



October 12, 2010

Los Angeles

## **EXPANDING PRO BONO PARTNERSHIPS IN CALIFORNIA TO IDENTIFY AND SUPPORT IMPACT WORK**

**1:30 PM to 2:50 PM**

Moderators: Melinda Bird, Disability Rights California, and Amos Hartston, Latham & Watkins

### **AGENDA**

- Welcome and Goals for the Session
- Part 1: Understanding and expanding the system for identifying and supporting impact work in California through pro bono partnerships.
  - Understanding the system: What is working? Where are there cases that are replicable? Are there gaps?
  - Expanding the system: What supports might serve to expand the system's capacity to bring increased impact litigation in California in the future?
- Part 2: Identifying and gathering feedback on some areas for potential future litigation
- Next Steps and Closing

### **NOTES FROM THE SESSION**

#### **Next Steps and Closing:**

At the end of the breakout session, the participants decided that the logical next steps are to:

- Share the list of current potential impact matters (some of which were shared during the breakout session) with all of the law firm representatives at the conference (regardless of whether they actually attended the impact session), and
- Convene a subsequent conference call to talk in more detail about the various potential matters and strategies for moving forward, so that firms could have more detailed internal conversations about which matters they would be interested in taking on. The group and discussed that a subsequent conference call (or two) would allow multi-firm participation and allow the senior litigators at firms to be involved in these next step conversations.
- PIC will provide staffing support to convene the next conference call.

#### **Understanding the system: What is working? Where are there cases that are replicable? Are there gaps?**

- Impact cases come from local field programs, and then either directly to pro bono firms or through support centers and then to pro bono firms.
- Placing cases via email works when the emails are short and to the point. It is best when the nonprofits have some consistent internal system for pitching impact matters.

- Law firms are seeking impact work, even in the current economy. It may take a bit longer to approve impact matters in comparison to individual cases, and it can be a bit more complicated to staff them. There are cost concerns and conflicts (both actual client conflicts as well as positional conflicts).
- Nonprofits have systems for pitching and placing cases - some place impact work primarily with the firms of board members; others use impact matters for building relationships with new firms.
- Impact cases achieve long-term and high-yield results for low-income and underserved Californians.
- There is often good collaboration between nonprofits - both in consulting on possible impact matters and co-counseling.
- Firms rely on nonprofits to identify and work up the potential impact cases. However, there is a question in the community about whether this could change and law firms could bring in pro bono support and resources in the earlier stages of identifying and researching cases.
- There is a sense that the potential impact matters abound, and that nonprofits must choose between a variety of possible impact litigation cases.
- There have been successful cases that involved co-counseling with law firms and multiple nonprofits.
- Some firms will pre-identify a certain area of law in which they will consider (and are more likely to approve) possible impact cases.
- Nonprofits do need to (and often do) pitch impact cases differently than they do individual matters.
- The firms and nonprofits bring complimentary strengths to the litigation.
- Unlike some case types involving individual matters, with impact litigation the firms are operating within areas of their internal expertise and strength - litigation and strategy. Meanwhile, nonprofits bring the substantive expertise.
- Nonprofits define the desired "impact" - or the goals of bringing the litigation, and criteria for success. Firms may, out of habit, define "success" as litigating the case to the utmost.
- Some firms are willing to do repeated impact cases in the same substantive areas, which then deepens the firm's own expertise in that area.
- Nonprofits should think about possible impact issues (as well as the likely individual matters) at the onset of the design and implementation of any new pro bono project; thinking about possible sources of impact work should be build in to pro bono project development.
- Firms and nonprofits need to discuss and address the question of who is the ultimate client in terms of settlement and case outcomes; agendas may differ.
- The use of organizational plaintiffs can be helpful.
- Firms and nonprofits should deal with issues upfront, including decision-making structure, who will serve as lead counsel, the roles of all the firms/nonprofits involved, and address the goals, outcomes, costs, strategies, fees, etc. All of these are usually addressed in co-counsel agreements.

**Expanding the system: What supports might serve to expand the system's capacity to bring increased impact litigation in California in the future?**

- A project to identify the most common issues that should be addressed in co-counseling agreements; and maybe some sharing of co-counseling agreement clauses (samples or templates).
- A similar project to share templates or samples of engagement letters. [There was then a group discussion about whether or not different firms have leeway to make changes to client engagement letters or not.]
- A discussion of the different ways firms and nonprofits have been handling attorney fees issues.
- A discussion to explore the model for pro bono involvement in developing impact cases- including a bifurcation of the case into investigation and reports before there is a defendant identified, and then subsequent litigation. Develop a more detailed concept of pre-litigation engagement and how this works.
- Nonprofits would like a survey of law firms to better understand their preferences in terms of impact work, types of cases, what areas of law they prefer, etc.
- What supports would be helpful to involve smaller nonprofits and/or rural nonprofits in pro bono partnerships to support impact work? It helps if the cases can be litigated locally (to the firm's office). Is there some use of technology that can make it easier to partner or co-counsel with rural programs?
- Better coordination among the California nonprofits - a more coherent system and strategies for identifying and prioritizing among possible impact litigation, as well as pitching cases to and placing matters with law firms.
- The potential use of law students to develop impact cases (particularly perhaps in rural areas). Law firm and law school partnerships to develop and work up impact matters. [Examples of models at UC Irvine and UCLA.]
- Explore whether there is some way to share the costs? This makes it easier to "sell" the impact cases within law firms.
- Open up law firm training on litigation topics and skills to nonprofit attorneys to help newer generations of nonprofit attorneys more comfortable working in the area of litigation.
- A conversation about better ways to deal with costs and the need for experts. Can the nonprofits help identify real experts that do not cost money? Recommendation that at the next conference/summit on pro bono, time be set aside to talk just about setting up trainings and dealing with experts.

**Identifying and gathering feedback on some areas for potential future litigation**

1. Language Access to services/public benefits provided by county (and state) agencies
  - These cases are "win-able."
  - Think about the use of law students (identifying clients, monitoring the agencies, taking declarations, etc).
  - Could be brought statewide - multiple partnerships between local legal aid nonprofits and firms bringing similar separate cases all over the state.

- There is an existing group (Public Benefits & Justice) that has spent the last years working on notice issues in public benefits, so the language access issues are ripe.
- There is the possibility of federal and state cases.
- Question: is there also a possible federal legislative fix? The consensus was that it was worth exploring more with the firms with a DC presence. These types of legislative advocacy matters are easier to bring if a large number of nonprofits all agree that it is the "right" fix.
- Next Steps: should there be two working groups - one exploring litigation and one exploring legislation?

## 2. Housing Matters - Relating to Either Housing Element or Housing Redevelopment

- These issues are timely - some jurisdictions have been surveyed and found to be out of compliance.
- These cases need to be brought on a large, statewide basis in order to ensure compliance (same idea about the possibility of a variety of firm/nonprofit partnerships bringing similar cases around the state).
- Need to explore possible positional conflicts, determine what is the goal of bringing these cases, what is the "win."
- Is there a possibility of bringing in the firm's clients working on redevelopment? Is that part of the solution?

## 3. Children and Special Education

- School to Prison Pipeline: replicate successful litigation from other states in California; data needs to be gathered; again could have different pairings of law firms and nonprofit providers working together around the state to file complaints against different school districts.
- The Governor's Blue Pencil of Funds for Mental Health in Special Education (AB 3632 funds): This is an urgent matter that needs to be brought quickly. Calls are being convened by organizations around the state. Funds have been slashed for mental health services for approximately 15,000 receiving mental health supports as part of their educational plans.

## 4. Other replicable models:

- There are several examples in the area of foster care.
- Immigration matters: such as enforcement of settlement (more like an investigation), or investigation and report on immigration reports to key policymakers.