



The Ethics of Pro Bono Representation: Working with Low Income Clients

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Preamble to the Wyoming Rules of Professional Conduct

- *“A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice”*



Rule 6.1, Wyoming Rules of Professional Conduct

- *“Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay.”*
- *Rule 6.1 “recognize[s] the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee.”*

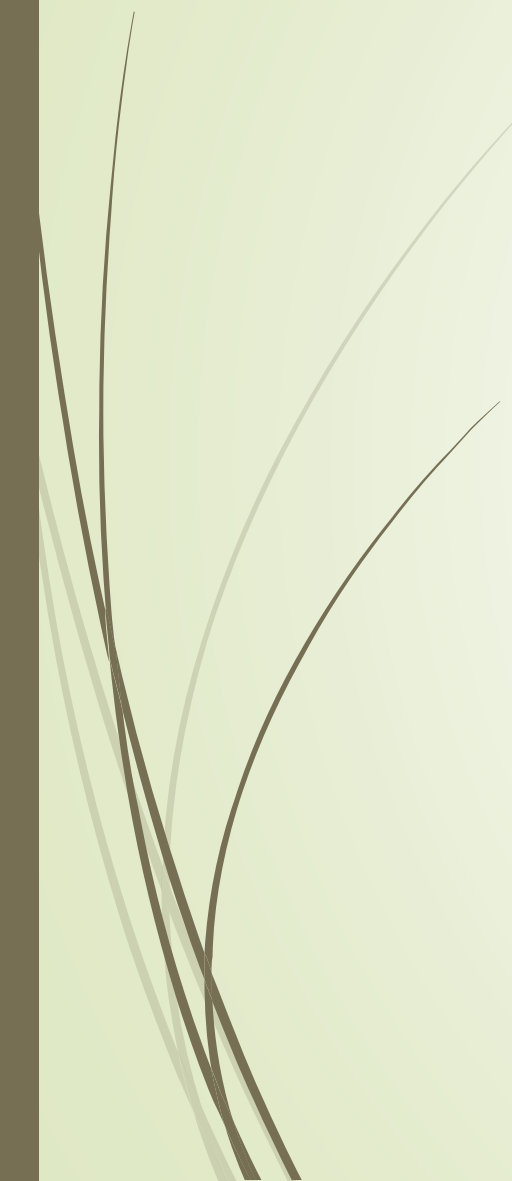


Equal Justice Wyoming

- First state-sponsored civil legal aid program in Wyoming
- Independent division of the Wyoming Supreme Court
- Provides funding, training, resources, and support for legal aid programs in Wyoming
- Provides support and resources for self-represented litigants in Wyoming
- Manages and supports a statewide pro bono programs of volunteer attorneys



The Changing Landscape of Legal Services

- Increasing number of self-represented litigants in the courts
 - This trend is not going to change in the near future
 - Judges spend a large portion of their time handling cases in which at least one party is self-represented
 - This change presents challenges to courts, attorneys, and litigants
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Wyoming's Low-Income Population

- 11.5% of Wyoming's population lives below 100% of the Federal Poverty Level
 - 67,000 individuals
- 30% of Wyoming's population lives below 200% of the Federal Poverty Level
 - 175,000 individuals



Wyoming's Lawyer Population

- There is one **attorney** in practice for every 250 Wyoming residents
- There is only one **legal aid attorney** for every 7,500 poor Wyoming residents



The Challenge: Meeting the Needs of Low-Income Consumers of Legal Services with the Population of Wyoming Lawyers

➤ **Civil Legal Aid Programs**

- Only able to serve a fraction of the need (about 20%)

➤ **Pro Bono Attorneys**

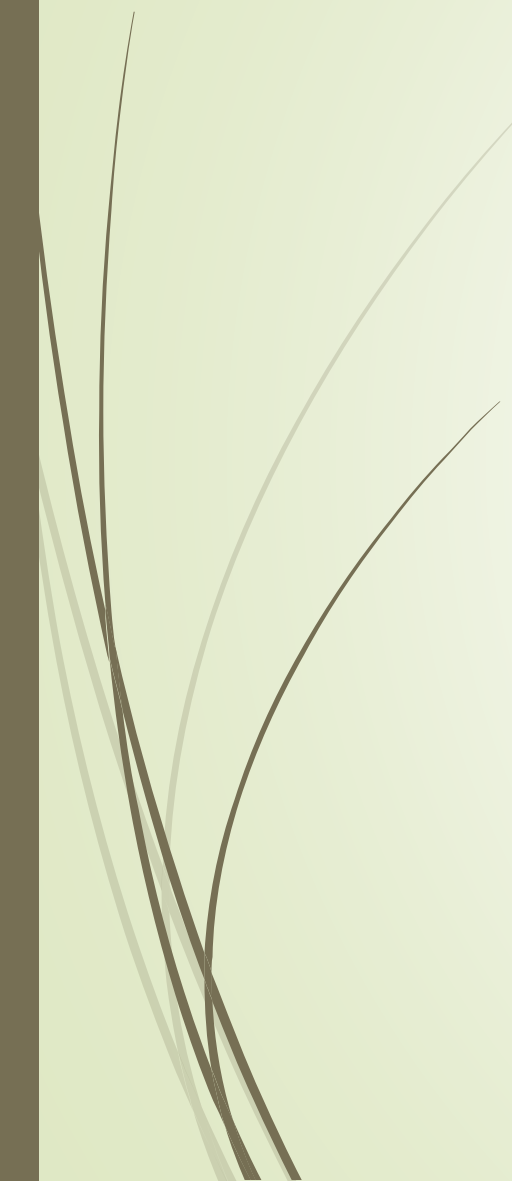
- Integral part of delivering services to low-income individuals

➤ **Pro Se Litigants**

- Access to information, trusted legal resources, and limited scope representation is essential



Ethical Considerations in Representation of Pro Bono Clients

- Rule 1.2 Scope of Representation
 - Rule 1.4 Communication with Clients
 - Rule 1.6 Confidentiality
 - Rule 1.14 Clients with Diminished Capacity
 - Rule 6.5 Pro Bono Legal Clinics
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Rule 1.2 Scope of Representation

- *A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.*
- This provision of Rule 1.2 “is intended to facilitate the provision of unbundled legal services, especially to low-income clients.”
- “Unbundled” means that a lawyer may agree to perform a limited task for a client without incurring the responsibility to investigate or consider other aspects of the client's matter. The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client.



Definition of “Informed Consent”

- **“Informed consent”** denotes the **agreement** by a person to a proposed course of conduct after the lawyer has communicated **adequate information** and explanation about the **material risks of and reasonably available alternatives** to the proposed course of conduct.



Obtaining the Pro Bono Client's Informed Consent

- Verify that the client understands the scope of the representation
 - Best practice to have a written agreement to assure the expectations are clearly set out – this is especially important if you are providing limited scope representation
- Explain the legal process and what to expect
- Explain the elements of the client's case – “I'm helping you seek an order of protection. An order of protection will be issued if...”



Rule 1.4 Communicating with Client

A lawyer shall:

- reasonably consult with the client about the means by which the client's objectives are to be accomplished
- keep the client reasonably informed about the status of the matter
- promptly comply with reasonable requests for information

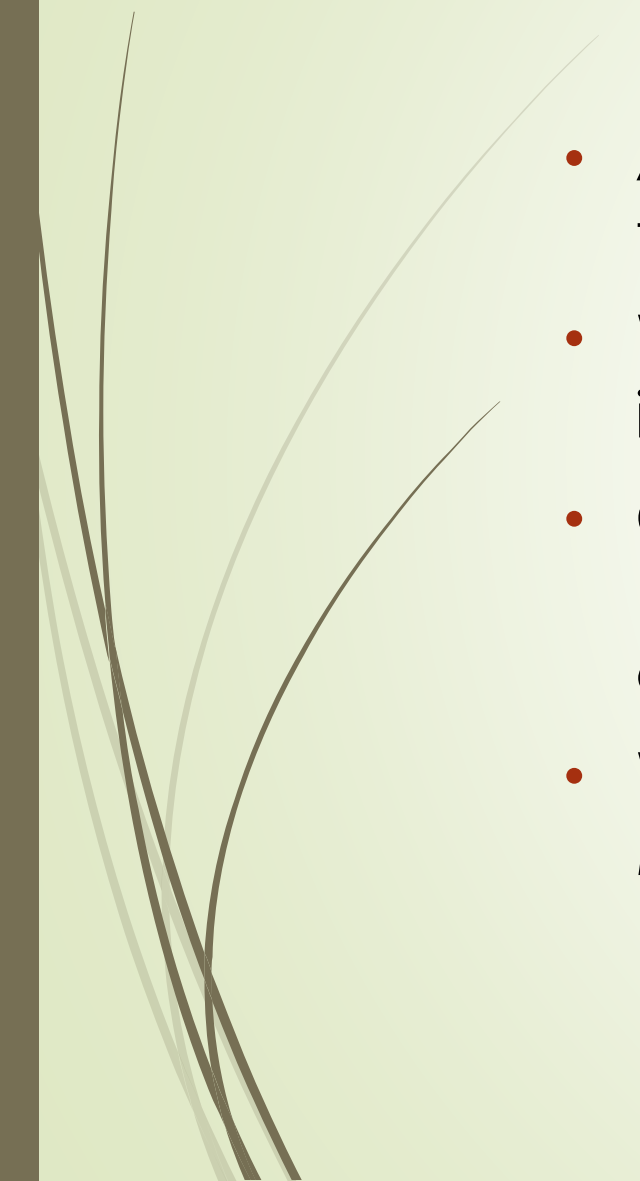


Low-Income/Self-Represented Clients: Communication Challenges

- Legal language barrier
- Complexity of the process
- Problems understanding the role of the Court
- Legal requirements are not always intuitive
- Procedural rules vary between type of Court and types of cases
- Lack of understanding of judgments or orders, which leads to noncompliance




Rule 1.6 Client Confidentiality

- ABA Model Rule 1.6(a) covers all “information relating to the representation of a client.”
 - Wyoming Rule 1.6(a) covers only “confidential information relating to the representation of a client.”
 - Confidential information is defined by Rule 1.0 as “information provided by the client or relating to the client which is not otherwise available to the public.”
 - Wyoming rule is narrower and more realistic than ABA Model Rule.
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Confidentiality and Pro Bono Clients

- Pro bono client may not understand attorney-client privilege
 - May not be aware of lawyer's responsibilities to keep communications confidential
 - May need to tell client not to discuss your advice or some aspects of the case with others
 - Clients may want to have friends or family attend consultations with you – advise clients on the potential consequences and waiver of privilege
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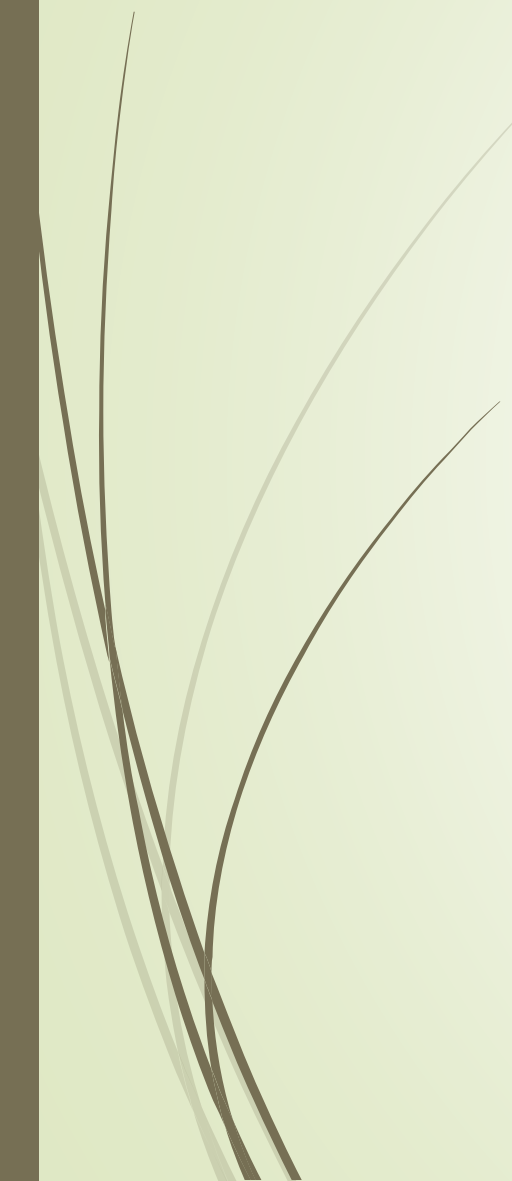


Rule 1.14 Clients with Diminished Capacity

- When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- When the lawyer reasonably believes that the client has diminished capacity . . . the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
- Confidential information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.



Communicating with Diminished Capacity Clients

- Can cause frustration for both the attorney and the client
 - Adjustments may be necessary to communicate with the client
 - Recognize uneasiness caused by mental illness
 - Determine if a different approach is necessary in dealing with the client
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Rule 6.5 Legal Advice Clinics

- Legal Advice Clinic setting (limited scope) requirements of attorney conflict check obligation are relaxed
- Rules 1.7 (concurrent conflicts) and 1.9(a) (conflicts involving former clients) apply only if lawyer knows a conflict of interest exists
 - Does not require a full blown conflict search “back at the firm”
- Lawyer must obtain informed consent for limited scope representation
- Skype clinics and answering questions on wyoming.freelegalanswers.org treated as virtual limited legal services programs



Equal Justice Wyoming Resources and Support for Volunteer Attorneys

- Malpractice coverage under Equal Justice Wyoming for pro bono work
- Web-based Pro Bono Portal: forms, outlines, CLE archives www.probono.wy.gov
- Placement with mentor attorneys
- Assistance in out-of-pocket cost reimbursement from Wyoming State Bar
- Assistance in receiving CLE credit for pro bono work performed



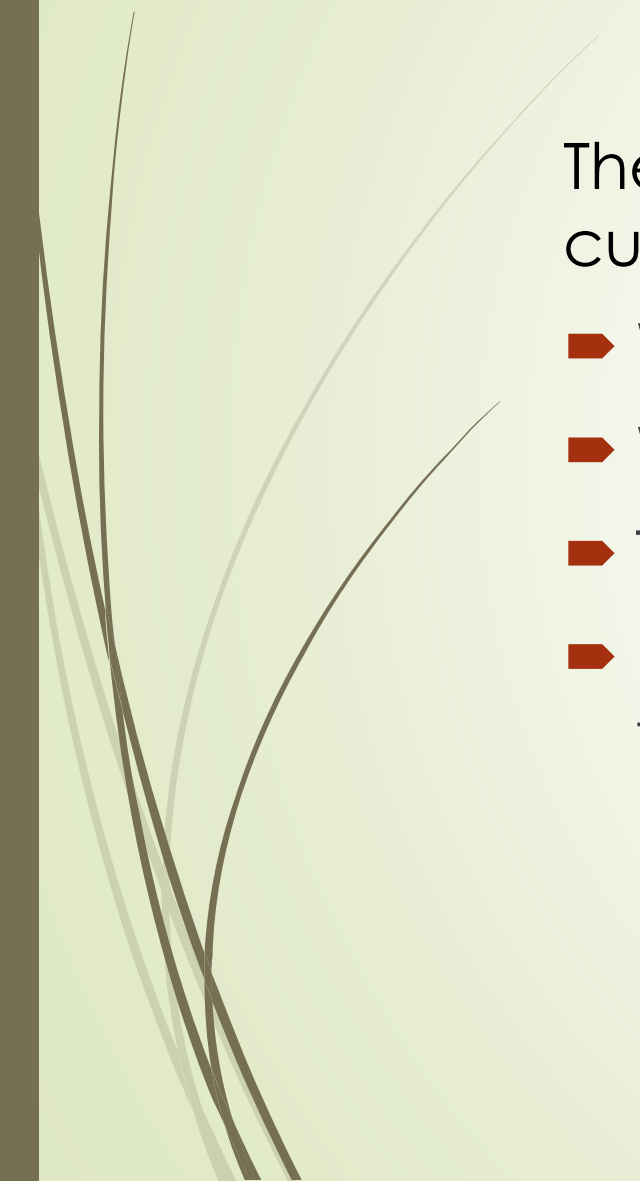
Support for Volunteer Attorneys

- Equal Justice Wyoming maintains database of mentors by practice area
- Provide forms, outlines, practice resources for volunteer attorneys
- Present one of Equal Justice Wyoming's monthly CLE webinars
- Consider bringing formal pro bono program to your firm or coordinating a free legal advice clinic through your local bar association



Volunteer Lawyer Program

The Volunteer Lawyer Program form allows you to customize your contribution by specifying:

- What type of cases you are willing to take
 - What geographical region you handle cases
 - The type of services you are willing to provide
 - Pick a level of involvement you are comfortable with – full representation, limited scope, or support services
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CLE Credit for Pro Bono Representation

Rule 5(d) of the Rules of the Wyoming State Board of Continuing Legal Education provides:

An attorney may receive a maximum of **five hours of legal education credit each calendar year for providing pro bono public service** as defined in Rule 6.1 of the Wyoming Rules of Professional Conduct. Such credit may be received **at the rate of one credit hour for each two hours of pro bono public service*****.



Questions About Professional Responsibility Issues?

Call the Wyoming State Bar's

Ethics Hotline

(307) 432-2106

or email Mark Gifford

mgifford@wyobc.org