

Pro Bono Advocates Call NY Bar's Privacy Beef Overblown

By Pete Brush

Law360, New York (July 25, 2013, 7:20 PM ET) -- A break between New York's largest lawyer group and the state's top judge over a new rule requiring attorneys to disclose pro bono efforts has surprised many advocates of free legal work, who say the bar group's privacy concerns overstate the amount of public scrutiny that Empire State lawyers will face.

Their comments came Thursday after a simmering disagreement between the New York State Bar Association and Chief Judge Jonathan Lippman — who in May instituted new rules designed to cut into the massive unmet need for legal services in the Empire State — came partially to a head.

The 76,000-member lawyer group's leadership met with Judge Lippman on Tuesday to express concerns, also conveyed in a late June letter, that the new disclosure requirement potentially constitutes "an invasion of privacy."

"By virtue of being included on the attorney registration form, lawyers' personal pro bono services and contributions will have to be reported and will be available to any member of the public and the media," the letter said.

New York State Bar Association President David M. Schraver, a Nixon Peabody LLP commercial litigator based in Rochester, also complained that "requiring lawyers to disclose their charitable works" borders on coercion despite the fact that the performance of free legal work is not mandatory.

The new rules raise the aspirational goal for pro bono hours from 20 to 50 — but it was the disclosure requirement that irked the state bar. But now the disclosure rule **may be in flux** after Judge Lippman on Tuesday agreed to more meetings with lawyers on the rule.

A time frame for additional discussions was not immediately available, though a person at the New York State Bar Association said mid-August was a possible date.

As the summertime tempest played out, lawyers in states where disclosure is mandatory downplayed the notion that lawyers' personal lives would become subject to undue scrutiny were the disclosure requirement to remain on the books in New York.

"I don't see any issue with disclosure," said Akin Gump Strauss Hauer & Feld LLP partner Steven H. Schulman, the firm's Washington-based pro bono practice head. "I believe, as Judge Lippman has said,

that asking people to report on how they are meeting that aspirational goal is entirely legitimate. It raises one's attention to pro bono."

Where the letter penned by the New York lawyer group equated pro bono work to charity, Schulman, who belongs to the Maryland bar — a state that has a disclosure requirement — said that connection is not necessarily a foregone conclusion.

"I would make the distinction between pro bono service and personal charitable work," he said. "If Judge Lippman had said, 'I want every citizen of the state to disclose their charitable activity' — assuming he had the power to do so — that would be personal. But this is a different thing. I don't consider it to be personal. I consider it to be professional."

Florida, the first of eight states to mandate such disclosure, does not legally consider pro bono work to be charity, according to legal opinions.

The state's former top judge, Rosemary Barkett, who now sits on the Eleventh Circuit, wrote for example in a June 1993 opinion backing disclosure that "basic legal aid must be viewed as every citizen's right and not as an act of charity."

One of the Sunshine State's leading pro bono advocates, Florida Legal Services Inc. Executive Director Kent Spuhler, said that legal opinion and others "blunted a lot of the arguments lawyers brought related to their privacy" when the rules came online.

The notion that disclosure in New York would lead anyone to dig for dirt on lawyers' pro bono efforts also is exaggerated, said Spuhler, whose state mandates that the records as filed by each individual are fully public.

"The horror stories have really never occurred. There have not been waves of reporters asking for individual pro bono reports," Spuhler said.

Mississippi, which mandates disclosure and aggregates pro bono data to gauge whether enough free legal work is being done, has seen no attempts to invade lawyer privacy, said Mississippi Bar Executive Director Larry Houchins.

"In Mississippi I'll have to say it's pretty much a nonevent," Houchins said. "A few years ago the court, of its own initiative, instituted the reporting requirement."

Florida certainly is more of a "media state" than Mississippi, Houchins noted, but he also rejected the New York bar's argument that the potential coercive effect of mandatory disclosure was somehow problematic.

"Over the years there have been a lot of lawyers who think this requires them to do pro bono," he said. "That's fine if the rules are seen as a backdoor nudge to make them meet their pro bono responsibilities."

Two other large New York bar groups, the New York City Bar Association and the New York County Lawyers' Association, have not taken a position on whether attorneys' pro bono disclosures should be available to the public.

Speaking for herself only, NYCLA President Barbara Moses said there could be legitimate privacy concerns if lawyers are asked to disclose too much detail about their financial contributions to legal services providers.

In lieu of pro bono hours New York rules allow for disclosure of "voluntary financial contributions made to organizations primarily or substantially engaged in the provision of legal services."

"That strikes me as a rather intimate detail of a lawyer's financial life," said Moses, counsel to Morvillo Abramowitz Grand Iason & Anello PC. "It does not strike me as an unwarranted invasion of privacy to ask a lawyer how many pro bono hours she has worked in a year."

Thirty states and Washington, D.C., have no reporting requirement. Many have never tried to implement disclosure while others, Colorado for example, have considered and rejected it.

"The practicing population in general probably was largely opposed to it. There are a lot of people who believe that pro bono is a personal choice," said Colorado Bar Deputy Executive Director Greg Martin, who added that his state does have other ways in which it encourages pro bono work, such as a lawyer recognition program.

Twelve states, meanwhile, have voluntary disclosure. But that, according to Spuhler, is tantamount to not having disclosure at all.

"They have pretty dismal participation," he said.

--Editing by John Quinn and Katherine Rautenberg.