

## **More Than Just “Don’ts”: A Review of the Aspirational Rules of Professional Conduct**

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Continuing legal education seminars and disciplinary cases dealing with ethics tend to focus on those things that an attorney must not do. However, the Rules of Professional Conduct include “aspirational” rules – *i.e.*, **rules that describe the standards that we should aspire to achieve in our professional life**. This presentation seeks to answer *two questions*:

- 1. What are the aspirational rules in the Rules of Professional Conduct?*
- 2. How might we apply these rules in our practice?*

The Rules of Professional Conduct are divided into the following areas:

Preamble and Scope

1. Client-Lawyer Relationship
2. Counselor
3. Advocate
4. Transactions with Persons Other than Clients
5. Law Firms and Associates
6. Public Service
7. Information about Legal Services
8. Maintaining the Integrity of the Profession

This material focuses chiefly on competence, diligence, communication, and public service.

## I. Preamble and Scope

### A. Preamble: A Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. *See, e.g.*, rules 32:1.12 and 32:2.4. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. *See* rule 8.4.

[4] In all professional functions a lawyer should be **competent, prompt, and diligent**. A lawyer should **maintain communication with a client concerning the representation**. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and

the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. **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 for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.** A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to ensure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] **Lawyers play a vital role in the preservation of society.** The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship. (emphasis added)

## II. Client-Lawyer Relationship – Competence, Diligence, and Communication

### A. Rule 1.1. Competence.

1. Rule and comments. “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”

#### COMMENT

##### *Legal Knowledge and Skill*

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of

evidence, and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. *See also* rule 6.2.

#### *Thoroughness and Preparation*

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. *See* Rule :1.2(c).

#### *Maintaining Competence*

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

## 2. Cases.

a. **Nigerian inheritance scheme – when it’s too good to be true.** *Iowa Supreme Court Att’y. Disciplinary Bd. v. Wright*, 840 N.W.2d 295 (Iowa 2013). An attorney failed to apply due diligence to verify the authenticity of documents purporting to be estate documents involving a purported bequest of \$18,800,000.

Although Wright apparently communicated with persons holding themselves out as attorneys, diplomats, representatives of the Nigerian government, the “Central Bank of Nigeria,” the Canadian Department of Justice, the Royal Bank of Canada,

and “a special adviser (sic) to the President [of Nigeria] on financial matters,” he failed to verify that any of them were who they claimed to be. And although Wright received documents purporting to be a last will and testament, a death certificate, and an “Anti Terrorist Clearance Certificate,” they were facially of doubtful validity. Without confirmation of the authenticity of the documents, the authority of the persons he was dealing with, or the existence of the allegedly inherited funds, Wright apparently disbursed more than \$200,000 in pursuit of the scam. We find Wright violated rule 32:1.1 when he failed to make a competent analysis of the bona fides of Madison’s Nigerian legal matter.<sup>1</sup>

b. **Probate is “unpleasant.”** *Iowa Supreme Court Att’y.*

*Disciplinary Bd. v. Marks*, 831 N.W.2d 194 (Iowa 2013).

Marks's testimony before the grievance commission indicated he did not feel he was competent to practice in the area of probate. One of the commissioners asked whether Marks felt he (Marks) was “fit to practice law and proficient in the probate area.” Marks responded, “No, I don't feel I'm proficient in the probate area,” though he further stated he believed he was “fit to practice law.” Marks was also asked, “When did you realize that probate was not an area of practice that you could handle?” Marks responded, “Many, many years ago. Well, 2003, 2004, in that general area.” Marks told the commission he had restricted his probate practice to favors for friends and a former client.

We find that the Board has proven by a convincing preponderance of the evidence that Marks did not possess “the requisite legal knowledge and skill to handle the case or that [he] did not make a competent analysis of the factual and legal elements of the matter.” *See Iowa Supreme Court Att’y. Disciplinary Bd. v. Dunahoo*, 799 N.W.2d 524, 531 (Iowa 2013) (citation and internal quotation marks omitted). Marks's conduct constituted more than mere instances of neglect. Marks testified that he found probate, in general, and the Rumley estate in particular, “unpleasant,” and that he faced “some sort of mental block” that prevented him from completing his responsibilities in regard to this estate. We have stated that when the Board has only “shown instances of neglect,” this does not constitute a showing that an attorney “lacked the skill or knowledge to handle” the matters which the attorney undertook. *Id.* Here, however, Marks acknowledged that he lacks the legal knowledge and skill necessary to handle probate matters and is not competent in this area. The Board has shown by a convincing preponderance of the evidence that Marks is not competent to handle probate matters. *See Iowa R. Prof’l Conduct 32:1.1 cmt. 5.* We thus conclude that the Board has proven a violation of rule 32:1.1.<sup>2</sup>

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<sup>1</sup> *Iowa Supreme Court Att’y. Disciplinary Bd. v. Wright*, 840 N.W.2d 295, 301 (Iowa 2013).

<sup>2</sup> *Iowa Supreme Court Att’y. Disciplinary Bd. v. Marks*, 831 N.W.2d 194, 198 (Iowa 2013).

c. **Know the basics.** *State v. Utter*, 803 N.W.2d 647 (Iowa 2011). A criminal defense attorney was found to be incompetent for not being aware of and protecting his client’s speedy trial rights. *See also State v. Schoelerman*, 315 N.W.2d 67, 71-72) (Iowa 1982) (holding a “normally competent attorney who undertakes to represent a criminal defendant should either be familiar with the basic provisions of the criminal code, or should make an effort to acquaint himself with those provisions which may be applicable to the criminal acts allegedly committed by his client.”)<sup>3</sup>

3. Practice pointers.

- a. Read new cases.
- b. Section Listserves.
- c. Attend and present at seminars.
- d. Associate with other attorneys.
- e. Track the Bar’s legislative agenda.
- f. If you don’t feel comfortable with an area, be honest with yourself and your clients.
- g. Explore the resources of the nonpartisan National Constitution Center ([www.constitutioncenter.org](http://www.constitutioncenter.org)) and Jeffrey Rosen’s *We the People* podcast.

**B. Rule 1.3. Diligence.**

1. Rule and comments. “A lawyer shall act with reasonable diligence and promptness in representing a client.”

COMMENT

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client

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<sup>3</sup> *See also Cortez v. United States*, 337 F.2d 699 (9<sup>th</sup> Cir. 1964) (holding that a competent criminal defense attorney must advise the client as to the potential risks of pleading guilty); *Merritt v. State*, 635 S.W.2d 27, 28 (Mo. App. 1982) (“The accepted standard for effectiveness of trial counsel is now established as that degree of performance which conforms to the care and skill of a reasonably competent lawyer rendering similar services under the existing circumstances.” (citations omitted)).

and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. *See* Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect. *See* Iowa Ct. R. ch. 33.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. *See* rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client or other applicable law. *See* rule 1.2. *See, e.g.,* Iowa R. Crim. P. 2.29(6); Iowa Rs. App. P. 6.102(1)(b) and 6.201, 6.109(4) and 6.109(5).

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. *See* Iowa Ct. R. 35.17(6) and 35.18 (where reasonable necessity exists, the local chief judge



shall appoint a lawyer to serve as trustee to inventory files, sequester client funds, and take any other appropriate action to protect the interests of the clients and other affected persons of a deceased, suspended, or disabled lawyer).

2. Case.

a. **One missed deadline does not constitute neglect.** *Iowa Supreme Court Att’y. Disciplinary Bd. v. Van Ginkel*, 809 N.W.2d 96 (Iowa 2012). The Court held:

In our cases involving rule 32:1.3 and its predecessor, we have recognized that a violation cannot be found where the acts or omissions complained of are inadvertent or the result of an error of judgment made in good faith. *See Iowa Supreme Ct. Att’y Disciplinary Bd. v. Joy*, 728 N.W.2d 806, 812 (Iowa 2007). Thus, an ethical violation does not typically occur from one missed deadline, but arises when a lawyer “repeatedly fail[s] to perform required functions as attorney for the executor, repeatedly fail[s] to meet deadlines, and fail[s] to close the estate within a reasonable period of time.” *Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Grotewold*, 624 N.W.2d 288, 293 (Iowa 2002). Neglect involves “a consistent failure to perform those obligations that a lawyer has assumed, or a conscious disregard for the responsibilities a lawyer owes to a client.” *Supreme Court Att’y. Disciplinary Bd. v. Van Lickiss*, 786 N.W.2d 860, 867 (Iowa 2010) (citation and internal quotation marks omitted).<sup>4</sup>

It is obvious from the record here with seven probate delinquencies in one estate that the Board has established by a convincing preponderance of the evidence that Van Ginkel's acts and omissions amount to a “consistent failure” to perform the duties and responsibilities of an attorney in the estate of John Oxley in violation of rule 32:1.3. Van Ginkel admits that he was “pokey” and “dilatatory” in connection with the estate. We agree. There is simply no excuse for the repeated failure of Van Ginkel to perform the necessary work on the John Oxley estate and to close this relatively uncomplicated estate well after the three-year statutory deadline in Iowa Code section 633.473.

3. Practice pointers.

- a. Use a tickler system and scheduled telephonic updates.  
Every file should have an action point on a calendar or other software.
- b. Assist new attorneys with workload management.

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<sup>4</sup> *Iowa Supreme Court Att’y. Disciplinary Bd. v. Van Ginkel*, 809 N.W.2d 96, 102 (Iowa 2012).

- c. Develop spreadsheets to track your progress on wills, probate files, and real estate closing files.
- d. Investigate project management software.<sup>5</sup>
- e. If you don't the time to take on a matter, be honest with yourself and your clients.

### C. Rule 1.4. Communication

#### 1. Rule and comments.

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in rule 1.0(e), is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

#### COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

#### *Communicating with Client*

[2] If these rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* rule 1.2(a).

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<sup>5</sup> A very popular book on the subject of productivity and project management is David Allen, *Getting Things Done: The Art of Stress-Free Productivity* (2001). A helpful App that accompanies this book is *Things* and can be downloaded at <https://culturedcode.com/things/>.

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. The lawyer should also discuss relevant provisions of the Standards for Professional Conduct and indicate the lawyer's intent to follow those Standards whenever possible. In some situations -- depending on both the importance of the action under consideration and the feasibility of consulting with the client -- this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

#### *Explaining Matters*

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. *See* rule 1.14. When the client is an

organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

#### *Withholding Information*

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

## 2. Case.

### a. **Patterns of non-communication are a problem.** *Iowa Supreme*

*Court Att’y. Disciplinary Bd. v. Nelson*, 838 N.W.2d 528 (Iowa 2013) states:

Iowa R. Prof’l Conduct 32:1.4(a). Rule 32:1.4(b) adds that a lawyer must “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” *Id.* r. 32:1.4(b). Violations of this rule occur when an attorney neglects to keep a client informed about the status of the case or does not respond to a client's attempts to contact the attorney about the case. *See Iowa Supreme Ct. Att’y Disciplinary Bd. v. Cunningham*, 812 N.W.2d 541, 547 (Iowa 2012) (finding the attorney failed to keep the client informed about the status of her divorce case and did not respond to her attempts to contact him regarding the case, constituting neglect and the failure to advance or protect the client's legal interest).

Nelson neither initiated nor returned client phone calls, despite requests by clients that he do so. He did not \*538 respond to emails and calls from prosecutors and the courts. He did not notify clients of court dates, resulting in their failure to appear, the issuance of warrants, and subsequent arrests. He was inaccessible to clients who called while they were in jail due to the warrants. His voicemails were full for weeks so clients could not leave him messages. He did not open his mail. He abandoned his office, so clients were unable to make in-person visits. Clients resorted to leaving sticky notes in his office and, on one occasion, tracking him down at the local bar to try to obtain information about their cases.<sup>6</sup>

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<sup>6</sup> *Iowa Supreme Court Att’y. Disciplinary Bd. v. Nelson*, 838 N.W.2d 528, 538 (Iowa 2013).

3. Practice pointers.
  - a. Use a tickler system and schedule telephone updates.
  - b. Encourage clients to schedule telephone conferences if they cannot reach you.
  - c. Return phone calls.
  - d. Manage your e-mail.
  - e. If you have been poor at communication with a client, be honest with yourself and your client.

### III. Public Service.

#### A. Rule of Professional Conduct 6.1. Voluntary pro bono publico service.

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year.<sup>7</sup> 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:

- (1) persons of limited means **or**
- (2) charitable, religious, civic, community, governmental, and educational organizations in matters that 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.

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<sup>7</sup> See Exhibit A for a comparison of pro bono hours required by state.

## COMMENT

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation.

[2] Paragraphs (a)(1) and (2) recognize 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. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making, and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation or by the Iowa Lawyer Trust Account Commission, or other comparable non-profit programs offering legal services to the economically disadvantaged, and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but, nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers, and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1)

and (2), **to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b).** Constitutional, statutory, or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2) and paragraphs (b)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b)(3), to the extent permitted by such restrictions.

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims, and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural, and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this paragraph.

[8] Paragraph (b)(3) recognizes **the value of lawyers engaging in activities that improve the law, the legal system or the legal profession.** Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator, and engaging in legislative lobbying to improve the law, the legal system, or the profession are a few examples of the many activities that fall within this paragraph.

[9] **Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer.** Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

**[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this rule.**

[12] The responsibility set forth in this rule is not intended to be enforced through disciplinary process. (emphasis added)

**B. What is the basis for the statement that “Every lawyer has a professional responsibility to provide legal services to those unable to pay”?**

1. Needs of the poor. “[N]eed is the primary motivating factor in the call for public service: unmet legal need which falls most heavily on the poor, the elderly, and various minority groups.”<sup>8</sup> People have a right to their day in court, but for the poor without legal representation, this is not a meaningful right. It is a matter of morality.<sup>9</sup>

2. Benefits of licensure impose a duty to serve. Only attorneys can represent others. As a result of this privilege, society has a right to expect that attorneys give back to their communities.

3. For those who receive a public education, the public should expect some expectation of service to the community.

4. When we become members of the Bar, we agree to the rules of ethics of that state. An ABA produced comparison of pro bono ethics rules by state is found at Exhibit A.<sup>10</sup> The integrity of the profession requires uniform adherence to these rules – especially these aspirational rules.

5. Providing legal services to the poor reverses the way the public views attorneys.

The perception of attorneys continue to suffer in public opinion polls. According to the Pew Research Center study published in 2013, “Among the 10 occupations the survey asked respondents to rate, lawyers are at the bottom of the list. About one-in-five Americans (18%) say lawyers contribute a lot to society, while 43%

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<sup>8</sup> Dean S. Spencer, *Mandatory Public Service for Attorneys: A Proposal For the Future* 12 SW L. REV. 493, 494 (1981).

<sup>9</sup> For a book describing modern efforts to address poverty locally and internationally, see Nicholas D. Kristoff and Sheryl WuDunn, *A Path Appears: Transforming Lives, Creating Opportunity* (2014).

<sup>10</sup> [www.americanbar.org/groups/probono\\_public\\_service/policy/state\\_ethics\\_rules.html](http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html)



say they make some contribution; fully a third (34%) say lawyers contribute not very much or nothing at all.”<sup>11</sup> The figure in 2013 represents a decline from 23% of Americans saying lawyers contribute a lot to society in 2009. The trend is in the wrong direction. Public service will help restore the value the public places on lawyers.

6. There is great personal satisfaction for having helped those who could not have otherwise afforded an attorney. It also provides the attorney with understanding of those who live in different segments of our society.

**C. How do we serve?**

1. Referral sources for paragraph (a)(1) “persons of limited means.”
  - a. Churches, human service agencies, United Way, your local legal aid clinic.
  - b. Volunteer Lawyers Project. *See* Exhibit B for material from Iowa Legal Aid. All states organize volunteer lawyers. *E.g.*,

what can real estate attorneys do? According to the Iowa Volunteer Lawyers Project:

Real estate attorneys who volunteer their time can provide meaningful assistance to low-income Iowans in any number of ways. By assisting low-income Iowans in the preparation of quit claim deeds, affidavits for surviving spouses, and similar documents, volunteer attorneys can provide low-income Iowans the opportunity to refinance their home loans or to apply for loan modifications. Victims of domestic violence often find it difficult to refinance or get new home loans where they do not have paperwork demanded by their lenders to prove ownership of their homes after being divorced. Older Iowans often need assistance in drafting the paperwork necessary to prove their home ownership after the death of a spouse.

Volunteer attorneys can also assist low-income homeowners by helping them respond to and raise defenses in foreclosure and contract forfeiture cases. When assisting low-income Iowans in foreclosure and forfeiture cases, volunteer lawyers can help homeowners find the time and the peace of mind to work through their difficult financial circumstances or to find alternative housing.

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<sup>11</sup> [www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/](http://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/)

2. Services for paragraph (b)(1) individuals or organizations. The benefits of lawyers to these organizations:

- a. Lawyers are particularly good at problem solving.
- b. Lawyers serve well on boards because they understand fiduciary duty, corporate governance, and conflicts of interest.
- c. Lawyers tend to be independent thinkers.
- d. Lawyers think about worst-case scenarios as they attempt to protect their clients.

**D. Next steps.**

As an application of this material, **please consider making a commitment to the following:**

1. **Commit** yourself to 50 hours of annual pro bono service per Rule 6.1. *See* Exhibit C for a sample worksheet for tracking your hours.
2. **Encourage** the members of your firm to follow Rule 6.1. If you are a sole practitioner, reach out to three other sole practitioners.
3. **Speak** at your county bar association to encourage following Rule 6.1.
4. **Register** with your state's volunteer lawyers project.
5. **Contact** a nonprofit organization to see if they have ways you can be of service.
6. **Contribute** financially to organizations providing legal services to the poor (*e.g.*, legal aid, International Justice Mission).

## Exhibit A – State-by-State Comparison of Pro Bono Ethics Rules

	<b>Specific Annual Goal</b>	<b>Financial Contribution Quantified?</b>
<b>AL</b>	No	No
<b>AK</b>	50 hrs	No
<b>AZ</b>	50 hrs	No
<b>AR</b>	50 hrs	No
<b>CA</b>	50 hrs	No
<b>CO</b>	50 hrs	No
<b>CT</b>	No	No
<b>DE</b>	No	No
<b>DC</b>	50 hrs	\$750 or 1% income
<b>FL</b>	20 hrs	\$350 to legal aid organization alternative
<b>GA</b>	50 hrs	No
<b>HI</b>	50 hrs (provide at least 25 hours of legal services to persons of limited means and to organizations in matters which primarily address the needs of persons of limited means)	No, but contribution suggested as alternative if lawyer is unable to provide pro bono service. In lieu of providing 50 hours of pro bono service, a lawyer should donate a minimum of \$500 to the Hawaii Justice Foundation.
<b>ID</b>	50 hours	No
<b>IL</b>		
<b>IN</b>	No	No
<b>IA</b>	50 hours	No
<b>KS</b>	No	No

<b>KY</b>	50 hrs	No but "financial support" encouraged.
<b>LA</b>	50 hrs	No
<b>ME</b>	No	No
<b>MD</b>	50 hrs For full-time practicing attorneys	No
<b>MA</b>	25 hrs	\$250 to 1% annual taxable professional income encouraged
<b>MI</b>	30hrs	\$300 or \$500 if income allows
<b>MN</b>	50 hrs	No
<b>MS</b>	20 hrs	\$200
<b>MO</b>	No	No
<b>MT</b>	50 hrs	
<b>NC</b>	50 hours	No
<b>NE</b>	No	No
<b>NV</b>	20 hrs @ no fee or 60 hrs @ reduced fee	\$500/yr to pro bono services org alternative
<b>NH</b>	No	No
<b>NJ</b>	No	No
<b>NM</b>	50 hrs	\$500 or a combination of hours and financial contribution as defined by a table
<b>NY</b>	20 hrs	No
<b>NC</b>		
<b>ND</b>	No	No
<b>OH</b>	No	No
<b>OK</b>	No	No

<b>OR</b>	80 hrs (2 cases or 20-40 hrs in direct legal services to the poor)	No
<b>PA</b>	No	No
<b>RI</b>	No	No
<b>SC</b>	No	No
<b>SD</b>	No	No
<b>TN</b>	50 hours	No
<b>TX</b>	50 hrs	No
<b>UT</b>	50 hrs	\$10 alternative for each hour not provided.

<b>VT</b>	50 hrs	No
<b>VA</b>	2% of professional time	No, but contribution suggested as alternative.
<b>WA</b>	30 hours	No, but contribution suggested as alternative.
<b>WV</b>	No	No
<b>WI</b>	50.	No
<b>WY</b>	50 hours	\$500 alternative

## **Exhibit B – Material from the Volunteer Lawyers Project**

Dear volunteer attorneys,

Thank you for your willingness to volunteer with Iowa Legal Aid! In an effort to ensure that you are familiar with all our benefits for volunteer attorneys I have enclosed a benefits summary below for your review. The summary includes information about ProBono.net/iowa, staff attorney support, reduced fee CLEs and malpractice insurance. Please let me know if you have any questions.

### **BENEFITS FOR VOLUNTEER LAWYERS PROJECT PARTICIPANTS**

#### **1. Probono.net/iowa**

A free service providing a comprehensive collection of information on legal topics, upcoming events such as continuing legal education opportunities and a library of poverty law materials, pleadings, and resource materials. To access [www.probono.net/iowa](http://www.probono.net/iowa), the website that has information and support for volunteers in Iowa, please do the following:

Go to [www.probono.net/iowa](http://www.probono.net/iowa)

Select the "Civil Law" link (found on the upper left side of the screen)

Click on "Join this Area." You'll be prompted to enter your email address, and press Continue. Fill out the information that follows and then click Finished.

Your information will be reviewed and in 2-3 days you can expect to receive a notification regarding your access to [www.probono.net/iowa](http://www.probono.net/iowa)

#### **2. Staff attorney support**

Staff attorneys experienced in specific areas of poverty law are available to provide technical assistance, research backup, and co- counseling.

Volunteer intake attorneys receive co-counsel support from staff attorneys.

To contact your co-counsel with any questions or concerns you can chat or call him/her.

Volunteer in-house attorneys can reach out to the managing or staff attorneys.

Volunteer attorneys who take cases can contact Kara Smith at [ksmith@iowalaw.org](mailto:ksmith@iowalaw.org) or Julie Hernandez at [jhernandez@iowalaw.org](mailto:jhernandez@iowalaw.org) for any type of assistance.

#### **3. Reduced fee continuing legal education seminars**

Participating attorneys are eligible to attend accredited Project Sponsored continuing legal education seminars at a reduced rate. To receive information about continuing legal education seminars you can:

Join [probono.net/iowa](http://probono.net/iowa)

Share your e-mail address on the VLP sign-up form

Add [ksmith@iowalaw.org](mailto:ksmith@iowalaw.org) to your address book to ensure that the message is not caught by the Spam filter

#### **4. Malpractice coverage**

Malpractice coverage is provided to volunteer attorneys for all cases accepted.

Professional liability insurance coverage is provided to volunteers who provide services to clients on behalf of Iowa Legal Aid, through referral or in connection with their in-house volunteer services.

Thank you for your help. Kind regards,

Jasmina Popaja

Volunteer Service Project Manager Iowa Legal Aid

1111 9th Street, Suite 230

Des Moines, IA 50314 515.243.1198 Ext. 1692

## SUPREME COURT OF IOWA Resolution

### PRO BONO LEGAL SERVICES

Many Iowans of limited means are unable to afford legal services to address their civil legal problems. Legal service organizations and volunteer lawyers do much to help address these needs for civil legal services. Nevertheless, there is a substantial gap between the services available and the demand for such services.

This gap is growing due to the consequences of the nation's economic downturn.

The lack of legal representation impedes access to justice. As officers of the court, lawyers shoulder a professional responsibility to ensure that all people have equal access to justice. Indeed, lawyers can proudly claim pro bono service to the needy and disadvantaged as a hallmark of their profession.

The American Bar Association has designated the week of October 25-31, 2009, as the first National Pro Bono Week Celebration to recognize the valuable pro bono contributions made by lawyers throughout the year and to increase pro bono participation across the nation to address the unmet needs of poor Americans for legal services.

### ***NOW, THEREFORE, BE IT RESOLVED THAT***

The Court recognizes the week of October 25-31, 2009 as the first National Pro Bono Week Celebration.

The Court recognizes that many Iowa lawyers serve the public good and honor their professional commitment by donating thousands of hours of pro bono services and making financial contributions to legal service organizations and pro bono programs. The Court commends these attorneys for their important contributions, which benefit our state, our justice system, our communities and, most of all, the clients they serve.

The Court urges all Iowa attorneys to devote at least 50 hours of pro bono legal services a year.

The Court encourages all judges to promote pro bono service by lawyers. To this end, the Court encourages judges to write and speak in support of pro bono service, recruit lawyers to do pro bono service, participate in events to honor and recognize lawyers who do pro bono service, train lawyers for pro bono service, make appropriate administrative accommodations for cases involving litigants receiving pro bono services, and give advisory assistance to pro bono programs.

ISSUED BY THE SUPREME COURT OF IOWA OCTOBER 19, 2009

# PRO BONO REGISTRATION FORM

UPDATED \_\_\_\_\_ NEW \_\_\_\_\_

NAME: \_\_\_\_\_  
FIRM / AGENCY: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_  
PHONE: ( \_\_\_\_\_ ) COUNTY: \_\_\_\_\_  
FAX: ( \_\_\_\_\_ ) \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

**Legal areas in bold indicate the highest level of need:**

(Please mark the areas in which you will accept referrals)

<u>Administrative Agency</u>		<u>Mediation</u>	
Unemployment Benefits	_____	<b>Family law issues</b>	_____
Social Security/SSI	_____	Other civil issues	_____
Driver's License	_____		
		<u>Consumer Issues</u>	
<u>Elder Law</u>		Debt Counseling	_____
Financial POA	_____	<b>Bankruptcy</b>	_____
Health Care POA	_____	Garnishment	_____
Living Wills	_____	Home Repair Contracts	_____
Pension	_____	Repossessions	_____
Wills	_____	Insurance	_____
Probate	_____	<b>Tax</b>	_____
Medicaid/Miller Trust	_____	Licensed to practice in tax court: yes ___ no ___	
Guardianship/Conservatorship	_____	Tort Defense	_____
		<u>Family Law</u>	
<u>Employment Law</u>		Adoption	_____
Wage claims	_____	<b>Child support</b>	_____
General employment issues	_____	Custody	_____
		Domestic Abuse	_____
<u>Housing</u>		<b>Dissolution of Marriage</b>	_____
Landlord/tenant	_____	Guardian ad litem	_____
<b>Real Estate</b>	_____	Pro Se Divorce Clinics	_____
<b>Foreclosure</b>	_____		
		<u>Immigration</u>	_____
<b>Intake at local Iowa Legal Aid ofc</b>	_____		

\*\*\*\*\*

List counties in which you will accept referrals: \_\_\_\_\_  
If you are fluent in any language other than English, please indicate which languages: \_\_\_\_\_

**TO COMPLY WITH PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS FOR COVERAGE OF CASES PLACED THROUGH THE VLP, WE NEED THE FOLLOWING COMMITMENT:**

I am admitted to practice, am in good standing, and have no disciplinary proceedings pending against me. I will notify the Volunteer Lawyers Project promptly if I become the subject of a disciplinary complaint or am disbarred, suspended, reprimanded, sanctioned or held in contempt by any court, administrative agency or regulatory body. (This information is needed for Iowa Legal Aid which provides malpractice coverage.)

\_\_\_\_\_  
Date Signature

Please return form to: Iowa Legal Aid Volunteer Lawyers Project, 1111 9<sup>th</sup> St Ste 230, Des Moines, IA 50314

For more information about pro bono in Iowa visit: [probono.net/iowa](http://probono.net/iowa)

The Aspirational Rules of Professional Conduct, p. 23

**\*NOTE: When you volunteer, cases will be placed with you through your local pro bono delivery program:**

**Polk County Bar Association  
Volunteer Lawyers Project  
www.pcbaonline.org  
515-243-3904**

**Iowa Legal Aid Volunteer Lawyers Project  
800-798-0311  
probono.net/iowa  
vlp@iowalaw.org**

UI0915



**Exhibit C – Worksheet for tracking pro bono hours**

Rule of Professional Conduct 6.1 Pro Bono Hours for 20\_\_\_\_.

	Client	Matter	Hours
January	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
February	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
March	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
April	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
May	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
June	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total

	Client	Matter	Hours
July	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
August	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
September	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
October	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
November	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
December	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
			Monthly total
Total for the year			_____