

Justice Sotomayor Calls For Mandatory Pro Bono Service

Law360, Washington (May 16, 2016, 7:25 PM EDT) -- U.S. Supreme Court Justice Sonia Sotomayor said Monday that all lawyers should be required to provide pro bono legal representation to low-income clients, insisting that law schools "don't do enough" to show young lawyers the importance of serving the needy. "I believe in forced labor" when it comes to improving access to justice for the poor, she said during an appearance at the American Law Institute's annual meeting in Washington. "If I had my way, I would make pro bono service a requirement."

The New York City-born justice, whose own pro bono work won her plaudits during previous U.S. Senate confirmations, said at the 93rd annual meeting of the American Law Institute in Washington, D.C., that she believes law schools should do more to promote free service for indigent and low-income clients.

The jurist said performing pro bono services can evoke the sense that a career in the law is an "honorable profession" and cited New York state requirements that all bar applicants must have completed 50 hours of free legal services.

"We need to have young lawyers graduate with that sense of being a part of an honorable profession devoted to serving others, with or without money," she said. "We have to find out what that elixir is to feed our young lawyers to promote their thinking about how important it is to serve, and to serve particularly the needy."

Justice Sotomayor shrugged off claims that making free service a requirement for lawyers would somehow damage the quality of the legal work performed.

"I rely on the ethical, professional sense of people, and of the vast majority of them understanding, whether they want to or not, that once they're obligated to render service, they should render it properly," she said.

Some critics argue that there are other ways to increase the availability of legal services to the poor. As economist Clifford Winston has demonstrated in a series of articles for the liberal Brookings Institution, we can greatly reduce the cost of legal services (including for the poor) by deregulating the legal profession. As he shows, we don't need to limit the right to provide legal services only to people who have spent three (very expensive) years in law school, and passed a hypercomplex bar exam that requires takers to memorize thousands of tidbits of information, most of which have little relevance to actual law practice. This is especially true of relatively simple services needed for many everyday legal transactions and cases.

We can also reduce the cost of legal services for the poor by allowing corporate entities to provide legal services, as advocated by legal scholar Gillian Hadfield. As she explains, corporatization has reduced the cost of and increased access to other types of professional services, and could do the same in the legal profession.

If these measures and others like them turn out to be insufficient, we can, where necessary, make legal services cheaper for the poor simply by giving them vouchers to pay for them. That would enable the recipients to select the lawyers they themselves choose. Such an approach would both avoid forced labor, and increase quality by incentivizing lawyers to compete for the business.