Rule 6.1 and Voluntary Pro Bono Reporting

Ethics, Explanations, and Opportunities

Regional Pro Bono Summit
Liberty University School of Law
April 26, 2019
Session 1
“Equal justice under law” is a shared American value, but in reality we are far from delivering that promise.

- 80% of the legal needs of the poor Virginians go unmet
- The vast majority of Virginia civil cases include at least one unrepresented party.
  - Both parties represented in only 1% of GDC cases, 6% of J&DR cases, 38% of Circuit Court cases
- There is an association between poverty and lack of representation.
- There is a significant disparity in outcomes between represented and unrepresented litigants (in favor of those represented by counsel).

Rule 6.1 establishes goals for pro bono service with these ideals in mind and with the hope of increasing access to legal services for those unable to afford an attorney.
RULE 6.1 Voluntary Pro Bono Publico Service

Virginia Rules of Professional Conduct (Rule 6.1)

A lawyer should render at least two percent per year of the lawyer’s professional time to pro bono publico legal services. Pro bono publico services include poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services.

A law firm or other group of lawyers may satisfy their responsibility collectively under this Rule.

Direct financial support of programs that provide direct delivery of legal services to meet the needs described in (a) above is an alternative method for fulfilling a lawyer’s responsibility under this Rule.

ABA Model Rules

A lawyer should be mindful of the 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, and should therefore devote professional time and civic influence on their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest. . . .

MODEL R. PROF’L. CONDUCT, Preamble, ¶¶ 4, 6 (quoted in pertinent part)
Rule 6.1
Not mandatory but...

COMMENT:

[1] Every lawyer, regardless of professional prominence or professional work load, has a personal responsibility to provide legal services to those unable to pay, and a personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.

- The Court encourages pro bono.
- It’s the right thing to do.
- There are personal and professional benefits to be captured.
- It’s also easier than you might think.
The Pro Bono Gap

- Despite the aspirational goals outlined in Rule 6.1, we have a significant pro bono gap in Virginia.
- According to the best available data, Virginia lawyers are providing just 80,000 hours of pro bono.

If we had 100% participation with this aspirational goal, we would be providing over 900,000 hours of pro bono!
Pro Bono Reporting - A National View

21 states have some form of statewide pro bono reporting

★ Mandatory
★ Voluntary
The New VOLUNTARY Reporting Rule

The addition of Paragraph 22 of Part Six, Section IV, of the Rules of the Supreme Court adds a new voluntary pro bono reporting rule to complement Rule 6.1 aspirational pro bono service goals.
When do I report?

- The hour is upon us!
- Rule in effect as of December 1, 2018.
- The July 2019 dues statement for the 2020 bar year will be the first to incorporate voluntary pro bono reporting.
  - Mailing in June!
  - Will ask you to look back on the pro bono contributions made from July 1, 2018 to June 30, 2019.
Do I have an ethical duty to report?

- The new rule sets forth **voluntary**, not mandatory, pro bono reporting.
- The rule requests that **active** members voluntarily supply information regarding pro bono service and financial contributions.
- Reporting zero hours/contributions is still reporting, and it’s helpful information for stakeholders.
GOAL 1: Heighten Awareness of the Importance of Pro Bono

*It’s the righteous thing to do...*

1) ...as good people, good citizens, and good attorneys.

“Every lawyer has a personal responsibility to provide legal services to those unable to pay.” (Rule 6.1, Comment 1)

2) ...because it totally rocks and feels awesome.

“Personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.” (Rule 6.1, Comment 1)
GOAL 2: Collect data on the amount of pro bono occurring

The rule sets the goal; we need to measure.

Participation is key.

See letter from Chief Justice Lemons encouraging reporting “so that we can gather reliable data regarding this important effort in Virginia.”
GOAL 3: Provide Benchmark Data to Access to Justice Commission

The Court cares about access to justice and pro bono.

The Court wants to know how we’re doing so gaps can be addressed through the strategic work of the Access to Justice Commission and other stakeholders.

Benchmarks allow us to measure progress.
GOAL 4: Allow the bar to educate the public regarding the amount of pro bono it is doing

Public feels “Equal Justice” is an empty promise

Skepticism about lawyers

Sharing goals and measuring process shows we care about the problem.

Transparency builds trust

Source: 2007 Citizens Survey, Office of the Executive Secretary, Supreme Court of Virginia.
A little thanks goes a long way.

Recognition can be an incentive for participation.

There’s nothing wrong with a little friendly competition.

Service awards/accolades can be great marketing for lawyers and firms; builds professional reputation and brand.
How will the data be collected?

A new Voluntary Pro Bono Reporting form ("Annual Dues Statement Section 5") will be included with your the Annual Dues Statement mailing.

- One-time reporting as part of the annual membership renewal process
- Intended to capture total contributions made in the preceding bar year (July 1 - June 30)
- Reporting can be done online or by mail
  - **Mail** - Simply fill out Section 5 and **return in same envelope as your completed dues statement and payment.**
  - **Online** - Section 5 will be part of the online renewal process; individual attorneys should renew online, if possible.
ANNUAL DUES STATEMENT SECTION 5
Voluntary Pro Bono Publico Legal Services Reporting for Active Members

If you are renewing by mail, please complete and return this form with your Annual Dues Statement in the self-addressed envelope provided.

The information reported on this form will be recorded anonymously and will not be associated with your name and bar number unless you opt in.

DO NOT COMPLETE AND RETURN THIS FORM IF YOU ARE RENEWING YOUR LICENSE ONLINE.

Circuit: _______________ (required)

[Please fill in the blank with your circuit based on your VSB address of record as shown on your Annual Dues Statement. See the back of this form for a list of cities and counties by circuit.]

Rule 6.1 of the Virginia Rules of Professional Conduct establishes a goal that every lawyer should render at least 2% per year of the lawyer’s professional time to pro bono publico legal services. The Supreme Court of Virginia requests that each active member of the Virginia State Bar voluntarily supply certain information as part of the annual license renewal process by marking one or more of the following optional responses:

1. ☐ Pro Bono Hours. I have personally provided approximately _______ hours of pro bono publico legal services as defined in subsection (a) of Rule 6.1 of the Virginia Rules of Professional Conduct during the previous 12 months beginning July 1 of the preceding year and ending June 30 of the current year.

2. ☐ Financial Contribution. I have personally contributed $_________ to support programs that provide the direct delivery of legal services to meet the needs described in Rule 6.1 (a) of the Virginia Rules of Professional Conduct, as an alternative method for fulfilling my responsibility to render pro bono legal services.

3. ☐ Not Applicable. The two percent goal is not applicable because:
   ☐ I am currently serving as a member of the judiciary, or
   ☐ I am a government lawyer prohibited by statute, regulation, or agency policy from providing legal services outside my employment, or
   ☐ I maintain retired, disabled, or associate status with the Virginia State Bar.

4. ☐ No Report. I do not wish to report the hours of pro bono publico legal services I have performed this year, nor do I wish to report any financial contributions made in lieu of performing such services.

Opt-in for Recognition.

☐ I choose to associate the data I report in this section with my name and bar number so that I can be considered for possible awards and recognition. By opting in, I understand that the information I report may be subject to FOIA requests.

Name: ___________________________ VSB ID No.: ___________________________

[Please fill in the blanks above with the requested information exactly as it appears at the top of your Annual Dues Statement.]
What do I report?

Circuit: __________________________ (required)

[Please fill in the blank with your circuit based on your VSB address of record as shown on your Annual Dues Statement. See the back of this form for a list of cities and counties by circuit.]

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You can view the full text of the Court’s order here:
How will the data I report be stored?

- **Anonymity is the default**
  - The details of your report will not be associated with your name/membership record UNLESS you **OPT IN**.
  - We will be collecting and storing your circuit information.

- **But you can identify yourself by opting in to be considered for possible recognition.**

<table>
<thead>
<tr>
<th>Opt-in for Recognition.</th>
</tr>
</thead>
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</tr>
</tbody>
</table>

Name: ____________________________  VSB ID No.: ____________________________

[Please fill in the blanks above with the requested information exactly as it appears at the top of your Annual Dues Statement.]
What categories of volunteer service are reportable?

Volunteer services for which you should track and report your hours include the following four categories taken from Rule 6.1 (a) and its comments.

Legal Service Categories

1. Poverty Law
2. Civil Rights Law
3. Public Interest Law

Non-Legal Service Category

4. Volunteer Activities Designed to Advance Pro Bono
Legal Service Categories - Threshold Requirement

Pro bono legal services consist of any professional services for which the lawyer would ordinarily be compensated. (Comment 1)

- Objective standard can be used, especially if you are engaging in a particular service for the first time. Be intellectually honest in your assessment.

- Free or nominal fee nature of the work must be established in advance of representation. (Comments 2, 3, 6)

- To truly be “pro bono publico” must fall into one of the categories outlined under Rule 6.1 (a).
Poverty Law

Providing low bono or pro bono legal assistance to someone who lacks the financial resources to hire a lawyer. (Comment 2)

- Legal aid clients
- Those with insufficient resources to pay an attorney, even if above legal aid guidelines
- Structured programs provide benefits, but ad hoc service does count
  - Helping a neighbor, a friend of a colleague, a fellow parishioner, etc.
- Examples of structured programs
  - Legal Aid Society of Eastern Virginia (LASEVA)
  - YWCA of Hampton Roads (Domestic Violence Advocacy program)
  - Virginia Free Legal Answers
  - Attorney General of Virginia Veterans Legal Services Clinic
  - Any programs outlined in Free and Low Cost Legal Resources in Virginia pamphlet
Civil Rights Law

Providing nominal fee or free legal assistance to assert or protect the rights of individuals in which society has an interest. (Comment 3)

- No requirement that client is unable to afford an attorney
- Professional services for victims of discrimination based on race, sex, age or handicap (“typical examples”) or any other protected class.
- Service to veterans, active-duty military, etc. (without regard to the ability to pay, otherwise would be pro bono Poverty Law)
  - Look for a federal law that is designed to protect the rights of the specific group in question and ask “are those rights being denied?” (Servicemembers Civil Relief Act, Vietnam Era Veterans Readjustment and Assistance Act, GI Bill, veterans benefits, etc.)
  - General civil legal assistance to veteran’s and service members not related to specific protective rights extended to these groups probably doesn’t count (drafting free life planning documents, assisting on a divorce/custody matter, etc.)

- Structured Programs
  - ACLU of Virginia
  - Disability Law Center of Virginia
  - Housing Opportunities Made Equal (FHA and ADA claims)
Public Interest Law

Providing pro bono or sliding scale legal services to religious, charitable or civic groups in efforts such as... (Comment 4)

- No requirement that the public interest group is unable to afford counsel
- Must be some connection between your legal service and a public service being provided by the organization
  - Setting up a shelter for the homeless
  - Operating a hotline for battered spouses
  - Providing public service information
- Service can be to the religious, civic, or charitable organization of your choice so long as the group is providing a public service in the spirit of the rule
- Structured programs
  - Northern Virginia Pro Bono Law Center
  - Greater Richmond Bar Foundation
  - Volunteer Mediator for BBB Car Warranty Dispute Resolution/VSB Fee Dispute Resolution
- Be wary of providing legal service to a nonprofit if you’re a member of the BOD (role confusion, loss of independence of professional judgment, conflicts of interest, competence, etc.)
  - Three-part webinar presentation “Before You Say Yes to Serving on a Board” - https://www.vsb.org/site/sections/pro_bono/webinar_recordings
Other Volunteer Activities

Engaging in volunteer activities designed to increase the availability of pro bono (Comment 5).

- Does not require provision of legal services

Examples:

- Training and mentoring lawyers who have volunteered to take pro bono cases
- Helping recruit lawyers to do pro bono
- Drafting training materials that pro bono attorneys will use to assist clients in any of the three categories discussed
- Developing informational materials to promote pro bono programs
- Performing intake or screening services for legal aid or other legal services programs that serve pro bono clients in any of the three categories of direct legal services outlined under Rule 6.1 (a)
- Serving on the VSB Special Committee on Access to Legal Services or other boards, committees or bodies that increase access to pro bono services on the state or local level (Access to Justice Commission or it’s many committees, VBA Pro Bono Council, local or specialty bar association or firm pro bono/public service committees)

Serving on a nonprofit board generally doesn’t count unless it is somehow related to advancing pro bono service (so legal aid board would count). Also, volunteering to coach your son’s little league team doesn’t count, even though that’s admirable and great for the community.
What about hours associated with fee losses or discounts given at the end of a case?

Comment 6 to Rule 6.1 requires that the free or nominal fee nature of the legal work must be established in advance of the representation for it to be considered pro bono under the rule.

- No writing off fee losses
- No contingency fees
What about free legal consultations?

- The advice and counsel provided must meet one of the categories of direct legal service under Rule 6.1 (a).

- The intent and purpose behind the engagement is central in determining if it is a reportable pro bono contribution.
  - General marketing and business development practices designed to screen for paying clients or identify good cases do not count, even if you do not charge a fee for the consult.
  - However, if someone calls and says “I can’t afford to pay a lawyer, but I need some free legal advice,” and you provide that advice for free when you would normally charge for that time, it DOES count.
Financial Contributions

Active bar members should report direct financial support of programs that provide direct delivery of “pro bono publico services” as defined by Rule 6.1 and its comments.

- **Cut a check** - donate directly to legal aid and non-profit legal service providers.

- **Go out for the cause** - Have fun while making a financial contribution - attend your local legal aid gala, buy a ticket to a non-profit event, participate in other fundraisers.

  - Report what you paid for the ticket MINUS any value received. Ask the organization for tax receipt.
Where can I get updated information about Voluntary Pro Bono Reporting?

Review VSB’s “Frequently Asked Questions” document, which is updated periodically with new information based on real inquiries from members like you!

http://www.vsb.org/site/members/voluntary_pro_bono_reporting_faqs

Contact Crista Gantz at cgantz@vsb.org
Suggestions for Doing Rule 6.1 Pro Bono Legal Aid

- Engage in direct service under Rule 6.1 (a) by partnering with the leaders in poverty law
- Opportunities include hotlines, clinics, full case representation
- 9 programs offer a variety of engagements throughout VA

<table>
<thead>
<tr>
<th>ORGANIZATION</th>
<th>OFFICE LOCATION(S)</th>
<th>PRO BONO CONTACT</th>
<th>PHONE</th>
<th>EMAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blue Ridge Legal Services (BRLS)</td>
<td>Winchester, Harrisonburg, Lexington, Roanoke</td>
<td>Debbie Lanham, Molly Bell, Robin Mayer, Susan Proctor</td>
<td>(540) 662-5021, (540) 433-1830, (540) 463-7334, (540) 334-2080</td>
<td><a href="mailto:dlanham@brls.org">dlanham@brls.org</a>, <a href="mailto:mbell@brls.org">mbell@brls.org</a>, <a href="mailto:rmayer@brls.org">rmayer@brls.org</a>, <a href="mailto:sproctor@brls.org">sproctor@brls.org</a></td>
</tr>
<tr>
<td>Central Virginia Legal Aid Society (CVLAS)</td>
<td>Richmond, Charlottesville, Petersburg</td>
<td>Kathy Brigman</td>
<td>(804) 518-2131</td>
<td><a href="mailto:kat@cvlas.org">kat@cvlas.org</a></td>
</tr>
<tr>
<td>Legal Aid Justice Center (LAJC)</td>
<td>Richmond, Charlottesville, Northern VA, Petersburg</td>
<td>Jessica Wright, Hallie Ryan (NoVA)</td>
<td>(804) 643-1086, (703) 778-3450</td>
<td><a href="mailto:Jessica@justice4all.org">Jessica@justice4all.org</a>, <a href="mailto:Hallie@justice4all.org">Hallie@justice4all.org</a></td>
</tr>
<tr>
<td>Legal Aid Society of Eastern Virginia (LASEVA)</td>
<td>Norfolk, Virginia Beach, Hampton, Williamsburg, Belle Haven</td>
<td>Tameeka Williams</td>
<td>(757) 627-5423</td>
<td><a href="mailto:tameekaw@laseva.org">tameekaw@laseva.org</a></td>
</tr>
<tr>
<td>Legal Aid Society of Roanoke Valley (LASRV)</td>
<td>Roanoke</td>
<td>Susan Proctor</td>
<td>(540) 334-2080</td>
<td><a href="mailto:sproctor@brls.org">sproctor@brls.org</a></td>
</tr>
<tr>
<td>Legal Aid Works (formerly Rappahannock Legal Services)</td>
<td>Fredericksburg, Tappahannock, Culpeper</td>
<td>Carolyn Ross, Kim McCartney, Laurie Wiggins</td>
<td>(540) 371-1105, (804) 443-9393, (540) 825-3131</td>
<td><a href="mailto:cross@legalaidworks.org">cross@legalaidworks.org</a>, <a href="mailto:kmccartney@legalaidworks.org">kmccartney@legalaidworks.org</a>, <a href="mailto:lwiggins@legalaidworks.org">lwiggins@legalaidworks.org</a></td>
</tr>
<tr>
<td>Legal Services of Northern Virginia (LSNV)</td>
<td>Fairfax, Arlington, Alexandria, Prince William, Loudoun, Route 1, Fredericksburg</td>
<td>Jennifer Fulmer</td>
<td>(703) 504-9153</td>
<td><a href="mailto:jfulmer@lsnv.org">jfulmer@lsnv.org</a></td>
</tr>
<tr>
<td>Southwest Virginia Legal Aid Society (SVLAS)</td>
<td>Castlewood, Christiansburg, Marion</td>
<td>Cassandra Turner</td>
<td>(540) 382-6157</td>
<td><a href="mailto:cassandra@svlas.org">cassandra@svlas.org</a></td>
</tr>
<tr>
<td>Virginia Legal Aid Society (VLAS)</td>
<td>Lynchburg, Danville, Suffolk, Farmville</td>
<td>Debby Hudgins</td>
<td>(434) 846-1326,</td>
<td><a href="mailto:deborahh@vlas.org">deborahh@vlas.org</a></td>
</tr>
</tbody>
</table>
Virginia Legal Aid Society’s mission is to resolve serious legal problems of low income people, to promote economic and family stability, to reduce poverty through effective legal assistance, and to champion equal justice.

Virginia Legal Aid can assist with housing issues, public benefits, healthcare benefits, family law (uncontested divorce, parental rights), consumer law, education law, advance directives, and permanent protective orders.
LOCAL Pro Bono OPPORTUNITIES

The Virginia Legal Aid Society serves the displayed area.

Its primary goal with the portal is to reach rural areas where the population is underserved.

Helps bring high-quality representation to rural areas.
LOCAL Pro Bono OPPORTUNITIES

Statewide Pro Bono Portal

Take a pro bono case anywhere in Virginia!
Registering is easy!

Visit: www.justiceserver.org
How to Register:
For preferred legal providers, select VLAS.
Filter cases by type and by the Legal Aid of your choice.
If you find a case you are interested in, click the “Express Interest” icon.

DIVORCE / SEP. / ANNUL. IN LYNCHBURG CITY
Client needs uncontested divorce - separation date 10/2013 - no children

Virginia Legal Aid Society
DIVORCE / SEP. / ANNUL. IN LYNCHBURG CITY

Client needs uncontested divorce - separation date 10/2013 - no children

LOCATION: LYNCHBURG CITY
LISTED BY: VIRGINIA LEGAL AID SOCIETY
CASE CATEGORY: DIVORCE / SEP. / ANNUL.

CLIENT AND ADVERSE

Client
Mrs Test, 5254 Seminole Ave,
Lynchburg, VA 24503

Adverse Party
Mr Test
You have passed the conflict check. Please view and accept the case.
<table>
<thead>
<tr>
<th>Pending Conflict Check</th>
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<tbody>
<tr>
<td>NO RECORDS TO DISPLAY.</td>
</tr>
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</table>

<table>
<thead>
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<th>Pending Acceptance</th>
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</tr>
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<td><em>View Case</em></td>
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</table>

<table>
<thead>
<tr>
<th>Accepted Case</th>
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<tbody>
<tr>
<td>TOTAL # CASES: 0</td>
</tr>
</tbody>
</table>
Review a Waiting Case

Phase 1 -- Notes about the case.

Here is some information our staff have included in the case for your consideration:

No notes have been entered about this case.

I want to continue with this case.  Cancel and return to potential cases.
Review a Waiting Case and Final Conflict Check

Review a Waiting Case

<table>
<thead>
<tr>
<th>Phase 2 -- Conflict Check</th>
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<tbody>
<tr>
<td>Here are names of people involved in this case and an attempt (on our part) to categorize their involvement in this case:</td>
</tr>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Client</td>
</tr>
<tr>
<td>Opposing</td>
</tr>
<tr>
<td>Opposing</td>
</tr>
</tbody>
</table>

[I want to continue with this case.](#)  [Cancel and return to potential cases.](#)
Review a Waiting Case

Phase 3 -- Personal information about the client.

Here is the last bit of personal information we will give you for determining whether you can and will help with this case:

Client Name: Mrs Test
Address: 5254 Seminole Ave
Lynchburg, VA 24503
Phone: (434) 444-5623
Sex: X
Age: 0

Take this case. Cancel and return to potential cases.
Welcome to The Private Bar Portal!
My Open Cases

First, select one of your cases using the select button to the left of the case:

<table>
<thead>
<tr>
<th>Client Name</th>
<th>Problem</th>
</tr>
</thead>
<tbody>
<tr>
<td>Test, Mrs</td>
<td>Divorce / Sep. / Annul.</td>
</tr>
</tbody>
</table>
For Case: 19-000143, Mrs. Test

Basic Case Information:  [Case Information]

Case Documents:  [View Documents]  [Add Documents]

Time:  [Add PBI Time]  [View PBI Time]  Time cannot be entered until case closure.

Case Notes:  [Add Notes]  [View Notes]

Case Closure:  [Close This Case]

**Warning** -- You will not be able to access this case once it is closed!
Case Closing

Case number: 19-000143  Client: Mrs. Test

How do you want to close this case? Uncontested Court Decision

Was the matter contested? No

Was the matter: Won

Total hours spent: 1.5 (e.g., 25.5)

Your hourly billable rate: $250 (whole dollars only, e.g., 250)

Total costs paid by Volunteer Attorney: $0

Suggestions for our organization and this Referral:

[Field for comments]

[Buttons: Close This Case/Return, Cancel]
Other Pro Bono Resources

- **American Bar Association** - The ABA's Standing Committee on Pro Bono and Public Service offers many resources to volunteer lawyers including Pro Bono rules and policies, a clearinghouse library and a directory of pro bono service providers in Virginia.  
  [http://www.americanbar.org/groups/probono_public_service.html](http://www.americanbar.org/groups/probono_public_service.html)

- **Virginia Bar Association** - The VBA serves the public through a number of legal advocacy and volunteer service opportunities including the Veterans Initiative and ProsforKids.  
  [http://www.vba.org/?page=how_we_help](http://www.vba.org/?page=how_we_help)

- **ProBono.net/va** - This website provides resources for pro bono and legal services attorneys to assist in the representation of low-income and disadvantaged clients. They also offer a Pro Bono Opportunities Guide.  
  [http://www.probono.net/va/](http://www.probono.net/va/)

- **Valegalaid.org** - This website is designed for pro se assistance and has helpful resources for pro bono volunteers.  

- **VA CLE Pro Bono Portal** - This program provides free, non-credit bearing CLE presentations and materials to pro bono attorneys to assist in specific pro bono cases. This service is also available to legal aid attorneys. Simply create an account, log in, search the online seminars and add programs to your Cart. Repeat as necessary as pro bono cases arise.  
More Information from the VSB About How and Where to Do Pro Bono

For more information about pro bono opportunities, including Virginia.freelegalanswers.org, please:

1. Visit the Pro Bono/Access to Legal Services pages on the VSB website (www.vsb.org),
   - Webinar recordings: http://www.vsb.org/site/sections/pro_bono/webinar_recordings
   - Free and Low Cost Legal Resources pamphlet: http://www.vsb.org/docs/probono/access-guide.pdf
3. Sign up for Virginia.freelegalanswers.org at https://virginia.freelegalanswers.org/
4. Contact Crista Gantz, Director, Access to Legal Services, Virginia State Bar at (804) 775-0522 or at cgantz@vsb.org
QUESTIONS?