

Eight Questions a Government Lawyer Should Ask Before Taking a Pro Bono Case

By Cheryl Zalenski

Government lawyers, like all lawyers, are encouraged to participate in pro bono legal services; but unlike most lawyers, they face a number of challenges to pro bono participation. For example, government lawyers' conflict of interest restrictions are generally stricter; they may face severe limitations on the use of office resources such as supplies, administrative support and even the telephone for pro bono work; and they may be prohibited by statute from providing any legal work outside of their agency.

While these challenges may initially seem daunting, they are not insurmountable. Most pro bono programs offer a variety of opportunities designed to accommodate the particular needs of their volunteers. Pro bono programs can be found through local or state bar associations; and through the ABA Center for Pro Bono's directory of pro bono programs at www.abaprobono.org/directory.html or, in a limited number of locations, at www.probono.net. After locating a likely pro bono possibility, a lawyer should contact the program to determine whether it offers volunteer opportunities that meet the lawyer's interests and needs. Careful investigation of a pro bono program and a little determination will open the way to satisfying pro bono participation. The following is a list of questions to ask pro bono program staff to assist in choosing an appropriate opportunity.

✓ Does the program thoroughly screen clients, and does it have a conflicts of interest policy?

It is essential that a pro bono program undertake a comprehensive screening of clients before referring a case to a volunteer lawyer. Thorough screening will provide a complete statement of the facts and an assessment of the nature of the legal issues involved, enabling a volunteer to ascertain whether a particular case would result in a conflict of interest. The program should have a comprehensive policy and procedures for identifying and addressing conflicts of interests.

Careful screening of cases also allows the program to make suitable referrals based on a volunteer's knowledge and skills, experience, and substantive area of interest. A thorough screening process ensures an optimal match between lawyer and client.

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✓ Is the pro bono program familiar with your agency's pro bono policy?

Before contacting a pro bono program, check with your agency to determine whether it has a pro bono policy or guidelines (see sidebar p. 4). When contacting a pro bono program, ask the program staff if they are familiar with your agency's policy; if not, provide a copy of the policy and discuss it with program staff members to be sure they understand the parameters in which you are permitted to volunteer. Be sure that you are comfortable with their understanding of the policy.

✓ Does the program offer opportunities that fit your schedule?

Are you able to attend court hearings during office hours, or do you require a weekend or evening opportunity?

Some government agencies permit lawyers to use time during the workday (using leave or flexible hours) for pro bono work, but other agencies may not. After determining the policy in your agency, ask whether the program provides volunteer opportunities to fit your available time.

The program should offer long-term opportunities, such as representing a client in a court case, and shorter-term options, such as evening clinics and after-office-hours community education programs. A well-developed pro bono program should be able to find an opportunity that fits your needs.

✓ Does the program offer training?

It is crucial that a program offer substantive training because many government lawyers will be volunteering in an area other than that in which they practice on a daily basis. Training should include classes covering the relevant legal issues and pertinent reference materials. Volunteers should have access to a library of additional resource materials, as well as assistance from program staff or other volunteers to answer questions, clarify issues, and offer general help.

✓ Does the program offer support to its volunteers?

In addition to substantive training, a program should offer a variety of additional support mechanisms to its volunteer lawyers. Many of these support mechanisms are essential for government lawyer volunteers because, as mentioned above,

Leading by Example: Roy Barnes

Roy Barnes, former governor of Georgia and a recipient of the 2004 ABA Pro Bono Publico award, has been a model of commitment to pro bono work throughout the various stages of his legal career as a private lawyer, a legislator and a governor.

While a state representative and private lawyer in the early 1990s, Barnes represented clients in a class action against Fleet Finance Company for alleged predatory lending practices. At the same time, Atlanta Legal Aid Society was pursuing legal action on behalf of low-income clients alleging predatory lending practices by Fleet Finance. Barnes coordinated with Atlanta Legal Aid staff to strategize on their respective cases. Their combined efforts led to victory in both cases and an eventual investigation of Fleet Finance by the Georgia attorney general.

Barnes' dedication to pro bono work and serving the poor continued while he was governor from 1999 to 2003. As governor, he urged lawyers to become involved in providing legal services to the poor and issued a proclamation declaring a Pro Bono Day in recognition of the important contributions made by Georgia's lawyers.

After leaving the governor's office in 2003, Barnes volunteered for six months at Atlanta Legal Aid. While there, he represented clients in a variety of matters, including landlord-tenant, consumer and family law issues. In one case, he represented grandparents attempting to adopt their three grandchildren; the mother of the children had mental health problems, and the father was in a penitentiary. Barnes was successful in terminating the parents' rights and facilitating the adoption.

Since leaving Atlanta Legal Aid and returning to private practice, Barnes has ensured that 10 percent of his law firm's time is committed to pro bono cases. Barnes also mentors and trains Atlanta Legal Aid lawyers and speaks regularly about the importance of pro bono work and the need for lawyers to meet their pro bono responsibility.

Barnes' commitment to providing pro bono legal services is an inspiration. "There is one last reason every lawyer should participate in pro bono," Barnes told the 2004 Equal Justice Conference attendees. "It is satisfying, and it is fun."

Where Can I Find Information on Pro Bono Policies?

A government agency should adopt a written pro bono policy in order to clearly establish the parameters of permissible pro bono work and the extent to which agency resources may be used.

For more information on pro bono policies for government offices, including sample policies, please visit the ABA Center for Pro Bono's webpage on government lawyers at http://www.abanet.org/legalservices/probono/government_attorneys.html. This webpage contains links to various government agency pro bono policies. Additionally, the ABA Center for Pro Bono and the ABA Government and Public Sector Lawyers Division offer an online publication, *Pro Bono Project Development: A Deskbook For Government and Public Sector Lawyers*, at <http://www.abanet.org/legalservices/downloads/probono/gvtattylowresfml.pdf>.

they may be limited in their ability to use office resources for pro bono work. You should determine whether, at a minimum, a program offers the following:

- Malpractice insurance. This is critical for most government lawyers, who do not receive coverage for pro bono work through their employers.
- Handbooks with program policies and staff contact information.
- Administrative support, if needed. Such support may include typing, photocopying, serving as a telephone contact, and filing legal documents with the court.
- Office supplies.
- Office space and telephone use for client interviews and meetings.
- Filing fee forms and other court fee waivers.
- Form pleadings, either through a website or in electronic format.
- A reimbursement policy covering incidental expenses and litigation costs.
- Legal research facilities and/or support.
- A policy addressing the receipt of lawyers' fees by program volunteers.

✓ How does the program document the volunteer's relationship with a pro bono client and the pro bono program?

A pro bono program should clearly communicate to both the client and the volunteer the nature of the relationship established among the program, the client and the volunteer. Each party's rights and responsibilities should be set forth in a written retainer agreement. You should carefully review the retainer agreement to ensure that you are comfortable with the form used by the program.

At the initial meeting between the volunteer lawyer and the pro bono client, the lawyer should discuss with the client the extent of the representation the volunteer agrees to undertake on the client's behalf. A retainer agreement should reflect, in detail, the agreement reached by the volunteer and the client.

A retainer agreement should also state that the pro bono lawyer is providing representation to the client in his/her individual capacity, not as an employee of the government agency. The lawyer's title and employing agency should not be named in the retainer. Additionally, the retainer should specify that the lawyer is providing representation only in the matter referred. In fact, a program's guidelines should state that volunteers are not expected to provide representation in other matters and should instruct them to refer clients back to the program if the need arises.

✓ Is there an effective method for ensuring communication between program staff and the volunteer?

A pro bono program should maintain regular communication between the volunteer and program staff. A well-designed communication system allows volunteers to record their progress and enables program staff to stay informed and provide feedback. Volunteers should have confidence that if they need help, program staff will be easily accessible to provide assistance.

A volunteer should ask if the program uses evaluations at the conclusion of a case. Evaluations allow a program insight into the volunteer's experiences with the program's procedures, the staff service, the client and the case. Well-run programs take these comments very seriously and utilize them to make adjustments to improve their system.

✓ What if the case becomes too much for a volunteer to handle?

A program should offer a number of solutions in the eventuality that a client or legal issue becomes too difficult or too complicated to handle, or the volunteer is unable to commit the necessary time. In such situations, pro bono programs may facilitate co-counseling arrangements with program staff lawyers or other volunteer lawyers who have expertise in the area of law involved, or enlist the assistance of paralegals or law students. Programs also may offer additional training opportunities, and, in some instances, the program may agree to take the case back if it becomes too onerous for a volunteer.

If conflicts arise after a lawyer has volunteered to staff a clinic or community education event, the program may be able to either locate a replacement or facilitate an exchange of dates between volunteers.

The Goal: A Rewarding Experience for All

With a little research and effort, government lawyers can find rewarding pro bono opportunities that fit their interests and limitations. The key to finding a trouble-free and satisfying pro bono experience is communication with a pro bono program prior to, during and after the volunteer experience. Asking the right questions will guide volunteers to an experience that is rewarding for everyone involved. ■

For more information on government lawyer participation in pro bono programs, please visit the ABA Center for Pro Bono's website at www.abaprobono.org, or contact the author at 312-988-5770 or zalenskc@staff.abanet.org.

Leading by Example: Christopher Wiles

Like many lawyers, Christopher Wiles' first taste of lawyering was in law school when he worked with the legal aid clinic at Cornell University. That experience sowed the pro bono seeds that he has continued to nurture ever since.

Wiles began his career as a private practitioner when he joined his father in practice at Wiles and Wiles in Syracuse, N.Y. in 1975. After 26 years as a private attorney, he joined the New York State attorney general's office in 2001.

Wiles has been involved in two pro bono programs for many years. The Consumer Law Clinic, operated by the Legal Services of Central New York, Inc., assists low-income people in resolving bankruptcy, automobile or other consumer issues without litigation. Lawyers participate in two-hour clinics held from three to 12 times per year. Wiles assisted 13 clients last year.

Wiles has also been active in the "Talk to a Lawyer Project," which was established by the Onondaga County Bar Association. This neighborhood outreach project helps people distinguish legal from non-legal problems and identifies those who need further legal assistance or representation. Fluent in Spanish, Wiles provides much-needed services for the clinic's many Spanish-speaking clients at the Southwest Community Center, one of three locations where the program is held.

Bolstered by his office's adoption in 2002 of a formal pro bono policy that encourages pro bono work, Wiles is nonetheless ever-mindful that a particular client's problem must not conflict with a function or area that the attorney general regulates or in which the office would have an interest. In all instances, he makes sure that clients clearly understand that he is not representing the office of the attorney general when he is working with them.

In 2004 Wiles was honored to receive the New York State Bar Association President's Pro Bono Service Award for the 5th Judicial District. Wiles believes that there are numerous rewards for a government lawyer engaging in pro bono work. "Beyond the fact that it is both entertaining and very satisfying," said Wiles, "it keeps me aware of what the private practitioner is doing, hones my negotiation skills, and gives me an opportunity to stay in touch with the public that each of us in the public sector has chosen to serve."