

# THE WHAT AND WHYS OF THE PRO BONO SURVEY

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Late last fall, I co-authored a letter with Idaho Supreme Court Justice Jim Jones that was sent, along with an informal survey, on behalf of the Idaho Pro Bono Commission to all private and public law firms and law departments in Idaho with five or more lawyers. The survey asked for information regarding pro bono legal service policies and, in the letter, we encouraged all firms to implement a written policy if they did not have one currently in place. While expressing appreciation to those of you who responded to the survey, I thought you might be interested in the survey results and also in learning more about the activities members of our state and federal judiciary are continuing to take to encourage pro bono legal services throughout Idaho.

## Before the survey

Before sending out our letter and the survey, members of the Idaho Pro Bono Commission held meetings around the state and initiated discussions at the state and federal level regarding members' efforts to develop templates for pro bono policies and, if organizations did not have policies in place, to encourage private, corporate and government law firms to adopt pro bono policies. Justice Jim Jones and I, along with Sixth District Magistrate Judge Rick Carnaroli, are the three judicial officers currently serving on the Commission and on the judicial sub-committee of the Commission. While the Commission as a whole was reviewing templates for policies drafted by sub-committees, we did our best to initiate conversation among members of the Bar about pro bono representation and pro bono policies, which included the facilitation of Dialogues with lawyers at the Federal Courthouses in Boise and Coeur d'Alene and the Bannock County Courthouse in Pocatello.

At all three Dialogues, attendance was good and we held open discussions about pro bono service and pro bono policies, although I share the observation reported by Magistrate Judge Rick Carnaroli in his article in the February 2010 Advocate that we were met also by "healthy skepticism



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*For sample pro bono policies visit the  
Idaho Pro Bono Commission's website at  
[http://isb.idaho.gov/ilf/ivlp/pro\\_bono\\_comm.html#Temp](http://isb.idaho.gov/ilf/ivlp/pro_bono_comm.html#Temp)  
Use these "templates" as a starting point  
and delete, add or modify to suit your firm.*

and concern." Since then, however, we have experienced a genuine outgrowth of enthusiasm and follow-through by lawyers and law firms across the state who have not only adopted policies but increased their time and commitment to helping those that do not have the means to hire a lawyer or otherwise obtain access to the judicial system and courts.

## Results of the survey

Out of 91 letters sent, 27 completed surveys were returned, although a few more dwindled in after the initial compilation, along with written policies some firms were willing to share. From the first 27 returned, 9 firms (or one-third of the respondents) indicated they had a written pro bono policy and another 4 indicated they were interested in having a written policy. The remainder indicated "no" regarding the existence of a written policy, but the majority of these respondents indicated also that they have encouraged and allowed pro bono service by the lawyers in their firms but do not have either a pro bono service requirement or a written policy on the subject. After the survey was taken, we received additional information from law firms about written pro bono policies and practices implemented

in law firms around the state. The Idaho Pro Bono Commission is compiling all the information received to date, as we plan to publish the list of firms that have a written policy in place in an upcoming edition. To be included in the published list, please contact Mary Hobson, Idaho Volunteer Lawyers Program Legal Director at (208) 334-4500 and let her know if you have a written policy but did not respond to the survey or your firm finalized a policy sometime later.

## Why have a written policy?

Both before, during and after our survey, I have been asked why it is necessary for a firm to have a written policy if the firm otherwise provides pro bono legal services and encourages lawyers in the firm to do so without the existence of a "formal" policy. When I hear this, it reminds me of times in my prior life in private practice when I counseled employer clients about the importance of written anti discrimination and harassment policies. If something is not in writing, it may as well not exist. Beyond this reason for having a policy in writing, analogies can be made to goal setting. It is more difficult to meet a goal if the goal and the steps to achieving it have not been reduced to

writing. Finally, we all know how difficult it can be to enforce an unwritten agreement or handshake deal.

I have given a lot of thought to this, and concluded some firms may not like the concept of a “policy” because they do not want to be accused of not following their own policy. Keep in mind that Rule 6.1 of the Idaho Rules of Professional Responsibility does not mandate pro bono service, but strongly encourages it as part of your professional responsibility (and oath) as a lawyer. Therefore, if you are reluctant to accept the concept of or the term “policy,” consider the fact that a pledge or statement of support might have the same result. In either event, reducing your commitment to writing is a great first step toward fully integrating Rule 6.1 of the Idaho Rules of Professional Conduct into your work and overall responsibilities as a lawyer.

One of the government firms that responded to the survey by indicating it was working on its policy was the Ada County Prosecuting Attorney’s Office. After receiving our letter, Ada County Prosecuting Attorney Greg H. Bower established a pro bono committee in December of 2009 that developed and organized the pro bono efforts of the lawyers in his office. That committee developed a pro bono guideline for their attorneys and organized an impressive 6.1 Pro Bono Challenge submission in April of 2010, reflecting the fact that two thirds of their lawyers participated in providing pro bono service.

From the corporate law firm respondents, we received one written policy and recently received a copy of the newly adopted J.R. Simplot Corporate Legal Department Pro Bono Commitment. General Counsel for the J.R. Simplot Company, Terry T. Uhling, serves on the Idaho Pro Bono Commission and, with regard to Simplot’s Commitment, he authorized me to quote him as follows: “At the J.R. Simplot Company our lawyers welcome the opportunity to serve as volunteer attorneys in meeting the pro bono needs within our communities. The Simplot legal team is committed to being a corporate pro bono leader in providing legal services that are in the public interest and for folks who cannot afford or find the representation necessary to protect their rights.”

There are other benefits of a written policy or pledge, such as recruiting new lawyers and clients. Many law students, and in particular those that attend the University of Idaho College of Law, have pro bono service hour requirements for graduation and already are “primed” for pro bono legal service when they are applying and interviewing for jobs for pay. It may be hard to convince an applicant that you do allow pro bono legal service, as approved by the firm, if you do not have

*The Idaho pro Bono Commission and The Advocate would like to know if your firm — regardless of size — has a written pro bono policy, so that you can be recognized in an upcoming Advocate article. Please contact Mary Hobson, Idaho Volunteer Lawyers Program Legal Director at mhobson@isb.idaho.gov or (208) 334-4510 and tell us you have a policy or if you would like more information.*

— Justice Jim Jones, Idaho Pro Bono Commission Chair

your “policy” in writing. With regard to clients, consider the fact that many corporations are community minded and some, such as Simplot, may prefer or even require outside firms to whom they assign litigation work to have a proven pro bono policy and commitment.

#### **What can Judges do to encourage pro bono service?**

First, I should start by telling you that the Idaho Supreme Court recently adopted a revised Canon 4C(3)(b)(iii) that addresses judicial encouragement of pro bono activities. The Canon now reads that Idaho state judges:

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, *provided that a judge may encourage participation by a lawyer or lawyers in pro bono activities as long as the encouragement is not coercive in nature.*

The amendment, italicized above, is consistent with the ABA Model Code of Judicial Conduct Rule 3.7(B) and the Canons applicable to federal judges, such that appointing lawyers to represent indigent parties and encouraging lawyers to participate in pro bono legal service, as long as the judge does not employ coercion, does not abuse the prestige of judicial office.

As one member of the Commission commented at a recent meeting, we are not “holding out tin cups and asking for coins” from lawyers. We are not soliciting for charity, but we are encouraging lawyers to engage in pro bono service as the means for providing access to and enhancing the administration of our system of justice. The lack of legal representation for those less fortunate impedes access to justice for everyone, as pro se appearances often delay court proceedings and fail to efficiently utilize judicial resources. Therefore, as judges, we have

the opportunity—and an obligation—to use our positions to promote and to provide access to justice. Encouraging members of the bar to help those who cannot afford to hire a lawyer to represent them is one way we can accomplish the goal of providing equal access to justice.

#### **A written commitment**

Thank you to everyone who responded to the survey either initially or in more recent months. As judges and lawyers, our commitment to pro bono service should never wane. Over the past 18 months while I have worked on the judicial subcommittee of the Idaho Pro Bono Commission, I have seen tremendous efforts by many members of the Idaho State Bar toward this commitment we share.

Finally, I encourage you to visit the Pro Bono Commission’s page on the Idaho Law Foundation’s web site, [www.isb.idaho.gov/ilf](http://www.isb.idaho.gov/ilf), where you can find the three templates for reducing your pro bono policy or commitment to writing.

#### **About the Author**

**Judge Candy W. Dale** was appointed United States Magistrate Judge by the United States District Court for the District of Idaho, entering duty on March 31, 2008. She was appointed Chief United States Magistrate Judge in October of 2008. Among her other duties, she is the supervisor of the Pro Se and Capital Habeas Unit; supervisor of the ADR Program and ADR Coordinator, which includes the Pro Bono Program; and Chair of the Local Civil Rules Advisory Committee. She also serves on the District’s re-entry team, START (Success Through Assisted Recovery and Treatment), in Boise and Moscow. She is the District of Idaho’s representative on the Magistrate Judge’s Executive Board for the Ninth Circuit, a member of the Jury Trial Improvements Committee for the Ninth Circuit, and a member of the Idaho Pro Bono Commission.