

PUBLIC INTEREST CLEARINGHOUSE

California Pro Bono Best Practices Guide

Chapter III: Intake and Referral Issues

2010

Working Draft

October 2010

California Pro Bono Best Practices Guide
Chapter III: Intake and Referral Issues
October 2010

A product of the Public Interest Clearinghouse
in collaboration with the State Bar of California
and the Pro Bono Best Practices Writing Group

Preface: Introduction to the Best Practices Guide

In October 2008, the State Bar of California and the Public Interest Clearinghouse (PIC) convened the first-ever statewide California Pro Bono Summit, which brought together a small number of representatives from the legal services provider community and large law firms with offices in California to undertake strategic planning discussions on how to coordinate, expand, and continue to improve pro bono partnerships in the state. One of the ideas generated at the 2008 Summit was the creation of a “California Pro Bono Best Practices Guide,” a comprehensive “how to” manual for legal services providers and law firms on developing and administering the best possible pro bono projects. A working group was formed which then proposed a document that would outline the best practices for developing and maintaining a successful pro bono program for both legal services providers and large law firms in California.

At the 2009 California Pro Bono Summit, participants provided comments on the outline, proposed content, and prioritized among the list of possible chapters. Participants agreed on a guide to consist of seven chapters spanning pre-referral issues to case closure. The guide would also offer legal services providers tips and strategies on how to foster valuable partnerships with law firms, clarify law firm expectations, and provide detailed examples of effective pro bono strategies.

2009 Summit participants prioritized the chapter focusing on the initial screening of potential clients by legal services providers, as well as issues that may surface as a case is referred to and accepted by a law firm. Participants also formed a writing group, staffed by PIC, including representatives from law firms, legal services providers, and the State Bar of California. The Writing Group produced the following document, which will eventually become the third chapter of the larger Best Practices Guide. Chapter Three includes seven subparts covering the following subjects: (1) institutionalizing front-end communication; (2) qualification as pro bono; (3) initial screening by legal services providers; (4) dealing with conflicts of interest; (5) circulating opportunities; (6) acceptance of pro bono matters; and (7) clarifying expectations.

Please note that this is a working draft of Chapter Three. PIC will be updating the content of this chapter as the remaining chapters are written. To provide comments or feedback on the substantive contents of Chapter Three, please submit a Comments Form by visiting our website at: www.pic.org/ProBonoGuide. The initial period for online comments will run from October 12 to November 23, 2010.

Members of the Pro Bono Best Practices Guide, Chapter Three Writing Group

PIC extends a special note of appreciation to all the members of the Pro Bono Best Practices Writing Group. Without their insightful comments, wealth of experience, honest feedback, and dedication this chapter would not have been possible.

David Lash (Chair), O'Melveny & Myers LLP

Diego Cartagena, Alliance for Children's Rights

Renee Glover Chantler, DLA Piper

David Daniels, Public Counsel

Tai Glenn, Legal Aid Foundation of Los Angeles

Edward Lodgen, Robins, Kaplan, Miller & Ciresi LLP

Rodney Low, State Bar of California, Office of Legal Services

Janet Seldon, Legal Aid Society of San Mateo County

Lani Woltmann, Disability Rights Legal Center

Chapter III – Best Practices in Pitching and Placing Pro Bono Matters

Table of Contents

<i>I. Institutionalizing Front-End Communication</i>	5
<i>II. Qualification as Pro Bono</i>	7
A. ABA Model Rules of Professional Conduct	7
B. Pro Bono Institute’s Law Firm Pro Bono Challenge	8
C. Association of Pro Bono Counsel (APBCo)	9
D. Pro Bono Rankings and Law Firm Definitions	10
<i>III. Initial Screening by Legal Services Providers</i>	10
A. Financial Eligibility	11
B. Substantive Merits of the Case	14
C. Timing and Deadlines	15
D. Client Challenges	17
1. The Need For Language Interpretation	18
2. Working with People with Disabilities and Possible Accommodations	19
3. The Client’s Present or Past Experience of Violence	20
4. Additional Challenges in Working with Low-Income Clients	21
<i>IV. Dealing with Conflicts of Interest</i>	22
A. Actual Conflicts	23
B. Late Arising and Potential Conflicts	25
C. Communication About Law Firm Culture and “Issue Conflicts”	26
D. Public Relations Conflicts	27
<i>V. Circulating Opportunities</i>	28
A. How to Distribute or Receive a Potential Pro Bono Matter	29
B. What Should Go in the Matter Description	31
C. Time Estimates	32
D. Determining Who Should Receive Pro Bono Pitches	33

E.	Methodologies for Placing Cases	34
VI. Acceptance of Pro Bono Matters		36
A.	Attorney Selection and Assignment	36
B.	Timing of Acceptance	37
VII. Clarifying Expectations		38
A.	Best Practices for Law Firms in Handling Pro Bono Matters	39
	1. Standard of Care	39
	2. Supervision	39
	3. Continuity of Representation	39
	4. Fully Utilize the Support and Resources Provided by the Legal Services Provider	40
	5. Communicating About Resource Disparities	40
	6. Legal Services Provider's Ongoing Role in the Matter	40
B.	Access to Mentoring and Ongoing Support from the Provider	41
C.	Ongoing Communication and Status Updates	43
D.	Scope of Representation	44
VIII. Summary and Conclusion		45
Appendix: Checklist of Issues to Consider in any Initial Conversation about a New Pro Bono Project or Relationship		46
Appendix: Additional Resources		47

California Pro Bono Best Practices Guide
Chapter III. Intake and Referral Issues
Working Draft: October 2010

This document will eventually become the third chapter of the larger “California Pro Bono Best Practices Guide.” This chapter covers seven subjects: (1) institutionalizing front-end communication; (2) qualification as pro bono; (3) initial screening by legal services providers;¹ (4) dealing with conflicts of interest; (5) circulating opportunities; (6) acceptance of pro bono matters; and (7) clarifying expectations. This is a working draft, and the Public Interest Clearinghouse welcomes comments on the draft through an online system at www.pic.org/ProBonoGuide from October 12 through November 23, 2010.



Key Concepts and Recommendations: The beginning of each section has a text box with this “key” symbol which contains the key concepts and recommendations discussed in more length in the section. We hope that including these text boxes will allow readers to skim the document for particular content areas, as needed.

I. Institutionalizing Front-End Communication



- ◆ The efficient management and distribution of pro bono matters is enhanced by having designated law firm representatives oversee the institutionalization of the relationship between legal services providers and law firms.
- ◆ Front-end communication between legal services providers and firms that sets forth the expectations and interests of both is essential to a positive working relationship and will enhance the delivery of pro bono services.

The California legal community has experienced a shift in the structure of pro bono partnerships between large law firms and legal services providers over the past decade. California has always had a number of legal services providers that provided services to clients predominantly through pro bono partnerships. Many of these providers have existing and institutionalized relationships with law firms. However, for many legal services providers, pro bono relationships with large law firms were historically based in large part on the individual relationships between one legal services staff attorney and one attorney at the firm. Pro bono opportunities were made available to firms on an ad hoc basis through those one-on-one

¹ For consistency, this Guide will refer to nonprofits that provide direct legal assistance will as “legal services providers.” This term includes the IOLTA-funded nonprofits that focus on providing free civil legal assistance to Californians who are low-income, senior citizens, or persons with disabilities and also includes other legal nonprofits with pro bono programs.

relationships. Over the past ten years, many large law firms and legal services providers have established a position within organization responsible for managing pro bono relationships and distributing or placing pro bono matters. This shift had led to a greater institutionalization of the relationships between legal services providers and large firms, substantially increasing the overall capacity of the legal community to engage private-sector resources in assisting low-income Californians.

This transition to a more institutionalized approach to pro bono has necessarily changed both parties' expectations around the very process by which pro bono matters are screened, assessed, and distributed to law firms. In addition, law firms and legal services providers now operate much more as partners in joint projects and as repeat players in the pro bono field. However, given the historical nature of pro bono as relying on ad hoc relationships, some providers and firms have not made the cultural shift to identifying and discussing each entity's expectations in these longer-lasting pro bono relationships.

Therefore, the primary recommendation of this chapter is that large law firms and legal services providers engage in a frank conversation about their expectations for the relationship, focusing on each of the sub-topics presented below, at the onset of every new pro bono project or relationship. Addressing these issues at the beginning of new projects or relationships, rather than mid-stream, will help promote more effective interaction and elevate the quality of the pro bono projects developed in California. This communication is key as providers and firms assess and continue to hone their internal pro bono policies, expectations, and preferences.

Legal services providers should be prepared to describe to new law firm partners the various policies and procedures they use in each of the key areas addressed in this chapter. Law firms should similarly be able to identify their expectations of legal services providers in each of these areas, as well as be able to articulate to the legal services providers their firm's policies and practices, particularly around conflicts checks, approval and placement of cases, and reporting procedures. A check list of suggested topics for facilitating initial discussion between legal services providers and law firms is provided as an appendix.

II. Qualification as Pro Bono



- ◆ At the beginning of any pro bono relationship, law firms should articulate what definition of pro bono is used internally, both for approval and reporting purposes, and legal services providers should be prepared to identify how the potential pro bono matters fit within those definitions.
- ◆ The ABA, Pro Bono Institute, and individual law firms have worked to define the types of cases that constitute eligible pro bono matters. All pro bono entities should be familiar with these varying definitions.

Before a law firm and a legal services provider begin new pro bono programs, it is important to consider what types of cases will qualify as pro bono matters. While there are many definitions of pro bono, the qualifications applied by the American Bar Association (ABA), Pro Bono Institute (PBI), and reputable pro bono rankings are generally accepted by most law firms as well as the California legal services community. The Association of Pro Bono Counsel (APBCo) has also provided guidance regarding the definition of pro bono for law firms.

A. ABA Model Rules of Professional Conduct



- ◆ The ABA encourages every lawyer to undertake at least 50 hours of pro bono work every year.
- ◆ The ABA's definition of pro bono is widely accepted in the legal community.

ABA Model Rule of Professional Conduct 6.1 states that every lawyer “should aspire to render at least (50) hours of pro bono publico legal services per year” to persons of limited means or to organizations addressing the needs of such persons.² To meet the 50-hour goal, Rule 6.1 states that lawyers can provide legal services to individuals or groups striving “to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their

² MODEL RULES OF PROFESSIONAL CONDUCT RULE 6.1 (1983).

organizational purposes.”³ Other entities have built on the ABA’s language to craft their own definition of pro bono.⁴

B. Pro Bono Institute’s Law Firm Pro Bono Challenge



- ◆ Large law firms that commit to the Pro Bono Institute’s Law Firm Pro Bono Challenge make an annual pledge to devote at least 3% or 5% of their annual billable hours to pro bono work.
- ◆ The Challenge has become one of the country’s most widely aspirational pro bono standards.
- ◆ The Pro Bono Institute also published several articles that explain “what counts” as pro bono under the Challenge.

Developed by some of the most influential law firm leaders and corporate general counsels in the country, the Pro Bono Institute’s Law Firm Pro Bono Challenge (“Challenge”) was implemented in 1995. Large law firms are challenged to devote at least three to five percent of annual billable hours to pro bono work. The Challenge has become one of the country’s most widely adopted aspirational pro bono standards for firms with 50 or more lawyers, and 134 law firms are currently Challenge Signatories.⁵ The Challenge defines pro bono as the delivery of free legal services to “indigent persons or organizations serving those clients; legal assistance to individuals, groups, and organizations that seek to protect civil rights, civil liberties or public rights; and legal assistance to charitable, religious, civic, community, governmental or educational organizations in matters that further their organizational purpose, where standard legal fees would deplete the organizations’ funds.” In addition, the Pro Bono Institute published a guide that explains “what counts” as pro bono work under the Challenge.⁶

³ The Board of Governors of the State Bar of California also adopted a Pro Bono Resolution encouraging attorneys to contribute 50 hours a year to pro bono work, and urging firms to support their employees’ pro bono contributions by giving actual work credit for pro bono activities. The Resolution defines pro bono work as the “direct delivery of legal services, without expectation of compensation other than reimbursement of expenses, to indigent individuals, or to not-for-profit organizations with a primary purpose of providing services to the poor or on behalf of the poor or disadvantaged, not-for-profit organizations with a purpose of improving the law and the legal system, or increasing access to justice.”

⁴ The California State Bar’s Board of Governors recently decided to recommend Proposed Rule of Professional Conduct 6.1. If approved by the California Supreme Court, Rule 6.1 would create another definition of pro bono in California. The new rule largely tracks ABA Model Rule 6.1, but with some changes.

⁵ A copy of the Pro Bono Institute’s Law Firm Pro Bono Challenge language and principles may be found at: www.probonoinst.org/challenge.text.php.

⁶ The Pro Bono Institute, *What Counts? A Compilation of Queries and Answers*, (2003 and 2008).

C. Association of Pro Bono Counsel (APBCo)



- ◆ APBCo is an organization consisting of members who manage law firm pro bono practices.
- ◆ APBCo published guidance that describes the factors and analysis APBCo members might use to consider whether an organization is eligible for pro bono services.
- ◆ The guidance builds on the PBI challenge definition and employs a three-prong

Drawing on the Pro Bono Institute’s definition of “pro bono legal services,” APBCo—an organization with more than 115 members who manage law firm pro bono practices on a full-time or near full-time basis—published a 2007 paper entitled, “APBCo Statement on the Eligibility of Nonprofit Entities for Pro Bono Legal Services.” The Statement describes the factors and analysis APBCo members might use to consider a nonprofit’s eligibility for pro bono legal services. In short, APBCo builds on the PBI challenge definition and offers a three-prong “Mission-Matter-Means” analysis to help determine an organization’s eligibility for pro bono services. Under this analysis, if the mission of an organization is to serve the indigent or to secure or protect civil rights, civil liberties, public rights, or human rights, then the nonprofit in question passes the “Mission” prong of the test and no further eligibility review is necessary. The organization is considered eligible for pro bono legal services, regardless of its budget.

If, however, the organization does not have a qualifying mission, the APBCo recommendation is to move on to the “Matter” prong of the test and examine whether the individual proposed matter itself presents a qualifying mission—one that serves the indigent or promotes civil, public, or human rights. If the case passes the Matter Test, it is eligible for pro bono status and no evaluation of the organization’s budget is necessary.

If neither the Mission nor Matter Tests are satisfied, APBCo recommends analysis under the “Means” test in order to determine whether a nonprofit has sufficient means to afford competent legal services. There are a number of factors a law firm might consider in to determining whether an organization meets the means test, including but not limited to whether the organization was referred by a legal services provider, the nature and extent of the legal services requested, and the constituency served by the nonprofit.

D. Pro Bono Rankings and Law Firm Definitions



- ◆ A variety of organizations and media outlets publish pro bono rankings, including the American Lawyer, Vault Guide to Law Firm Pro Bono Programs, and the NALP Directory of Legal Employers. These ranking systems tend to use at least some variation of the definitions discussed above.
- ◆ Many law firms also have their own internal definitions of what counts as pro bono.

In recent years, a variety of organizations and media outlets have published rankings of pro bono performance by major law firms, including the American Lawyer, Vault Guide to Law Firm Pro Bono Programs, and the National Association for Law Placement (NALP) Directory of Legal Employers. These ranking systems tend to use at least some variation of the definitions discussed above.

Many law firms also have their own internal definitions for what qualifies as pro bono. For the most part, these definitions are in line with those described above. With pro bono cases referred by reputable legal services providers, there is typically little question as to whether the referred matters are considered pro bono. Nonetheless, as part of an initial conversation at the beginning of any pro bono relationship, law firms should be able to articulate what definitions of pro bono are used internally, both for approval and reporting purposes, and legal services providers should be prepared to identify how the potential pro bono matters fit within those definitions.

III. Initial Screening by Legal Services Providers



- ◆ Legal services providers and law firms should discuss the firm's expectations regarding screening and the provider's practices and policies for screening pro bono matters.
- ◆ Providers should conduct thorough intakes to determine financial eligibility and merits of the case, as well as language needs, disabilities, presence of violence or other sensitive facts, and clients' individual characteristics requiring special attention.

A legal services provider must be able to describe to law firms its practices and policies for screening potential pro bono matters. Similarly, each law firm should be able to identify and articulate its expectations regarding screening. Most firms expect that before a legal services provider places a pro bono case with a law firm, a thorough intake interview must be conducted to determine financial eligibility and to analyze the merits of the case to the extent possible. Given that a seasoned attorney is not always available to perform the initial client interview, the legal services provider should provide all staff members and volunteers who

conduct intake interviews with proper training and emphasize the importance of ascertaining specific types of relevant information, including whether a client requires language assistance, a client has a mental health disability, the case involves some form of violence or other sensitive facts, or whether a client might have individual characteristics that could make it a more challenging pro bono experience.⁷

A. Financial Eligibility



- ◆ Law firms typically rely on legal services providers to determine whether a client is financially eligible to receive pro bono assistance, and many law firms will not question the criteria a nonprofit uses to determine eligibility.
- ◆ The source and type of funding received by providers often determines the financial eligibility requirements.
- ◆ California legal services providers typically draw on three major sources of government funding: IOLTA, EAF, and LSC.
- ◆ Legal services providers should inform law firms about the financial eligibility requirements for pro bono services early on in the pro bono relationship.
- ◆ Legal services providers should not refer clients who would not be considered low-income under some reputable rubric, unless there is a compelling reason.

Many law firms do not have formal income or asset guidelines for the pro bono cases they accept. Instead, they rely on legal services providers to determine whether a client is financially eligible to receive pro bono assistance within the definition of pro bono in use at the legal services provider. While legal services providers may use different requirements to determine whether a client is eligible for pro bono services, many law firms will accept the criteria that a legal services provider uses, assuming that the criteria are reasonable.

The type of funding a legal services provider receives usually determines the nature of the services it can provide as well as the financial eligibility requirements that it establishes for its clients. There are three primary sources of funding that legal services providers in California draw on: (1) Interest on Lawyers Trust Accounts, (2) Equal Access Fund, and (3) Legal Services Corporation, all of which use a percentage of the Federal Poverty Level (FPL) to determine eligibility. Almost 50 legal services providers also receive funding through the federal Older Americans Act funding, which has its own criteria for eligibility.

1. **Interest On Lawyers Trust Accounts (IOLTA):** IOLTA funding is established by California statute and administered by the State Bar of California, Office of Legal Services. Clients who receive direct services funded by IOLTA must be at or below

⁷ Pro bono projects that involve law firms assisting with intake procedures will also need to include this same discussion, as well as possible additional training for law firm pro bono participants on the importance of gathering this type of information and techniques for doing so.

125% of the FPL. Alternatively, if clients are financially eligible to be referred for pro bono assistance if their income is at or below 175% of the FPL.

2. **Equal Access Fund (EAF)**: EAF grants are funded through the California state budget and administered by the Office of Legal Services. The grants use the same 125% of FPL as IOLTA to determine eligibility. There are a limited number of “Partnership Grants” funded by EAF that support joint projects between courts and legal services providers to provide self-help assistance in the courts to self-represented litigants.
3. **Legal Services Corporation (LSC)**: Eleven legal services providers in California receive federal LSC funding. LSC traditionally limited eligibility to 125% of the FPL, but starting in 2005, allowed programs to serve clients up to 200% of the FPL in cases meeting certain criteria.⁸
4. **Older Americans Act Funding**: These grants are provided by local Area Agencies on Aging at the county level to provide legal services for seniors. While clients served by these funds do not have to meet specific income or asset eligibility tests, the statute requires legal services providers receiving these funds to focus on individuals with the “greatest social need,” including non-economic factors such as physical and mental disabilities, language barriers, and cultural, social, or geographic isolation.⁹
5. **Other Sources of Funding**: Legal services providers also receive funding from other sources, such as private foundations, corporate support, and individuals. Such funds may, but do not necessarily, impose financial eligibility requirements.

Given the various income eligibility requirements linked to each source of a legal services provider’s funding, it is possible that a provider will have separate income eligibility criteria for each particular program that it runs. For example, if a legal service provider has an elder abuse program for which it receives unrestricted funding as well as a housing rights program funded by IOLTA, the provider might be able to serve all persons over the age of sixty-five through its elder abuse program – regardless of its clients’ income or assets – but may need to limit assistance for clients seeking help with housing based on the IOLTA financial eligibility requirements. It is thus conceivable that a law firm will partner with a legal services provider that has several different income eligibility requirements. It is helpful for law firm pro bono leaders¹⁰ to understand the complexity of funding sources for legal services providers and the varying financial eligibility requirements driven by the grants and revenue sources. Similarly, legal services providers might educate law firm pro bono leaders about the funding requirements and the provider’s screening practices.

⁸ 45 C.F.R. § 1611.5 (2005).

⁹ OLDER AMERICANS ACT § 3002(24) (2006).

¹⁰ Law firms have a variety of ways of configuring their internal administration of pro bono programs, including pro bono committees, full-time pro bono Directors or Partners, rotating pro bono Fellows, or other staffing structures. For consistency, this Guide will refer to all of these pro bono-related positions within a firm as “pro bono leaders.”

Regardless of the criteria a legal services provider uses to determine financial eligibility, it is a best practice for the provider to inform law firms of financial eligibility requirements for pro bono services early in the relationship or placement of a case. Two types of situations warrant particular attention in this area: (1) projects that are funded by an income source that allows greater flexibility in financial eligibility than the standards sources of funding, and (2) projects or individual matters that fall outside the most common standards for income eligibility.

In the first situation, legal services providers might explain to the firm in advance the unique set of income or asset limits used by the provider or required by the revenue sources for that project. For example, a senior citizen client who lives on a very limited income but owns a home may meet the legal services provider's eligibility requirements, particularly if the source of support for the project is Older Americans Act funding. If such situations are likely to repeat frequently in a specific pro bono project (for example, a project focusing on elder abuse restraining orders), then the legal services provider should identify the way income and asset eligibility will be handled when pitching the project to firms.

As a general rule, legal services providers should avoid referring clients who would not be considered low-income under some recognized rubric or the provider's standard financial eligibility requirements, unless there is a compelling reason for doing so. If a potential client is not low-income but has a compelling need for pro bono representation, this should be disclosed and explained in the initial pitch to the law firm. If the situation is likely to recur in a particular pro bono project, the provider should specifically discuss this with the firm at the beginning of developing the project or recruiting the firm to participate in the project. For example, a small business or disadvantaged entrepreneur might not meet the income or asset eligibility tests established by a legal services provider but still have compelling reasons for receiving pro bono legal representation. In general, transparent up-front conversation about how financial eligibility will be handled – either in one-off pro bono matters or on-going collaborative projects – can prevent questions or doubts later about either the provider's screening practices or whether an individual matter counts as pro bono for the firm.

PRACTICE TIP: If a client has an asset, such as a house, but is still eligible for assistance, the provider should specifically identify that asset in pitching the case and explain why the client is still eligible for direct legal services.

B. Substantive Merits of the Case



- ◆ Law firms rely on nonprofits to determine whether a case has legal merit before trying to place it.
- ◆ Thus, nonprofits should assess the definition of “success” for each case with the client and discuss that definition in the case description.
- ◆ Nonprofits should provide thorough intake interviews to identify all important legal issues and relevant facts, as well as all the major strengths and weaknesses of a case.
- ◆ Although “winning” may be an important criterion for a law firm when deciding whether to accept a case, it is not always a dispositive factor.
- ◆ Law firms should be willing to consider the client’s and provider’s ideas on what constitutes success in a particular pro bono matter.
- ◆ As a best practice, nonprofits should be direct and clear with law firms from the beginning and throughout their relationship about the merits of a case.

As with financial eligibility, law firms usually depend on legal services providers to evaluate the merits of a case before trying to place it. Legal services providers are not expected to predict all the surprises that might arise in a particular matter, but they are expected to provide high-quality screenings with thorough issue-spotting that will ascertain all important legal issues and relevant facts. Many law firms rely on legal services providers for subject matter expertise, unless the case or project specifically relies on substantive knowledge that the firm may have internally. Thus, it may initially fall on the legal services provider to determine the strengths and weaknesses of a potential case and whether the case is appropriate for referral to a partner firm.¹¹

There is no doubt that the likelihood of prevailing on the substantive issues presented in the case is one factor that a law firm may assess when determining whether to take on a pro bono matter. However, law firms should be open to considering alternative criteria for success as articulated by clients and the legal services providers that are broader than a victory in court. Legal services providers may use a completely different set of criteria for assessing the potential outcomes with clients, and obtaining a court order or some other traditional “win” in a case may not be the outcome sought by the client through the pro bono representation.

For example, representation in unlawful detainer cases may still be considered successful if the attorneys do not prevent the ultimate eviction, but are able to successfully negotiate a payment plan and additional time to move out of the home, thereby preventing a family from becoming homeless. In such cases, even though the clients may not have had a

¹¹ Some legal services providers involve law firm volunteers in their initial intake and screening clinics or appointments; this allows law firms to provide an important service to the provider in undertaking screening and evaluation of potential matters. This is particularly true in subject matter areas that fall within the firm’s areas of expertise. This can provide firms a way to gain more information and experience working with the client populations served by legal services providers.

meritorious defense to the eviction, the pro bono representation was successful by achieving important, albeit perhaps less traditional, victories. This might be a sufficiently compelling reason for a law firm to take on such cases despite not being able to prevail on the eviction matters on the merits.

Therefore, it is important for the legal services provider to assess the definition of “success” in cases similar to the one described above and to candidly discuss that definition with law firms. Similarly, law firms will need to partner with legal service providers in determining what constitutes a meritorious case for pro bono placement and may need to adopt the providers’ and clients’ approach to assessing legal merits in cases dealing with core poverty law issues and basic life necessities. Legal services providers and law firm pro bono leaders can work together to identify how best to discuss these alternative types of “wins” to the pro bono attorneys at the firms that handle these cases. Pro bono attorneys can also engage with their pro bono clients to understand the client’s expectations for what might constitute a successful outcome.

As a best practice, legal services providers should be direct and clear with law firms from the beginning and throughout their relationship about the merits of a case. This includes clarity about the goals of representation and the standard for success. Legal services providers should never conceal from partner law firms that a case is likely to be difficult to win or whether thorny issues are likely to develop. Furthermore, if after a case has been referred to a partner law firm a legal services provider discovers additional information suggesting that the referred case might lack merit or involve issues that were not previously discussed, the legal services provider should contact the partner firm as soon as possible. Although as a best practice law firms should not return cases once they have taken them on, a firm might be deterred from accepting future cases from a particular legal services provider if they feel that they cannot trust the provider to gather and disclose relevant information.

C. Timing and Deadlines



- ◆ Timing and deadlines related to cases should be discussed and clearly defined as soon as possible, particularly in emergency matters.
- ◆ Legal services providers should not refer cases that require immediate, emergency action from a law firm, unless that is the standard nature of the case or there is a pre-existing agreement between the provider and firm to review such cases for possible placement.
- ◆ As a best practice, if a legal services provider plans to refer a time-sensitive case, the nonprofit should first stabilize the matter and address any pressing time deadlines before referring it to a law firm, unless there is a preexisting understanding between a law firm and the referring provider.
- ◆ If a law firm cannot accept a time-sensitive case because of firm policy or the length of its conflicts check process, the law firm should respond as quickly as possible to the referring provider with this information.

Law firms and legal services providers should understand that there can be cultural differences in the respective practice environments relating to acceptable timing and deadlines in cases. Legal services attorneys and providers are likely to administer case handling systems that focus on speed and same-day responsiveness, even for new cases and clients. Low-income clients often contact the legal services provider on the day that their welfare benefits are to be discontinued, on the final day to file an answer in an eviction matter, or on the final day to respond to a collection notice. In response, legal services providers often organize their intake systems to respond immediately to emergency matters. Some providers have an “emergency attorney of the day” system, where staff attorneys cover these types of emergencies on a rotating basis, even when the matter falls outside their substantive area of law. In such emergency coverage systems, a public benefits attorney may handle some emergency housing matters by working with a client to prepare the necessary answer to maintain the status quo, prior to transferring the case to the housing unit.

These standard intake procedures for handling emergencies are dissimilar from the systems for handling intake of new clients and matters by some large law firms, where processing conflicts checks can take several days and attorney staffing structures might not be created to respond to cases that enter the law firm practice in an emergency mode. Both providers and firms should discuss these types of cultural differences around the handling of “emergency” matters and then incorporate increased understanding of the varying practices in their pro bono partnerships.

Given this cultural difference between referring providers and firms in the handling of emergency matters, it can be difficult to refer cases that require immediate action to a law firm. It is also important for a legal services provider to distinguish between a case that is truly an emergency and one that was simply referred to a law firm at a late stage in the process. Even in cases where immediate responses are unavoidable, a legal services provider should highlight the deadline and explain why urgent action is required. In some instances, a legal services provider and law firm may have a pre-existing relationship where the law firm is willing to handle certain types of cases that require a quick turn-around time, as in domestic violence and elder abuse matters, or temporary (emergency) guardianships. Even with such pre-existing agreements, the legal services provider should communicate pressing deadlines as clearly and quickly as possible.

Some times a legal services provider needs immediate assistance with a case that does not typically involve quick deadlines or falls outside an existing agreement between a firm and the provider. In such instances, the provider should consider stabilizing the matter to meet pressing deadlines and maintain the legal status quo before referring it to a law firm. For example, in a case where an answer to a complaint is due in three days, the provider could work with the client to file the answer and then refer the case to a law firm for ongoing pro bono representation. This way, the legal services provider will be able to pitch the case as a non-emergency matter without immediate deadlines, which will increase the likelihood that a law firm will be able accept the case.

If a law firm cannot accept a time-sensitive case because of firm policy or the length of its conflicts check process, the law firm should explain to the legal services provider why it cannot accept the matter as soon as possible. Legal services providers should be sensitive to the fact that law firms often have complex, multi-tiered decision-making processes. It is equally important for law firms to explain their procedures for accepting a case and how long it typically takes for a case to receive approval. This will streamline the case referral process and enable providers to know which law firms to approach when they have time-sensitive matters.¹²

D. Client Challenges



- ◆ Legal services providers should disclose all actual and potential challenges of working with a particular client before a law firm accepts a case.
- ◆ Referring providers and law firms should build a shared understanding about the significant challenges low-income clients face in their lives and in accessing legal services, including: (1) the need for language assistance; (2) accommodations for persons with disabilities; (3) a client's experience of violence, and (4) drug and alcohol abuse, homelessness, and substantial trauma.
- ◆ Depending on the specific client challenge, legal services providers may want to communicate about the case by phone rather than by email.
- ◆ Legal services providers should consider building in trainings and technical assistance for pro bono attorneys working with clients who pose additional challenges.
- ◆ Providers and law firm pro bono leaders should develop ways to explain client challenges to pro bono attorneys within the law firm setting.

Legal services providers and law firm pro bono leaders can build a shared understanding about the significant challenges that many low-income clients experience in their lives, some of which can make it difficult for them to access legal assistance even when they desperately need it. Limited access to transportation, difficulty affording their phone bills, unstable housing arrangements, medical problems, jobs with non-traditional hours, and health and mental health conditions are all typical situations that must be considered when working with low-income clients. Legal services attorneys understand the nature of these challenges and generally accept that a poverty law practice requires working with clients to address and manage these types of difficulties. In contrast, for some (but by no means all) law firm attorneys, these situations can be completely new, and at times, challenging to manage. Failure to return phone calls, for example, can be understood by a legal services attorney as an indication of the client's difficulty in paying for his or her phone service, but might be misinterpreted by an attorney in the private sector as the client's disinterest in the case.

¹² See also the section dealing specifically with conflicts checks, below.

In addition to disclosing any particular client challenges in pitching a pro bono matter, legal services providers should find useful ways to explain these difficulties faced by clients to partner law firms. The development of pro bono leader positions within law firms means that there are now individuals within the firms who have a similar understanding about the complexities that low-income clients face in accessing services and what that means for a legal services or pro bono practice. Legal services provider staff and law firm pro bono leaders should collaborate to develop ways to explain and normalize the challenges discussed in more detail below.

1. The Need For Language Interpretation



- ◆ Initial conversations between legal services providers and firms should include whether language interpretation and translation needs will be provided by the referring provider, by the law firm, or jointly by both.
- ◆ The statewide legal services delivery system should continue its efforts to expand language access to legal and pro bono assistance.

California is the nation's most linguistically diverse state, with approximately 224 languages spoken. Almost forty percent of Californians (more than thirteen million people) speak a language other than English at home, and more than four million California households are "linguistically isolated," meaning that no person in the household aged fourteen or older speaks English at least "very well." Almost four percent of Californians (over 1.3 million people) speak no English at all, with about half of this group speaking Spanish, and the remainder speaking any of more than 200 languages. Approximately twenty percent of Californians (almost seven million people) speak English less than "very well," which effectively precludes meaningful participation in a legal proceeding without substantial language assistance.¹³

A 2005 California Commission on Access to Justice report on "Language Barriers to Justice" recommends that legal services providers continue efforts to improve language access to their services. The report notes that this must include training both providers' staff and "pro bono volunteers how to serve a client community with limited English proficiency; sharing best practices for meeting the challenge; sharing resources with court self-help centers; and encouraging outreach to law schools to recruit bilingual students and students of color and to educate and mentor them regarding language access issues."¹⁴

Given the tremendous need to ensure language assistance in languages other than English, law firms and legal services programs should discuss how they will handle pro bono

¹³ California Commission on Access to Justice, *Language Barriers to Justice in California*, (2005), available at www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYdnho%3d&tabid=216.

¹⁴ *Id.*

matters involving language interpretation needs at the beginning of the pro bono relationship. In addition, it is a critical best practice for the legal services provider to highlight the need for language assistance in specific cases at the time of distributing the case. Both parties should agree who will provide the necessary support before the law firm accepts the case. Neither the legal services provider nor law firm should assume that the other party has the required language capacity or ability to retain interpreters.

Overall, both referring providers and firms need to collaborate to better meet the language access needs of clients. This issue that under discussion at the statewide level to identify additional systemic best practices for involving local community based organizations, undergraduate universities, law schools, and other possible partners in a network for interpretation or translation services. Additionally, legal services providers and firms can explore working together to request bulk discounts from existing telephonic interpretation service providers.¹⁵

2. Working with People with Disabilities and Possible Accommodations



- ◆ Describing the client's disability and necessary accommodations at the law firm and at court is an important part of the placement effort.
- ◆ If a law firm has concerns regarding providing appropriate accommodations, a nonprofit should provide adequate information, training, and ongoing technical assistance.
- ◆ On a statewide level, legal services providers should develop statewide trainings on accommodations for pro bono clients with disabilities, working in partnership with the California Support Centers and direct services programs with expertise in this area.

The client population for legal services providers includes persons with disabilities who may require accommodations by the legal services provider, the pro bono law firm, and the courts. While legal services attorneys have access to trainings on the substantive disability rights issues involved in providing appropriate accommodations and best practices in working with this particular client population, law firm attorneys often do not. If concerns regarding working with this client population may be a potential barrier to the placement of some cases, legal services providers should provide adequate information and training for the law firm to ensure a comfort level, and ultimately better services, for the clients. As a recommendation for the statewide pro bono community, legal services providers should provide trainings on these

¹⁵ For example, nonprofits that are member organizations of the Legal Aid Association of California (LAAC) have access to discounts with Ethnic Bridge, a telephone translation service, and can also provide that discount to law firm attorneys working on pro bono matters.

issues on a statewide level in partnership with the California Support Centers and the direct services programs with particular expertise in this area.

Legal services providers should inform law firms about a client's known disabilities and any accommodations required by the client to access the pro bono legal assistance. The legal services provider might likely be involved in determining what accommodations would be most helpful to the client. If the disability and related accommodations might make placement within the law firm more difficult, than the provider might consider whether calling the law firm to pitch the case might be more effective than sending an email. This will provide the legal services provider with an opportunity to better explain why the case is compelling, tell the personal story of the client, and address any of the law firm's questions or concerns. If the legal services provider normally serves clients with disabilities, it can consider pitching potential cases in conjunction with training sessions that offer MCLE credit. Because law firms and attorneys often welcome free trainings, especially in new areas of law and on the MCLE topic of "elimination of bias," legal services providers might take advantage of this opportunity to offer such trainings and raise awareness of the providers' programs.

Both legal services providers and law firms should be aware that accommodations in the court system can be requested for persons with disabilities under California Rule of Court 1.100, using Form MC-410.¹⁶ California Courts must make reasonable accommodations to ensure communication in court proceedings. These may include auxiliary aides and services or furnishing equipment, devices, or materials in alternative formats at no charge. Title III of the Americans with Disabilities Act also requires that law firms be accessible to persons with disabilities. However, neither the ADA nor any other federal law gives a right to reasonable accommodation in federal court proceedings. Nonetheless, federal courts have adopted a policy to provide reasonable accommodations if there is a communication disability and have appointed a coordinator to help.

3. The Client's Present or Past Experience of Violence



- ◆ Legal services providers should disclose whether a case involves a client with present or past experiences of violence.
- ◆ If the case involves severe violence, a referring provider should consider calling, rather than emailing, the law firm to pitch the case.
- ◆ Because violence can be disconcerting, providers should consider offering training, practice tips, and ongoing technical assistance.
- ◆ On a statewide level, the legal services community should develop trainings for pro bono attorneys and firms on best practices in working with clients who have experienced violence.

¹⁶ CAL. R. CT. 1.100 (2010).

If a case involves present or past experiences of violence – emotional, physical, sexual, or any other form – the legal services provider should disclose this information in the preliminary description of the pro bono matter. If the legal services provider is asking the firm to participate in a pro bono program that will routinely involve cases where the client has experienced or is experiencing violence, the legal services provider and firm can discuss best practices, training and additional support as part of the program, and how the provider will screen for and articulate this factor in the case descriptions. If the matter is not part of a larger pro bono project, the referring provider might consider calling law firms to directly discuss the sensitive nature of the case.

Because attorneys at law firms might have minimal experience working with clients who have been the victims of violence, legal services providers should consider providing some form of initial training or practice tips, as well as offering on-going technical assistance. Training on working with clients who have experienced violence will not only ensure that clients receive legal assistance sensitive to their needs, but also offers firms an opportunity to build expertise in a particular area of law. As with disability accommodations discussed above, the statewide pro bono community in California should consider partnering with Support Centers and direct services programs to offer trainings on best practices in these areas.

4. Additional Challenges in Working with Low-Income Clients



- ◆ Low-income clients experience stresses that might cause them to be demanding, difficult, nonresponsive, or resistant to assistance.
- ◆ Nonprofit providers should consider including in their pro bono programs supports such as cultural sensitivity training and best practice tips, as well as continual support, mentoring, and advice on working with such clients.
- ◆ Nonprofits that offer this type of support should include that information in the case description to firms.

Many clients living at or below the poverty line deal with substantial hardships throughout their lives. Some have experienced past or current violence or abuse, have struggled with alcohol or drug addictions, are homeless, or may have experienced substantial trauma in the past. Studies show that low-income clients often experience higher levels of anxiety and depression than the rest of the population. Foster care youth, domestic violence survivors, and individuals who are homeless are sometimes more difficult to reach and maintain contact with because of the nature of their circumstances. All of these challenges and life stresses can cause clients to be demanding, difficult, non-responsive at times, and even resistant to the very assistance they seek.

Legal services attorneys develop skills at managing these types of observable behaviors by clients; however, such behaviors might be new, unexpected, and perhaps even overwhelming for attorneys practicing in the private sector. Therefore, legal services providers

might consider ways to prepare pro bono law firms to best handle pro bono matters involving clients with more challenging behaviors. The broader legal services provider community should consider developing trainings for both legal services and law firm attorneys that directly address the many challenges that low-income clients face, focus on cultural sensitivities, and model best practices on how to manage such behaviors. Legal services providers might also offer to serve as a source of continual support and advice for the attorneys who take on cases involving potentially difficult clients.

Legal services providers can become comfortable identifying such behaviors in case descriptions and offering additional supports and mentoring for such cases. For example, the legal services provider could identify that a particular client has a tendency to be non-responsive and offer to remain involved as a liaison with other social services nonprofits serving the client. This would facilitate the flow of information and messages. Additionally, some legal services providers have received grants that allow them to provide clients with a phone card to facilitate phone calls to pro bono attorneys. In some situations, the legal services provider might consider calling the law firm to directly pitch the case. When provided with proper notice, an explanation of the context behind a client's difficult or non-responsive nature, and an offer of continued support, law firms will likely feel more comfortable accepting cases with more challenging clients or circumstances.

IV. Dealing with Conflicts of Interest



- ◆ Law firms and legal services providers should fully discuss and understand procedures for assessing conflicts of interests. It is vital for providers to understand what information firms require and how much time it will take the firm to fully assess the issues. It is equally vital for firms to understand the time frame under which the providers and their clients are operating.
- ◆ Not only should legal services providers conduct thorough intakes to uncover all actual and potential conflicts, providers should also consider “issue conflicts” and public relations conflicts.
- ◆ Law firms and legal services providers should frankly discuss the general types of cases that are likely to present both actual conflicts and issue conflicts for the volunteer law firm.

As a best practice, law firms and legal services providers should discuss each entity's expectations and preferences regarding the information needed to screen for actual and potential conflicts of interest at the onset of any pro bono relationship. Legal services providers are sometimes unaware of how complex the conflicts check process is in a large national or multinational law firm. Therefore, firms and legal services providers should have explicit and frank conversations about the time and information needed to perform the conflicts check

process in advance of actually distributing or accepting any pro bono matters or signing up for a pro bono program.

A. Actual Conflicts



- ◆ Legal services providers should engage in scrupulous efforts to identify the names and identifying information of all parties possibly involved in any pro bono matter.
- ◆ Law firms should inform providers about the kind of information required to run a thorough conflict report and the time generally required to complete and evaluate the report.
- ◆ Law firms should also report back to providers if additional time is needed to complete or further evaluate the results of a conflicts report in a particular case.
- ◆ All lawyers in private law firms should be aware of the need for, and the importance of, thorough conflict reports so that their individual dealings with legal services providers do not run afoul of firm needs and practices.
- ◆ California Rule of Professional Conduct 1-650 enables attorneys to provide short-term legal services to clients in clinic/hotline/counseling settings without an advance conflicts check, provided the individual attorney is unaware of any actual conflict of interest.
- ◆ Legal services providers should strive to achieve the kind of substantive expertise in particular subject matters that will enable them to better identify potential areas of conflicts for volunteer law firms.

Before a legal services provider pitches a pro bono opportunity to a law firm, it should complete a thorough intake process to uncover all potentially adverse and interested parties. California Rules of Professional Conduct explicitly prohibit an attorney from accepting a new client that has a direct conflict with a current client, and in some cases, with a former client.¹⁷ For example, in guardianship cases, legal services providers should gather all the names of the parties potentially interested in custody, in addition to names of all family members and other parties who may later intervene. In cases involving consumer issues, legal services providers can undertake due diligence in assessing the chain of ownership of the debt.

Law firms should provide partner legal services providers with a clear and accurate estimate of the normal length of their conflicts check process, which can vary substantially from firm to firm.¹⁸ It is important for law firms to take into consideration that legal services providers reserve pro bono cases for firms that express interest, and thus, it is helpful if firms can respond to legal services providers as soon as possible with final approval. Law firms might

¹⁷ CALIFORNIA RULES OF PROFESSIONAL CONDUCT Rule 3-310 (2009).

¹⁸ Based on anecdotal information, legal services providers can expect conflicts check process to typically require one or two days at most law firms, unless the preliminary check raises potential conflicts that the firm has to research or if the matter involves potential issue or public relations conflicts.

also make it a priority to inform all of their attorneys about their conflicts check and approval processes for pro bono matters so that all parties that engage in pro bono work are educated about the steps involved in taking on a new matter. This is especially important for new attorneys as they are introduced to the firm's overall policies and procedures. Legal services providers should also realize that for national

Range of Conflicts to Assess:

- Actual Conflicts - where representation results in direct conflicts of interest with a firm's former or current clients
- Issue Conflicts - where representation might be viewed unfavorably by former, current, or potential clients, or might create law adverse to a firm's clients' interests
- Public Relations Conflicts - where representation could negatively affect a firm's public image

Best Practices in these types of cases: Sensitivity on the part of both legal services providers and firms, willingness to engage in frank conversations about the issues involved, and willingness by the provider to pitch these types of matters through a personal, one-on-one email or phone call, rather than email blasts or listservs.

firms with headquarters outside of California, conflicts checks may have to be run through the central office in another state so time zone differences can delay a conflicts report.

As a best practice, if the initial conflicts report raises any red flags for the firm, the firm should let the legal services provider know as soon as possible what next steps are required. Law firms should realize that legal services providers will typically place a case "on hold" while the firm goes through its conflict check procedure. The law firm should advise the legal services providers if any additional questions need to be answered, and give a projected time frame for the firm's additional process.

The recent adoption of Rule 1-650 to the California Rules of Professional Conduct enables attorneys to provide short-term legal services to clients – such as assistance at legal-advice hotlines, advice-only clinics, or pro se counseling programs – without advance conflicts checks, as long as the attorneys are not aware of any actual conflicts. Rule 1-650 recognizes the extreme difficulty of having to check for conflicts of interest at legal clinics and thus removes the need to conduct an immediate conflict check that was previously required for volunteer attorneys. Thus, attorneys at law firms can feel confident that providing short-term, limited legal services will not adversely affect them or their firms.¹⁹

Law firms and legal services providers should discuss likely possible conflicts at the onset of any pro bono relationship. If possible, a legal services provider should be familiar with the general practice areas of the law firm and avoid attempts to place matters which would likely conflict with that firm's general practice. For example, if the legal services provider approaches

¹⁹ CALIFORNIA RULES OF PROFESSIONAL RESPONSIBILITY Rule 1-650 (2009). If an attorney's representation of a client continues beyond an initially limited consultation, the attorney will be subject to Rule 3-310 and thus must proceed with the normal conflicts check process.

a firm about a pro bono project involving special education cases, and the firm represents school districts, the firm and legal services provider should have a conversation about which districts will constitute conflicts, as either previous or current clients, so that the provider can filter out cases involving those districts rather than pitching them to the firm only to have the

Understanding Both Sides:

- Legal services providers should understand that national law firms may have to clear conflicts checks with central offices outside California, which can complicate the timing.
- If the conflicts check in a particular matter raises any red flags, the law firm should share this information with the provider as soon as possible and provide an approximate length of time the additional process will require.

conflicts discovered later. This would also foster a conversation about potential “issue conflicts” in advance. (See section C below).

As a best practice, legal services providers are encouraged to build their own substantive expertise in handling particular subject matters at issue and become more skilled at undertaking due diligence to uncover all possible conflicts and parties. Law firms can also understand that in new projects, addressing new areas of law or new types of cases, there can be a learning curve for both legal services providers and the law firms. As an example, a pro bono provider started a project dealing with identify theft on

behalf of youth transitioning out of foster care services. The legal services provider undertook the screening and then passed the cases on to pro bono attorneys for representation. As the staff handled more cases, they gained the ability to better predict conflicts for the law firms because they became more aware of the intersection between various potential opposing entities, including subsidiaries of corporations, and were therefore better able to spot potential law firm conflicts based on the information in financial statements. This type of knowledge can only develop over time, and developing that knowledge should be a joint process undertaken by the firm and provider.

B. Late Arising and Potential Conflicts



- ◆ Law firms that discover actual conflicts of interest after accepting a pro bono case are likely to return that case to the referring provider.
- ◆ The best way to minimize the possibility of these difficult situations is to conduct as thorough an analysis and engage in as much due diligence of the situation as possible prior to the placement of a case with law firms.

If a law firm accepts a case and later discovers an actual conflict of interest, the firm may be required to withdraw from the case pursuant to the Rules of Professional Responsibility. It is also important for a legal services provider to keep in mind that law firms may also be hesitant to accept or continue work on cases for pro bono clients due to concerns of being conflicted out of lucrative cases later on, especially in small markets where there is a limited set of key players. For example, if a consumer law case is placed with a law firm and the

firm later realizes that a lender bank in the pro bono matter is an existing or former client, the firm will almost certainly return the case to the legal services provider. Although it is possible for the law firm to seek a waiver from the bank to continue the pro bono representation, this option may not be practically feasible as law firms may be reluctant to pursue this route.²⁰ To avoid situations where a law firm is forced to withdraw from a case, both legal services providers and law firms can upfront conduct as much due diligence as possible in order to uncover all actual as well as potential conflicts. This will minimize the likelihood of later discovering that a firm has been conflicted out of a matter.

C. Communication About Law Firm Culture and “Issue Conflicts”



- ◆ Law firms and legal services providers should, at the outset of their relationship, discuss the kinds of matters that will present issue conflicts.
- ◆ Legal services organizations should conduct due diligence in attempting to understand the focus of a law firm’s practice areas.
- ◆ Common issue conflicts arise when a firm cannot represent employees in wage and hour cases when the firm’s labor and employment practice focuses on the representation of employers or when a firm’s financial services practice prohibits the firm from representing borrowers against major banking institutions. Examination of a firm’s website can often reveal instances where such conflicts are likely to arise.

In addition to identifying actual and potential conflicts of interest, legal services providers will benefit from learning more about the specific client populations on which particular firms focus their practices, and consequent substantive areas of law that the firm is – or is not – willing to handle on a pro bono basis. Legal services providers might undertake some due diligence in assessing these cultural and practice issues at various firms, as some law firms are unwilling to accept specific types of cases regardless of whether there is an actual conflict with a current or former client. These types of conflicts are most often referred to as “issue conflicts.”

For example, some firms will not engage in foreclosure, employee rights, or special education pro bono work because they have existing clients that are banks, large corporate employers, or school districts. Sometimes the departments at those firms working with such clients have determined that they do not want to risk accepting cases against future potential clients (even if the bank or company is not a current client). Alternatively, the firm might be concerned that current corporate clients would not look favorably on pro bono in those substantive areas or that the firm will take a pro bono case that could ultimately create law that is potentially adverse to its clients.

²⁰ For more information on waivers, please see, “Prospective Waivers from Commercial Clients to Permit Firms to Provide Pro Bono Representation to Potential Adverse Parties,” by Heller Ehrman LLP (2008).

In developing knowledge about issue conflicts, a legal services provider would benefit from understanding the different areas of law that a firm practices so that it can try to avoid circulating pro bono opportunities that might conflict with the firm's interest in developing its paying client base in certain fields. Information about a firm's practice areas may be easily accessible on the firm's website. Legal services providers may also want to search other channels in order to locate more specific information about a firm's willingness to accept specific types of cases. When commencing a pro bono relationship with a law firm, the legal services provider might inquire at the inception about whether there are particular practice areas that they avoid in terms of pro bono matters.

As a legal services provider builds expertise in an area of law, it will become better at predicting possible conflicts. For legal services providers that are building a practice group or pro bono program, it is recommended that the provider do some initial research about a firm before pitching a particular type of case to the firm. Legal services providers might also keep notes on which firms are willing to accept which types of cases, or when they are informed that issue conflicts exist. Once a law firm informs a legal services provider about an issue conflict area, some firms will expect the provider to retain that information internally and not shop additional matters dealing with that substantive area of law to the firm.

Individuals responsible for coordinating pro bono at a firm can also build an internal understanding of the types of practice areas at legal services providers that may pose issue conflicts for that particular firm, and be prepared to identify those issue conflict areas for providers interested in pitching particular pro bono matters to the firm. Both parties can be comfortable addressing these issue conflict areas at the beginning of any pro bono partnership and understand that a fair amount of open conversation and communication may be needed to make the needs and limitations clear on both sides.

D. Public Relations Conflicts



- ◆ The likelihood of a matter being the subject of press coverage can create sensitivities of which legal services providers and law firms should be aware.
- ◆ Legal services providers should inform a law firm, prior to the placement of a pro bono matter, if the legal services organization believes that the engagement is likely to engender public attention or scrutiny. Similarly, if the matter involves issues that are politically sensitive, individual lawyers at the firms should be encouraged to discuss their own personal concerns about any potential issues that may arise.

When a legal services provider circulates a pro bono opportunity, it should consider how the case may affect a firm's public image, or how the firm's marketing or public relations department might view the case. Thus, legal services providers might identify cases that may attract negative publicity or criticism, even if the provider feels that the likelihood of this

reaction is small. If a legal services provider wants to place a potentially sensitive matter, it might think carefully about the attention that the cases may draw, communicate the nature of the case to potential partner firms, and refrain from pitching the matter to firms that it knows have rejected similar cases in the past.

Legal services providers should be aware that individual pro bono attorneys might have ethical or philosophical problems with certain types of cases or with assisting particular client populations. As a best practice, legal services providers should not assume a law firm or an attorney will be comfortable with certain sensitive facts or be supportive of a particular controversial issue. When placing a sensitive case, a legal services provider can be straightforward about the facts of the case in a manner that will tactfully reveal the pertinent information to the potential partner firm or pro bono attorney.

Finally, legal services providers should realize that firms sometimes need additional time to resolve potential “issue” or public relations conflicts. For example, while a conflicts report on interested parties goes through an existing system, potential “issue” conflicts may need to be discussed with a managing partner or even the Executive Committee of the firm. Different stakeholders or departments within the firm may need to be consulted, resulting in a process that is longer than the typical conflicts check in an individual case.

V. Circulating Opportunities



When circulating pro bono opportunities, providers should consider:

- ◆ The manner of distribution — the nonprofit must determine for each particular available pro bono matter which distribution method will work best and why (websites, email, phone calls, face-to-face).
- ◆ How to clearly articulate unique challenges in the case, as well as time estimates and deadlines for completing the matter.
- ◆ The appropriate recipient at the law firm for the pro bono pitch.
- ◆ The appropriate contact person at the legal services provider for questions or updates from the firm after the placement of the pro bono matter.
- ◆ The support that the legal services provider will provide post-placement, including but not limited to mentoring, additional training, and review of draft pleadings.
- ◆ The support that the legal services provider hopes the law firm will provide, including but not limited to supervision and leadership from senior attorneys, attorney staffing to work the case, paralegals, support staff, copying, transcription, translation, and payment of costs and fees.

Once a legal services provider has thoroughly screened for financial eligibility, the merits of a case, disabilities requiring accommodations, potential complications unique to specific clients witnessed through observable behaviors, and conflicts of interest, the legal services provider is ready to circulate the pro bono opportunity. This section will discuss the most effective and efficient ways to refer pro bono matters to law firms, including how to distribute a case, to whom the opportunity should go, and different methodologies for placing cases.

A. How to Distribute or Receive a Potential Pro Bono Matter



Various Pro Bono Distribution Methods:

- ◆ Website: Legal services providers in California typically do not distribute pro bono matters on websites. The nonprofits that share administration responsibility for the online SoCal Pro Bono Center (www.SoCalProBono.org) have decided to share information about pro bono clinics but not individual cases. The Public Interest Clearinghouse made the same decision for the statewide website (www.CAProBono.org).
- ◆ Email: Email is the most common way to distribute pro bono matters. In using email distribution methods, legal services providers must decide between the following options discussed below:
 - Email listservs
 - Email “blasts” to many individuals and firms at once
 - Emails to smaller, selected groups of individuals and firms (in email “batches”)
 - Personalized one-on-one emails (may be helpful in difficult to place cases – more info below)
- ◆ By Phone: Telephonic distribution of cases is not as common. However, it can be helpful in difficult to place cases.
- ◆ Face-to-Face Meetings:
 - Some legal services providers use regular marketing meetings at firms to stay in touch and pitch opportunities
 - This can be an effective way to facilitate better ongoing collaboration on matters and can also help both parties engage in deeper discussions about mutual expectations.

Legal services providers have a range of methods for circulating pro bono matters and opportunities, including email, telephone, and in-person meetings. Legal services pro bono coordinators should utilize these tools in a strategic manner. Distributing information about pro bono opportunities is not an exact science, meaning that the strategies for circulating information cannot be easily distilled into one set of recommendations or best practices. Instead, pro bono coordinators at legal services provider must undertake a complicated process of balancing multiple needs and relationships in ensuring high quality legal help for clients and

providing high quality volunteer experiences for firms and attorneys seeking to increase their legal skills and give back to their communities. Experienced legal services pro bono coordinators know a great deal about the various law firms and attorneys with whom they are working, and they continue to hone and expand their understanding of the law firm's interests and needs.

One way to facilitate effective shopping of pro bono matters is to be transparent regarding the needs and preferences of both the firm and legal services provider at the beginning of any pro bono relationship. In the beginning of any collaboration between a legal services provider and a law firm, the two parties should discuss the types of cases and circulation preferences that the firm is interested in taking on so that the legal services provider can circulate cases in a more targeted manner. The legal services provider might also confer with law firms to identify situations where circulating a case by phone or in person might be appropriate. Law firms should also feel free to request specific types of cases or projects from legal services providers. For example, a firm might want a case in Orange County suitable for a first to third year associate that might require 40 hours.

PRACTICE TIP FOR LEGAL SERVICES

PROVIDERS: Consider sorting potential volunteer and/or firms into categories by expertise, reliability, size, resources, trainings accessed, history of accepting matters, and other similar criteria. This will facilitate more targeted use of email distribution lists.

Currently, email is the most common and widely-used method to inform law firms about pro bono opportunities. However, it may not always be the best method to circulate cases. Depending on the type of case or client, a phone call or an in-person meeting may be more appropriate. It is, of course, neither feasible nor efficient to call or schedule an in-person meeting regarding all pro bono matters. For the majority

of cases, it makes sense to distribute case descriptions via email. Legal services providers and law firms should discuss distribution preferences in any repeat pro bono project at the beginning of the partnership. Distribution of information may differ significantly depending on the type of opportunity the legal services provider is pitching to the firm. Methods for circulating information about pro bono clinics, individual pro bono cases, impact matters, or ongoing or signature pro bono projects should be treated differently.

Some legal services providers might use an email blast system (with many firms or attorneys at once) for simpler matters, but use more targeted emails to smaller groups of firms or attorneys for any matters that would require more hours, more resources, or have greater substantive complexity. For a complicated individual case, such as a case with a convoluted fact pattern or challenging client behavior, it is sometimes easier to pitch the case through a personalized one-on-one email or over the telephone (or a system involving both) rather than through a blast or group email. This will provide the legal services provider an opportunity to avoid any misunderstandings about the case and alleviate any concerns that a law firm might have, while also effectively conveying the client's story. If a legal services provider is aware that a law firm has a particular interest or area of expertise, and the provider wants to foster

stronger relationships with the law firm, a targeted pitch over the phone might also be more effective than only relying on email.

Legal services providers might consider having different email lists for different types of cases, rather than maintaining only one list that is used for all pro bono matters. For example, a legal services provider might want to have one email list for firms that handle veterans' cases and another email list for firms interested in doing appellate work. Targeted emails can garner better responses and can facilitate stronger relationships between a law firm and a legal services provider. Affordable and sometimes free software programs exist that manage different email distribution lists and send out email blasts, including programs such as Constant Contact and Network for Good. The benefits of targeted emails lists must be balanced against the fact that many firms want to receive a wide variety of pro bono matters. For placing more complex cases, legal services providers that retain large attorney email lists might consider using a smaller list that includes only experienced attorneys who have been sufficiently vetted. This will not only ensure that the potential client will be provided quality legal assistance, it will also minimize time expended by law firms responding to opportunities that have already been placed.

B. What Should Go in the Matter Description



- ◆ For detailed information on how to pitch a pro bono case to a large law firm, read Karen A. Lash's article, "Pitching Pro Bono: Getting to First Base with the Big Firm."
- ◆ The contents of a matter description depend on the type of case a legal services provider is trying to pitch. However, the basic marketing principles of telling a good story and using effective case descriptions should always be included.
- ◆ Case descriptions should include:
 - information about the support that the legal services provider will offer;
 - the intended outcome of the case;
 - particularly compelling facts about the client and the situation;
 - conflict information without disclosing privileged client information; and
 - the training and skill-development opportunities that a firm and its lawyers can learn from a particular pro bono matter.

What should be included in the circulated opportunity will depend on the type of case a legal services provider is trying to pitch. For more information on how to effectively pitch a pro bono case to a large law firm, please read Karen A. Lash's article, "Pitching Pro Bono: Getting to First Base with the Big Firm." The article explains in detail what information should be included in the matter description, as well as how to most effectively "sell" a client's story.

Referring providers should be careful not to disclose privileged information in an email blast or when discussing a case over the phone or in person. It is better to include generic information instead of specific details about a case, and the names of potential clients should

never be included in a circulating opportunity. In instances where it is virtually impossible to conceal identifying facts, the legal services provider might consider calling to pitch the case rather than sending an email.

C. Time Estimates



- ◆ Law firms will need to evaluate the time required on a potential pro bono matter and the time deadlines involved (e.g., filing dates, scheduled hearings) in determining whether the firm can accept the matter.
- ◆ Legal services providers should provide general estimates of the time commitment and duration of the matter in the initial pitch and be specific and accurate about any applicable deadlines.
- ◆ Law firms should understand that absent special arrangements to the contrary with the legal services providers in accepting a matter, it will be the law firm's responsibility to meet all applicable deadlines, including finding alternative staffing within the firm should calendar conflicts arise or staffing change at the law firm.
- ◆ Legal services providers should clearly explain the detailed tasks involved in handling the matter and carrying out a successful representation.
- ◆ Legal services providers should create an atmosphere where a pro bono attorney is comfortable asking questions and seeking assistance.

Many law firm attorneys prefer time-limited, concrete pro bono projects or cases. As a result, legal services providers must be prepared to be able to provide a general but reliable estimate of how many hours the type of case usually requires as well as the overall timeframe for the matter. As a best practice, legal services providers should identify a more specific time estimate if it is likely to vary from the typical time frame. For example, if a guardianship case usually requires approximately thirty to forty hours over the course of two to three months, the legal services provider should include that information when it circulates the opportunity. However, if the guardianship matter includes complexities – including likely opposition by a relative, involvement of Child Protective Services, or a client who has limited English proficiency – the provider might identify in the case description that the matter will take longer to handle than a typical uncontested guardianship.

The legal services provider should also be able to clearly explain to the law firm pro bono leader (and ultimately also to the attorney volunteer) what the attorney will be doing in a matter as well as the tasks that will need to be completed in order to carry out a successful representation. For example, if the firm's attorneys will be volunteering at a clinic, the legal services provider can inform the firm what staffing that clinic entails and what the attorneys' specific role will be. If, on the other hand, the firm is taking on a case where an attorney will be assisting a victim of violence with petitioning for a U-visa, the legal services provider can identify the relevant steps in a manner similar to the following: step one, call the client to

schedule an interview; step two, draft a declaration based on the interview; step three, collect supporting documentation. Check lists and trainings manuals provide guidance and support. Additionally, the legal services provider should not assume that a pro bono attorney knows how to perform a certain legal task just because the attorney is at a law firm or has been practicing for a number of years. Just as it is a best practice for law firms to ensure adequate supervision of attorneys on pro bono matters, it is also important for the legal services provider to create an atmosphere where the volunteer attorney will be comfortable asking questions and seeking assistance from the legal services provider whenever necessary. This will strengthen the provider's relationship with the attorney and the law firm and help ensure that the client is provided with quality legal assistance.

D. Determining Who Should Receive Pro Bono Pitches



- ◆ Legal services providers and law firms should each identify the appropriate contact persons on pro bono matters and projects.
- ◆ Legal services providers and law firms should discuss their expectations for how new matters will be pitched and placed.
- ◆ Firms and providers should, when possible, coordinate through one contact person at the firm and at the provider.
- ◆ The law firm and the legal service provider should strive to keep the identified pro bono contact person on both sides informed about case placement and all major developments in any matter.
- ◆ Some law firms and legal services providers have designated full or part-time staff positions focused on pro bono administration and management; these positions can facilitate strong pro bono relationships and the effective placement and handling of pro bono matters.

Law firms should identify the appropriate contact person or group within the firm that should initially receive a pro bono pitch. Law firms might consider identifying this individual or individuals on the firm website to facilitate contacts from legal services providers with pro bono matters. If no specific individual or individuals are identified but there is a designated pro bono leader at the law firm, a proposed case should usually be directed to that person first. Once the pro bono leader receives the information about the case, she will then distribute it to the attorneys at the firm.

If a law firm does not have a designated pro bono leader, then the law firm and legal services provider should work together to articulate a clear set of expectations regarding the process for circulating opportunities and communicating the acceptance of a pro bono matter. This set of expectations should indicate that the receiving firm must run a conflicts check or follow any other processes necessary to take on a new representation at that firm, and also must inform the legal services provider that the firm would like to accept the case in the manner identified by the provider.

It is usually most effective and efficient for initial communications regarding case description and acceptance to take place directly between the appropriate staff person at the legal services provider and the law firm. In most instances, if there is an interested attorney, the leader or designated individual should inform the legal services provider rather than having interested attorneys separately contact the provider directly. Having individual attorneys contact a legal services provider without the knowledge or support of the firm could give rise to risk management concerns, such as the adequate supervision normally required by the firm. It can be more challenging and problematic for a provider when a law firm does not have a designated individual, or set of individuals, responsible for coordinating pro bono matters for the firm.²¹

In some instances an attorney or a group of attorneys at a law firm will reach out to a specific legal services provider for pro bono work because of an interest in a particular area of law or client population. This presents a great opportunity for the legal services provider to build strong, meaningful relationships with a law firm. In these situations, it is perfectly appropriate for the provider to have direct communication with the interested attorneys. However, it is recommended that the provider inform the pro bono leader, if the firm has one, that the initial contact has been made. The legal services provider could also check in with the firm's pro bono leader to see if she wants to be made aware of all major developments, which the provider can do by copying the pro bono leader on relevant emails. Keeping the pro bono leader involved creates goodwill. It also helps deal with any supervision issues and streamlines the conflicts check and work approval processes.

E. Methodologies for Placing Cases



- ◆ Ensuring the most capable and committed pro bono representation possible for each client should be the overarching goal of both the law firm and legal services provider.
- ◆ While legal services providers use a variety of methodologies for case placement, they should strive for an equitable distribution system that recognizes substantial variations in law firms' processes for accepting cases.
- ◆ Different methodologies include "first-come, first-served," a "wheel" approach that involves a revolving rotation of placements, giving priority to firms that have indicated an interest in building an ongoing expertise in the area, and rewarding firms that have demonstrated a consistent level of responsiveness.
- ◆ Legal services providers should be careful about using a strict "first-come, first-served" model in placing cases, as some law firms may avoid pro bono programs that operate under a "race for the case" model.
- ◆ When placing pro bono matters, providers should consider the law firm's expertise, size, and past performance, as well as the resources the firm can commit.

²¹ It is also more effective if the nonprofit has a designated contact person for pro bono administration.

Legal services providers use a variety of methodologies in selecting a firm for placement of a pro bono matter. Providers consider factors such as areas of expertise, prior performance, loyalty, size, resources, and responsiveness. Legal services providers might also place cases based on a long-term plan to develop expertise within a firm or to being a new pro bono relationship. Legal services providers consider giving priority to a law firm it knows wants to build expertise in a certain area of law or has a particular interest in helping a specific client population, or has been willing to develop in-house expertise so as not to have to rely so heavily on the legal service provider's limited staff for assistance. These are valid and appropriate considerations that will not only foster stronger relationships between a legal services provider and law firms, but will also promote superior pro bono legal assistance in the long term. On balance, legal services providers should maintain equitable distribution systems that recognize different firms' processes for responding to pro bono case pitches.

One case placement methodology used by legal services providers might be called a "wheel" approach, where the legal services provider rotates through a list of possible firms and offers the next firm on the "wheel" the opportunity to accept a case before moving on to the next firm on the list. In this approach, each firm is given an opportunity to accept a case before the provider cycles through the group of firms in a subsequent round of distributions. The wheel approach might be used in projects with a known number of law firms participating and where the cases circulated are similar in nature, time commitment, and/or substantive area of law. For example, in a pro bono guardianship project with ten firms participating, the legal services provider might offer available cases to each of the firms, on a rotating basis to ensure equity in case placements.

Another case placement methodology is the use of a "first-come, first-served" process, where cases are always placed with the law firms that respond immediately to pro bono opportunities. Legal services providers that use an inflexible first-come, first-served policy should be aware of the potential negative consequences of that choice. Some firms report that a strict "first-come, first-served" model will not work for them and that they are unlikely to participate in such projects or distribution systems. Firms may not be able to accept a case immediately because conflicts check and intake processes require at least a day or two. If a legal services provider places every pro bono case on a "first-come, first-served" basis, such firms would seldom secure an opportunity to work with that provider. As a result, the overall pro bono delivery system may lose an opportunity for such firms to build internal expertise and resources, and the legal services provider may lose the opportunity to learn from firms with different areas of expertise and strengths, as well as the possible financial support of these firms. Therefore, as a best practice, legal services providers are urged to move away from an inflexible "race for the cases" first-come, first-served approach to a more varied and flexible approach that balances the possible needs, resources, strengths, and interests of each potential firm and distributes opportunities in a more nuanced way. Although perhaps more resource intensive to administer, a more tailored approach ultimately engages and increases a higher amount of pro bono resources in the delivery of legal services to low-income Californians.

Some possible adjustments to the strict “first-come, first-served” approach include promising the next similar case to the firm that responds second to a circulated matter. Alternatively, some legal services providers have entertained the idea of establishing a twenty-four hour wait period after a case is distributed to allow all interested firms to respond to the opportunity. After a number of firms respond, the provider selects the firm based on a set of criteria to ensure the best possible placement.

In contrast to the “first-come, first-served” model, some legal services providers have moved to a distribution approach for complex case types that allows firms to assemble and propose a specific pro bono team. For example, in a complex impact litigation matter, the legal services provider might articulate the requested skills and expertise of the pro bono co-counsel team, including certain levels of experience, language capabilities, and other skills. The firms interested in the pro bono opportunity would then have a set period of time to assemble a team of attorneys and describe that team to the provider, which can then select the firm with the team that best meets the needs of the pro bono case.

VI. Acceptance of Pro Bono Matters



- ◆ A law firm should have an identified process, decision maker, and distribution method for the dissemination of pro bono matters.
- ◆ A law firm should be clear with referring legal services providers about the time required for the firm to make decisions about potential pro bono matters.

A. Attorney Selection and Assignment



- ◆ Law firms have their own set of criteria for selecting attorneys for pro bono matters.
- ◆ If a firm is interested in a case, the firm and the referring legal services provider should have a candid conversation about the firm’s decision-making and placement process and the time required.

Just as each legal services provider must determine how it will circulate pro bono opportunities to law firms, individuals at law firms responsible for managing pro bono must determine the best ways to circulate these opportunities to attorneys within the firm. Some firms circulate pro bono opportunities to all of their attorneys, and matters are assigned on a “first-come, first-served” basis in the firm. In other instances, a firm’s pro bono leader might give priority to an attorney who has a particular interest in an area of law or type of case rather than to the attorney quickest to respond. A pro bono leader may also evenly distribute cases so that everyone at the firm who wants to do pro bono work has the opportunity to do so.

A law firm should designate a decision-maker regarding acceptance and placement of pro bono matters with the firm, whether it is a full or part-time pro bono leader or the firm's pro bono committee. Firms should share information about the decision-making process and the time required for decisions with referring legal services providers.

PRACTICE TIP: The law firm and legal services provider should agree on a contact person at the firm to receive opportunities and shepherd matters through the firm's approval process, even if the firm does not have a designated pro bono leader. Initial conversations between a firm and provider should clarify the firm's acceptance process, timing of conflicts checks, how the firm will identify supervision, and what communication will flow from the firm to the referring provider during the pro bono representation.

A firm may sometimes allow its attorneys to contact legal services providers directly to express interest in pro bono opportunities. Although this method may be necessary in firms with no designated pro bono leader, legal services providers and firms should examine carefully whether another approach might be more efficient and ensure better risk management for the firms. For example, in firms without a pro bono leader, an attorney interested in a pro bono matter would be responsible for ensuring that the case is approved by the firm's pro bono committee and identifying a supervisor. In this example the case approval and acceptance process might take significantly longer – to the detriment of the client.²² The possibility also exists that the attorney is ultimately unable to find a supervisor at

her firm and thus cannot accept the case. Meanwhile, the referring legal services provider – and the client – are in limbo. This can create serious problems in time-sensitive matters. Having a pro bono leader to filter attorney interest alleviates confusion, facilitates the finding of supervisors for referred cases, and streamlines the conflicts check process.

B. Timing of Acceptance



- ◆ Many law firms will not accept a pro bono case until a specific attorney has been staffed on the matter, a supervising attorney has been secured, and the conflicts check process has been completed and cleared.
- ◆ If a law firm expresses interest in a case but cannot accept the case immediately, the referring provider and firm should have a candid conversation about the time frame in which the firm expects to be able to formally accept or decline the case.
- ◆ A referring legal services provider should be prepared to hold the case for a law firm based upon an agreed-upon schedule while the law firm is in the process of deciding, unless the exigency of the circumstances prevents the provider from waiting.

²² For more information on ethical responsibilities of attorney supervisors at law firms, please see, "Pro Bono Ethics Handbook: Ethical Duty to Supervise Lawyers in Pro Bono Matters," Heller Ehrman LLP (2007).

After expressing interest in an available pro bono case, many law firms expect some time to be able to process conflicts and identify staffing and supervision. Many law firms will not formally accept a case referred by a legal services provider until: (1) an attorney from the firm has been selected to work on the case; (2) a partner or counsel agrees to supervise the matter; and (3) the conflicts check process has been completed, with any potential conflicts resolved.

Once a law firm has expressed interest – but has not formally accept – the firm and referring legal services provider should have a candid conversation about the time frame needed for the firm to formally accept or decline the case.²³ The law firm should indicate approximately how long the approval process generally takes at its firm and what the process entails. Meanwhile, the legal services provider can agree to hold the case for the firm for that period of time. There is value to this mutual agreement to hold a case open in order to give the firm the time required to process the case internally. Even if the firm is ultimately unable to take the case, the legal services provider is now aware that the firm is interested in a specific type of case or substantive area of law and can refer subsequent cases to the firm. In addition, it allows the law firm to ensure that it has the ability to actually take on a case before committing to do so.

VII. Clarifying Expectations



Once a pro bono matter is formally placed with a firm, the referring legal services provider and the firm should confirm expectations regarding:

- ◆ Standard of care;
- ◆ Cost obligations;
- ◆ Mentoring and the legal services provider’s ability to provide ongoing support;
- ◆ How the referring provider can receive status updates and the form of communication preferred by both partners;
- ◆ The scope of representation and time estimates for completing the work;
- ◆ How to handle subsequent substantive issues that may come up for the same client during the representation.

²³ It is difficult to set a reasonable time frame for acceptance that applies to all types of cases. For example, the turn around time for guardianship cases that are uncontested could be relatively quick and can even be as short as an hour or two. In contrast, a contested guardianship case with multiple interested parties seeking custody of the children involved might well require a more lengthy conflicts check process, and by implication, the acceptance process is longer as well. Many law firms have quick conflicts check processes that can be completed in a couple of days or less. However, if a proposed case is “sensitive” for political or other reasons, and not because of actual conflicts, then it may take longer to approve.

A. Best Practices for Law Firms in Handling Pro Bono Matters



1. Pro bono attorneys must apply the same standard of care they would apply to their for-profit clients.
2. Law firms should ensure that every pro bono case is supervised by a senior, experienced attorney, treating all such engagements with the same concern for client care and risk management issues afforded the firm's commercial clients.
3. If an attorney leaves the firm, it is the firm's responsibility to see that representation of the client is not adversely impacted.
4. The referring provider and firm should clarify cost obligations at the outset of any engagement.

1. Standard of Care

As the Rules of Professional Responsibility apply equally to all cases accepted, attorneys must provide pro bono clients with the same high standard of care and professionalism as they would their paying clients. Firms should adopt policies to ensure that pro bono cases are handled with the same zealous representation as is employed in the firm's commercial matters. Pro bono cases require the same coordination and supervision to ensure that attorneys meet deadlines, address client needs promptly, and produce quality work product. Firms can also complete performance reviews for attorneys staffed on pro bono matters and take these reviews into consideration when deciding compensation.

2. Supervision

To ensure that pro bono cases are treated with the same practice standards as non-pro bono matters, law firms may also require supervision of work on pro bono matters by a senior, experienced attorney, in accord with the firm's standard practice for other matters. Firm should identify senior supervising attorneys at the time the pro bono matter is placed with the firm even if there is an understanding that a junior associate will perform the majority of the work.

3. Continuity of Representation

If an attorney working on a pro bono case leaves the firm, the firm must follow standard requirements of professional responsibility with regard to ongoing duties to the client. This usually means providing continued staffing for the pro bono matter by other attorneys within the firm. The new pro bono attorney is expected to meet all deadlines and to provide quality legal assistance, even if that requires him or her to seek additional substantive and skills-based training to adequately represent the client. The firm's pro bono leader and supervising attorney should ensure that the transition is as seamless as possible. The pro bono leader

should also inform the referring legal services provider of all staffing changes as quickly as possible.

It is also important to highlight that many referring legal services providers operate under funding requirements to mandate data collection on the status of cases and the number of pro bono hours a firm has donated on particular cases. Some legal services providers have a simple “pro bono case resolution” form that can be filled out when a case is completed, while other providers request quarterly or year-end reports. It is important that law firms provide this information when it is requested by legal services providers to support compliance with the requirements of key funders of legal services.

4. Fully Utilize the Support and Resources Provided by the Legal Services Provider

Law firms should take advantage of the resources made available by referring legal services providers, such as trainings, on-going mentoring, and technical assistance. If a pro bono attorney needs advice on a particular matter after the case has been placed, he or she might contact the legal services provider for additional support. The legal services provider should strive to create an atmosphere where the pro bono attorney feels comfortable seeking advice whenever he or she needs to, as this will ultimately elevate the quality of legal assistance.

5. Communicating About Resource Disparities

As a best practice, law firms and legal services providers should have candid conversations about cost obligations prior to placement of a case. Legal services providers and pro bono clients have limited resources, and referring providers operate within the bounds of restrictions imposed on the expenditure of funds by foundations, government contracts and private donors. Therefore, law firms should not assume that the legal services provider can cover costs that the firm may normally incur in the handling of cases, including costs relating to messengers for documents, court filings, and the use of experts.

6. Legal Services Provider’s Ongoing Role in the Matter

Once a law firm accepts a case, it is critical for the legal services provider and law firm to clarify any ongoing role of the legal services provider in the matter. In particular, the firm and legal services provider should be clear about whether the firm is accepting full representation of the matter or whether the provider will be involved as co-counsel. If the provider and firm will be serving as co-counsel, they should enter into a separate co-counsel agreement. In addition, it is a law firm’s responsibility to draft and secure retainer agreements between a firm and a client once a firm accepts a case.

B. Access to Mentoring and Ongoing Support from the Provider



- ◆ Legal services providers should offer trainings, manuals, resources, and other sources of support to law firms at the beginning and throughout the course of pro bono representations.
- ◆ A referring provider and law firm should discuss the firm's expectations regarding mentoring, and the provider should be candid about what support it can provide.
- ◆ The degree of mentorship between a provider and law firm often depends on the complexity of the area of law required by the case, as well as whether a law firm has existing expertise in the area of law.
- ◆ If a provider is pitching a project in a new area of law for the law firm, the provider should plan to offer mentoring and ongoing technical support.
- ◆ There are a variety of models for offering ongoing support, including "office hours" with staff attorneys at the referring provider, an "attorney of the day" system, or a pro bono coordinator that handles all technical assistance.
- ◆ As firms develop expertise in particular types of pro bono cases, the need for mentoring and ongoing support generally decreases.
- ◆ Providers should budget for costs of providing support to volunteers.

The system where a legal services provider outsources a pro bono case at a firm and then has limited-to-no contact with the firm thereafter is largely becoming obsolete, at least in areas where the legal services provider has the substantive expertise and the firm does not. Instead, many successful pro bono relationships now incorporate trainings,²⁴ manuals, resources and other support from the legal aid provider at the beginning and throughout the course of the pro bono representation and the firm's involvement in ongoing projects. Therefore, as a best practice, legal services providers can design projects that involve staff support for pro bono attorneys. A legal services provider and a partner law firm can also discuss what the firm's expectations are regarding training and mentoring. The legal service provider should be upfront about what support, if any, it can or is willing to provide.

The degree of mentorship between a legal services provider and a partner law firm often depends on the complexity of the area of law involved in a referred case. The need for mentoring and external support exists along a continuum, with firms needing little or no support in areas in which they have existing expertise, but needing a full range of support for matters in which the firm's attorneys

PRACTICE TIP: Many firms are increasingly expecting legal services providers to provide mentoring and additional ongoing supports. The model where providers would outsource cases without supports is becoming increasingly unpopular.

²⁴ Scheduling trainings at law firms on specific case types can be a very effective tool. It gets attorneys involved, is an excellent way to "pitch" cases, demonstrates the training value, and is a personal and substantive way for the legal services organization to connect with the firm and its lawyers.

are handling engagements in a new subject matter area for the first time. For example, foster benefits cases can be very technical, and attorneys might be hesitant to accept one of these matters without proper training and ongoing guidance. In contrast, an impact litigation case or amicus brief may not require as much active mentoring. Mentoring and ongoing support can also be an essential component of new pro bono projects, as the assurance of a higher level of support by the provider can make it easier for firms to agree to participate in new programs.

PRACTICE TIP: Types of supports that legal services providers may provide:

- Training
- Mentorship, either by pro bono coordinator, staff attorneys, or experienced volunteers
- Ongoing support, technical assistance and advice to pro bono attorneys
- Manuals
- Sample pleadings and willingness to review draft pleadings/papers
- Insights on appearing before local judges
- Guidance and support in working with certain client populations

Mentoring and external support for law firm volunteer attorneys can be provided using a range of models. Some projects take an “office hours” approach, where a staff attorney is available to pro bono attorneys for prescheduled phone appointments for advice and technical assistance. Some programs have an “attorney of the day,” who is responsible for handling all requests for assistance from pro bono attorneys that come in by phone or email throughout the day. Other legal services providers choose to have the staff person responsible for pro bono administration handle the majority of technical assistance and bring in staff attorneys only on substantive issues.

As a law firm becomes more accustomed to handling certain types of cases, the need for active mentoring usually decreases. Indeed, many firms are making an effort to develop internal expertise in particular types of pro bono cases. Legal services providers should be aware of this development so that they can structure their pro bono programs in a manner that will allow them to efficiently match pro bono projects with each firm’s internal resources or allow firms to develop internal expertise over time.

In addition to providing substantive legal support, legal services providers might also act as an ongoing source of assistance regarding more practical matters such as sample pleadings, information about service of process issues, filings, the unique preferences of local judges, and offering guidance and support on how to work with certain client populations. For example, compared to a pro bono attorney unfamiliar with a specific area of law, a more experienced attorney at a legal services provider will likely be better equipped to determine in which court to file a particular claim in order to garner the most favorable results. Some legal services providers have attorney supervisors who accompany pro bono attorneys to court. Providing additional support for law firms will not only ensure a more positive experience for the pro bono attorneys and strengthen their commitment to doing pro bono work, it can also help avoid issues that might arise due to a pro bono attorney’s unfamiliarity with an area of law not practiced by her firm.

Legal services providers should also consider having a formal structure or plan in place for providing mentorship to partner law firms. This might include determining who at a legal services provider – a designated pro bono coordinator or separate groups of attorneys – is responsible for creating training materials and making presentations to attorneys at law firms. Legal services providers should determine what mentoring and support models they will use in advance of pitching cases or new pro bono projects.

C. Ongoing Communication and Status Updates



- ◆ Legal services providers should discuss with partner law firms how they can receive status updates on referred cases and the form of communication the firm prefers.
- ◆ Referring providers should not require law firms to submit formal, periodic updates.
- ◆ Providers and firms should determine in advance how they will handle communication about changes in staffing or critical developments in the case, understanding that there may be ethical issues involved.
- ◆ Law firms should consider copying the contact person at the referring provider on key documents and correspondences.

Legal services providers should discuss with partner law firms how often they will touch base for status updates on referred matters, as well as what form of communication the law firm prefers. Provider's expectations regarding communication differ greatly; some providers do not expect communication from the firms except upon closure of the case or if any problems arise, while other providers may want on-going communication to foster stronger relationships and to ensure the smooth referral of pro bono cases. Many legal services providers will need some type of report as to total number of pro bono hours contributed and the number of volunteers working on cases, both for annual reporting on the IRS Form 990, as well as for reports required by funders.

Although some legal services providers have tried implementing formal report forms for firms to complete on a regular schedule, as a best practice, legal services providers might consider limiting the amount of documentation that they require law firms to provide. Formal, periodic updates can become an administrative, and often unnecessary, burden for firms. Indeed, it may be that the concept of requiring formal report forms is based on the older version of outsourcing pro bono matters to firms followed by only limited contact. Under the model suggested in this guide, law firms and legal services providers will have ongoing contact post-placement, with continued mentoring, training, and support as needed.

Separate from the issue of periodic updates on pro bono matters, law firms should keep legal services providers informed as to changes in staffing and critical developments in a case. For example, if the attorney on a pro bono matter leaves her firm, it is a best practice for the law firm to promptly inform the legal services provider that another attorney is taking over the

matter. If a client becomes unresponsive to phone calls and letters, the firm can contact the referring provider for assistance locating the client.²⁵

D. Scope of Representation



- ◆ Even though most engagement letters clearly state the scope of representation, legal services providers and law firms should still discuss the issue once a firm accepts a case.
- ◆ A law firm should also be clear in the pro bono representation agreement with the client about the scope of representation.
- ◆ There are several ways a law firm can handle additional substantive matters for the client during the pro bono representation, including amending the representation agreement and providing assistance for the new matter.
- ◆ If the client's new legal issue was not included in the firm's original pro bono representation agreement and the firm does not want to handle the issue, the firm should contact the referring legal services provider as soon as possible. The referring provider should then screen the new issue for possible assistance and/or referrals, just as the legal services provider would for any new client matter.
- ◆ If the client's new legal issue is related to the subject of the original scope of pro bono representation, then the referring provider should identify the resources necessary to assist the pro bono firm in its expanded representation.

One of the most important issues to clarify once a law firm accepts a case is the scope of representation, and most engagement letters spell out the terms clearly. As a general matter, most pro bono cases are limited in scope to a particular issue as described by the legal services provider in its original "pitch" to the law firm. As a best practice, the firm should be very clear in the pro bono representation agreement with the client about the scope of representation.

New substantive legal issues may come up for a client after she has started receiving pro bono assistance from a firm. As a best practice, the firm should communicate with the legal services provider as quickly as possible about the new issue, and the firm should not promise the client that the provider will be able to assist or find another resource for the case. Such new legal issues can be handled by the referring provider in several ways:

- If the new issue is not included in the firm's representation agreement and the firm has existing expertise in the matter, the legal services provider and firm might discuss whether the firm will amend its representation agreement and also provide assistance on the new issue.

²⁵ For more information regarding the ethical responsibility to continue providing pro bono representation to a client even after the attorney responsible for the matter departs a firm, please see, "Pro Bono Ethics Handbook: Obligation to Continue Representation in Pro Bono Matters," Heller Ehrman LLP (2007).

- If the new issue was not included in the firm’s representation issue and the firm does not have expertise in the area, then the firm and legal services provider can handle that several ways:
 - The firm can refer the client back to the legal services provider for screening and assistance or referrals on the new issue.
 - The provider could bring in a staff attorney with expertise to mentor on that second issue in order to allow the firm to provide pro bono assistance on the new issue.
 - If neither the legal services provider nor the partner law firm has expertise in the area of law implicated by the new issue, the legal services provider should screen and process the new legal issue presented, just as the provider would for any other client.
- If the new issue is related to the issue which is the subject of the original scope of pro bono representation, then it is strongly recommended that the legal services provider take the responsibility of identifying and bringing in the resources necessary to assist the pro bono firm in its pro bono representation. If the legal services provider cannot provide technical assistance internally on the issue, then as a best practice the referring legal services provider should bring in the external support needed, either from a support center or additional firm on a pro bono basis. The law firm providing the pro bono assistance should not be required to pay for the costs of bringing in a consultant on issues for the purposes of the pro bono matter.

VIII. Summary and Conclusion

In order to effectively and efficiently provide pro bono representation, law firms and referring legal services nonprofits should focus on enhancing front-end communications in order to clarify the parties’ expectations and also address the various issues and concerns discussed in this guide. Tackling these issues and concerns in a candid and preemptive manner ensures that legal services providers, law firms, volunteer attorneys, and clients have positive experiences, thus strengthening overall support for legal services and ultimately improving the delivery of legal assistance to those Californians.



APPENDIX: CHECKLIST OF ISSUES TO CONSIDER IN ANY INITIAL CONVERSATION ABOUT A NEW PRO BONO PROJECT OR RELATIONSHIP

General Pro Bono Project Issues:

- ◆ What definitions of “pro bono” is each partners using? What types of cases will “count” as pro bono matters?
- ◆ What type of initial screening does the law firm expect?
- ◆ What initial screening practices does the legal services provider use?
- ◆ What are the financial screening requirements for this project? Is there anything to immediately flag regarding the treatment of assets, etc?
- ◆ How should the proposed pro bono matter be distributed or received? Email (email listservs, email blasts, emails to smaller groups, or one-on-one emails)? Phone calls? In-person meeting?
 - What types of pro bono cases does the legal services provider refer?
 - What types of cases does the law firm seek?
- ◆ What kinds of trainings are available to the firm through the pro bono opportunities with the legal services provider?
- ◆ Who should receive pro bono pitches at the law firm?
- ◆ What should go in the matter description to the law firm?
- ◆ What methods does the legal services provider employ when determining with whom to place a case?
- ◆ What additional factors does the legal services provider consider when placing a case? Firm reputation? Firm expertise? Firm size? Attorney expertise and amount of resources the firm is willing to allocate to the case?
- ◆ How do law firms circulate opportunities to their attorneys? What factors do they consider when assigning a matter to an attorney?
- ◆ What is the time frame required for a law firm to accept or pass on a case?
- ◆ Will the law firm apply the same standard of care for all cases accepted?
- ◆ Will the law firm ensure that pro bono cases are supervised by senior attorneys?
- ◆ What steps are taken when an attorney working on a case leaves the firm?

Case-Specific Pro Bono Issues:

- ◆ How many hours does the case require? What is the overall timeframe for the matter?
- ◆ What will the pro bono assistance involve in terms of substantive law and the skills required? What tasks need to be completed?
- ◆ Who is responsible for the cost obligations?
- ◆ What is the legal services provider’s on-going role in the matter?
- ◆ What are the partners’ expectations regarding mentoring, communication between the partners once a case is placed, and the scope of representation? Does the matter have substantive legal merit? What are the strengths and weaknesses of the case?
- ◆ What are the goals of representation and criteria for success in the matter?
- ◆ What are the important deadlines in the project?
- ◆ Does the case require immediate, emergency action?
- ◆ Does the matter involve actual or potential client challenges?
 - Is the client a limited-English or non-English speaker? If so, who will provide language support?
 - Does the client have a mental health disability?
 - Does the client require special accommodations?
 - Does the case involve present or past experiences of violence?
 - Is the client dealing with additional challenges, such as substance abuse or substantial trauma?
 - Can the nonprofit provide ongoing support and technical assistance?
- ◆ Are there actual or potential conflicts of interests, issue conflicts, or public relations concerns?
 - What is the timing of and process for the law firm’s conflicts check?
 - What are the expectations relating to late-arising conflicts?

Appendix: Additional Resources

1. Heller Ehrman LLP, *Pro Bono Ethics Handbook: Attorneys' Fees Waivers in Pro Bono Settlements*, Pro Bono Institute (2007)
2. Heller Ehrman LLP, *Pro Bono Ethics Handbook: Ethical Duty to Supervise Lawyers in Pro Bono Matters*, Pro Bono Institute (2007)
3. Heller Ehrman LLP, *Pro Bono Ethics Handbook: Ethical Limits on Advancing Disbursements to Pro Bono Clients*, Pro Bono Institute (2007)
4. Heller Ehrman LLP, *Pro Bono Ethics Handbook: Limitations on Fee Splitting in Pro Bono Matters*, Pro Bono Institute (2007)
5. Heller Ehrman LLP, *Pro Bono Ethics Handbook: Obligation to Continue Representation in Pro Bono Matters*, Pro Bono Institute (2007)
6. Heller Ehrman LLP, *Prospective Waivers from Commercial Clients to Permit Firms to Provide Pro Bono Representation to Potential Adverse Parties*, Pro Bono Institute (2008)
7. Karen A. Lash, *Pitching Pro Bono: Getting to First Base with the "Big Firm,"* 2 DePaul Journal for Social Justice 201 (2009)
8. The Law Firm Pro Bono Project, *What Counts? A Compilation of Queries and Answers*, Pro Bono Institute (2008), available at <http://www.probonoinst.org/pdfs/What%20Counts%202008.pdf>
9. The Law Firm Bro Bono Project, *What Counts? A Compilation of Queries and Answers*, Pro Bono Institute (2003), available at <http://www.probonoinst.org/pdfs/whatcounts.pdf>