

Frequently Asked Questions

New Professional Rule 6.7: Requirement for Reporting of Direct Pro Bono Legal Services

[Rule adopted January 1, 2015 and amended April 30, 2015]

Q: Who Must Comply?

A: All Indiana attorneys but those in 4 exempted categories:

- 1) currently serving as a member of the judiciary or judicial staff,
- 2) a government lawyer prohibited by statute, rule, regulation, or agency policy from providing legal services outside his or her employment,
- 3) retired from the practice of law, or
- 4) inactive standing with the Clerk of the Indiana Supreme Court.

Even if you are exempt, you are still required to report that you are exempt and what the reason is for your exemption.

If you were exempt for only part of the year, then you were not exempt the other part of the year and should report hours and donations for that period.

If you are not exempt and have no pro bono or financial contributions to report, you must insert "0" (zero) in the form.

Q: What Must I Report?

A: "Reportable Pro Bono Hours" = legal services in Indiana or other states directly to individuals reasonably believed to be of limited means (1) without charge and without any fee expectation when the services were rendered or (2) at a charge of less than 50% of your normal rate and without expectation of any greater fee when the services were rendered.

Financial contributions and In-kind contributions of tangible property to eligible organizations:

- the Indiana Bar Foundation
- any of the local IRC 501(c)(3) pro bono districts listed at the Indiana Supreme Court website
- a legal service organization located in Indiana that is eligible for fee waiver under I.C. 33-37-3-2(b)

Q: Am I required to offer pro bono hours and donations to maintain my attorney license?

A: No. The Indiana Supreme Court requires attorneys to report voluntary hours and donations, not to work pro bono hours or make donations. The Court is collecting this information to find out how much pro bono attorneys are voluntarily providing as part of a project to evaluate Hoosiers' access to legal aid.

Q: Where Do I Report?

A: During your annual attorney registration on the Indiana Courts Portal at <http://portal.courts.in.gov>.

Q: When Do I Report?

A: Pro bono reporting for calendar year 2015 began with the 2016 attorney registration cycle. In 2017, attorneys will report for calendar year 2016. Attorneys have until 11:59pm on October 1 each year to complete registration, report pro bono, certify IOLTA information, and pay fees.

Q: Can I change what I've reported after I complete my attorney registration?

A: No. Once you certify the information in your annual attorney registration is correct and submit it through the Indiana Courts Portal, you will not have the ability to go back and make changes. Make sure you have all the pro bono information you need before you sit down to complete registration.

Q: What is not included in the term "reportable pro bono legal services":

A:

- Legal services "for the benefit" of poor people (amended from the original rule)
- Legal services to organizations
- Legal services written off as bad debts
- Legal services rendered to improve the law, the legal system, or the legal profession

Q: May I report pro bono services or donations made outside of Indiana?

A: Yes. Rule 6.7 says "legal services in Indiana or other states directly"

Q: How do I know if my client is a person of limited means?

A: You are making a good faith approximation. Revised Rule 6.7 does not define "limited means" so it is a flexible concept that allows lawyers to measure their pro bono clients' ability to pay against what it would otherwise cost them to pay for representation. A pro bono client may not be indigent in the absolute sense of the word, but might not have sufficient means to pay for legal representation. Still, if a lawyer represents a wealthy client for free because he believes in the cause, that is not reportable pro bono.

Q: Do my legal services qualify as pro bono legal services if I charge a reduced fee to a client who is unable to pay my general legal fees?

A: Yes, as long as you are making that determination at the time the services are provided and you are charging less than 50% of your normal rate without expectation of any greater fee.

Rule 6.7 acknowledges the laudable practice of lawyers who, rather than abandoning a client who can no longer pay for legal services, sticks with their client with no further expectation of being paid.

Q: May I approximate my financial contributions for pro bono reporting?

A: The original Rule 6.7 allowed for approximations of financial contributions. The amended rule requires reporting direct monetary support in actual, not estimated, dollars. Most lawyers already track these donations for tax purposes.

Q: What in-kind contributions may I report?

A: The amended Rule 6.7 clarified that in-kind contributions do not include the value of donated services, only “tangible property.” The valuation question was left deliberately vague by a reference to the donated property as “fairly valued.”

Q: What enforcement mechanisms are in place for compliance with Rule 6.7?

A: The amended Rule 6.7 does not discuss professional discipline for violation of the rule. Practically speaking, non-compliance is not an option. The Court’s online annual registration portal will require attorneys to answer the Rule 6.7 questions in order to complete their attorney registration renewal. If attorneys have no pro bono or financial contributions to report, they must insert “0” (zero) in the form.

Q: Can a legal representation that began as a fee-payment engagement be converted to a reportable pro bono representation?

A: Yes. Whether a representation is reportable pro bono is determined at the time the services were rendered; not at the outset of the representation.

Q: Why is this information being collected?

A: The Court is collecting this information to find out how much pro bono attorneys are voluntarily providing as part of a project to evaluate Hoosiers' access to legal aid. The collection of this information is not part of an effort to require lawyers to provide pro bono services, which has repeatedly been held unconstitutional. *See, e.g., Sholes v. Sholes*, 760 N.E.2d 156, 163 (Ind. 2001) (“this Court in *Blythe* (1853), *Webb* (1854) and *Pollard* (1899) has consistently rejected the notion that an attorney may be compelled to serve without compensation”).

AMENDED PROFESSIONAL CONDUCT RULE 6.7

Rule 6.7 Requirement for Reporting of Direct Pro Bono Legal Services

(a) Reporting Requirement. To assess the current and future extent of volunteer legal services provided directly to individuals of limited means and to encourage such services, an attorney must report as part of the attorney's annual registration the following information:

(1) Pro Bono Hours - no compensation. During the previous calendar year ending December 31 I have personally provided approximately _____ hours of legal services in Indiana or other states directly to individuals reasonably believed to be of limited means without charge and without any fee expectation when the services were rendered.

(2) Pro Bono Hours – substantially reduced compensation. During the previous calendar year ending December 31, I have personally provided approximately _____ hours of legal services directly to individuals reasonably believed to be of limited means at a charge of less than 50% of my normal rate and without expectation of any greater fee when the services were rendered.

(3) Financial Contribution. During the previous calendar year ending December 31, I have either (i) made monetary contributions of \$_____ to the Indiana Bar Foundation, to any of the local IRC 501(c)(3) pro bono districts listed at the Indiana Supreme Court website, or to a legal service organization located in Indiana that is eligible for fee waiver under I.C. 33-37-3-2(b); or (ii) made an in-kind contribution of tangible property fairly valued at \$_____ to one or more of the foregoing qualifying legal service organizations or pro bono districts.

(4) Exempt Persons. An attorney is exempt from reporting under this Rule who is exempt from the provision of pro bono legal services because he or she (i) is currently serving as a member of the judiciary or judicial staff, (ii) is a government lawyer prohibited by statute, rule, regulation, or agency policy from providing legal services outside his or her employment, (iii) is retired from the practice of law, or (iv) maintains inactive standing with the Clerk of the Indiana Supreme Court.

(b) Reporting Required. By requiring the affirmative reporting of pro bono legal services provided directly to an individual of limited means, this Rule 6.7 requires reporting only for a subset of the public interest legal service encouraged under Rule 6.1.

(c) Public Disclosure of Information Received. Information received pursuant to this Rule is declared confidential and shall not be publicly disclosed by the Indiana Supreme Court or any of its agencies, on an individual or firm-wide basis.