

# **Ethical Issues in California Pro Bono Representation 2016**

San Francisco and Live Webcast, September 7, 2016

## **Why You Should Attend**

While the ethical obligations of pro bono legal practice are no different than a commercial law practice, there are practical considerations regarding eligibility of clients, challenging clients, conflicts (similar in theory, different in practice settings), expectations on both sides, case management responsibility, and different delivery models, such as limited scope representation, that cause many professionals to hesitate to offer pro bono legal services. This program is designed to answer questions regarding the ethical obligations of pro bono legal service, encourage attorneys to engage in this professionally rewarding aspect of law practice, and remove ambiguities that are barriers to engaging in pro bono legal services.

## **What You Will Learn**

Attorneys knowledgeable about professional responsibility and pro bono service, who work in legal services, law firms, private bar programs and in-house corporate law departments will discuss the application of the California Rules of Professional Conduct, the ABA Model Rules of Professional Conduct, and, where relevant, the Proposed California Rules of Professional Conduct to pro bono legal service in different settings. The faculty will begin with the basics of pro bono, including the definition of “Pro Bono” for lawyers, why it is considered an important part of the profession, and ethical concerns unique to pro bono, as opposed to the commercial practice of law.

The faculty will also address emerging ethical issues in developing areas, such as pro bono clinics, incubators, pro bono in Federal courts, and the impact of technology in pro bono legal services.

Finally, the faculty will discuss hypothetical fact patterns to illustrate the application of the rules.

## **Who Should Attend**

Law firm pro bono coordinators and partners, law firm associates, legal services pro bono coordinators, solos, small and medium firm attorneys engaged in pro bono legal services, court-based program administrators for self-represented litigants, judges, and everyone interested in access to justice.

## **Program Schedule**

9:00

### **Program Overview and Introductions**

*Tiela Chalmers*

9:15

### **Pro Bono Rules; Commencing and Conducting the Representation**

#### **I. Pro Bono Rules**

##### **A. Pro Bono Service**

- What Qualifies as “Real” Pro Bono
- The Need
- History/Background
- Duty
- Basic Principles of Pro Bono Representation

##### **B. Commencing the Representation**

- Be Admitted: Unauthorized Practice
- Attorneys Admitted in Other States
- Pro Bono as a Loss Leader for Future Pecuniary Gain
- Selecting and Vetting the “Right” Pro Bono Clients

##### **C. Checking for Conflicts of Interest**

- Conflicts Between Clients
- Conflicts Between Attorney and Client
- Conflict Imputation and Screening
- Conflict Waivers
- Conflicts in Clinics

##### **D. Defining the Scope of Representation**

- Full Scope, Limited Scope, Self-Help
- Rules for Limited Scope Representation

##### **E. Documenting the Representation**

- Written Retainer Agreement
- Plain Language
- Dealing with Law Firm Standard Letters
- Language Issues
- Non-representation Letter

#### **II. Conducting the Representation**

##### **A. The four C’s**

- Conflicts
- Competence
  - Options if you Have No Experience in this Area of Law
- Confidentiality
  - Differentiate from Attorney-Client Privilege
  - Potential Clients
  - Who is the Client?

- Communicating with Pro Bono Provider or Mentor
- Consequences of Breach of Confidentiality
- Physical and Electronic Files
- Email and Online Document Storage
- Cocktail Parties and their 21<sup>st</sup> Century Counterpart, Social Media
- Communication
  - Keeping Client Informed
  - Settlement Offers
  - Avoiding Avoidance
- Other Basic Rules
  - Safekeeping Property
  - No Frivolous Actions
  - No Sex with Clients
- B. Professionalism and Cultural Competence**
  - Don't Be a Jerk
  - Reasons Why Pro Bono Clients May Make Different Decisions Than You Would
  - Different Family and Cultural Values and the Role of the Attorney
  - Time and Outcome Tracking
- C. Ending the Representation**
  - Disengagement Letter
  - Client Right to Files
  - Reporting to Pro Bono Provider
- D. Problems That Can Arise**
  - Losing Track of the Client
  - What to Do if you Have Questions, or Feel Out of Your Depth
  - Confidentiality, Death and Imminent Bodily Injury Exception
  - Client With Diminished Capacity
- D. Emerging Issues**
  - Incubator Programs
  - Working with Non-Lawyer Volunteers and Interpreters

***Tiela Chalmers, Renee Glover Chantler, Toby J. Rothschild, Christopher M. Tirrell, Jonathan McNeil Wong, Phong S. Wong***

11:15

*Networking Break*

11:30

**Specific Application of Ethical Rules and Issues to Various Pro Bono Practice Settings – Hypotheticals, Including:**

- Challenging Attorneys
- Brief Advice Clinics
- Reporting Outcomes
- Attorney as Officer of the Court

***Tiela Chalmers, Renee Glover Chantler, Toby J. Rothschild, Christopher M. Tirrell, Jonathan McNeil Wong, Phong S. Wong***

12:30

*Adjourn*

## **Faculty**

### **Chairperson**

#### **Tiela Chalmers**

Chief Executive Officer  
Alameda County Bar Association  
Oakland, California

#### **Renee Glover Chantler**

Pro Bono Counsel  
DLA Piper US LLP  
East Palo Alto, California

#### **Toby J. Rothschild**

Of Counsel  
OneJustice  
Los Angeles, California

#### **Christopher M. Tirrell**

Pro Bono Co-Chair  
Global Alliance, Supply Chain, and Worldwide Technical Regulations Counsel  
Hewlett Packard Enterprise Company  
Palo Alto, California

#### **Jonathan McNeil Wong**

Partner  
Donahue Fitzgerald LLP  
Oakland, California

#### **Phong S. Wong**

Pro Bono Director  
Legal Aid Foundation of Los Angeles  
Los Angeles, California

**Program Attorney:** Christina Thompson