



# Practicing Pro Bono as a Judge

By Retired Judge Thomas M. Sipkins

The Minnesota Code of Judicial Conduct (“Code”) establishes standards for the ethical conduct of judges and those employed by the judicial branch to perform judicial functions. Code, Application, Part I(B). This includes Tax Court judges, judges on the Workers’ Compensation Court of Appeals, the Office of Administrative Hearings, and, generally, retired judges. See Code Application, Part II.<sup>1</sup>

Judges in Minnesota are encouraged to engage in extra-judicial activities which do not interfere with their performance of judicial duties; which do not lead to frequent disqualification; which do not appear to undermine the judge’s independence, integrity, or impartiality; or which do not appear to a reasonable person to be coercive. Rule 3.1. As Comment 1 to Rule 3.1 provides, in part: “Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, the administration of justice, such as speaking, writing, teaching . . .”

Rule 3.7 similarly provides that a judge may participate in “activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit . . .” under certain enumerated circumstances. See Rule 3.7(A). Rule 3.7(B) notes, “A judge may encourage lawyers to provide *pro bono publico legal services*” (emphasis added). Comment 4 to the Rule states as follows:

In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to *participate in pro*

*bono publico legal services, if in so doing the judge does not employ coercion, or abuse the privilege of judicial office.* Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work (emphasis added). In other words, the Code encourages judges to encourage lawyers to perform pro bono so long as the encouragement is not coercive; that is, it does not violate Rule 1.3, which requires judges to avoid abuse of the prestige of judicial office.

That begs the question: may a judge perform pro bono legal services for another person or organization? Rule 3.10 provides a definitive answer. “A judge shall not practice law” (emphasis added). The prohibition against practicing law does not apply to a judge who is acting pro se.

“A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge’s family, a person with whom the judge has an intimate relationship, or a member of the judge’s household, but is *prohibited from serving as the lawyer* for any such person *in any forum*” Rule 3.10 (emphasis added). Comment 1 to Rule 3.10 clarifies that a judge is permitted to act pro se in all legal matters, including litigation on behalf of herself or himself. That self-representation, however, expressly precludes representing others, pro bono or otherwise, and making appearances in any forum on behalf of others, including those enumerated in Rule 3.10. Thus, for example, a judge can represent herself as plaintiff or a defendant in litigation, but she may not, at the same time, represent other named

plaintiffs, or a putative class of plaintiffs in any capacity, including in a pro bono capacity. Similarly, a judge may not act pro bono as an advocate for a clergyman. See Ill Jud. Ethics. Comm. Op. 96-16 (1996);<sup>2</sup> Ariz. Jud. Ethics Adv. Comm. Op. 95-3;<sup>3</sup> see also Annotation, *Propriety and Permissibility of Judge Engaging in the Practice of Law*, 89 A.L.R. 2d 886 (1963).

In summary, a judge should encourage lawyers to perform pro bono services, but generally is precluded personally from practicing law, except on a pro se basis.

<sup>1</sup>These categories of judges, listed in Application Parts III and IV, may practice law but not in the district court of the county in which they serve. Pro Tempore Part-Time Judges (conciliation court judges) may practice law in the district court of the county in which they serve. Code, Application, Part V. In their capacities as lawyers, they may work on a pro bono publico basis.

<sup>2</sup>[http://www.ija.org/index.php?option=com\\_content&view=article&id=156:1996-16-judge-acting-as-an-advocate-for-a-rabbi-&catid=23:opinions&Itemid=139](http://www.ija.org/index.php?option=com_content&view=article&id=156:1996-16-judge-acting-as-an-advocate-for-a-rabbi-&catid=23:opinions&Itemid=139)

<sup>3</sup>[http://www.azcourts.gov/portals/137/ethics\\_opinions/1995\\_95-03.pdf](http://www.azcourts.gov/portals/137/ethics_opinions/1995_95-03.pdf)



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