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## Risk Management for *Pro Bono* Work

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Although Oregon has not adopted ABA Model Rule of Professional Conduct 6.1 that specifically encourages *pro bono* work, we are frequently and appropriately urged to provide free or reduced cost legal services to those in need by courts, bar groups, our peers and our own consciences. At the same time, there is no distinction between paying and *pro bono* clients when it comes to either our regulatory duties or the standard of care. In fact, both the Oregon Supreme Court (see, e.g., *In re Mettler*, 305 Or 12, 18, 748 P2d 1010 (1988)) and the United States District Court for the District of Oregon (see, e.g., *DG Cogen Partners, LLC v. Lane Powell PC*, 917 F Supp2d 1123, 1137 (D Or 2013)) have noted that payment of a fee is not necessary to create an attorney-client relationship and its attendant duties. Reflecting this lack of a distinction between paying and *pro bono* clients, there are reported decisions involving both regulatory discipline and legal malpractice claims against lawyers performing *pro bono* work. That is not a reason to avoid *pro bono*. It is, however, a reminder that we need to pay the same attention to law firm risk management when handling *pro bono* work as we do when representing paying clients.

In this column, we'll look at four areas that case law suggests lawyers need to pay special attention to on the risk management front when handling *pro bono* cases: competence; diligence; communication; and handling funds. These

areas are not unique to *pro bono* work. Oregon State Bar statistics published annually suggest that these are continually among the principal areas leading to regulatory discipline in Oregon. Although the Professional Liability Fund does not categorize claims in the same way the OSB tracks disciplinary statistics, “retail” practice areas like family law that are often a staple of *pro bono* work are usually heavily represented in the PLF’s annual analysis of the frequency of claims by practice field.

**Competence.** RPC 1.1 speaks to our bedrock duty of competent representation in a regulatory sense and the standard of care does the same in the civil liability context. *In re Hartfield*, 349 Or 108, 239 P3d 992 (2010), offers an illustration. The lawyer in *Hartfield* took on a conservatorship matter for an elderly client on a *pro bono* basis. The lawyer, however, failed to file a required inventory and an accounting, missed court dates and was eventually removed by the probate court. The probate judge reported the lawyer to the Oregon State Bar and the Bar opened disciplinary proceedings against the lawyer. Although the lawyer was eventually disciplined for “conduct prejudicial to the administration of justice” for failing to meet court-imposed deadlines and other requirements, the Supreme Court was critical of the lawyer’s overall handling of the matter.

Particularly when we may be navigating an area for a *pro bono* client that is not

within our primary practice focus, it can be critical to get the assistance necessary to handle the matter concerned. This might include, depending on the circumstances, attending CLE courses in the substantive area concerned or seeking guidance from legal clinic staff who work on matters of the kind involved routinely. The bottom line, however, is that clients—whether paying or pro bono—expect and deserve that their legal affairs will be handled competently.

**Diligence.** RPC 1.3 addresses our duty of diligence under the professional rules and it is an equally key component to the standard of care. Under the duty of diligence, we are expected to devote sufficient attention to a matter that it moves along at a pace reasonably appropriate to the circumstances. As noted earlier, this standard makes no distinction between paying and *pro bono* clients. In *In re Jackson*, 347 Or 426, 223 P3d 387 (2009), for example, a lawyer was disciplined for failing to be adequately prepared in handling a divorce *pro bono*.

**Communication.** RPC 1.4(a) requires that a lawyer “keep a client reasonably informed about the status of a matter[.]” RPC 1.4(b), in turn, obliges a lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Again, there is no exception for *pro bono* work. In *In re Petranovich*, 26 DB Rptr 1 (2012), for

example, a lawyer was disciplined for failing to keep his *pro bono* client apprised of developments in a federal civil case.

**Handling Funds.** RPC 1.15-1 governs our general duty of safekeeping for client funds and other property. RPC 1.15-2, in turn, specifically regulates client trust accounts. Handling client funds is among the most sensitive duties we have as lawyers. Although many *pro bono* matters do not involve handling client funds, some do and the same exacting standards apply in those instances as with paying clients. In *In re Martin*, 328 Or 177, 970 P2d 638 (1998), for example, a lawyer took on a *pro bono* federal civil case in which the client advanced \$1,000 in costs. The lawyer did not deposit the funds into trust and, when questioned later by replacement counsel, was unable to provide an accurate accounting of how the funds were used. The lawyer was disciplined under the then-equivalent versions of today's RPCs 1.15-1 and 1.15-2.

## **ABOUT THE AUTHOR**

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