral obligation to assist the less privileged members of society and engage in pro bono projects such as the ones mentioned above. Despite the efforts expended in establishing avenues for providing pro bono services, it seems the pro bono culture is not caught on with lawyers in Nigeria. This has led to arguments by members of the bar that the pro bono service requirement should be made mandatory by introducing sanctions. In response to this some commentators have argued that making pro bono services mandatory will "undermine its moral significance and compromise altruistic commitments". Others have stated that they might lack the required skills to take on certain specialised cases and interestingly, some commentators in America have stated that requiring lawyers to commit to pro bono legal service regularly might amount to involuntary servitude. A middle ground is however provided in the American Bar Association Model Rules of Conduct Section 6.1 which provides that:

*Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:*

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
  - (1) persons of limited means
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means;

In addition, the same ethical principles that apply in administering legal services to fee paying clients also apply to clients from a pro bono service scheme these include upholding the dignity of the law and the courts. This was the opinion of the American courts in **SEGAL v STATE BAR OF CALIFORNIA** (1988) 44 Cal 3d 1077, 1084. The court stated that "Segal's argument presupposes that pro bono clients deserve less diligent service than paying clients, a proposition that undermines the integrity of the legal profession. An attorney's standard of professional conduct to a pro bono client should be no different from his responsibility to any other client."

While partaking in pro bono service schemes lawyers are reminded to observe these rules of ethics. Firstly, Rule 24 of the Rules of Professional Conduct advises that they ensure that the law is upheld at all times and that no advice given to a client brings the court or judicial officers to disrepute. Secondly, they should preserve the confidences of their clients as provided for in Rule 26. Furthermore, lawyers providing pro bono legal services should be mindful of conflicts of interest; they should seek out cases in areas that are not related to their practice for example a lawyer representing a bank or another financial institution should not offer advice in cases about finance or bankruptcy.

### Conclusion

To my mind offering pro bono legal services should be voluntary but lawyers should be encouraged by the NBA and other governmental agencies by frequent enlightenment programmes on its benefits to the indigent members of the society and its overall impact on the public's perception of the legal profession.