

**SECTION 3:**

**INITIAL CONSIDERATIONS IN DEVELOPING A  
PRO BONO PROGRAM**

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## **What Is Your Firm Hoping to Achieve with Your Pro Bono Program?**

Although the objectives might change over time as your pro bono program evolves, it is a good idea in the initial stages of the program to identify what goals you have for the program and to design the program to achieve those goals. It is, after all, against those goals that the success of your program ultimately will be measured. As any business consultant will tell you, if you cannot measure it, you cannot manage it.

Common goals that law firms have set for their pro bono programs are discussed below. These goals, as you will see, are not mutually exclusive and most successful pro bono programs will incorporate some or all of these objectives. They are also not exhaustive. The goals you set for your program are limited only by your imagination and the culture of your law firm.

### **I. Satisfying Attorneys' Desire to Give Back to the Community**

The impetus for and goal of many pro bono programs is to provide an outlet for attorneys to give back to the community. Law firms are blessed with amazing resources and talents and yet there are profound unmet legal needs among the poor and disadvantaged. Pro bono is a way to bring the two together in a way that ultimately benefits not only the participants but also society as a whole.

### **II. Training Your Lawyers and Legal Staff**

For many young law firm lawyers, the opportunities to take a case to trial or head up a matter are few and far between because of the stakes of such engagements and the cost of legal services. Pro bono programs can provide wonderful training opportunities to newer lawyers or lawyers who simply wish to broaden their horizons.

### **III. Promoting Your Firm and Its Image**

Pro bono engagements can raise the visibility of your firm and help burnish its reputation in the community as a firm of high quality that cares about its community. Many law firms report that recruits express an interest in the firm's pro bono credentials, and a small but influential group of corporations are now asking their outside law firms to show a commitment to pro bono law in order to remain a preferred provider.

### **IV. Building Stronger Relationships Within Your Firm or Between the Firm and its Clients**

This objective is often overlooked but many successful pro bono programs expressly are designed to foster closer relationships between persons within the same law firm and/or between lawyers and their clients. Just as many lawyers want to give back to the community, so do paralegals, secretaries and information technology staff at law firms and corporate law departments. For many law firms, partnering with an actual or prospective client on a pro bono matter is a very effective way of establishing or strengthening a business relationship.

## **What Are Realistic Goals for Your Pro Bono Program?**

When you are establishing your pro bono program, you need to be realistic about the goals you set for the program. A firm that has no history of pro bono service is not likely to be transformed into a pro bono powerhouse overnight. On the other hand, there is a value in setting goals that are aspirational in nature to encourage the growth of the program and to remind people of why you thought there was value in pro bono in the first place. While there are a number of structures that firms have successfully used to provide support to their attorneys for pro bono work, the common denominator is strong and visible support from the firm's leadership.

### **I. Setting Minimum Pro Bono Hours**

In PBI's experience, successful pro bono programs are voluntary in nature and succeed because lawyers and legal staff are enthused about giving back to the community, not because they have to put in their time to reach some preset hours goal. PILI therefore encourages firms to adopt aspirational pro bono standards rather than requiring a set number of hours.

### **II. Tracking Your Investment in Pro Bono**

For your program to be successful, it is important to track not only the number of lawyers and legal staff who participate in the program but the hours they spend each year on pro bono matters and the value of those hours. The reality of legal practice is that any individual's time on pro bono cases will vary from year to year. Because of this, law firms should look more broadly at average pro bono hours to ensure that over time the program is growing. You should also track expenses incurred by the program and charitable contributions made by your firm as a result of its involvement in pro bono matters so you can be prepared to quantify your firm's financial commitment to pro bono.

### **III. Expect Better Participation from Younger Lawyers**

Although pro bono work should appeal to lawyers of all experience levels, it is simply a fact of life that younger lawyers seem to participate in pro bono work on a more frequent basis. This is a product of many factors, from the relative idealism of younger lawyers, to their desire for more training and the busy schedules of more experienced lawyers who are balancing not only work, but management or business development responsibilities. A good pro bono program will try to appeal to more experienced lawyers for support and involvement but will realize that participation rates will be higher among younger attorneys. That being said, a well organized and well promoted pro bono program that engages young lawyers is likely to be one that keeps those lawyers committed and involved as they progress in their careers.

### **IV. Collect Pro Bono Success Stories and Impact of the Program**

The firm's pro bono coordinator or committee should continually and enthusiastically promote the program by disseminating information about the program's successes, recognizing lawyers and legal staff who participate in it, and documenting the achievements of the objectives set for the program. When trying to drum up participation in and support of a pro bono program, there is simply no substitute for good press and honest enthusiasm for the program.

# Setting Up Your Pro Bono Program

## I. Getting Buy-In at Your Law Firm

The first challenge in initiating a pro bono program is to build the necessary support among the leaders of your firm. You need to be prepared to dispel the “myths” of pro bono and to articulate why having a program will not only benefit the clients you intend to serve, but your firm and individual attorneys as well. PILI’s Pro Bono Initiative can help your firm get started.

## II. Promulgating a Pro Bono Policy

The less experience your firm has with pro bono work, the more important it will be to develop and promulgate a policy explaining how the program will work. The policy should address:

- What your firm considers to be pro bono work;
- Who will approve the engagements and what type of information will need to be provided before a pro bono matter is accepted;
- Whether and how much billable, bonus or advancement credit will be given to pro bono matters;
- What type of support will be available on pro bono cases (e.g., expert fees); and
- What amount of pro bono work is expected of each attorney.

## III. Rolling Out the Program

Once your pro bono policy has been adopted, you must take steps to ensure that the program gets off to a good start. You should consider:

- Encouraging department leaders to lend their vocal support and encourage program participation, ideally by their own example;
- Having a few pro bono opportunities in hand to distribute to interested lawyers; and
- Announcing publicly the purposes and goals of the program.

## IV. Maximizing the Program’s Potential

As your pro bono program gains traction, maximize its potential by:

- Appointing a manager of the program to cultivate and identify good opportunities for the firm, encourage participation, track involvement and promote successes;
- Partnering with one or more pro bono or legal aid agencies to pre-screen cases for your organization;
- Actively involving your legal staff in the program and encouraging them to spot worthy matters or causes for your firm to handle or support;
- Publicizing your pro bono program’s successes and linking the program with your organization’s marketing, recruiting and professional development efforts; and

- Participating in the legal community's efforts to identify and share best pro bono practices.

# The Importance of a Pro Bono Policy

## I. Why a Pro Bono Policy?

There are numerous advantages to adopting a written pro bono policy within your firm. For example, a written pro bono policy emphasizes your firm's commitment to pro bono work and to your community. A written pro bono policy can provide guidance and encouragement to newer lawyers as they are developing their professional standards and integrating pro bono work into their individual practices. A written pro bono policy is a reflection to the broader community of your firm's desire to serve the needs of disadvantaged members of the community.

Developing a written pro bono policy for your firm also makes good business sense and promotes a shared understanding of the firm's process and commitment to public interest law. A written pro bono policy documents the firm's tradition of encouraging pro bono activity and establishes the procedures by which the firm will handle pro bono cases. A written pro bono policy can establish consistent guidelines and procedures for how the firm will recognize or "value" pro bono work performed by lawyers within the firm. Finally, and oftentimes most importantly, adopting a written pro bono policy can help build and maintain the necessary support for pro bono work among the leaders of the firm and ensure the sustainability of the program for the future.

## II. Components of a Pro Bono Policy

There are many "model" pro bono policies available through the Pro Bono Initiative that can provide a firm with guidance in drafting its own written pro bono policy. In addition, many firms post their written pro bono policies on their websites. Of course, each firm will have very different reasons for establishing a pro bono program and will have adopted different procedures for implementing and managing that program. Nonetheless, it can be helpful for a firm that is considering establishing a new pro bono program or revising an existing pro bono policy to review a variety of policies to get an idea what other firms have incorporated into their pro bono programs.

The first step is to define the firm's pro bono vision or mission statement. Why is pro bono important and what is the firm's commitment to pro bono work? In addition to this statement, which is typically found at the beginning of the pro bono policy, a written pro bono policy should address the following:

- Definition of Pro Bono – What type of work will qualify as pro bono work in your firm? Not all volunteer work typically qualifies as pro bono work. You should consider using the definition of pro bono that has been adopted by the Illinois Supreme Court in Rule 756.
- Process for Taking On a Pro Bono Case – What is the process for running conflicts checks and opening up new pro bono matters?
- Use of Firm Resources for Pro Bono Work – What type of support will be available for pro bono work?
- Recognition of Pro Bono Work – Whether and how much credit will be given for pro bono work? This is probably the most important component of the pro bono policy as it defines, in a quantifiable way, how the firm "values" pro bono contributions by its lawyers.
- Staffing and Supervision of Pro Bono Projects – How will pro bono matters be staffed and who will supervise these matters? Many firms require that all pro bono matters be supervised by a partner or other senior attorney.
- Management of Pro Bono Program – Who will be responsible for managing and overseeing the pro bono program, reviewing and approving new pro bono matters, keeping track of the pro bono work

being performed by lawyers in the firm, encouraging participation in the pro bono program, and working with local pro bono and public interest agencies and firms to identify new projects and cases?

## **What Are Your Attorneys' Pro Bono Interests?**

This is another important preliminary question for which you should seek input from your attorneys in the early stages of developing your pro bono program. Particularly for newer or smaller programs, it is recommended that you consider identifying a limited number of legal aid agency partners that will provide your attorneys with a suitable variety of pro bono options.

Many firms conduct a survey of their attorneys at the outset of their program development to inquire as to their attorneys' interests. Firms also encourage newly hired attorneys to complete a pro bono interest survey upon joining the firm. These surveys vary but may include questions regarding the types of opportunities, i.e. litigation versus non-litigation or specific practice areas; the types of issues confronted or groups served by the opportunities, i.e. domestic violence, children, civil rights; or the amount of time the attorneys would typically expect to spend on a pro bono matter. You might also inquire about organizations with which your attorneys have existing relationships that might be potential partners for your pro bono program.

Based on the interests of your attorneys, you might find that one or two agencies have sufficient opportunities to meet their needs. Or, you might need to identify multiple agency partners to cover the spectrum of interest. If you choose to focus your agency partnerships based on a survey, you will likely find that the selected partner agencies may not meet the interests of all of your attorneys. As part of your pro bono management structure, you may want to allow your attorneys the ability to submit unique opportunities to the pro bono coordinator or committee for approval. This is particularly important when the chosen agency partners do not provide an opportunity that meets the interests of every attorney in the firm. Once you've identified your attorneys' areas of interest, one effective way to communicate with them is to establish an e-mail distribution group by interest area in order to disseminate pro bono opportunities relevant to their area of interest.

## **SAMPLE PRO BONO INTEREST SURVEYS**

*As part of a PILI Pro Bono Consultation, members of the Consultation Team from other Illinois law firms will share sample interest surveys that they have used at their own firms. PILI also maintains a library of sample pro bono interest surveys used by a variety of firms. Please contact PILI's Director of Programs, Michael Bergmann at 312.832.5129 or [mbergmann@pili-law.org](mailto:mbergmann@pili-law.org), for a Pro Bono Consultation.*

## Malpractice Coverage for Firm's Pro Bono Work

Malpractice coverage is an important consideration in developing your pro bono program. Often, pro bono matters are, or can be, covered under your firm's existing malpractice coverage. If not, most legal aid and public interest law agencies carry a policy that will cover pro bono attorneys who handle cases through the agency. There are some, however, that do not. You should consult with any potential agency partner as to whether they provide coverage. The agency should be able to provide you with the pro bono endorsement and coverage from their policy at your request. You may also purchase an additional policy covering your pro bono activities.

There are many malpractice providers for you to choose from. Aside from typical insurance providers, the **National Legal Aid and Defenders Association (NLADA)** also provides malpractice coverage for pro bono volunteers and is a popular option. Your firm must become an NLADA Member in order to purchase insurance through NLADA. Visit NLADA's website at [www.nlada.org/Insurance/](http://www.nlada.org/Insurance/) or contact them directly at 800/725-4513 for more information about their insurance program.

If you are considering a firm/corporation partnership (covered in more detail in Section 5), you should note that many corporations do not have malpractice coverage for pro bono work. If their corporation does not have malpractice coverage, the corporate attorneys will need coverage through an agency or will need to purchase additional coverage. A firm will not typically be able to include the corporate attorneys under the firm's policy.

# Special Considerations for Small Firms in Designing a Pro Bono Program

Much of what is written about successful pro bono programs comes from the marketing departments of large law firms. While there is no question that these firms have served as influential leaders of the pro bono movement, small law firms also have a proud history of commitment to pro bono legal services. There are, however, unique challenges faced by small law firms in establishing and growing a successful program.

## I. The Blank Slate Problem

The person, usually an associate, who wants to start a pro bono program at a small law firm usually starts with a blank slate. No program is on the books and whatever pro bono work that has been done by the firm's lawyers in the past is probably not well coordinated or documented. Fortunately, PILI can provide you with forms and advice like this manual, as well as introductions to legal aid agencies and pro bono coordinators at other law firms, to help get you started.

## II. The Resource Challenge and Solutions

Many lawyers at small firms meet resistance from their partners that the firm cannot "afford" a pro bono program given its limited resources. There are ways to ameliorate this concern:

- Select cases that will not require a large commitment of time or money from the firm and where the case is unlikely to exceed preliminary estimates;
- Require the referring agency to screen matters for you and to train your lawyers in how to properly handle their matters; and
- Partner on matters with other law firms, corporations or legal aid agencies.

## III. The Need for Sounding Boards

Depending on the firm's resources, pro bono lawyers at small firms may need persons outside of their firm to serve as sounding boards on issues that may arise during the course of a pro bono representation. Small firm pro bono coordinators should scrutinize referring agencies to ensure that they do not simply hand off matters to law firms and leave the handling lawyer to his or her own devices. Good legal aid agencies will provide not only continuing staff support but also networks of other pro bono lawyers who can assist you with background on the process or the law, as well as advice on strategy.

## IV. Getting the Word Out

Because small firms often do not have the marketing staff or resources of large firms, it is a challenge to promote the successes of a small firm's pro bono program. Small firms will need to rely on the services of agencies that refer them cases to help disseminate news of their successes. PILI, as well as other bar associations and organizations, can also help to promote your program.

## Developing an Effective Pro Bono Policy

A well drafted and organized pro bono policy is an integral part of a successful pro bono program. While some firms eschew the adoption of policies, developing some parameters around your pro bono program will provide clarity for your attorneys in their pro bono efforts, allow for the success and growth of your program and allow for ease in managing your firm's pro bono efforts.

### I. Define Pro Bono at Your Firm

This is a critical first step in developing your policy. The Illinois Supreme Court has enumerated what counts as pro bono for the annual reporting of pro bono work. However, many firms have their own internal definition that defines pro bono. Your policy should clearly establish what the firm considers to be pro bono work. Some of the possibilities include:

- Direct legal representation for the poor;
- Legal representation to not-for-profit organizations serving the poor; or
- Developing and presenting a training session on a substantive law topic for pro bono attorneys.

Many firms also encourage and promote community service in conjunction with their pro bono policies. Two examples are:

- Serving on a not-for-profit organization's board of directors; or
- Community service activities such as volunteering at a homeless shelter or soup kitchen.

### II. Identifying a Leadership Structure

The typical leadership structure for a firm pro bono program is usually either: (1) the identification of one individual, a pro bono coordinator, who is responsible for administering the firm's program; or (2) the establishment of a committee that will bear responsibility for the program. Typical responsibilities of the pro bono coordinator or committee include:

- Develop, monitor and implement the firm's pro bono policy;
- Review and accept or reject pro bono projects;
- Coordinate and monitor all pro bono activities, ensuring that proper assistance, supervision and resources are available for services;
- Monitor the hours and costs spent on approved pro bono projects;
- Communicate the options and available services which constitute pro bono to all lawyers in the firm, including incoming attorneys not yet familiar with the firm's policies;
- Provide periodic reports on the firm's pro bono activities; and
- Ensure that the same firm standards of quality and care are given to the pro bono client as are given to a paying client.

The role of the coordinator might be a dedicated, full-time individual within your firm. Some firms have non-lawyer pro bono coordinators and others employ a full-time attorney pro bono coordinator. The level of this position, i.e. administrative, manager/director, or partner varies among firms. In some instances, the pro

bono coordinator is an attorney who administers the firm's (or office's) pro bono program on a voluntary basis, in addition to his/her responsibilities as an attorney for the firm. Those involved in a committee structure tend also to be serving voluntarily in that role. A number of firms combine these structures, either utilizing a non-attorney to administer the program under the committee's direction or with local office pro bono chairs. PILI maintains a list of many of the pro bono contacts at Illinois' law firms. While there are a number of structures that firms have successfully used to provide support to their attorneys for pro bono work, the common denominator is strong and visible support from the firm's leadership.

### **III. Process for Approving Pro Bono Matters**

Next, you should explain the approval process at the firm for pro bono matters. You might allow approval to occur from the bottom-up, wherein you allow your attorneys to identify their own opportunities and then present them to the committee or coordinator for approval. You might choose a top-down approach, wherein the committee or coordinator identifies the permitted opportunities. Or, you might choose to permit a combination of these models. If your attorneys are able to identify their own opportunities for approval, determine what information your firm will require in the approval process. Information you might request could include:

- Legal aid agency description;
- Opportunity description;
- Agency process for screening clients;
- Information necessary for conflict check,
- Support and training provided by agency;
- Malpractice insurance provided by agency; and
- Expected duration of representation.

### **IV. Available Firm Support for Pro Bono Matters**

An effective policy will state what firm support and resources are available to attorneys in their pro bono matters. What you will be able to provide is driven by the pro bono program's budget and the size and success of the firm. The greater the support you are able to provide, the easier and more attractive pro bono will be to your attorneys. Types of support that might be available include:

- Use of staff, including paralegals, secretaries, document preparation staff;
- Ordinary costs associated with the matter, including: reproduction, postage, telephone calls, faxing, messenger service, etc.;
- "Extraordinary" costs that may be associated with some matters, including: expert testimony, court reporters, research, travel, service of process fees, etc.

You might choose to set limits and then provide for an approval process for additional funds when necessary. Many legal aid agencies have agreements with low-cost or free process servers, court reporters and other services that you should explore with your agency partner. Also, under 735 ILCS 5/5-105.5, many of the court costs can be waived, without the necessity of a motion, when civil legal services are being provided to an eligible client through a legal aid agency.

## **V. What Credit Will Attorneys Receive from the Firm for Their Pro Bono Work?**

The answer to this question varies widely from firm to firm, depending on the size of the firm and its culture. Some questions to consider regarding this question include:

- Will your firm credit pro bono work towards the firm's billable requirements? If so, how many hours will be credited, i.e. 50, 100, unlimited? If there is a specific limit, is there a process for obtaining approval for additional hours?
- Will pro bono work (or a lack thereof) be considered when determining salary increases, bonuses, and promotions?

Many firms allow their attorneys to credit a certain number of their pro bono hours towards their billable requirement. Some, in addition or as an alternative, factor an attorney's pro bono work (or lack thereof) into salary, bonus and promotion considerations.

## **VI. Supervision of Pro Bono**

Most policies contain a provision regarding the supervision of pro bono cases. Substantive supervision of the pro bono case and attorney are often assigned to a partner. The firms also assign supervisory responsibility to that partner regarding fees and disbursements.

## **SAMPLE PRO BONO POLICIES**

*As part of a PILI Pro Bono Consultation, members of the Consultation Team from other Illinois law firms will share samples of their pro bono policies. PILI also maintains a library of pro bono policies. Please contact PILI's Director of Programs, Michael Bergmann at 312.832.5129 or [mbergmann@pili-law.org](mailto:mbergmann@pili-law.org), for a Pro Bono Consultation.*