

1998

## A Christian Lawyer's Mandate to Provide Pro Bono Publico Service

Nitza Milagros Escalera  
*Fordham University School of Law*

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

Nitza Milagros Escalera, *A Christian Lawyer's Mandate to Provide Pro Bono Publico Service*, 66 Fordham L. Rev. 1393 (1998).

Available at: <https://ir.lawnet.fordham.edu/flr/vol66/iss4/29>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

## A Christian Lawyer's Mandate to Provide Pro Bono Publico Service

### Cover Page Footnote

B.A., Le Moyne (1973); M.S. Syracuse University (1976); M.P.A., New York University (1984); J.D., Columbia University School of Law (1987). I am extremely appreciative of Professor Russell Pearce for asking me to write this article. The process has been a blessing. My faith has increased and my commitment to being a lawyer whose acts of justice are performed to praise God has been renewed. I also thank the Rev. Angela Askew, Rose Rodriguez, Ilsa Conde Sanchez, and Diana Sanabria for their invaluable research and editorial assistance.

# A CHRISTIAN LAWYER'S MANDATE TO PROVIDE PRO BONO PUBLICO SERVICE

*Nitza Milagros Escalera\**

## INTRODUCTION

**N**OWHERE is the lawyer's religious obligation more evident than in the area of pro bono publico service.<sup>1</sup> The American Bar Association ("ABA"), in its Model Rules of Professional Responsibility, exhorts its members to participate in pro bono publico service. However, the Bar's membership has consistently vetoed the implementation of a mandatory pro bono service obligation. If the majority of the membership is ever to both accept and satisfy a professional responsibility to serve the indigent, it must be infused with a different insight into the mandatory nature of this responsibility. This paper seeks to persuade lawyers, but more specifically, Christian lawyers, as to why we must support mandatory pro bono publico service.

As a backdrop for this discussion, this paper will first provide a brief history of the Bar's struggle to mandate pro bono publico service and the arguments for and against that have emerged during this struggle. The paper will then turn its attention to a discussion of the Christian lawyer's religious obligation to perform pro bono publico service.

## I. THE BAR'S ATTEMPTS TO MANDATE PRO BONO SERVICE

Belief in the existence of a lawyer's obligation to perform pro bono publico service dates back to the early history of the American legal profession. As early as 1836, the provision of pro bono service was viewed as part of the legal profession's responsibility. David Hoffman, in his treatise *A Course of Legal Study, Addressed to Students and the Profession Generally*,<sup>2</sup> lists fifty resolutions regarding the deportment of members of the legal profession. In Resolution XVIII, Hoffman sets forth what appears to be the first written document re-

---

\* B.A., Le Moyne (1973); M.S., Syracuse University (1976); M.P.A., New York University (1984); J.D., Columbia University School of Law (1987). I am extremely appreciative of Professor Russell Pearce for asking me to write this article. The process has been a blessing. My faith has increased and my commitment to being a lawyer whose acts of justice are performed to praise God has been renewed. I also thank the Rev. Angela Askew, Rose Rodriguez, Ilsa Conde Sanchez, and Diana Sanabria for their invaluable research and editorial assistance.

1. Pro bono publico is defined as being "[f]or the public good; for the welfare of the whole. For example, 'pro bono' legal work is providing legal services to indigents without charge." Black's Law Dictionary 1203 (6th ed. 1990).

2. David Hoffman, *A Course of Legal Study, Addressed to Students and the Profession Generally* (2d ed. 1836).

garding an American lawyer's duty to perform pro bono publico service.<sup>3</sup>

To my clients I will be faithful; and in their causes, zealous and industrious. Those who can afford to compensate me, *must do so*; but I shall never close my ear or heart, because my client's means are low. Those who have none, and who have just causes, are, of all others, the best entitled to sue, or be defended; and they shall receive a due portion of my services, cheerfully given.<sup>4</sup>

George Sharswood's 1854 essay, which provides the foundation for our modern legal ethics codes, offered a similar view. He wrote that:

[W]hen the client has the ability, his services should be recompensed; and that according to a liberal standard. There are many cases, in which it will be his duty, perhaps more properly his privilege, to work for nothing. It is to be hoped, that the time will never come, at this or any other Bar in this country, when a poor man with an honest cause, though without a fee, cannot obtain the services of honorable counsel, in the prosecution or defence of his rights.<sup>5</sup>

This tradition continued in 1908, when the ABA adopted the Canons of Professional Ethics as the first national legal ethics code.<sup>6</sup> Canon 4 recognizes the inherent duty of a lawyer to provide legal representation to indigents, but only in criminal cases. Canon 4 states that: "A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts on his behalf."<sup>7</sup> Sixty one years later, in 1969, the ABA enacted the Model Code of Professional Responsibility to replace the Canons of Professional Ethics.<sup>8</sup> Ethical Consideration 2-25 of the

3. *Id.* at 758.

4. *Id.*

5. George Sharswood, *An Essay on Professional Ethics* 153-54 (3d ed. 1869).

6. *Selected Statutes, Rules and Standards on the Legal Profession* 331 (John S. Dzienkowski ed., 1992):

The ABA adopted 32 Canons of Professional Ethics at its thirty-first annual meeting on August 27, 1908. Between 1908 and 1969, the ABA added Canons 33 through 47. Although the Canons were in effect for 61 years, the general aspirational approach of the Canons proved to be outmoded to regulate the conduct of lawyers in the 1950s and 1960s. The Canons were superseded in 1969 by the Model Code of Professional Responsibility.

*Id.*

7. *Id.* at 332.

8. The following is a description of the Model Code:

The distinctive feature of the Model Code is its organization into canons, ethical considerations, and disciplinary rules. The canons provided the Model Code with a theoretical structure . . . [and were] a general directive to lawyers about the law of professional responsibility. The ethical considerations . . . discussed actual fact situations that arose under each canon . . . [and were] only aspirational in nature . . . The disciplinary rules were the provisions that lawyers needed to follow to avoid disciplinary liability.

*Id.* at 219.

Code of Professional Responsibility recognizes a lawyer's obligation to render free legal service in both civil and criminal matters.<sup>9</sup>

About ten years later, the ABA's Commission on Professional Standards began work on a new set of rules of professional conduct. This commission, also known as the Kutak Commission, drafted the Model Rules of Professional Conduct, which for the first time proposed that lawyers be required to render unpaid public interest legal service.<sup>10</sup> The ABA rejected this mandatory proposal. Instead, it enacted an aspirational goal as Rule 6.1 of the Model Rules:

A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.<sup>11</sup>

The ABA narrowed the definition of pro bono service in 1988 when it adopted the Toronto Resolution. This resolution urged lawyers "to devote a reasonable amount of time, but in no event less than fifty hours per year, to *pro bono* and other public service activities that serve those in need or improve the law, the legal system, or the legal profession."<sup>12</sup> On February 8, 1993, Model Rule 6.1, was amended as follows: "A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year."<sup>13</sup>

---

9. Ethical Consideration 2-25 states:

Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

Model Code of Professional Responsibility EC 2-25 (1980).

10. Debra D. Burke et al., *Mandatory Pro Bono: Cui Bono?*, 25 Stetson L. Rev. 983, 994 (1996).

11. Model Rules of Professional Conduct Rule 6.1 (1991).

12. ABA House of Delegates, Summary of Action Taken by the House of Delegates of the American Bar Association, Aug. 9-10, 1988, at 43.

13. Model Rules of Professional Conduct Rule 6.1 (1994).

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

Despite the ABA's unsuccessful efforts to convince its membership of the imperative to adopt a mandatory pro bono publico requirement, the local bars in El Paso, Texas and Westchester, New York have succeeded in instituting mandatory pro bono programs. In Orange County, Florida, the local bar mandates annual reporting of pro bono service as a condition of membership.<sup>14</sup> In addition, fourteen ABA approved law schools have implemented mandatory pro bono publico service requirements for graduation.<sup>15</sup> In general, these programs are designed to demonstrate that pro bono service is as important as any substantive law course.<sup>16</sup>

- 
- (1) persons of limited means or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
  - (b) provide any additional services through:
    - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
    - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
    - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

*Id.*

14. Esther F. Lardent, *Structuring Law Firm Pro Bono Programs: A Community Service Typology*, in *The Law Firm and the Public Good*, 59, 83-84 (Robert A. Katzmann ed., 1995).

15. Neta Ziv compiled a list of known mandatory pro bono programs and the number of required hours:

Columbia University School of Law (40 hours); Florida State University College of Law (20 hours); Loyola Law School (40 hours); Northeastern University School of Law (30 hours); Southern Methodist University School of Law (30 hours); Stetson University College of Law (10 hours—not required to be law related); Touro College Jacob D. Fuchsberg Law Center (20 hours); Tulane University School of Law (20 hours); University of Hawaii School of Law (20 hours); University of Louisville School of Law (20 hours); University of Pennsylvania School of Law (70 hours); University of Washington School of Law (60 hours); Valparaiso University School of Law (20 hours); Western State University College of Law (20 hours).

Neta Ziv, *Law Schools Fostering a Commitment to Public Service—What More Can Be Done?* 15 (May 1997) (research paper presented to Lawrence Friedman, Marion Rice Kirkwood Professor, Stanford University School of Law and Deborah Rhode, President-elect, Association of American Law Schools and Professor & Bernard Bergeen Faculty Scholar, Stanford University School of Law, on file with the *Fordham Law Review*).

16. In January, 1995, the Bar of the City of New York's Committee on Legal Assistance "urge[d] the 15 law schools in [New York] state to institute mandatory pro bono programs as a means of teaching future lawyers the value of public service." Matthew Goldstein, *Bar Urges Pro Bono Rule for Law Students*, N.Y. L.J., Jan. 26,

## II. THE ARGUMENTS FOR AND AGAINST MANDATORY PRO BONO

The amount of scholarship dedicated to the debate over the efficacy of the Bar's mandating pro bono service by attorneys is astounding.<sup>17</sup> The arguments for mandatory pro bono service usually take one of the following forms. One, the poor have unmet needs that lawyers have an obligation to fulfill. This obligation emanates from the premise that lawyers "as . . . officers of the court . . . can be compelled to assist in the administration of justice."<sup>18</sup> Two, attorneys enjoy a monopoly over the practice of law as a result of licensing restrictions, and as such are impliedly obligated to render pro bono service in order to afford all citizens access to the courts. Third, a lawyer's pro bono obligation is closely linked to the professional responsibility of the organized bar to perform public service. Fourth, pro bono can be mandated "because of the inherent power of the judiciary to compel service."<sup>19</sup> Fifth, legal history supports the premise that "[l]awyers have inherited from the clergy<sup>20</sup> the duty to represent and assist the indigent."<sup>21</sup> Even though lawyers are encouraged by the national and state bars to

---

1995, at 1. To date only Columbia University School of Law and Touro College's Jacob D. Fuchsberg Law Center require pro bono service as a condition of graduation. *Id.*

17. See Burke et al., *supra* note 10; Debra Burke et al., *Pro Bono Publico: Issues and Implications*, 26 Loy. U. Chi. L.J. 61 (1994); Tigren W. Eldred & Thomas Schoenherr, *The Lawyer's Duty of Public Service: More than Charity?*, 96 W. Va. L. Rev. 367 (1993-94); Zino I. Macaluso, *That's O.K., This One's On Me: A Discussion of the Responsibilities and Duties Owed by the Profession to Do Pro Bono Publico Work*, 26 U. Brit. Colum. L. Rev. 65 (1992).

18. Burke et al., *supra* note 10, at 987.

19. *Id.* at 988.

20. "The religious communities were a major institution in medieval society. . . . [They] provided society with artists, . . . political advisors and leaders, as well as theologians, priests, and ministers." Dennis M. Campbell, *Doctors, Lawyers, Ministers: Christian Ethics in Professional Practice* 18-19 (1982).

21. Macaluso, *supra* note 17, at 66. *But see* Jonathan R. Macey, *Mandatory Pro Bono: Comfort for the Poor or Welfare for the Rich?*, 77 Cornell L. Rev. 1115, 1115 (1992).

No less a philosophical luminary than St. Thomas Aquinas addressed the issue [of a lawyer's obligation to provide pro bono publico service] in Question 71 of the *Summa Theologica*, asking the question, "Whether an advocate is bound to defend the suits of the poor?" His answer . . . was a resounding no.

*Id.* (quoting The *Summa Theologica* of St. Thomas Aquinas, LXXI Part II, Question, at 273 (Father of the English Dominican Province trans., R&J Washbourne, Ltd., 1918)). Some legal historians, such as Harvard University law professor David Shapiro, find no historical basis establishing a duty on the part of lawyers to engage in pro bono publico service. David L. Shapiro, *The Enigma of the Lawyer's Duty to Serve*, 55 N.Y.U. L. Rev. 735 (1980). Shapiro asserts that "Romans treated the legal problems of the poor with 'some indifference,'" *id.* at 740 (citing Mauro Cappelletti et al., *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies* 6-16 (1975)), and that the English, while allowing indigents access to legal services on a contingency fee basis, whipped claimants who lost and could not pay the defendant's costs "for wasting everybody's time," *id.* at 745 (citing Charles Viner, 16 A General Abridgement of Law and Equity 261 (1st ed. 1743)).

become involved "in the problems of the disadvantaged [because it] can be one of the most rewarding experiences<sup>22</sup> in the life of a lawyer,"<sup>23</sup> the "basic responsibility for providing legal services for those unable to pay [still] rests upon the individual lawyer."<sup>24</sup>

Opponents of mandatory pro bono service argue that this mandate "violates the First, Thirteenth and Fourteenth Amendments,"<sup>25</sup> that it would "fall[ ] disproportionately on [solo practitioners],"<sup>26</sup> that it would "result in a higher incidence of malpractice,"<sup>27</sup> that it is "inefficient to require every lawyer to become proficient in such arcane areas as public benefits or eviction law,"<sup>28</sup> that "it erodes the sense of volunteerism,"<sup>29</sup> "reduc[es] the legal services available for other good causes not included within the scope of the mandatory pro bono program,"<sup>30</sup> that charity should be voluntary not compelled, that voluntary work that is compelled is not good work, and that "there is [no] substantial need for more pro bono legal services for the poor."<sup>31</sup>

### III. THE CHRISTIAN LAWYER'S DUTY TO PERFORM PRO BONO PUBLICO SERVICE

Whereas it is true that involvement in pro bono publico service can be a rewarding experience and can serve as a mechanism to increase one's career opportunities, the Christian lawyer's impetus for involving herself in the problems of the indigent is different. The Christian lawyer's involvement in pro bono publico service entails more than personal reward or career enhancement. It derives from a religious commitment that governs regardless of whether the profession mandates this service. This religious commitment is not unique to the individual lawyer. Christian legal institutions, as part of the community of the New Covenant, also have a religious commitment to involve themselves in the problems of the indigent.

Matthew, in his Gospel, records the commandments Christians are to follow in order to develop and nourish their relationship with God and their neighbor: "'Love the Lord your God with all your heart and

22. Some of the rewards of pro bono publico service articulated by legal scholars include: close up space developing contacts, a good reputation, expansion of one's legal knowledge, and the amelioration of skills that have atrophied. Macaluso, *supra* note 17, at 69.

23. Eldred & Schoenherr, *supra* note 17, at 381-82 (quoting Model Code of Professional Responsibility EC 2-25 (1986)).

24. *Id.* at 381 (quoting Model Code of Professional Responsibility EC 2-25 (1986)).

25. Mary Coombs, *Your Money or Your Life: A Modest Proposal for Mandatory Pro Bono Services*, 3 B.U. Pub. Int. L.J. 215, 217 (1993).

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 216.



with all your soul and with all your mind.' This is the first and greatest commandment. And the second is like it: 'Love your neighbor as yourself.' All the Law and the Prophets hang on these two commandments."<sup>32</sup> It is implicit in these commandments that a Christian must do more than attend church services, read scripture, and live a life that incorporates prayer, fasting, and the praising of God. A Christian must commit to a life that exemplifies a proper love of self<sup>33</sup> and to acts that manifest the love of another.<sup>34</sup>

The relationship established by these two great commandments has been characterized as "a trinity [that includes] God, the individual soul, and our neighbor."<sup>35</sup> It is via their relationship with neighbors that Christians involve themselves in the realm of the social and social responsibility.<sup>36</sup> "As the consciousness of our relationship to God develops, the sense of solidarity with our fellow men [and women] increases."<sup>37</sup> This sense of solidarity with the neighbor should serve as an impetus for Christians to develop and manifest qualities such as justice,<sup>38</sup> impartiality,<sup>39</sup> unselfishness,<sup>40</sup> sincerity,<sup>41</sup> abundance,<sup>42</sup> and benevolence.<sup>43</sup>

---

32. *Matthew 22:37-40* (New International Version). Biblical citations are to the New International Version.

33. "Don't you know that you yourselves are God's temple and that God's Spirit lives in you?" *1 Corinthians 3:16*.

34. See *Acts 20:35* ("In everything I did, I showed you that by this kind of hard work we must help the weak, remembering the words the Lord Jesus himself said: 'It is more blessed to give than to receive.'"); *Luke 12:33* ("Sell your possessions and give to the poor. Provide purses for yourselves that will not wear out, a treasure in heaven that will not be exhausted, where no thief comes near and no moth destroys."); *Matthew 5:42* ("Give to the one who asks you, and do not turn away from the one who wants to borrow from you.").

35. Gregory Lee Jackson, *Prophetic Voice for the Kingdom: The Impact of Alvin Daniel Mattson Upon the Social Consciousness of the Augustana Synod 117* (1986).

36. Christian social responsibility directs Christians "to minister to the physical and temporal needs of our fellow men . . . [It] is also concerned about the conditions which produce the need for charity . . . [It further] implies a concern for the elimination of those things in the structure of society which produce indigent people." *Id.* at 118-23.

37. *Id.* at 117.

38. See *Proverbs 21:3* ("To do what is right and just is more acceptable to the Lord than sacrifice."); see also *Deuteronomy 16:20* ("Follow justice and justice alone, so that you may live and possess the land the Lord your God is giving you."); *Psalms 82:3* ("Defend the cause of the weak and fatherless; maintain the rights of the poor . . .").

39. "And you are to love those who are aliens, for you yourselves were aliens in Egypt." *Deuteronomy 10:19*.

40. "Carry each other's burdens, and in this way you will fulfill the law of Christ." *Galatians 6:2*.

41. "Love must be sincere. Hate what is evil; cling to what is good." *Romans 12:9*.

42. "May the Lord make your love increase and overflow for each other and for everyone else, just as ours does for you." *1 Thessalonians 3:12*.

43. See *Isaiah 58:6-10*.

Is not this the kind of fasting I have chosen: to loose the chains of injustice and untie the cords of the yoke, to set the oppressed free and break every yoke? Is it not to share your food with the hungry and to provide the poor

## IV. THE CHRISTIAN LAWYER'S NEIGHBOR

How does the Christian lawyer identify who is her neighbor? While some theologians support the view that the neighbor we Christians are commanded to love is a fellow member of the Christian community, I support theologian Gustavo Gutierrez<sup>44</sup> universal view of the neighbor. For Gutierrez, neighbor and scriptural terms such as "all nations" and "the least of these brothers of mine,"<sup>45</sup> "refers to all persons lacking basic necessities of livelihood because charity, . . . in other New Testament writings, has an inclusive, universal character."<sup>46</sup> Further support for this universalist view can be gleaned from the parable of the Good Samaritan found in Luke's Gospel.

On one occasion an expert in the law stood up to test Jesus. "Teacher," he asked, "what must I do to inherit eternal life?"

"What is written in the Law?" he replied. "How do you read it?" [The expert of the law] answered: "'Love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind'; and 'Love your neighbor as yourself.'"

. . . .

But [the expert of the law] wanted to justify himself, so he asked Jesus, "And who is my neighbor?"

In reply Jesus said: "A man was going down from Jerusalem to Jericho, when he fell into the hands of robbers. They stripped him of his clothes, beat him and went away, leaving him half dead. A priest happened to be going down the same road, and when he saw the man, he passed by on the other side. So too, a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he traveled, came where the man was; and when he saw him, he took pity on him. He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, took him to an inn and took care of him. The next day he took out two silver coins and gave them to the innkeeper. 'Look after him,' he said, 'and when I return, I will reimburse you for any extra expense you may have.'

"Which of these three do you think was the neighbor to the man who fell into the hands of robbers?"

The expert in the law replied, "The one who had mercy on him."

---

wanderer with shelter—when you see the naked, to clothe him, and not to turn away from your own flesh and blood? . . . If you do away with the yoke of oppression, with the pointing finger and malicious talk, and if you spend yourselves in behalf of the hungry and satisfy the needs of the oppressed, then your light will rise in the darkness, and your night will become like the noonday.

*Id.*

44. Gustavo Gutierrez, a Peruvian diocesan priest, is a leader in Latin American Liberation Theology. His social ethics emphasize community and solidarity with the poor, oppressed, and outcasts of society.

45. *Matthew* 25:31-46. For a full reading of these verses, see *infra* note 49.

46. Thomas L. Schubeck, *Liberation Ethics: Sources, Models, and Norms* 156 (1993).

Jesus told him, "Go and do likewise."<sup>47</sup>

In this parable "[t]he neighbor was the Samaritan who *approached* the wounded man and *made him his neighbor*.' [The] emphasis to the active verbs . . . stress[es] the active commitment involved in going out of one's way in order to serve the poor."<sup>48</sup> For the Christian this entails a life-long commitment to approach the most vulnerable in our society.<sup>49</sup> For the Christian lawyer, the message to be gleaned is that we are to make our lawyering gifts<sup>50</sup> available for the service of others, especially the indigent.

This duty to serve those in need is not unique to the Christian faith. In the Jewish faith, for example, the duty to serve is called *mitzvot*. *Mitzvot*, defined as "the concrete actions Judaism uses to fashion lives of ethical rigor and spiritual insight," are to be performed to imitate

47. *Luke* 10:25-37.

48. Schubeck, *supra* note 46, at 158.

49. The following verses from *Matthew* illustrate this point:

"When the Son of Man comes in his glory, and all the angels with him, he will sit on his throne in heavenly glory. All the nations will be gathered before him, and he will separate the people one from another as a shepherd separates the sheep from the goats. He will put the sheep on his right and the goats on his left.

"Then the King will say to those on his right, 'Come, you who are blessed by my Father; take your inheritance, the kingdom prepared for you since the creation of the world. For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.'

"Then the righteous will answer him, 'Lord, . . . [w]hen did we see you a stranger and invite you in, or needing clothes and clothe you? When did we see you sick or in prison and go to visit you?'

"The King will reply, 'I tell you the truth, whatever you did for one of the least of these brothers of mine, you did for me.'

"Then he will say to those on his left, 'Depart from me, you who are cursed, into the eternal fire prepared for the devil and his angels. For I was hungry and you gave me nothing to eat, I was thirsty and you gave me nothing to drink, I was a stranger and you did not invite me in, I needed clothes and you did not clothe me, I was sick and in prison and you did not look after me.'

"They also will answer, 'Lord, when did we see you hungry or thirsty or a stranger or needing clothes or sick or in prison, and did not help you?'

"He will reply, 'I tell you the truth, whatever you did not do for one of the least of these, you did not do for me.'

"Then they will go away to eternal punishment, but the righteous to eternal life."

*Matthew* 25:31-46.

50. The Bible instructs us to contribute to society based on our gifts:

We have different gifts, according to the grace given us. If a man's gift is prophesying, let him use it in proportion to his faith. If it is serving, let him serve; if it is teaching, let him teach; if it is encouraging, let him encourage; if it is contributing to the needs of others, let him give generously; if it is leadership, let him govern diligently; if it is showing mercy, let him do it cheerfully.

*Romans* 12:6-8.

God and "bring justice, compassion, and holiness to the world."<sup>51</sup> In the related context of medical practice, Rabbi Mark Washofsky wrote that the practice of medicine is a mitzvah, a religious obligation. Just as a doctor must treat an indigent patient who seeks medical care and is unable to pay,<sup>52</sup> so too must a lawyer accept an indigent client who seeks legal representation and is unable to pay. The practice of law could also be a mitzvah since it is action through which justice, compassion, and holiness can be brought to the world.

#### V. HOW THE CHRISTIAN LAWYER IS TO SERVE

Closely associated with the Christian duty to love one's neighbor is the duty of stewardship. Stewardship is an action or ministry of both the individual Christian and the corporate church. It is "what we do with what [God as we understand her] gives to us. It is the acquisition, accumulation and management of [our wealth, possessions, talents or] gifts. . . . [It] is the sharing, giving and release of resources."<sup>53</sup>

In the Episcopal Church after those gathered together for Mass have given their offerings of the day, all pray: "Let us with gladness present the offerings and oblations of our life and labor to the Lord."<sup>54</sup> This prayer recognizes God's generosity in bestowing all with talents, wealth, and possessions; acknowledges that all are partnered with God and willingly act to share their material possessions and talents with others.

Scripture advises everyone to use their talents wisely.<sup>55</sup> For Christian lawyers this means acknowledging that their lawyering skills are a valuable God-given resource to be utilized for the service of others and for "redressing economic and social ills."<sup>56</sup> As Christian lawyers acknowledge God as the source of their lawyering talent, it follows that there must be an acceptance that practicing law is also practicing faith.<sup>57</sup>

Christian lawyers who are blessed with wealth and prosperity are also called to be stewards of these gifts. This does not mean Christian lawyers are called to relinquish their possessions. Being stewards of

51. Bradley Shavit Artson, *It's a Mitzvah! Step-By-Step to Jewish Living* 14 (1995).

52. Mark Washofsky, *May a Doctor Refuse to Treat an Indigent Patient?*, *Reform Judaism*, Summer 1996, at 56.

53. Donald W. Hinze, *To Give and Give Again: A Christian Imperative for Generosity* 18 (1990).

54. *The Book of Common Prayer and Administration of the Sacraments and Other Rites and Ceremonies of the Church* 377 (1979) [hereinafter *The Book of Common Prayer*].

55. See *Matthew* 25:14-30; *Luke* 19:11-26.

56. Hinze, *supra* note 53, at 10.

57. Milner S. Ball, *A Meditation on Vocation, in Radical Christian and Exemplary Lawyer: Honoring William Stringfellow* 129, 131 (Andrew W. McThenia, Jr. ed., 1995) [hereinafter *Radical Christian and Exemplary Lawyer*].

these gifts, however, does require tithing<sup>58</sup> and the use of wealth and prosperity wisely.<sup>59</sup> The issue of tithing<sup>60</sup> deserves some attention because being faithful to this teaching directly impacts how a Christian uses her time and distributes her material possessions. For the Christian lawyer, these two principles relate to the time devoted to pro bono publico service.

As mentioned earlier, Model Rule 6.1 recommends a minimum of 50 hours of pro bono publico service a year, at no fee. This is the minimum a Christian lawyer should provide in pro bono publico service to meet the spirit of tithing. For those Christian lawyers unable to provide fifty hours of pro bono service, the parable of the Good Samaritan would appear to also support the buy-out options to pro bono service suggested in Model Rule 6.1 and in other state bar pro bono proposals. While the Samaritan did attend to the immediate needs of the injured traveler, he compensated another individual, an innkeeper, to tend to the ongoing needs of the traveler. The Christian lawyer, in like fashion, could provide the financial resources necessary to ensure access to legal services for indigent individuals.

#### VI. THE CHURCH'S ROLE IN ASSISTING CHRISTIAN LAWYERS TO MEET THEIR DUTY TO PERFORM PRO BONO PUBLICO SERVICE

The term "church," as used in the New Testament, "means 'called out,' and refers to the assembly of Christians who have been called out from the world."<sup>61</sup> The church is one of God's instruments through which she works to accomplish her good will.<sup>62</sup> Scripture describes the Church as the Body of Christ. Paul utilizes the analogy of the body to describe the church so that its members can understand the interdependency that exists between God and each person in the fulfillment of God's ultimate plan.

[T]he body is not made up of one part but of many. . . . [I]n fact God has arranged the parts in the body, every one of them, just as he wanted them to be. . . .

. . . If one part suffers, every part suffers with it; if one part is honored, every part rejoices with it.

Now you are the body of Christ, and each one of you is a part of it.<sup>63</sup>

---

58. "This stone that I have set up as a pillar will be God's house, and of all that you give me I will give you a tenth." *Genesis* 28:22.

59. See *Matthew* 25:14-30.

60. "The Biblical guideline is the tithe—10% of [an individual's] annual income." Division of Christian Education of the National Council of the Churches of Christ in the USA, *Stewardship—A Way of Life* 9 (1989). This formula can also be utilized in calculating the amount of time to be dedicated for pro bono publico service.

61. Jackson, *supra* note 35, at 196.

62. *Id.* at 199.

63. *1 Corinthians* 12:14-27.

Each part of this body is called to be a sign "to the world that its inner structures and all its activities are at least striving to be consonant with the life and teachings of Jesus Christ"<sup>64</sup> to love God above all else and our neighbor as ourself. The Book of Common Prayer describes the Church as the community of the New Covenant who pursues its mission<sup>65</sup> through prayer, worship, the proclamation of the Gospel, and the promotion of justice, peace, and love.<sup>66</sup>

This community of the New Covenant also has a duty to promote and engage in pro bono service. The pro bono duty of the Church is different than that of the individual Christian lawyer. The Church's pro bono duty involves all its ministers: lay persons, bishops, priests, and deacons. It requires these ministers, lawyers, and non-lawyers alike, to teach, in all appropriate settings, about the religious duty lawyers and other professionals have to provide pro bono publico service. Christian ministers are also called upon to join with ministers of other faiths to design and implement legal services for indigent members of their congregations and those who live in neighboring communities.

These ministers can also promote pro bono service by writing or encouraging others to write articles on the subject of pro bono publico service as stewardship. These articles can then be submitted to each denomination's national or local publications. In addition to the above, ministers can make themselves available to national, state, and local bars to discuss how pro bono publico service is both a religious and professional duty.

In addition to the above, the Church's ministers, in particular its Bishops, can exhort every Catholic law school to implement a mandatory pro bono publico service requirement for graduation. This will assist lawyers in training to understand that their faith and their lawyering vocation is inextricably intertwined.

I close with a prayer for all lawyers of faith. This prayer is a paraphrase of the words of Andrew W. McThenia, Professor of Law at Washington and Lee University in Lexington, Virginia who edited the book honoring William Stringfellow, a fellow lawyer of faith.

*God of All, grant us your wisdom so that we may be ever mindful that "[a] lawyer's work of justice is a form of prayer and praise [to you]. [That] [w]e do our acts of justice as a way of praising [you] God, knowing that it is not [you] God who is made whole by these acts of praise but we ourselves."<sup>67</sup> Amen.*

---

64. Alfred T. Hennelly, *Liberation Theologies: The Global Pursuit of Justice* 24 (1995).

65. "The mission of the Church is to restore all people to unity with God and each other in Christ." Book of Common Prayer, *supra* note 54, at 855.

66. *Id.*

67. Andrew W. McThenia, Jr., *An Uneasy Relationship with the Law, in Radical Christian and Exemplary Lawyer*, *supra* note 57, at 167, 177-78.