

# Law Firm Attorneys Displaced by the Economic Downturn:

## Best Practices and Guidance for Effective Pro Bono Engagement



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## Introduction

Over the past few months and for the foreseeable future, major law firms are experiencing unprecedented contraction and change. Unlike other recent recessions, where countercyclical practices have enabled firms to remain steady, virtually all practice groups and geographical locations have been affected by the current global economic crisis. In the midst of this unrest, anxiety, and uncertainty, it is heartening to see law firm leaders focusing on pro bono as an important issue on their agendas and a problem-solving tool available to them.

For a number of reasons, largely due to the speed at which events on the ground are unfolding or perceived to be developing, we are seeing many laudable, but ad hoc and randomized, attempts at using pro bono to address the effects of the economic situation. The goal of the Pro Bono Institute's Law Firm Pro Bono Project's is to help channel these efforts by offering best practices, tips, and issue spotting to help firms to take full advantage of the opportunities created by the crisis, to bypass avoidable mistakes, and to maximize participation by available attorneys. *General guidance, however, is no substitute for individualized, tailored, confidential technical assistance, and we strongly encourage firm leaders and pro bono staff to contact the Project directly to work through issues of particular concern to them and their firm.* (Pro Bono Institute Member Law Firms and Signatories to the Law Firm Pro Bono Challenge<sup>®</sup> may access this assistance free of charge. Contact information may be found at the end of this guide.) Although there are many commonalities, firms vary greatly in their culture, geographic scope, values, and pro bono needs and capacities. Any decisions made with respect to deferred associates and RIF'd lawyers, and any new programs and policies initiated, must align with each firm's own strategic vision for the future and key business interests and goals as well as the critical legal needs of the low-income and disadvantaged clients who will benefit from expanded pro bono efforts.

In addition to developing this guide and providing confidential, tailored technical assistance to individual firms, the Pro Bono Institute and its Law Firm Pro Bono Project will continue to monitor these issues, providing topical webinars as well as updated publications, as warranted.

## Overview

Attorneys displaced by the economic downturn can be characterized by three basic scenarios:

1. RIFs. There have been thousands of attorneys who have been laid off from their firms as part of “reductions in force,” and we continue to learn of more on a regular basis. As firms make the difficult and emotional decision to lay off lawyers or rescind outstanding offers to recruits, judicial law clerks, and laterals, easing departures from the firm by offering modest financial support and outplacement services to transitioning lawyers that enable them to volunteer with public interest organizations/pro bono programs cushions the blow of the RIF and helps mitigate the impact of RIFs on the lawyers who are leaving and the lawyers who are staying at the firm. Many laid-off attorneys are using this change, unplanned as it may have been, to re-think their professional goals and interests, and many would like to transition to full-time careers in the public interest. Firms that provide a structured on-ramp are providing a critical life preserver to the individual attorney and potentially enormous assets to public interest organizations and their clients. Many organizations will be receptive to hosting such volunteers. For example, a new program offered by the New York City Law Department offers litigation and labor associates, who recently have been laid off or are on the verge of losing their jobs, the chance to gain courtroom experience while continuing their job search. Similar programs could be replicated in other communities and at other organizations. (It is an open question whether public interest organizations will be less willing, even assuming they have the financial resources, to make permanent hires of RIF’d attorneys at the same time they have the possibility of getting an influx of many volunteer lawyers and too early to tell whether a dynamic is being created whereby these attorneys are actually competing against each other for opportunities to serve the public interest.)

RIFs, of course, affect not only the individuals who have been let go, but also create tremendous unease for the lawyers (and other staff) who remain at the firm. Pro bono can be an effective way to help mitigate the anxiety and distress that firm attorneys are currently experiencing. The reasons and ways that pro bono can improve morale are well rehearsed, but it is important to keep them in mind at this time. Top firm leaders must clearly and forcefully reaffirm the firm’s

commitment to pro bono and ensure that other firm managers and leaders do not undermine that message.

2. Excess Capacity. Pro bono can offer a sensitive and meaningful short-term solution to firms dealing with overcapacity. Even after rounds of lay-offs, there are still many attorneys who remain at firms, but are not fully occupied by work for paying clients. These attorneys are particularly well-suited to participate in a rotation program, which many firms already operate or could establish now, since there are available participants. Rotation programs (also called externships, secondments, sabbaticals, and fellowships) are well-established and successful programs in which a law firm “loans” attorneys to a host organization often while retaining them as employees of the firm, and, usually, while paying them a regular (or close to regular) salary. Other programs, which often are developed to cover a longer period of time, provide the attorney with a reasonable stipend, or lump sum payment, and participants are not employed by the firm during the program. These programs provide an innovative and flexible way for firms to increase their pro bono involvement and offer significant opportunities for firm lawyers to develop skills and gain experience, while providing critical legal services for the clients of the host organization. By continually staffing host organizations with firm lawyers, these programs have the effect of providing legal services organizations with the equivalent of full-time lawyers, free of costs.

Obviously, there may be logistical and capacity issues with trying to take existing rotation programs to scale. Whereas one or a handful of associates may have participated in the past, many more may be available to do so now – and for longer periods of time. Nevertheless, building on existing relationships and trying to place attorneys with even a few years’ experience present opportunities, without the challenges of starting to build a program from scratch. Moreover, many legal services organizations that may not be interested in hosting recent law school graduates with deferred start dates, may be more receptive to hosting your associates who have a few years’ experience.

For a number of years, many firms have had in place public interest fellowships available for their summer associates, whereby their summer associates could split their summers, spending half of the summer at the firm and half of the summer at a public interest organization, while

being paid a firm salary. This year, many firms have shortened their summer associate programs across the board by a number of weeks, and a few firms have cancelled their summer programs altogether. As a result, a greater number of law students will now have additional time to dedicate to pro bono work, either with public interest groups located where they have spent their summers or in their home communities, either back in the city where they attend law school or where their families reside.

3. Deferred Incoming Associates. Many major firms are delaying the start date of new associates, either on a mandatory or voluntary basis, for a period of months or even a year or more. Many firms are encouraging their deferred associates to spend the time before their delayed arrival at the firm working at a public interest organization. The potential numbers are staggering and present a significant opportunity, as well as related challenges, for public interest organizations and law firms alike.

There are a number of issues and obstacles that must be addressed in order to successfully deploy deferred associates to public service programs and opportunities. Law firm leaders need to be cognizant of the sensitivities and capacity of struggling and strapped public interest groups to accommodate this wave of volunteers. Public interest groups are reacting to this possibility in a range of ways. Many public interest groups are enthusiastic about the prospects for hosting numerous volunteers. Others, however, are skeptical and suspicious. They are not interested in being babysitters and are concerned, at a time when their own resources and staffing are so pressed, whether and how such programs might work. And, yet other organizations are not even aware of the possibilities. Education, communication, and outreach are critical steps of this process that must not be overlooked or bypassed. Speed may be important in giving adequate notice to incoming associates, but so is taking the time to ask the difficult questions and make prudent decisions that will ensure that deferred associates and the host organizations have positive, successful, and meaningful experiences. In short, do not be deterred if your initial inquiries are met with visceral resistance and a quick “no; we can’t possibly do that.”

## Best Practices and Guidance

As the concept of providing significant pro bono opportunities to displaced associates becomes more widespread, there is a danger that key elements of successful initiatives will be lost or watered down. To assist law firms weighing their options, we offer assessment and analysis of the core features and pitfalls of the models discussed above. For ease of reference, we direct most of these tips to the deferred associate context, but many are likewise applicable to RIF'd attorneys and the more-established rotation/sabbatical programs.

- Free Agency. Many firms have adopted or are considering plans to deal with their deferred associates that place the onus on the individual deferred associates to identify and secure their own public interest positions. That option may seem appealing, since it requires the deferred associates themselves to demonstrate initiative and commitment and ensures that they will find a placement at an organization that they are truly passionate about helping. Nevertheless, it has been our experience that these deferred associates, who are overwhelmingly third-year law students (with a few judicial law clerks thrown into the mix), are not necessarily best situated – in all instances – to serve as their own placement specialists. They may be living and attending school in a location far away from the law firm office they had intended on joining in the fall. They may lack the contacts at the legal services organizations to gain access and entry. Legal services organizations and other nonprofits do not have large recruiting departments, and may not even have one designated staff person, to review incoming resumes and applications. There is a serious likelihood that resumes submitted by deferred associates will simply go unanswered at a well-intentioned, but overwhelmed, organization. Moreover, even if these associates are able to gain a toe-hold, they may not have answers to basic questions. Then it takes the institutional heft and reputation of the law firm to break down barriers and work with the public interest group to create placements for their associates. It may be unrealistic to expect that all deferred associates can create a program and successful experience all on their own. Some may be able to do so, but many more will likely need the firm's help if they are going to be able to take advantage of this opportunity to engage in meaningful public interest work.

Firms have a number of options beyond individual matchmaking. Think creatively about ways to communicate opportunities to your associates; just circulating lists may not suffice. A “job fair” might make sense, where host groups give presentations to your associates about their organizations and opportunities. Or, “job” conference calls and podcasts might enable you to educate your deferred associates who are still in law schools located around the country. These are relatively inexpensive programs and do not require a tremendous amount of coordination or planning.

Likewise, firms might think about organizing teams of deferred associates that can be placed together, which would encourage shared experiences and mutual support. Individuals should not be made to feel that this gap period is a punishment or an unreasonable burden – and a shared, group experience would help combat negative signaling and make the experience more enjoyable and collaborative. Group placements would also simplify administrative issues for the firm as well as the host organization and facilitate supervision, tracking, and contact – and they could be placed at organizations that are of strategic interest to the firm. Groups are better able to tackle a major project on the organization’s wish list and develop meaningful skills that can be linked to the firm’s overall talent management efforts and goals. When the groups return to the firm they will have had an intense bonding experience and be better colleagues with deep connections to each other and to the firm.

- Finding Hosts. Our initial experience indicates that many public interest groups may be reluctant to host deferred associates, and firms are going to have to step into the breach and help work through their reservations with them. At a time when so many organizations are struggling, with sharply reduced revenues and resources and staff lay-offs of their own, the firms may need to offer some level of resource-infusion to help facilitate their capacity to host your deferred associates. Do not be surprised if you are met with a response that the organization would be happy to host, but supervising your associates means taking staff off of other projects and they would like some help or compensation. This aid may come in the form of financial support, office supplies, computer equipment and resources, and supervision or coordination. A willingness to

engage in open dialogue and discussion about the host's needs is critical to ensuring success.

Plan on deploying your full network of contacts to locate appropriate host organizations, including firm alumni who work in public interest and public sector jobs. Reach out to all firm partners to make connections with appropriate organizations with which they are affiliated. These outreach efforts will not only yield exciting and innovative opportunities, but will help you ensure that a wide group within the firm is invested in the success of your efforts.

- Home Grown. Consider hosting some of your own deferred associates, who would be available to work full-time or virtually full-time on the firm's pro bono matters and create new initiatives. This option allows the firm to retain maximum control over supervision, training, evaluation, and overall quality of the experience. It may be politically delicate to have some deferred associates be affiliated with the firm, while others are not afforded this option, but, under certain circumstances, this is a viable option that should not be readily dismissed. An influx of pro bono talent could be especially useful to firms and offices in communities that do not already have a well-developed pro bono infrastructure. Associates could create this infrastructure, for example by coordinating intake and screening for nonprofit clients and providing training materials and programs that could serve to be a long-term investment in the pro bono capacity of that community.
- Beyond the Usual Suspects. For a variety of reasons, it may not be possible for every firm to place all of its deferred associates at a traditional public interest legal services provider. It is worth pursuing a wide variety of options including courts, prosecutors, public defenders, legislatures, boards of education, law school clinics, think tanks and academic institutes, and nonprofit organizations that are not traditional legal services providers. Federal agencies, courts, and other municipalities and offices may have ethical restrictions on their abilities to host attorneys affiliated with law firms, so some due diligence and research may be



required. Of course, placing your associates at nonprofits and other nontraditional hosts can raise additional issues to consider, such as access to legal research materials, malpractice insurance, and proper supervision and training, but they offer tremendous opportunities as well, and are less likely to complete their “hiring” early in the process.

- Clients/In-House Legal Departments. One intriguing idea is to place associates at in-house legal departments that are looking to start or improve their own pro bono programs. Many legal departments have good intentions but lack the necessary infrastructure to launch and maintain a meaningful pro bono program. Associates, with assistance and guidance from senior lawyers at the firm, could bring that capacity and significantly enhance the legal department’s pro bono capacity. When the associates who have spent time in a legal department return to the firm, they will have a first-hand experience of standing in the shoes of their clients, strong relationships, and a greater sensitivity to the needs and concerns of in-house lawyers.

A slight variation on this model is for associates to work with a group of legal departments in one geographic area to provide guidance and infrastructure for all of their pro bono programs. This would be especially helpful for small legal departments, where each one alone cannot support significant pro bono infrastructure, but would benefit from being part of a collective.

- Collaborative Community Initiatives. The tasks of placing and monitoring your associates who are spending time in public service can be daunting. But this is a tremendous opportunity for firms and firm offices in each community to come together, along with the public interest organizations and nonprofits, and coordinate on trainings and other common issues to eliminate redundancies and minimize competition and confusion. It may not be possible in all locations, but city-wide efforts to publicize available opportunities, to develop joint management initiatives, and ease the administrative burden on any one institution may be worth the effort and enable firms to accomplish more on this front than

they could working alone. If your firm is uncomfortable about working with your own deferred associates or sabbatical associates who are not employees of the firm while they are on leave, it may make sense for firms to agree to “trade” associates and run interference for other firm’s associates assuming that the jurisdiction’s ethics rules do not bar such an arrangement. This helps maintain the separation and avoids issues that may create complications once the attorneys return to their home firms. Alternatively, it may be more efficient in your community to designate one firm as the liaison for one host organization, rather than having individual liaisons from each firm with associates working at the organization.

- International. Think big! Many associates will be interested in using the time not just for public service, but for travel and an adventure. Since the gap period may be up to a year (or longer), there is time for a substantive and exotic experience. Although you might assume that the costs associated with an international placement are prohibitive, we know of several instances where client foundations and other international organizations were willing to pay travel and living expenses in exchange for having the services of dedicated, full-time pro bono attorneys. International placements, however, require extra due diligence to ensure that firms are in compliance with any minimum wage, work visa issues, and other benefits mandated by the country where any associates are placed.
- Underserved Locales. Again, think about pursuing opportunities and placements for your associates in other parts of the country, particularly those where the local legal market will not already be supplying a large influx of volunteer manpower, where the need for legal services is great, and with potentially cheaper costs of living. Examples are New Orleans, Las Vegas, Florida, rural California, and Texas. Likewise, associates may want to pursue opportunities in their hometowns, where their law schools or clerkships are located, or where they have family and friends. The more remote the location, the less likelihood of an artificial scarcity of viable placements. On the other hand, firms may need to

work harder to ensure adequate supervision and training and ways to bridge the distance gap.

- Scale. There is tremendous potential in the numbers of available deferred associates to do public interest work during their gap time. But those numbers also pose problems: can public interest groups accommodate thousands of volunteers? We need to re-focus our mindsets from one-off and individual small scale volunteer placements to accommodate the realities associated with the large-scale numbers of volunteers that are possible now. Because of the numbers involved, those firms that hit the ground running and get out of the tracks quickly are likely to have an advantage in placing their associates. Firms need to be sensitive to public organizations being overwhelmed by the number of new volunteers contacting them, as there is currently no national coordinated system in place to manage these opportunities on either the advertisement or the application side.
- Interviews/Selection. Many public interest organizations have expressed a keen interest in being part of the selection process, and firms should keep that issue in mind when contacting them. Small offices are particularly sensitive to issues of “fit” and want to ensure that associates spending time with them are a good fit, in terms of skill sets, experience, expectations, personality, and values. Organizations are concerned that candidates may have no genuine interest in their mission and work and are only coming to them because they have no better alternatives. Some organizations may only be interested in candidates with several years’ experience, while others are open to hosting recent law school graduates. This may not just be a matter of preference, but may be an institutional reality given that the staff may already be stretched thin or that they may not have appropriate staff in place to adequately train and manage your volunteers, or even to respond to volunteer requests. Firms should, therefore, factor into their timelines the lagtime necessary for candidates to apply to host organizations, arrange interviews, and consider and evaluate their options.

- Supervision/Evaluation. Is the law firm prepared to play any role in the supervision and evaluation of associates working at legal services organizations or other public interest placements? If the firm wants to ensure that its associates are obtaining certain skills and having a meaningful experience that is on track with overall talent management needs, then having a hand in the associate's experience may make sense, if feasible. On the other hand, if the associate is not considered an employee of the firm, it may blur lines and create unnecessary confusion and logistical hassles. At the very least, the firm should confer with the host organizations about its evaluation needs and expectations and discuss whether a coordinated effort is possible and the nature of that effort.

Some potential host organizations have expressed concerns about their capacity to adequately train and supervise a large new crop of full-time volunteers. Meaningful training and supervision takes staff attorneys away from other projects, and a firm may need to think about ways that it can step into this breach and provide additional support to the host organization.

- Compensation. Firms are using a variety of compensation schemes with regards to their displaced associates. Some are paying monthly stipends, while others are offering a lump sum at the beginning of the time period. Some firms are paying all of their deferred associates a set amount, while others are offering more – “sweeteners” – to those who are engaged in public interest work. Some of these deferred and furloughed associates are remaining employees of the firm during their gap periods, while others are not. These issues are sensitive internal matters and need to be carefully resolved by each firm. The Pro Bono Institute and its Law Firm Pro Bono Project are available to work with firm leaders and HR staff to identify and address the issues raised by various arrangements.

One issue that firms should be particularly sensitive to is how the associates' compensation level appears to the public interest host organization and its employees, where the pay scale is radically different. At least one firm is offering a stipend that is similar to what public interest lawyers earn, and it will be interesting to see if that is enough of an incentive for their associates to participate. Other firms are offering \$50,000 to \$75,000 (and yet others are offering a portion, such as one third, of their

current annual salary to associates who wish to take leave to pursue public interest opportunities), amounts which are the equivalent of what senior attorneys, with decades of experience, in many public interest organizations earn. It is important to be aware of this dynamic, since it could lead to morale problems at the host organization and resentment towards the volunteers. Compensation is not a new issue and legal services organizations have been hosting firm rotation associates who are being paid large salaries for many years, but it is prudent to be especially sensitive during this economic crisis. Additionally, many legal services organizations are unionized and firms should keep that in mind as their initiatives are enacted. Firms should remind associates of their tax obligations, particularly if they will be treating them as self-employed, and will not be withholding taxes from their stipends or lump sum payments. Firms should also clarify whether they expect associates to be at the public interest organizations on a full-time basis, or whether their programs will accommodate part-time, flex-time, and other creative arrangements that may be necessary, either at the behest of the associate or the host organization.

- Benefits. Public interest organizations and nonprofits have expressed particular concerns about how associates will obtain health insurance, since they are not in a position to provide this benefit to volunteers. Current associates and deferred associates may not all be similarly situated in this regard. If the current associates are not employees of the firm during their time participating in the public interest program, firms should consider paying their COBRA costs or arranging to otherwise continue their health benefits during the duration of the gap period. Several firms are doing just that. Not all associates will be able to obtain coverage from family members or be in a position to purchase it themselves, and this should not preclude their ability to participate in public service. Indeed, many public interest organizations are not willing to host associates who do not have health insurance, since it violates their value system.

Likewise, firms should consider making arrangements for new associates whose start dates are deferred, who unlike current employees, may not even be eligible for COBRA unless an employment relationship can first be established and then terminated. Firms could cover the costs of the associates extending their health insurance from their

universities or extending COBRA coverage for judicial law clerks. Alternatively, firms could purchase a new group health plan to cover these lawyers, or offer an additional stipend to enable these deferred associates to purchase their own coverage on the open market (estimates of annual premiums range from \$800 to \$2,000).

In addition, firms must decide how to treat long-term disability, life insurance benefits, and other pension and retirement benefits that they may be providing to currently-employed associates. One firm is offering to reimburse outstanding law school student loans (if any) at their current repayment rate to a maximum of \$1,000 a month. Firms may want to determine whether any of the displaced associates will become eligible under student loan repayment programs administered by their law schools and other sources and take the terms of those programs and related trigger amounts into account when crafting these programs. Firms should assess what other benefits may be at issue or may pose stumbling blocks to participation in these opportunities and decide which benefits they may be willing (or not willing) to offer during gap periods and articulate clear guidelines.

- Technology. One potential obstacle to finding placements is that many host organizations do not have enough computers or phones for their staff, let alone a large number of new full-time volunteers. If firms have extra laptops, PCs, faxes, printers, and phones, they should consider making them available to deferred associates and/or their host organizations. In addition firms should consider deploying their IT professionals to assist with any installation and troubleshooting.
- Malpractice Insurance. If associates are not going to be considered employees of the firm they most likely will not be covered by the firm's malpractice insurance policy. This is not a barrier to volunteering at most legal services organizations or pro bono programs, since they provide malpractice coverage to their volunteers. This, however, is an obstacle that needs to be addressed for associates who want to secure a placement at a nonprofit organization or other host that is not a traditional legal services provider, NGO, government agency, etc., that may not have the ability to provide such coverage. An

umbrella “feeder” organization or bar group might be able to step into the breach in such situations or the firm itself may be able to obtain additional coverage.

- Bar Dues and CLE. Associates may be accustomed to the firm paying their bar dues and costs of satisfying their CLE requirements. Some firms are continuing to pay the fees of an attorney’s primary bar registration during this time. While firms may not be willing to pay for the full range of CLE-associated costs, some firms are at least inviting associates to attend approved local firm-sponsored CLE programs and other appropriate events. Moreover, firms are entitled to expect that their associates will remain current with their CLE requirements and bar registrations at all times, and they should make their expectation clear. Firms should clearly articulate whether (and to what extent) they will be continuing with these benefits while the associate is on-leave doing public interest work.
- Unauthorized Practice of Law. The majority of incoming associates with deferred start dates will not yet be admitted members of the bar, when they begin their public interest placements. Therefore, issues pertaining to the unauthorized practice of law may arise and should be kept in mind when finding appropriate projects and host organizations. Likewise, if associates spend sabbatical time at a host organization outside of the jurisdiction in which they practice, unauthorized practice issues may arise. Lack of a bar admission is not an outright barrier to participation, and there are numerous projects and engagements that can be tailored to lawyers without any or with pending bar admissions, particularly if they have appropriate supervision. Firms and the associates themselves are reminded to research the specific rules in their jurisdiction(s). Another useful reference tool is “The CPBO Guide to In-House Corporate Pro Bono Multi-Jurisdictional Practice (MJP) Issues” available at [www.cpbo.org](http://www.cpbo.org).
- Conflicts. Likewise, firms are encouraged to research the specific rules in their jurisdiction(s) regarding conflicts generally, and imputed disqualification in particular, so that host organizations and pro bono projects are selected that are appropriate and will not cause avoidable problems for either the firm or the associate down the road. If ethical screens need to be established, with a bit of research and forethought, they can most

likely be crafted at the outset in an informed and unobtrusive manner. Many conflicts rules turn on whether the associate is an “employee” at the time of the work for the public interest organization and particularized determinations will have to be made. Business conflicts should also be taken into account before placement decisions are finalized.

- Space. One potential and practical obstacle to firms being able to place a large number of their associates at host organizations is the simple lack of office space. Be creative as to how you might be able to offer more workable space to enable more of your associates to participate in pro bono work during their gap periods: Does the firm have vacant office space (either in its main offices, in satellite, auxiliary space, or even carrels in the library)? Do clients have space available? Does the local bar association? Do the courts? Do local law schools? Do other law firms or businesses nearby? Does the type of work lend itself to telecommuting or only needing an office on occasion?
- Pro Bono versus Community Service. Firms are investigating many substantive and meaningful volunteer opportunities that may not be technically “pro bono” legal services. Do not discount them out of hand, particularly if more traditional pro bono opportunities become hard to find. There is a range of civic engagement that may be attractive to associates, and many of these experiences lend themselves to significant leadership development and project management and other “talent management” goals that a firm may have in place.
- Seniority. Many associates are concerned about how time away from the firm will be treated upon their return. If determinations of class rank, status, and compensation upon their return will be based on the nature of the work done and the quality of the experience on an individual basis, firms should make this policy clear. Likewise, if a uniform policy of treatment for all associates is contemplated, that should also be made clear. Seniority and class rank decisions are important to the individual and the firm alike and emphasize the need for law firms to create systems to monitor and evaluate the experiences that their associates are having. Likewise, if the firm is devising a public interest program with the real goal of assisting with its attrition levels and is not guaranteeing that associates can



return to the firm, they need to be open, honest, and transparent about their plans and limitations.

- Mandatory/Voluntary. Most firms are making public service opportunities available on a “voluntary” or optional basis; but those firms that are offering extra compensation for public service may, in effect, be making it “mandatory” for those deferred associates who need the extra income. One concern that firms should bear in mind is that at least some displaced associates may not have a strong desire to spend this time in public service and may have no enthusiasm or interest in this type of work. Public interest organizations are concerned about the possibility of hosting associates whose commitment to the work will be less than wholehearted. Firms should keep this concern in mind when crafting their policies and formulating their messages.

Some firms are opening their public interest programs to all of their attorneys without exception, while others are establishing eligibility requirements and a departmental approval process. Firms are also employing various timing scenarios for their programs – some expect their associates to begin their placements this fall, whereas others expect placements to begin as early as May 2009.

- Termination. Several public interest organizations have expressed the desire to confirm that they have the right to “terminate” or discipline a volunteer associate and under what circumstances. Firms should make clear to their associates that they will be accountable to their host organizations and should not take the relationship for granted. They will be held to the same standards of professionalism and excellence as they would if they were working directly for partners at the firm. The firm should also establish a policy and procedures for dealing with any problems that arise (i.e., who at the firm should be contacted, who will be responsible for decisionmaking, whether compensation paid is dependent on staying at the host organization and what happens to the stipend if the arrangement is ended prematurely, etc.).
- Orientation. Attorneys who come from high-powered and resource-rich environments may have, at times, expectations that don’t travel well. Grunt work may be a necessity at

certain times for everyone – including well-educated and well-credentialed attorneys. It would behoove firms to conduct orientations for their associates to help orient them to the different world that they are entering, including the differential in available resources, and to create reasonable expectations to avoid disheartening experiences. Moreover, these types of orientation sessions would lend themselves to consolidation, where associates from many firms being placed at a variety of organizations could go through a common training, without the need for each institution or organization to plan its own.

- Fundraising Expectations. One of the long-term benefits of placing associates at host organizations is the potential for creating or enhancing the relationship between the firm and the organization. It is entirely possible, however, that an additional long-term benefit that may be in the mind of the host organization is that the firm will become a benefactor in the future when the economy improves, if its associates have positive experiences. That expectation may be unrealistic, but firms should be aware of the possibility.

Firms should also take care not to diminish their donations to host organizations by any amounts donated to defray overhead expenses, training, and other support (including the costs of the stipends themselves) that are incurred in an effort to ensure that associates have a successful experience. These relationship investment costs may be a necessary part of the firm's commitment to the program and should not undercut the firm's overall charitable giving program.

- Works in Progress. It would be unrealistic to think that at the time associates leave their host organizations and (re)join their firms, all of their ongoing matters will have been resolved. Firms should develop a plan for handling open matters and contemplate that associates would be bringing with them to the firm a number of active pro bono matters. Likewise, when attorneys leave their firms permanently (either voluntarily or involuntarily) their open pro bono matters should not be returned to the referring public interest organization. Rather, the firm should arrange for a smooth and appropriate transition of the matter to another firm attorney. We have heard of some instances where departing attorneys have taken their pending pro bono matters with them, and that may be an appropriate response as well. Indeed, one firm has supported a RIF'd associate in her

efforts to continue with an ongoing pro bono matter, by continuing to pay for disbursements and other expenses incurred.

- Consult with All Firm Professionals and Departments. As the discussion above makes abundantly clear, there are complicated institutional questions involved in designing and implementing these public service programs. A wide swath of firm leadership and management needs to be involved in the consultation and decisionmaking process. In addition to firm management and the pro bono responsible staff, if any, professionals from Human Resources, Recruiting, Marketing, Professional Development and Training, employment and labor counsel, ethics counsel, practice group leaders, and the associates' committee as well as other relevant committees, should be involved, and in many instances, playing a primary role. This is a unique opportunity to integrate your pro bono goals and efforts with a wide-range of your firm's strategic goals and doing so will help ensure the success of your efforts. Human Resources, Marketing, and Professional Development professionals should especially be engaged to help craft a consistent message about the reasons for the creation of your program and the details of its implementation.

These programs take a great deal of minding and tending to ensure that the participants are well-matched to their hosts and receive appropriate supervision, training, and feedback. Administering such a program could easily overwhelm a small pro bono department, if they were the only resources available at the firm to manage the issues that will arise. If done well, these programs can help your associates learn skills and make meaningful progress in their careers at a time when they might otherwise fall behind.

- "Counting" the Hours. While the driving force behind these programs should not be whether the pro bono hours of displaced associates "count" for purposes of the Pro Bono Institute's Law Firm Pro Bono Challenge<sup>®</sup> or any other internal or external standard, it may be possible to design programs where these hours (or some of these hours) do "count." For example, time spent at externships or rotations, by associates who continue to be employees of the firm, should be counted as pro bono time for purposes of the Challenge. Since the associates continue to work directly for the firm, their hours are

considered billable hours when it comes to both paying and non-paying clients. “What counts” questions are subtle and fact-based, and should be submitted in writing to the Law Firm Pro Bono Project.

## **Conclusion**

We all know that change is difficult and that this is a tremendous time of anxiety and uncertainty for law firms. It is also, however, a time for transformation and innovation. All aspects of the firm are fair game for re-examination and re-invention, including pro bono. This is a pivotal moment, and the potential exists for a true revolution in public service and equal justice. A generation of young attorneys is available to be inculcated with a pro bono ethic that will stay with them for the rest of their careers. Moreover, they will then (re)join your firms better trained, better prepared, and in higher spirits than otherwise would be possible under the circumstances.

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