

Ten Tips for Starting a Pro Bono Program in a Government Law Office

By Katherine Mikkelson

The ABA Model Rules of Professional Conduct state that every lawyer has a professional responsibility to provide legal services to those unable to pay for those services. Some public sector lawyers believe that government service satisfies this obligation. However, by declining to volunteer, these lawyers are missing a great opportunity to broaden and enhance their legal skills while helping those less fortunate.

Likewise, managers of government lawyers are often reluctant to encourage pro bono participation because, given budgetary limitations, they are already demanding a great deal of their lawyers. Additionally, some managers may fear that agency heads and the public may think that if their lawyers have time to volunteer, they must not have enough work to do. Managers should balance these concerns with the knowledge that pro bono participation often has the positive effect of enhancing office morale by giving lawyers more client contact, trial experience and the chance to work on novel legal issues. And positive office morale, in turn, helps to recruit and retain excellent lawyers.

Despite the benefits of participation, pro bono work for public lawyers is sometimes problematic. Government lawyers face conflict of interest restrictions, limitations or prohibitions on the use of office resources, as well as statutory restrictions constraining their ability to perform pro bono work. Due to these impediments, government lawyers may believe that establishing an office pro bono program is difficult if not impossible. However, the challenges are not insurmountable, and hundreds of programs are currently under way. Here are ten tips to get your office started.

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1. Choose the type of pro bono program that would work best in your office.

Government law offices generally use one of three models for developing a pro bono program:

- Partnering with an established bar association program that will provide pre-screened cases (for conflicts of interest and suitability), training, mentors and other support
- Participating with an independent outside pro bono service provider that has been pre-approved by your office (e.g., Catholic Charities, Legal Aid Society, Legal Council for the Elderly, Volunteer Lawyers for the Arts)
- Creating an in-house program (for example, the Maryland Attorney General's Office is referred pre-screened cases from several organizations and a committee within the office administers the program)

When deciding which model best suits your office, take a look at the number of potential staff members available for volunteer work, the culture of your office and the personalities of the staff and managers. Generally, the easiest and most efficient method may be to coordinate with an existing program whose administrative structure and support are already established. For lawyers that are prohibited from practicing law outside the office, a program can be established for volunteers to handle such matters as staffing client intake sessions at pro bono clinics, teaching street law courses or offering a seminar for low-income elderly on writing a will.

2. Develop a pro bono policy.

Developing a pro bono policy may seem daunting, but countless offices at the city/county, state and federal levels have already crafted policies that can be used as models

Unforeseen Benefits

By Daniel F. Collopy

I first met my pro bono client, Joe,* almost eight years ago at the D.C. Bar's Pro Bono Clinic Night program. My agency, the National Labor Relations Board (NLRB), was staffing the clinic with lawyers from a major Washington, D.C., firm. It was difficult for Joe to explain the status of litigation involving his visitation rights for his then three-year-old son (unfounded allegations of physical abuse and neglect, complaints about his compliance with prior custody orders, and motions pending to end or severely restrict his ability to visit his son). However, I left our initial meeting with the strong belief that this man loved his son and that his difficulty communicating with others, particularly the court, was seriously jeopardizing his ability to see his son.

Now, several years and countless motions, hearings, guardian ad litem and settlement agreements later, Joe and his family have spent a great deal of time with Joe's son and have formed close, caring and loving bonds.

In that time, our paths have crossed many times, inside and outside of court. A few years ago, while handling another pro bono matter in court, Joe's name was called in a case brought by an insurance company for my client's failure to maintain an auto insurance policy (while opening the door of a friend's car, the door was struck by an oncoming car). Fortunately, I was there and able to jump in and reach a settlement for Joe. Not long after, I ran into Joe as he was heading to his demolition job on a remodeling project just a few doors down from my home. The number of coincidences was starting to mount.

About three years ago, Joe spent six months in jail for not paying court-ordered child support; he had health

issues and had missed some payments because he was not able to work. Proud and embarrassed, he tried to handle the matter himself. When I found out what happened after he was released from prison and again trying to visit his son, I gave him (and his mother and sisters) a hard time for failing to call me to see if I or someone else could help him. Now I simply call him or his mother every month or two to see how things are going.

Probably the best work that I have done for Joe was to have him meet with me in my office for several hours while we pieced together a résumé and job applications for federal employment. Joe had done cleaning work at a federal building for nearly 20 years before being laid off prior to my representing him. I'll never forget the sound of Joe's voice when he called to tell me that he had just been hired by a government employer with full restoration of vacation benefits, a thrift savings account and holiday pay and could quit his job at an industrial laundry.

I'd be lying if I said that representing clients like Joe is challenge-free. However, I realize how I have touched his life and solved some serious problems for him. Unfortunately, the world is full of Joes who need our assistance. In most cases, it doesn't take extraordinary legal talent to help, just a willingness to serve as an advocate for the under-represented. ■

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(the Division has collected many of these policies on its website at www.abanet.org/govpub/probono.html). In addition, the federal government's Intra-Agency Task Force on Pro Bono Service (contact Laura Klein at the Department of Justice [laura.klein@usjdoj.gov] or Dan Collopy at the NLRB [dan.collopy@nlrb.gov]) can provide guidance and additional sample policy statements.

Adoption of a formal pro bono policy signals to potential volunteers that the leadership of the office supports pro bono work and encourages all lawyers to participate. In addition, it addresses important office policy issues up front, organizes them in one place, and provides a useful resource for volunteer lawyers.

At a minimum, the policy should contain the following:

- **A definition of what constitutes pro bono legal work:** Use Model Rule 6.1 and the corresponding state ethics rule as a starting point.

- **Procedures for accepting cases and conflicts checks:** Which supervisors or senior managers must review and approve specific pro bono work?
- **Permissible use of office resources:** May lawyers use administrative and paralegal support; office equipment such as telephones, copiers, faxes and desktop computers; online flat-rate research databases (Lexis/Nexis or Westlaw); and phones to make long-distance telephone calls?
- **Provisions concerning the use of administrative, compensatory or vacation leave:** May lawyers work on pro bono cases during regular business hours, or must they take leave? Can lawyers make up missed time informally by coming in early or staying late? (Because new lawyers are the most likely to volunteer and rarely have much accumulated leave, it is important to address these issues. Likewise, volunteers should be encouraged to partner with other office lawyers to provide

coverage when the lead volunteer lawyer must attend to pressing office needs.)

- **Number of suggested hours per year:** Provide an aspirational goal for volunteers.
- **Types of cases that may be handled (civil and/or criminal, public benefit cases, cases where government entity is a party):** Take into consideration the difficulty of the issues presented and the number of court appearances needed to handle the case, resources available to train and mentor volunteers, and other resources (pleading or form databases and funds to pay for court fees).
- **Model retainer agreements:** These agreements are useful for communicating to the client his/her responsibilities and the limitations on the scope of issues/problems that will be handled by the volunteer lawyer (some states require written retainer agreements).
- **Evaluation procedures:** How will the program coordinators obtain feedback and suggestions for program improvements from volunteers?

3. Create a pro bono steering committee and coordinator.

One of the most important elements for a successful pro bono program is effective leadership of the program. A program coordinator or pro bono committee representative should serve as the liaison between the office and the outside or in-house program and should coordinate program administration and training. A committee has several advantages in operating and promoting an office's pro bono program. With a committee, representatives from all divisions of the office can be involved and available for consultation and for advertising pro bono opportunities.

4. Contact local bar association programs and other pro bono programs for partnership opportunities and case sources.

Partnering with an established program will reduce the work for the office program organizers and minimize "reinventing the wheel." Many pro bono clinic programs have partnered with large firms for years and generally welcome the opportunity to establish partnerships with government pro bono programs. For example, the Department of Justice and the NLRB work with the D.C. Bar Association to provide volunteer lawyers who have handled hundreds of cases over several years. Many pro bono providers also have specially tailored programs to accommodate the needs of government lawyers (screening out criminal and government benefit cases, for example). In some states, such as Wisconsin, certain government lawyers are prohibited from representing individual clients, but they can handle client intake, serve on the board of a nonprofit organization or serve as trainers for community legal education programs for low-income groups. Because government lawyers do not generally have malpractice insurance, partnerships should be formed only with outside pro bono programs that will provide malprac-

tice insurance for government volunteer lawyers.

Because many federal government lawyers are not licensed to practice law in the states where they work, it may be necessary to modify court rules to permit such government lawyers to represent clients on a pro bono basis. The District of Columbia has adopted a specific provision to this effect (Rule 49).¹ Likewise, local courts, through bar associations, should be encouraged to give priority on the court's docket to government pro bono lawyers to have their cases called first to minimize their time away from the office. New York's Erie County Bar Association lobbied for, and has had great success, having judges call pro bono cases first for all volunteer lawyers (not just government) to encourage greater pro bono participation. "Express lane" programs, particularly where administrative leave is rarely granted for pro bono work, can be a big factor in recruiting and retaining volunteer lawyers.

5. Set up a referral and case assignment process.

The most important institutional component of a successful in-house pro bono program is the referral and case assignment mechanism. The referral process should include a screening for financial eligibility (generally the poverty line), a detailed conflicts check, and a standardized method for recording case assignments and case status. Again, if a pro bono committee is used, these tasks can be rotated among committee members or their designees. Procedures should also be established for closing completed cases.

6. Ensure that volunteers are provided with case support and training.

Case support can include a thorough summary of the facts and an accurate assessment of what will be required to handle a particular case; office space for conducting interviews; specialized manuals (often provided by estab-

Resources

- www.abanet.org/govpub/probono.html - the Division's website, which includes an online tool kit specifically designed for public sector lawyers
- www.abanet.org/legal services/probono/home.html - the ABA's Center for Pro Bono website, which contains news items, publications, rules and policies, and more; staff contact is Cheryl M. Zalenski, 312-988-5770, zalensk@staff.abanet.org
- www.probono.net - a New York City-based clearinghouse that matches volunteer lawyers with projects and cases in 15 jurisdictions, with more regions set to join within a year

lished pro bono providers online and in hard copy) in the various substantive law areas; malpractice insurance; sample pleadings; paralegal, administrative or law student assistance; funds to cover litigation costs (depositions and filing fees); and mentoring and co-counseling of volunteers, where appropriate.

Training is also vital if lawyers take pro bono cases in subject areas in which they do not practice. Many bar association-sponsored programs develop specific training materials just for public sector lawyers. Lawyers may also need training in practice before local or administrative courts, alternative dispute resolution techniques or specific practice rules. Consider distance-learning opportunities, such as computer-based training, CD courses, online training, webcasts with live video streaming, or podcasts; they may be vastly more convenient and less expensive than traditional training programs.

7. Develop a review and evaluation procedure.

Fairly regularly, program coordinators should meet to review operations, update procedures and modify the referral process if necessary. Program coordinators should also conduct a more formal review to determine if program goals are being met.

Decide on the form of review: peer review teams, review by agency or organizational leaders, or independent outside evaluation.

Data should be gathered to answer the following types of questions:

- What is the nature or scope of the services being provided?
- Has the project been successful in recruiting volunteer lawyers?
- Does the program receive referrals that do not create conflicts?
- Is the project's case acceptance system organized and functioning well?
- What improvements would ensure that clients are receiving the best quality legal representation?

8. Publicize the project.

Publicizing the pro bono project helps to accomplish three goals: recruiting volunteers, building and maintaining morale, and securing and magnifying support from office management. It also informs the community at large about the volunteer activities of the office. A pro bono project may be publicized by brochures, posters, email announcements, office intranet sites, office newsletters and notices in bar association publications. One of the most effective methods is a kick-off or informational event where program coordinators describe the project, highlight current volunteers and answer questions. Schedule it during lunchtime and provide pizza and soda or at midafternoon and provide sweet treats and coffee.

9. Recruit volunteers.

If the program has a lot of support at the top (particularly by office leaders personally volunteering to handle cases or staff intake sessions) and it is publicized regularly and in a positive manner, recruitment should not be difficult. New staff members are a good source for recruitment. Prospective hires should be told about the program at interviews, and information about the program should be included in welcome packets and orientation materials. Current volunteers can informally tout the program to colleagues. Often a person-to-person request to take on a specific case does the trick. Many projects sponsor recruiting campaigns where a letter to staff, signed by the agency head, is accompanied by a brochure or other literature describing the project.

Other methods of recruitment include the following:

- Holding a brown-bag lunch-and-learn program
- Arranging a function where the head of the office describes the program and encourages participation
- Providing specialized in-house training for one of the substantive areas
- Arranging for a "government lawyer night" at a local clinic where conflict-free cases are handled
- Establishing an annual Law Day recruitment event
- Bringing representatives in from local pro bono programs to discuss their programs (pro bono fairs)

10. Recognize your volunteers.

It's very important to recognize the achievements of volunteers. Recognition encourages them to continue to participate and helps to recruit others to participate. Determine the form that will best suit your group. Consider local bar associations, nonprofit groups or the judiciary as sponsors of a recognition event.

Some ideas for recognition include the following:

- A special reception, luncheon or dinner recognizing outstanding pro bono service
- An awards ceremony
- An "honor roll" of all lawyers who contribute a certain amount of hours
- Individual thank-you letters at the end of the year
- Magazine or newsletter articles about the program participants ■

Endnotes

1. Rule 49 of the D.C. Court of Appeals rules discusses the unauthorized practice of law in D.C. courts. Rule 49(c)(9) provides an exception for pro bono cases. Rule 49(c)(9)(C) authorizes pro bono practice

[w]here the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, and is assigned or referred by an organization that provides legal services to the public without a fee; provided that the person is supervised by an enrolled, active member of the District of Columbia Bar.