

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2505 (Gabriel)
Version: May 30, 2024
Hearing Date: June 11, 2024
Fiscal: No
Urgency: No
AM

SUBJECT

Attorneys: pro bono legal services

DIGEST

This bill requires every active licensee of the California State Bar, except as specified, to report whether they have provided pro bono legal services during the calendar year, as specified. The bill makes this information confidential, except that it authorizes the State Bar to publish a report of the information in the aggregate and in an anonymized fashion.

EXECUTIVE SUMMARY

Existing law provides that every lawyer authorized and privileged to practice law in this state is expected to provide voluntary pro bono legal services to those who cannot afford the help of a lawyer or make a contribution to organizations that provide such services if the licensee is unable to provide those services themselves. This bill seeks to encourage attorneys licensed in California to fulfill their duty of providing and supporting pro bono legal services by requiring licensees to report to the State Bar on the pro bono legal services they have provided in the calendar year. This bill is sponsored by the Legal Aid Association of California and is supported by numerous legal aid organizations. No timely opposition was received by the Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires all attorneys who practice law in California to be licensed by the State Bar and establishes the State Bar, within the judicial branch of state government, for the purpose of regulating the legal profession. (Cal. const., art. VI, § 9; Bus. & Prof. Code § 6000 et seq.¹)

¹ All further references are to the Business and Professions Code unless otherwise stated.

- a) The Legislature sets the annual fees. (§ 6140 & 6141.)
 - b) The State Bar is governed by the Board of Trustees of the State Bar (Board). (§ 6010 et seq.; § 6016.)
- 2) States that it has been the tradition of those learned in the law and licensed to practice law in this state to provide voluntary pro bono legal services to those who cannot afford the help of a lawyer.
- a) Every lawyer authorized and privileged to practice law in California is expected to make a contribution. In some circumstances, it may not be feasible for a lawyer to directly provide pro bono services.
 - b) In those circumstances, lawyers may instead fulfill their pro bono ethical commitment, in part, by providing financial support to organizations providing free legal services to persons of limited means. In deciding to provide that financial support, lawyers should, at minimum, approximate the value of the hours of pro bono legal service that they would otherwise have provided. In some circumstances, pro bono contributions may be measured collectively, as by a firm's aggregate pro bono activities or financial contributions.
 - c) Lawyers also make invaluable contributions through their other voluntary public service activities that increase access to justice or improve the law and the legal system. In view of their expertise in areas that critically affect the lives and well-being of members of the public, lawyers are uniquely situated to provide invaluable assistance in order to benefit those who might otherwise be unable to assert or protect their interests, and to support those legal organizations that advance these goals. (§ 6073.)
- 3) Defines "legal aid organization" to mean a nonprofit organization that provides civil legal services for the poor without charge. (§ 6159.51.)

This bill:

- 1) States that every lawyer should aspire to fulfill their individual commitment to provide pro bono legal services each year and contribute financially to California legal aid organizations pursuant to Section 6073.
- 2) Requires an active licensee to report whether they have provided pro bono legal services through the licensee's My State Bar online profile on the State Bar's internet website through a provided section where those hours are to be declared when payment of annual fees is due. Every licensee is required to report the following:
 - a) amount of pro bono legal services hours performed during the calendar year preceding the year in which the annual fee is due; and
 - b) hours of reduced fee legal services performed for a low-income individual, nonprofit organization, or public law library established under Section 6360 during the calendar year preceding the date the annual report is due.

- 3) The reporting requirement in 2), above, does not apply if a licensee is any of the following:
 - a) employed by an organization primarily engaged in the provision of pro bono legal services, including qualified legal services projects and qualified support centers, as defined in Section 6213, legal aid organizations, and nonprofit public benefit corporations, as authorized by Section 13406 of the Corporations Code;
 - b) a full-time employee or an officer or elected official of the State of California, or political subdivision thereof, or the federal government; and
 - c) prohibited by their current employer from performing pro bono legal services if the licensee declares this prohibition on their My State Bar online profile on the State Bar's internet website through a provided section when payment of annual fees is due.
- 4) Requires the State Bar to retain and maintain the information reported pursuant to 2), above, for purposes of historical record for at least five years.
- 5) Provides that the information reported pursuant to subdivision (b) is confidential.
 - a) Authorizes the State Bar to publish aggregated and anonymized reports based on the information received pursuant to 2), above.
- 6) Specifies that failure to comply with these requirements does not subject a licensee to disciplinary or administrative punishment.
- 7) Specifies that the State Bar cannot use any moneys received from the annual license fees collected pursuant to Section 6140 or 6141 for any costs associated with this provision.
- 8) Defines various terms for these purposes.

COMMENTS

1. Stated need for the bill

The author writes:

AB 2505 will help increase access to legal aid for low income Californians, which has been shown to provide a tremendous benefit to low-income litigants. This bill will add reporting requirements for all licensed attorneys in California, which will incentivize lawyers to provide critical legal services to those in need.

2. Legal services

In 1963 The U.S. Supreme Court stated that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for [them] This seems to us to be an obvious truth.” (*Gideon v. Wainwright* (1963) 372 U.S. 335, 344.) This right to counsel has only been extended to criminal proceedings; however, the conception of a Civil Gideon right has been growing to provide legal counsel to indigent litigants in civil matters involving basic human needs. In 2009, Assemblymember Mike Feuer proposed that California embark on a project to put the Civil Gideon concept to the test. He introduced AB 590 (Ch. 457, Stats. 2009), the Sargent Shriver Civil Counsel Act, so named in honor of then-California First Lady Maria Shriver’s father, who was a major proponent of legal aid. AB 590 passed both houses of the Legislature on a bipartisan basis and was signed by then-Governor Schwarzenegger on October 11, 2009. The Shriver Project is funded by a \$25 fee in various court filing fees and it is administered by the Judicial Council. Pursuant to the Act, legal aid agencies, in partnership with their local county courts, must present proposals to the Judicial Council. The proposals must focus on at least one of the civil matters identified as having such profound impact on litigants’ lives that legal counsel should be appointed: housing-related matters, domestic violence and civil harassment restraining orders, probate conservatorships, guardianships of the person, elder abuse, or actions by a parent to obtain sole legal or physical custody of a child.

According to a 2023 report from the American Bar Association (ABA) there are fewer than three civil legal aid attorneys available to provide free legal help for every 10,000 Americans living in poverty.² The California Access to Justice Commission, a supporter of this bill, notes on their website that:

The gaps in access to counsel include persons with incomes below the poverty line and those who still cannot afford representation, but do not qualify for legal aid services. As a result, the Commission encourages lawyers to offer low-cost legal representation, including reduced rate and limited scope legal assistance where appropriate, and provides materials that can help those lawyers operate an effective and efficient low-cost law practice serving a modest means clientele.³

The State Bar currently urges all lawyers to provide a minimum of 50 hours of pro bono legal services annually; however, currently there is no way to measure if this goal is being met or not. This bill seeks to incentivize attorneys in this state to provide legal services by requiring every active licensee of the State Bar, with certain exceptions, to report whether they have provided pro bono legal services during the calendar year.

² Karen Sloan, *Civil legal aid attorneys in short supply, ABA report finds*, Reuters (Nov. 30, 2023), available at <https://www.reuters.com/legal/government/civil-legal-aid-attorneys-short-supply-aba-report-finds-2023-11-30/>.

³ Cal. Access to Justice Commission, *About*, <https://calatj.org/about>.

The Legal Aid Association of California, the sponsor of this bill, writes that:

California has fallen behind other states' efforts to expand access to civil legal services through pro bono work. As it stands, the California Bar strongly encourages all licensed attorneys to annually provide 50 hours of pro bono legal services. However, because there is no reporting requirement, the state has no way to even measure the percentage of attorneys meeting or surpassing this goal.

This bill helps close the justice gap by increasing pro bono legal work by adding pro bono reporting requirements for practicing attorneys as part of their licensing fees paying process. California is behind other states in utilizing this tool to increase access to civil legal services. While it does not require licensed attorneys to complete pro bono hours, it has had the effect in other states of increasing the number of hours lawyers spend on indigent civil defense work.

The ABA reports that 10 states currently have mandatory pro-bono reporting requirements, including Florida, Hawaii, Illinois, and New York. The ABA also notes that mandatory pro-bono reporting provides data essential for the design of successful programs, creates positive peer pressure, encourages fulfillment of professional responsibility, and may raise awareness of the need for free or reduced fee legal services, and raise awareness of opportunities for pro bono involvement.⁴

The bill specifically states that the State Bar cannot use any moneys received from the annual license fees to cover the cost of implementing this bill. Existing law requires any lawyer who handles client funds that are in amounts too small or held too briefly to earn interest for the client to participate in the Interest on Lawyers' Trust Accounts (IOLTA) program. The interest earned from pooled IOLTA is provided by the State Bar to various legal services programs in the state and benefits nearly 100 nonprofit legal service organizations throughout California. This program seeks to increase access to justice for individuals and families living in poverty and improves our justice system. As the pro bono reporting requirement under this bill is designed to help encourage the provision of legal services to those unable to afford them, it seems that funding the reporting requirement from IOLTA funds may be appropriate, so long as the legal services community does not have any apprehensions. Additionally, the State Bar receives grants for various purposes, including access to justice and legal services, and it is plausible that this reporting requirement may be able to be funded by some of those funds as well. The author may wish to clarify as the bill moves through the Legislative process.

⁴ ABA, *Pro Bono Reporting*,
https://www.americanbar.org/groups/probono_public_service/policy/arguments/.

3. Proposed author amendment to address concerns raised by the California Lawyers Association

Some concerns have been raised by the California Lawyers Association regarding the lack of a decline to state or did not track option in regards to the pro-bono reporting requirement contained in the bill. To address this concern, the author has offered to amend the bill to authorize the State Bar to include, as part of the reporting requirement under the bill, options for active licensees who do not track their pro bono hours or reduced fee legal services hours, or who declines to answer to indicate such status when prompted to report.

4. Statements in support

Disability Rights California, a supporter of the bill, writes:

Disability Rights California works with law firms, attorneys and others who provide pro bono or volunteer assistance on disability related civil and service rights matters. Our work would not be possible without the generous contributions of many volunteers and pro bono counsel to meet the needs of our client communities. In 2020, there was a drop in pro bono volunteers due to the COVID pandemic, and we will never know the full loss to our community or who is coming back and recommitting to pro bono. With statewide data, and a full understanding of various demographics, we can, as a community, work to increase pro bono contributions. Additionally, and importantly, attorneys are able to contribute financially to meet their pro bono responsibility when they are unable to give their time. We hope that the mandatory reporting requirement reminds attorneys they can always contribute financially to support the civil legal aid system.

SUPPORT

Legal Aid Association of California (sponsor)
Affordable Housing Advocates
Alameda County Homeless Action Center
Asian Americans Advancing Justice - Asian Law Caucus
California Access to Justice Commission
California Advocated for Nursing Home Reform
Coalition of California Welfare Rights Organizations
Community Legal Aid SoCal
Deborah L. Rhode Center on the Legal Profession
Disability Rights California
Elderly Care Everywhere
Inland Counties Legal Services INC.
Inner City Law Center
Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Legal Aid Foundation of Los Angeles
Legal Aid Society of San Diego
Legal Services of Northern California
Los Angeles Center for Law and Justice
Neighborhood Legal Services of Los Angeles County
Public Counsel
The Law Foundation of Silicon Valley
Western Center on Law & Poverty, Inc.
Worksafe

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: AB 3279 (Committee on Judiciary, 2024) is the annual State Bar fee license bill. AB 3279 is currently pending in the Senate Judiciary Committee.

Prior Legislation: None known.

PRIOR VOTES

Assembly Floor (Ayes 62, Noes 4)
Assembly Judiciary Committee (Ayes 10, Noes 1)
