SECTION 4:

PRO BONO PROGRAM ADMINISTRATION

Contents

The Life of a Pro Bono Matter

The process of opening and closing new matters is critical to several aspects of effective pro bono management, including eligibility determination, time tracking, conflicts and liability concerns, strategic resource management, and marketing. Case closing communications provide additional safeguards that reinforce the benefits of case opening procedures, particularly conflicts and liability concerns, and facilitate effective attorney-client communications. The key principle to remember is to treat pro bono cases like any other client matter in the firm, recognizing a few special items mentioned below.

I. Opening a New Matter

New pro bono matters should be opened in the same manner as paying client matters, with a few differences. First, the new matter form is typically used by the pro bono administrator or partner to determine whether the matter qualifies as pro bono. This is particularly important for two reasons: (1) to ensure proper record keeping of pro bono hours of timekeepers and (2) to provide timekeepers with billable hour and collection credit, where applicable. Second, it is often used by the accounting department to keep track of costs incurred in the work, which, in some cases, can be recovered through the court system. Third, it is used to create a record of which attorney will be supervising junior attorneys and paralegals who are handling matters. Fourth, it is used to track the types of matters a firm handles and clients served through the pro bono program, which is important for conflicts purposes. Fifth, matter opening information is an excellent source of materials for firms to gather resource allocation information, such as source of opportunities, types of opportunities handled, etc, that can be examined for strategic purposes.

II. Conflicts

As with any other new matter, the responsible attorney must perform a conflicts check on a pro bono matter prior to performing any work. Typically, the conflicts check process is the same for a pro bono matter as it is for any paying client matter. The attorney should identify the name of the client, individual or organization and any related parties, as well as all adverse parties, when performing the conflicts check.

In addition to any legal conflicts that may arise with a prospective pro bono representation, "issue conflicts" can also arise. For example, if a firm has a labor and employment practice that primarily represents employers in employment disputes, there may be some hesitancy to take on employee representation in pro bono matters. It may be prudent to discuss whether the approval of the pro bono leadership, or even all of the partners in a particular firm, is required before taking on such representation or whether these representations should be avoided altogether.

Whenever feasible and consistent with the ethical obligations due to your clients, the firm should request waivers of those conflicts that interfere with pro bono representation. We also encourage law firms to attempt to minimize the extent to which issue conflicts impede their ability to undertake an otherwise valuable pro bono representation.

III. Engagement Letters & Co-Counseling Agreements

A. Engagement Letter

An engagement letter should be required for all pro bono matters in the same manner as with paying client matters. Many firms use a form pro bono engagement letter that deviates somewhat from the form paying client engagement letter. For example, a pro bono engagement letter should be designed to be easily understood by clients who may have limited literacy skills. You should keep your particular client's abilities in mind when you are adding the information concerning the scope of the work. Additionally, an engagement letter should preserve a firm's ability to seek attorneys' fees where appropriate. Finally, firms should narrowly delineate the nature of the matter in the engagement letter so as to avoid any confusion about the extent of the representation.

When working with clients that are institutions such as nonprofits, rather than individuals, firms will want to consider the nature of the relationship. For example, a firm may want to represent the entity on a continuing basis at least with respect to certain issues (for example, employment matters) but may want to consider other matters (for example, transactions) on a case-by-case basis. Also, while indigent clients may not be able to pay for out of pocket expenses incurred during the representation, nonprofit clients may have the resources to pay for certain filing or registration fees, and any expectation to that effect should be described in the engagement letter.

B. Co-Counseled Engagement Letter and Agreement

If a firm is going to co-counsel a matter with a public interest organization, corporation or other private law firm, there may be a need for a separate form co-counseled engagement letter. This letter informs clients that two different entities are representing them and makes it clear that neither counsel is liable for the performance of the other counsel. In addition, you should consider having a written co-counseling agreement for all co-counseled matters to protect all counsel in the event of any dispute in the representation of a particular pro bono client. A sample of such letter is available.

IV. Matter Closing

A pro bono matter is completed per the terms of the engagement letter at the time the substantive portion of the case is finished or because the attorney-client relationship has ceased for any reason that may or may not be connected to the substantive aspects of the matter. In most circumstances where the matter comes to a substantive conclusion, a document memorializes that conclusion. For example, a settlement agreement, court order, closing document, etc. often confirm the final status of a given matter. Where such documents are generated, firms should, as a practice, send the client a cover letter that explains the impact of the document. A letter of this nature can be easily modified to confirm to the client that the firm considers the matter closed.

In other circumstances, a pro bono matter may close when it has progressed to a pre-determined cessation point. For example, many firms agree to accept certain administrative matters up to a certain point in an established process (e.g., asylum matters, denial of government benefits, etc.). In such situations, firms should send the client a closing letter that explains the matter has reached the cessation point and, accordingly, the firm considers the matter closed. It may be advisable to reference the terms set out in the engagement letter. When sending a closing letter to the client where the matter has not come to a substantive close, the firm should explicitly describe relevant filing deadlines and, if possible, enclose necessary forms. Such closing communications should allow time for the client to meet any prevailing time limits or filing deadlines.

It may be that the matter has concluded based on the cessation of the attorney-client relationship irrespective of the substantive status of the underlying matter; in this case, the firm should communicate in writing its decision to terminate the relationship or confirm that the client has made such a decision. In most cases, a brief letter explaining that the firm no longer represents the client is sufficient. When considering whether to discuss substantive issues such as filing deadlines, the firm should balance the duty to inform the client against any possible misunderstandings that the relationship has been in fact discontinued.

SAMPLE PRO BONO LETTERS

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 letters. PILI also maintains a library of pro bono letters. Please contact PILI's Director of Programs, Michael Bergmann at 312.832.5129 or mbergmann@pili-law.org, for a Pro Bono Consultation.

Developing an Effective Pro Bono Intranet

A critical element in the success of a pro bono program is ensuring that your attorneys know about the pro bono program and its policies, are able to identify opportunities of interest to them, and have access to the tools and resources to enable them to handle a matter. Several firms have attempted to address this element though the development of a pro bono intranet site for their attorneys. This is separate and apart from the information available to the public about the pro bono program through the firm's internet site. While it is an excellent tool to supplement your overall pro bono efforts, it should not be relied upon as the only source for communication about your program and available opportunities. The human element is often the most effective means to promote both your program and opportunities.

I. The Basics

The intranet site should be the central place for the basic information relevant to your firm's pro bono program. Some of the basic information that you should consider incorporating into your firm's pro bono intranet site includes:

- Your firm's pro bono policy and an explanation of the management structure of your pro bono program;
- A calendar for relevant pro bono happenings, such as meetings, trainings, and events;
- The latest pro bono news from the firm, agency partners and the larger legal community;
- Forms that attorneys might regularly use in their pro bono matters;
- A library of reference materials applicable to your pro bono matters; and
- Links to other pro bono resources.

II. Pro Bono Interest Survey and Pro Bono Program Feedback

Previously discussed in Section 3, the pro bono interest survey is an important element in determining what pro bono opportunities will engage your attorneys. Posting the survey on your intranet site will allow new attorneys to provide you with feedback about their interests. You might also include a feedback tool to allow attorneys to rate your intranet site and your program as a whole so that you can continually improve your program and engage your attorneys more completely in the program.

III. Opportunities and Related Trainings

Identifying and promoting opportunities should be a key goal of your intranet site. Winston & Strawn began developing their pro bono intranet site in 2004 and the site went live in 2005. One of the key features of the Winston site is their pro bono opportunity template, which contains the following information:

- A description of the work involved;
- An estimate of the amount of time required;
- Information about recent and upcoming training sessions;
- Contact information for the referring legal assistance organization;
- A list of other attorneys who accepted similar matters;

- A list of currently available client matters; and
- A link to applicable forms and material resources.

The sort component of the Winston site also incorporates the factors that, in their experience, attract attorneys to pro bono work. Viewers can choose among five filter criteria set out in a tab format: practice area, time required, public interest law area, client type, and skills development. Thereafter, the view can be sorted by choosing from among increasingly more specific category groups. For example, an attorney who selects the "client type" tab will view 17 discrete client groups including children, disabled, elderly, homeless, etc. When selected, each category group opens to display the title and brief description of every applicable opportunity. Another click reveals the complete template described above.

Winston's site also contains features designed to manage the posted data, and to increase the ease and volume of attorney use. Each opportunity contains an "I'm interested" icon that, when clicked, sends a message to the firm's pro bono director, so that he knows that the viewer wants to learn more and can follow up. The page design provides "editor access" so that the pro bono director can easily add and remove information, providing content control and removing editorial responsibility from the Information Technology staff.

IV. Do Not Reinvent the Wheel

Though the task may sound daunting, not all of the content on your intranet site needs to be a new creation. Many of the items you might choose to include on your site such as news, events and opportunities can be supplemented by RSS feeds from syndicated content sources such as the Associated Press or *The Wall Street Journal*. Illinois' premier internet resource for pro bono attorneys, www.IllinoisProBono.org (discussed in more detail in Section 6), also has content feed that your firm can receive at no cost. If you already have a firm intranet in place, you should also consider linking existing content within your larger site to your pro bono site.

SAMPLE PRO BONO INTRANET SITES

As part of a PILI Pro Bono Consultation, members of the Consultation Team from other Illinois law firms will share their experiences with and samples of pro bono intranet sites. PILI also maintains a library of sample pro bono intranet sites. Please contact PILI's Director of Programs, Michael Bergmann, at 312-832-5129 or mbergmann@pili-law.org, for a Pro Bono Consultation.

Incentives to Promote Pro Bono

Aside from providing billable hour credits or factoring pro bono efforts into promotion, salary increases and bonuses, there are a variety of incentives to use in promoting pro bono within your firm. Many legal services agencies recognize their pro bono attorneys throughout the year, but recognition beyond that is also an important consideration. We describe below some of the possible means to promote and encourage pro bono throughout your firm.

I. Internal Firm Recognition

Many firms hold regular receptions or luncheons to promote the firm's pro bono program and to celebrate the outstanding contributions of pro bono attorneys from the firms. Such events are an excellent way to promote the pro bono program to encourage overall awareness and to increase participation. Whenever possible, the firm should invite representatives from the agencies with which the firm works to these events to build a stronger relationship between the firm and its members and the agency. Many firms also distribute regular pro bono newsletters detailing their pro bono program and their attorneys' efforts. Samples of such newsletters are available as part of PILI's Pro Bono Consultations.

II. PILI Pro Bono Initiative Award and Pro Bono Honor Roll

The Public Interest Law Initiative acknowledges a single organization (law firm or corporation) each year for unprecedented pro bono work in the community with its Pro Bono Initiative Award. The award is given at PILI's Annual Awards Luncheon held in December. For many years, PILI has also recognized the outstanding pro bono contributions of law firms and corporate law departments with the PILI Pro Bono Honor Roll.

For more information about these awards, contact PILI Executive Director, Susan Curry, at 312.832.5128 or scurry@pili-law.org.

III. CBA/CBF Pro Bono and Public Service Annual Awards

Each year the CBF partners with the Chicago Bar Association to recognize exemplary attorneys in our legal community through the CBF/CBA Pro Bono and Public Service Awards.

The Pro Bono and Public Service Awards celebrate outstanding members of the legal profession who have used their talents and resources to improve access to justice for the less fortunate in our community. These six awards are presented each year at one of the signature events in the Chicago legal community, the Annual Pro Bono and Public Service Awards Luncheon.

More information about these awards is available on the CBF website, www.chicagobarfoundation.org, or by contacting CBF Director of Pro Bono, Kelly Tautges at 312-554-8356 or ktautges@chicagobar.org. Additional information regarding the CBF is also included in Section 6 of this Guide.

IV. CBA Liberty Bell Award

Each year as part of its annual Law Week celebration, the Young Lawyers Section of The Chicago Bar Association presents the Liberty Bell Award. This award is presented to a non-lawyer who: (1) has a sense of responsibility for community welfare and public duty under the law; (2) helps others to understand and assert their rights under the law; (3) promotes and encourages respect for and obedience to the law; and (4) assists with the smooth functioning of our system of justice.

For more information about this award, contact Jenni Bertolino at 312.554.2031 or jbertolino@chicagobar.org.

V. Illinois State Bar Association's John McAndrews Award

The Illinois State Bar Association established the John C. McAndrews Pro Bono Award to honor those individual members of the profession, law firms, corporations and affiliated bar associations who have shown extraordinary commitment to providing free legal services to the income eligible or to expanding the availability of legal services to the income eligible. Three awards are given annually; one to an individual, one to a firm and one to an affiliated bar association.

For more information about the McAndrews Award, contact Melinda Bentley at 217-252-1760 or mbentley@isba.org.

VI. American Bar Association Center for Pro Bono

The Standing Committee on Pro Bono and Public Service presents awards annually to individual lawyers and institutions in the legal profession who have demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged. The awards are presented at the Pro Bono Publico Awards Assembly Luncheon during the ABA Annual Meeting, typically held in August.

The Pro Bono Publico Awards program seeks to identify and honor individual lawyers and small and large law firms, government attorney offices, corporate law departments and other institutions in the legal profession that have enhanced the human dignity of others by improving or delivering volunteer legal services to our nation's poor and disadvantaged.

More information about the awards and other ABA awards can be found on the Center's website at http://www.abanet.org/legalservices/probono/nav_awards.shtml. Additional information regarding the ABA Center for Pro Bono is also included in Section 6 of this Guide.

VII. National Legal Aid and Defender Association (NLADA)

Each year at its annual dinner, NLADA honors one or more members of the private bar or corporate community who have demonstrated outstanding leadership in promoting and supporting equal justice with the National Exemplar Awards. In addition, the Charles Dorsey Award is given biennially to an individual who has provided extraordinary and dedicated service to the equal justice community and to organizations that promote expanding and improving access to justice for low-income people. To be eligible to receive this award, an individual must have demonstrated a commitment to equal justice for all through service as an officer, board or committee member of a national or statewide organization devoted to fulfilling the promise of equal justice.

More information about NLADA's awards can be found on their website at http://www.nlada.org/About/About_Awards.

VIII. Pro Bono Institute Awards

The Pro Bono Institute at the Georgetown University Law Center recognizes the pro bono contributions of individuals and organizations through several different awards. The Laurie D. Zelon Pro Bono Award is given each year to an individual or organization that has provided exemplary pro bono service. The Pro Bono Institute's Chesterfield Smith Award recognizes extraordinary courage and commitment to pro bono by a legal leader. This award is not given annually; rather, only when warranted by outstanding achievement.

For more information about the Pro Bono Institute and its awards, visit their website at www.probonoinst.org or contact Pro Bono Institute President, Esther F. Lardent, at 202.662.9699 or elardent@probonoinst.org. Additional information regarding the Pro Bono Institute is also included in Section 6 of this Guide.