

OneJustice

# California Pro Bono Best Practices Guide

2014

A PRODUCT OF ONEJUSTICE IN COLLABORATION WITH THE STATE BAR OF CALIFORNIA  
AND THE PRO BONO BEST PRACTICES WRITING GROUPS

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OneJustice would like to sincerely thank all the members of the Pro Bono Best Practices Guide writing groups. Without their insightful comments, wealth of experience, honest feedback, and dedication this guide would not have been possible.

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# Preface

In October 2008, the State Bar of California and OneJustice (formerly known as Public Interest Clearinghouse) convened the first-ever statewide California Pro Bono Summit, which brought together a small number of representatives from the legal services provider<sup>1</sup> 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 collaborating to develop and administer the best possible pro bono projects. A writing 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 preliminary outline proposed by the writing group. Summit participants discussed ideas for additional content, and prioritized among the list of possible chapters. Participants agreed on a guide consisting of five chapters spanning pre-referral issues to case closure, and all steps in-between. The guide would offer tips and strategies to legal services providers and law firms on how to foster valuable partnerships with one another by clarifying expectations among partners and providing detailed examples of effective pro bono strategies.

With this guidance from the larger community of stakeholders, the writing group began meeting regularly under the auspices of OneJustice. In a series of one-hour statewide conference calls, the group tackled each issue that had been proposed for inclusion in the guide. Representatives from law firms and providers discussed their experiences, exchanged candid observations of practices that worked for them, problems they had encountered with one another, systemic hurdles to effective pro bono case handling, strategies they used to enhance the working relationships between firms and providers, individual practices that improved efficiencies, and substantive legal issues and administrative oversight issues that both assisted and thwarted effective pro bono partnering. From unique and differing perspectives, the group of provider and law firm representatives examined the best ways to improve the pro bono delivery of legal services to the needy in California. After every discussion, OneJustice would draft proposed text, the writing group would review and edit those materials, and the next issue would be tackled. The process proved to be illuminating, itself bringing value to law firm/provider relationships. While long, that process was educational and led to detailed analyses of the best practices involved in the most successful relationships between legal aid organizations and major law firms throughout the state.

By no means a final product, this best practices guide is intended to be a work-in-progress, to be commented upon, improved upon, and expanded. We invite your comments, suggestions for expansion, additional input, and guidance. The writing group especially hopes that later editions of the work, with your directives, will grow to include the best practices involved in working with law schools, corporate law departments, and other constituencies in an effort to further improve the pro bono legal services system in California. We invite your thoughts and participation.

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<sup>1</sup> The terms “legal services provider”, “legal services nonprofit”, “provider”, and “nonprofit” are used interchangeably in this guide when referring to organizations that provide free civil legal help to low-income or otherwise underserved individuals.

The writing group put together this best practices guide in a format they felt would be accessible and useful. The division and layout of chapters, subsections, and discussion points are the result of the group's collaborative process. Employed are a number of strategies to make the guide as easy to use as possible. For instance, the Guide features "Key Concepts and Recommendations" text boxes:



**Key Concepts and Recommendations:** The beginning of each section has a text box with this key symbol for key concepts and recommendations discussed in more length in the section. These text boxes will allow readers to skim the document for particular content areas.

Again, we invite your thoughts and suggestions not only as to substance but also as to any ideas that would make the guide more complete and more accessible. Thank you.

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## **Chapter 1: Building Successful Pro Bono Relationships**

### **I. Institutionalizing Front-End Communication**



- ◆ Having designated law firm representatives oversee relationships with legal services providers enhances efficient management and distribution of pro bono matters.
- ◆ Providers and firms should maintain front-end communication about the expectations and interests of both parties to ensure positive working relationships and successful delivery of pro bono services.

Over the last decade, California's legal community has experienced a shift in the structure of pro bono partnerships between large law firms and legal services providers. Historically, pro bono relationships with large law firms were based largely on individual relationships between one legal services staff attorney and an attorney at a partner law firm. Pro bono opportunities were made available to firms on an ad hoc basis through those one-on-one relationships. More recently, some large law firms and legal services providers are establishing permanent positions responsible for managing pro bono relationships and placing pro bono matters. This staffing shift strengthens the relationships between legal services providers and large firms, substantially increasing the overall capacity to engage private-sector resources in assisting low-income Californians.

The transition to a more institutionalized pro bono approach has changed all parties' expectations about the process by which pro bono matters are screened, assessed, and distributed to law firms. Law firms and legal services providers now operate more often as repeat partners on joint projects. However, given the historical nature of pro bono matter placement based on ad hoc relationships, some providers and firms have not made the cultural shift of identifying and discussing each entity's expectations in longer-lasting pro bono relationships.

Therefore, the primary recommendation of this guide is that large law firms and legal services providers begin by engaging in frank conversations about their expectations for the relationship. Addressing these issues at the beginning of new projects or relationships, rather than midstream, will help promote more effective interaction and elevate the quality of the pro bono projects developed. This community is key as providers and firms assess and continue to hone their internal pro bono policies, expectations, and preferences.

When collaborating with new law firm partners, legal services providers should expect to describe policies and procedures they use in each of the major areas addressed in this guide. Law firms should similarly be able to identify their expectations for legal services providers and articulate relevant policies and practices, particularly conflicts checks, approval and placement of cases, and reporting procedures. A check list of suggested topics for facilitating initial discussions between legal services providers and law firms is provided as the Appendix.

## II. Identifying Appropriate Contacts



- ◆ Where possible, all introductory emails and phone calls should be directed to the pro bono coordinator at a law firm or legal services nonprofit.
- ◆ If there is no designated pro bono coordinator at a law firm, a nonprofit should contact the firm's Career Development Department or Pro Bono Committee, locate an individual who serves as the point person for a sub-group of cases, or find an associate who is willing to become the de facto pro bono coordinator for the nonprofit's project.
- ◆ Email is generally the best method to initiate contact with a law firm or legal services nonprofit.
- ◆ When developing a new relationship with a firm, a nonprofit should try to identify any personal or professional connections that it has with members of the firm, such as someone who may have volunteered with the nonprofit in the past.

If a law firm has a designated pro bono coordinator, then all initial contact should be directed to this individual. Although a nonprofit usually initiates the first contact with a new firm, on some occasions a firm will seek out a nonprofit for pro bono opportunities. If a nonprofit has a pro bono coordinator, all initial communication should be directed to that individual. If there is no designated pro bono coordinator, the firm can contact the nonprofit's executive director or managing attorney.

To locate a pro bono coordinator at a large law firm, a nonprofit should consult the *California Guide to Pro Bono Law Firms 2012 Edition*,<sup>2</sup> the firm's website, or the *Vault Guide to Law Firm Pro Bono*.<sup>3</sup> Please note, however, that not all pro bono coordinators are listed on their firm websites because of the high volume of calls from clients seeking free assistance they would receive if identified. If a law firm has a national pro bono coordinator in addition to coordinators in each office or region, the legal services provider should contact the national coordinator first for an introduction to the local coordinator, even if the provider can find the contact information for the local coordinator.

Legal services provider staff should keep in mind that the pro bono contact person at a firm may not necessarily work exclusively on managing pro bono; rather, the individual might have assumed the role of overseeing pro bono placements in addition to his or her other duties. The exact title or role of this individual will vary widely depending on how a firm is structured and the amount of resources dedicated to pro bono. For example, at some firms the pro bono contact is the recruiting coordinator, while at other firms it is a member of the pro bono committee, a managing attorney, or an associate.<sup>4</sup>

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<sup>2</sup> To download a copy of the *California Guide to Pro Bono Law Firms 2012 Edition*, please visit: <http://www.californiaprobono.org/library/>. This guide is password protected to ensure the information remains confidential, but if you would like to request a password, please email [JusticeBus@one-justice.org](mailto:JusticeBus@one-justice.org).

<sup>3</sup> To access a copy of the latest edition of the *Vault Guide to Law Firm Pro Bono*, please visit: [http://www.vault.com/wps/portal/usa/store/bookdetail?item\\_no=845](http://www.vault.com/wps/portal/usa/store/bookdetail?item_no=845).

<sup>4</sup> 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

If a law firm does not have a designated pro bono coordinator, legal services providers will need to perform more research to identify a suitable contact. Since firms often view pro bono as a professional development tool, some firms' career development departments are involved in placing pro bono cases. Other firms have established pro bono committees. For firms without a designated pro bono coordinator, we recommend contacting a firm's career development department or a member of the firm's pro bono committee.

At some firms, there might be an individual who serves as a point person for a sub-group of cases. Although this individual may not always be easy to locate, he or she functions as a pro bono coordinator and may have knowledge about the capacity and interest at the firm. If a law firm does not have any pro bono point person, a provider might be able to identify an individual at the firm with strong interest in pro bono work. This individual could serve as a de facto pro bono coordinator for a particular case or project and could become the primary contact for placing a sub-group of matters. However, if the pro bono relationship becomes dependent on that individual, the relationship may not last if the individual leaves the firm. Due to high turnover rates at large law firms, this is not an ideal set-up, though in some circumstances it may be the only option for a legal services provider seeking to forge initial contact with a large firm that does not have a formal pro bono contact person.

The best method of first communication with a law firm depends on the type of case a legal services provider is trying to place. If a provider has a list of cases or a group of similar cases, then email is the best way to initially approach a firm. On the other hand, if a legal services provider is only trying to place a single case or a matter that is sensitive or urgent, then a phone call might be a more effective choice.

Before cold-calling a law firm, a legal services provider should research the firm to understand the firm's areas of expertise, practice groups, and matters it may be willing to handle on a pro bono basis. The legal services provider should be aware of possible issue conflicts as well as other types of conflicts of interest before approaching any firm for the first time.<sup>5</sup>

When approaching a firm for the first time, a legal services provider should try to find a "hook" or some common interest with the firm to introduce their organization. For example, a legal services provider should determine if someone from the firm has ever worked with anyone at their nonprofit or find any other possible overlap between the two entities. Some providers even develop sophisticated databases of past volunteers, board members, and other useful information, which they then use as a tool to connect to new law firms. These databases can identify the best contacts at both a legal services provider and law firm.

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other staffing structures. For consistency, this Guide will refer to all of these pro bono-related positions within a firm as "pro bono leaders."

<sup>5</sup> Please see Chapter Three of this guide for a more in-depth discussion of conflicts issues.

### III. 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.<sup>6</sup> 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 organizational purposes.”<sup>7</sup> Other entities have built on the ABA's language to craft their own definition of pro bono.<sup>8</sup>

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<sup>6</sup> MODEL RULES OF PROFESSIONAL CONDUCT RULE 6.1 (1983).

<sup>7</sup> 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.”

<sup>8</sup> 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.

## 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% to 5% of their annual billable hours to pro bono work.
- ◆ The Challenge has become one of the country's most widely adopted 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 (the "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.<sup>9</sup> 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.

## 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 "Mission-Matter-Means" analysis.

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 provider'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

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<sup>9</sup> A copy of the Pro Bono Institute's Law Firm Pro Bono Challenge language and principles may be found at: <http://www.probonoinst.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenger.html>.

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 prong, it is eligible for pro bono status and no evaluation of the organization’s budget is necessary.

If neither the Mission nor Matter prongs are satisfied, APBCo recommends analysis under the “Means” test in order to determine whether a provider has sufficient means to afford competent legal services. There are a number of factors a law firm might consider in 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 provider.

#### **D. Pro Bono Rankings and Law Firm Definitions**



- ◆ American Lawyer, Vault Guide to Law Firm Pro Bono Programs, and the NALP Directory of Legal Employers rank firms based on pro bono and use similar definitions for pro bono.
- ◆ 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.

## IV. First In-Person Meeting



- ◆ Before the first in-person meeting with a law firm, a legal services provider should thoroughly research the firm's practice areas, culture, and pro bono program.
- ◆ At the first meeting, a legal services provider should bring a list of cases that can be placed immediately as well as information about the types of cases that are generally available.
- ◆ To successfully pitch a new program, a nonprofit should share compelling client stories and successes.
- ◆ During the first meeting, a provider should be prepared to discuss the time commitment and length of a typical case, exact tasks that a volunteer attorney is expected to perform, potential costs, available training, and ongoing support.

Once a legal services provider has successfully contacted a law firm, it is ideal to schedule an in-person meeting to build the relationship and pitch its programs in more detail. To prepare for this first meeting, the provider should research the firm's practice areas, culture, and pro bono program. Much of this information is readily available on a firm's website or in its annual report. Providers should also review information about the firm in the *California Guide to Pro Bono Law Firms 2012 Edition*. In addition, legal services providers should familiarize themselves with the various definitions of pro bono the law firm uses to track its work.<sup>10</sup> The more information a legal services provider can learn about a firm prior to meeting, the more effective the meeting will be.

If a legal services provider can offer benefits to the firm as part of pro bono involvement – such as Minimum Continuing Legal Education (MCLE) credit for trainings or a unique new project – it should include that option in the initial in-person meeting. A legal services provider should bring an organized folder containing general information about the provider and its pro bono programs, a list of cases that can be placed immediately, and types of cases that are generally available. In some instances, a law firm will circulate available cases to their associates immediately to see if there is interest in those matters. The provider should also mention any upcoming training sessions. If the provider has an effective annual report or recent articles that feature pro bono volunteers, then it should include this material in the introductory packet of information.

To effectively pitch a pro bono program, the legal services provider should offer a compelling description of the client needs and the importance of the project on a macro and micro level. It is helpful to share specific client stories and past successes when introducing a new program to a law firm.<sup>11</sup> The development department and pro bono coordinator at a legal services nonprofit should coordinate when approaching a new firm to ensure that their messages are clear and consistent.

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<sup>10</sup> For a more detailed discussion of what qualifies as pro bono at a large law firm, please refer to Chapter Three of this guide.

<sup>11</sup> For more information on how to successfully 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." This article explains in detail what information should be included in the description of a circulated case, as well as how to effectively "sell" a client's story.

During the first in-person meeting with a new firm, the legal services provider must also be ready to discuss practical information about prospective pro bono cases, such as the timeframe, the required time commitment, expectations, mentoring, training, and potential costs. Because law firms need this information to determine if a pro bono program is a good match, it is crucial that legal services providers prepare this material in advance and be ready to discuss these issues.

As a best practice, legal services providers should understand that the first meeting with a law firm may be focused more on relationship-building than immediate pro bono involvement by the firm. Although a legal services provider should attend the meeting with a list of cases that are ready to be placed, it must never assume that the law firm can immediately take the cases. Instead, the provider should present the potential cases and wait for the firm to gauge interest and capacity.

## V. Pro Bono Fairs and Informational Presentations



- ◆ Since the types of attendees at nonprofit- and firm-sponsored pro bono fairs can vary greatly, a legal services nonprofit should prepare for them on a case-by-case basis.
- ◆ Informational presentations about a legal services nonprofit and its pro bono program are successful recruitment tools, especially if they take place at the offices of a law firm, during lunch, and offer MCLE credit.

Nonprofit- and firm-sponsored pro bono fairs attract different populations of attorneys. Firm-sponsored pro bono fairs draw pro bono leaders and law firm attorneys, whereas nonprofit-sponsored fairs which are usually organized by local or minority bar associations interest a wide range of attorneys. Although attending a nonprofit-sponsored fair does not usually initiate a new pro bono relationship between a law firm and a legal services provider, it can increase the visibility of a pro bono program, with positive and lasting effects. Since the majority of attorneys attending nonprofit-sponsored fairs are retired, new graduates, or unemployed, providers should offer volunteer opportunities targeted for those groups of attorneys. On the other hand, firm-sponsored pro bono fairs frequently provide networking opportunities for legal services providers and can foster pro bono relationships with new law firms. However, it is rare to actually place cases with associates from the sponsoring firms at the fair itself.

An effective approach to placing cases with a new law firm is an informational presentation about a legal services provider's pro bono program where cases are available immediately after the presentation for referral. The most attractive presentations are those that offer MCLE credit, perhaps over lunch, and are limited to one hour. These presentations are particularly successful if attendance is encouraged by firm management and pro bono leaders. Even though not all associates who attend these presentations will ultimately volunteer and take a pro bono matter, the meetings still serve as a model opportunity for recruitment.

## VI. Building and Maintaining a Successful Relationship



- ◆ Timely, transparent, and informative communication is vital to a successful pro bono relationship between a law firm and a legal services nonprofit.
- ◆ All logistical information about a potential referral – such as client screening data, case descriptions, time estimates, deadlines, and volunteer tasks – must be accurate and finalized by a legal services nonprofit before placing a case.
- ◆ Providers should avoid placing “difficult” cases with a new partner law firm; instead, the nonprofit should allow the firm to develop relevant expertise before it tackles cases with complex substantive or client management issues.

The most important component of a successful pro bono relationship between a law firm and a legal services provider is timely, transparent, and informative communication. Availability and responsiveness to phone calls and emails quickly demonstrate accountability and foster a strong and lasting relationship. More importantly, this enables both parties to address problems and questions promptly. Even if a law firm or legal services provider cannot answer messages immediately, as a courtesy and best practice each party should acknowledge receipt of any communication within 24 to 48 hours. In addition, a legal services provider or law firm must never ignore emails or phone calls simply because it cannot adequately address an issue.

Another important component of a successful pro bono relationship is providing a strong infrastructure and support at the beginning of any involvement in a pro bono project. In other words, a legal services provider should sort out all logistical details such as training resources, adequate case descriptions, client screening, accurate time estimates, clear expectations of the volunteer attorney, and identification of any provider attorney mentors before a case is placed or at the initial meeting with a law firm. Not only must a provider communicate this information up-front to a potential law firm partner, it should also frankly and fully disclose any possible client challenges or controversial issues. If a legal services provider loses its credibility and a firm’s trust, there is a high probability that the firm will not work with the provider again. Thus, as a best practice, a legal services provider must ensure that case descriptions and time estimates are accurate in order to avoid surprises and misunderstandings that can damage long-term relationships with firms.

When building a new relationship with a law firm, a legal services provider should avoid, if possible, placing cases that are difficult in terms of client management at the beginning of the relationship. If a firm can develop its expertise with easier cases, it is more likely to have a positive pro bono experience and develop an increased interest in and capacity for future cases with more complex substantive or client management issues. Ultimately, working with a firm to build its internal capacity and expertise in pro bono subject matter areas will better leverage the resources available and result in increased services for clients.

## VII. Summary and Conclusion

In order to establish successful pro bono relationships, law firms and legal services providers must engage in front-end communication to clarify the parties’ expectations. If there is a designated pro bono coordinator at a firm and nonprofit, the communication is often more efficient and effective. If there is not a pro bono contact, then the law firm and legal services provider should

work together to identify an appropriate individual. In addition, a provider must thoroughly research the firm's practice areas, culture, and pro bono program before contacting a firm for the first time. The first in-person meeting between a firm and a provider is a good opportunity to establish clear expectations for the relationship and for the provider to pitch all the attractive elements of their pro bono program, including trainings that offer MCLE credit and ongoing access to mentoring and technical support. Once a pro bono relationship or collaboration is launched, both parties should continue to have frequent contact and maintain an open dialogue. This will ultimately maximize volunteer attorneys' experiences and enhance the delivery of pro bono legal services for Californians in need.

## **Chapter 2: Ideas for Effective Pro Bono Training/MCLE**

### **I. Importance of Pro Bono Trainings**



- ◆ Top-notch training ensures pro bono attorneys are prepared to provide top-notch service.
- ◆ Trainings serve as an introduction to the nonprofit partner and its clients.
- ◆ Trainings can help build strong relationships between nonprofits and pro bono attorneys and firms.

Trainings are nearly always an essential element of pro bono partnerships, as most pro bono attorneys will be asked to work in areas of the law and with particular types of clients that might be new and unfamiliar to them. The goal of the pro bono relationship should be to provide high quality legal assistance to the client. Training, mentoring, and supervision ensure that the goal of high quality legal assistance is met. Legal services nonprofits must, therefore, ensure that high quality training opportunities are made available to their pro bono partners. In addition to ensuring pro bono attorneys are prepared to serve their pro bono clients, trainings are a good opportunity for legal services nonprofits to introduce their work, their role in the community, and the impact pro bono will have on the community at large. It can also be a great tool for building strong relationships with pro bono attorneys and firms.

#### **PRACTICE TIPS FOR EFFECTIVE TRAININGS:**

- Less than two hours
- During lunch
- Offer MCLE credit
- Include case examples
- Provide written materials

This section provides tips and strategies on how to create effective trainings for attorneys at large law firms – for both experienced and new volunteers.

### **II. Developing and Scheduling Pro Bono Trainings**



- ◆ Be clear about training expectations at the outset of a pro bono engagement.
- ◆ Consider interests of particular pro bono partner when deciding on the timing, format, and mode of training.
- ◆ Trainings during lunch should be no longer than 90 minutes.
- ◆ Legal services nonprofits should offer trainings, manuals, and other sources of support to law firms at the beginning and throughout the course of pro bono representation.

#### **A. Setting Training Expectations**

Trainings, particularly in-person trainings, require a great deal of time and resources on the part of the legal services nonprofit. A starting point for setting expectations is for the law firm and legal services nonprofit to be clear about the goals of a training. Will attorneys be taking cases right

away and how many cases should the legal services nonprofit be expected to have available and present at the training? Will the training be limited to individuals who can and are interested in taking cases or are they aimed at educating potential volunteers about opportunities? Ultimately, the legal services nonprofit's goal to have cases taken as a result of the training.

Legal services nonprofits should be very clear with potential pro bono partners about training requirements for particular pro bono matters. While legal services nonprofits should be flexible about the mode and format of training (see below), law firms need to know what kind of time commitment will be required by pro bono attorneys. Before the engagement is formalized, nonprofits therefore need to identify all of the trainings in which pro bono attorneys will be expected to participate, and whether volunteers will be able to hit the ground running after the first training.

Trainings are a valuable resource for both the legal services nonprofit and the law firm. Both parties should focus on recruiting an audience that will help meet the goals of the firm and the organization. And whenever possible, other firms should be invited to attend trainings hosted by a firm.

## **B. Determining Where, When, and How Trainings Will Be Provided**

Trainings can be conducted in many ways. In-person at the partner law firm. By webinar at a prescribed time. Or on-demand through recorded video. Nonprofits should work with law firms to determine the timing and mode that works best for both parties. In addition, both legal services nonprofits and firms should consider and suggest alternative ways for volunteer attorneys to learn about the types of cases they will be taking on and prepare for taking matters on their own.

To determine a date and time for a law firm training, the legal services nonprofit should begin by speaking to the firm's pro bono coordinator. The pro bono coordinator can provide insight into the culture of the firm, the days and times when trainings are most convenient for their attorneys, and the resources the firm can provide to the legal services nonprofit.

Trainings should run less than two hours. Some firms request that trainings be limited to 90 minutes. If the legal services nonprofit can schedule the training over lunch, it will be more convenient for associates to attend. However, lunch presentations should normally not run longer than 90 minutes. Due to the substantive law of certain pro bono matters proper training may require more than two hours. In such instances the legal services nonprofit and the law firm should discuss the detailed time commitment to be presented to volunteer attorneys. In those instances it is best to break trainings into parts and hold them in the afternoons or evenings. Regardless of when the training is scheduled, the legal services nonprofit should always provide an accurate estimate of the training's length and not exceed the promised time.

## **C. Publicizing Trainings**

A legal services nonprofit should work with the law firm to publicize the training and identify who should be invited to the training (*e.g.*, Is the training available to other firms besides the host?). Materials publicizing trainings should include clear and accurate descriptions of what the training will cover, the nonprofit's pro bono project, and any volunteer opportunities flowing from the training. The materials should provide a compelling description of client needs and the

importance of the project to both encourage new recruits and strengthen the commitment of existing volunteers.

## **D. Types of Trainings**

Although in-person trainings are ideal because they promote strong bonds between legal services nonprofits and pro bono attorneys, webinars, prerecorded trainings, and other alternatives can also be effective, convenient, and less costly.

### **1. In-Person Trainings**

Trainings in real time can be in-person or via webinar. Both provide the audience an opportunity to ask questions during the presentation and interact with the presenter. The advantage of in-person trainings is the ability to establish a strong relationship with the pro bono attorneys, which generally leads to better interactions during the pro bono engagement and a better chance of future pro bono partnerships. They also offer richer experiences for the pro bono attorneys because the audience is able to interact with the trainer. In-person trainings, however, can be difficult to schedule, as they require finding a time that works for both the firm and the nonprofit. This is particularly difficult for smaller nonprofits with limited staff and resources. Offering a live webinar is a good alternative to in-person trainings, as they allow for discourse between the participants while giving participants flexibility with regard to their location during the training. But, because the trainer never gets to meet the pro bono attorneys, webinars lack the relationship-building quality of in-person trainings.

### **2. Recorded Trainings**

Recorded trainings provide flexibility for both the legal services nonprofit and the firm, and are an excellent alternative when scheduling an in-person training proves difficult. In-person trainings can also be recorded, sometimes by the partner law firm, and made available after the fact to those who couldn't attend live trainings. Volunteer attorneys can watch and even revisit trainings at their own convenience. Recorded trainings serve as an ongoing resource for the legal services nonprofit to use in the future and/or to share with other legal services nonprofits doing similar work. The downside of recorded trainings is that volunteer attorneys are unable to ask questions or get clarification of issues. It is recommended that organizations provide written materials or call-in hours for pro bono attorneys to ask questions about the training. In addition, it is highly recommended that the legal services nonprofit provide additional support and materials when the recorded training was created by an organization other than itself. Trainings from other organizations usually only cover general substantive law and may not address some of the issues a volunteer attorney may face when working with a pro bono client. The legal services nonprofit should always ensure that the substantive law in recorded trainings is up to date and consistent with the rules of local courts. As a best practice, it is best to update trainings at least once per year and send out new trainings to firms with older versions.

### 3. Resources for Recording or Creating Webinars

Legal services nonprofits often have limited technological equipment for trainings. When looking to record live trainings, legal services nonprofits can ask if the firm has recording capabilities available. In addition, there are several nonprofit support centers across the state that can provide assistance recording trainings or that may have applicable trainings in their libraries. For example, the Practicing Law Institute and OneJustice have a library of webinars on various legal topics. Legal services providers should also reach out to Support Centers to identify what webinars and training materials they have created and are available to support pro bono programs (*e.g.*, Immigrant Legal Resource Center, etc.)

#### E. Supplementing Trainings with Written Resources

Some legal services nonprofits dedicate a great amount of resources to creating manuals for volunteers and pro bono attorneys. Manuals are an excellent reference tool for volunteer attorneys to use throughout the pro bono matter. In most cases, a manual should be used as a supplemental training tool for the volunteer attorney. The legal services nonprofit should provide a point-person to answer follow up questions or alternative forms of training should the manual not be sufficient for the volunteer attorney. The nonprofit should consult with its volunteers to determine the volunteer's knowledge, experience and familiarity with the subject matter.

Law firms can generally assist with costs of printing and copying and may be available to help research and develop manuals and samples.

### III. Training Content & Structure



- ◆ Effective trainings guide volunteers through each step of the pro bono engagement.
- ◆ MCLE credit is a great way to attract attendees to a training.
- ◆ Mock client interviews and hearings are helpful for associates who have never worked with low-income clients or lack litigation experience.
- ◆ Written manuals that include relevant law and statutes, sample cases, and step-by-step guidance on how to complete specific matters are invaluable to volunteer attorneys.

When developing trainings for a law firm audience, the legal services nonprofit should always clarify the goals of its presentation, while considering the particular needs of its volunteer attorneys. Will the training cover one particular area of law? Or, is it an overview on how to prepare for a clinic? How much experience have the volunteer attorneys had with the subject matter and topic? The answers to these questions will help determine the structure of the training, its substance and length, and the types of materials provided to participants. Below are some suggestions on the structure and content of trainings.

## **A. Laying the Groundwork**

The initial training in a pro bono engagement should start with an explanation of the legal services nonprofit's work, the types of clients it serves, and the general mission of the pro bono engagement. This will provide pro bono attorneys with important context for the work they will be doing.

Another vital element of the initial training is a detailed description of the time commitment, goals, and responsibilities of the pro bono engagement. This should include a description of the respective roles the law firm and the nonprofit will take on during the engagement (*e.g.*, who will take lead and make decisions in particular situations), the requisite trainings, any costs associated with an engagement (*e.g.*, technical fees, etc.) and who will be responsible for them, and matters relating to malpractice insurance. Furthermore, the training should discuss any obligation that the pro bono attorneys have to track hours and outcomes and report them to the nonprofit.

## **B. Engaging Participants in Interactive Training Exercises**

Although trainings should offer a thorough discussion of the substantive legal topics underlying the pro bono engagement, the majority of the training needs to be specific, practical, and grounded in real-world examples. This will empower pro bono attorneys to leave the training with a concrete understanding of how to handle a particular type of case. General commentary on forms and rules are not helpful. Instead, the trainer should be able to take volunteers step-by-step through what is required so that volunteers can actually visualize what they will be doing as part of their pro bono project.

While trainings are an opportunity for law firm attorneys to learn about a new substantive legal area, legal services nonprofits should ensure trainings are as engaging and interactive as possible. One useful way to engage participants in an interactive training is to incorporate a mock client interview or mock hearing into the training. Since some associates at law firms may not have had client contact or litigation experience, it is often helpful for them to see a step-by-step model of what to do at an interview or hearing. One legal service nonprofit even asked members of the U.S. Immigration Court to conduct a mock hearing at their immigration law training. The mock hearings provided volunteer attorneys with the opportunity to practice oral advocacy with feedback from actual judges. Trainers should also encourage volunteers to attend actual judicial or administrative hearings and can help facilitate trips to relevant courthouses and agency offices. These are just a few innovative methods legal services nonprofits can incorporate in their trainings.

## **C. Providing Useful Supplementary Materials**

As a best practice, legal services nonprofits should distribute written materials during their training sessions.<sup>12</sup> These materials should include relevant laws and statutes, sample cases, and step-by-step guides on how to complete specific tasks. Ideally, volunteer attorneys will refer to the materials when they are working on a referred matter. Thus, the more detailed the materials are, the more helpful they are for the volunteer. However, the materials should not be so voluminous that they are impractical for a volunteer attorney to reference. If there are important reference materials a trainer thinks a volunteer attorney should have, the trainer should consider providing CD-ROMs,

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<sup>12</sup> Most law firms will provide copies of the training materials to offset the cost for their legal services partner. MCLE trainings longer than one hour must provide written materials.

flash drives, or links to such materials as a way of cutting back on volume. It may also be possible for the firm to post such additional materials on their internal shared drives or website, rather than having to provide each attendee with the materials.

#### **D. Granting MCLE to Participants**

To attract more attendees, legal services nonprofits should also offer MCLE credit where possible, especially if they are able to offer specialty MCLE credits such as in ethics and elimination of bias.<sup>13</sup>

### **IV. After the Training**



- ◆ Get feedback from training participants and use it to improve future trainings.
- ◆ Update trainings and supplementary materials regularly to reflect substantive changes in the law and Judicial Council Forms.

After each training session, legal services nonprofits should conduct a survey and evaluation to help them improve their trainings. Some nonprofits also ask their volunteer attorneys for in-depth feedback after the attorneys have completed work on cases. This allows for input on how effectively the training prepares attorneys for the actual experience of volunteering. At the conclusion of a training, the presenters should include their contact information.

Nonprofits should also consider additional trainings or notices whenever a substantial change in the law occurs or there are changes to required forms or procedural requirements. Similarly, additional training should be provided if the subject matter of a case enlarges or when cases become more complex.

Trainers should also regularly update their support materials. Additionally, trainers should draw on the knowledge and experience of experts when assembling and updating materials to ensure that they are providing clear and accurate information to trainees. It is a good practice for trainers to review their training materials at least once a year, as legal forms and the law change fairly frequently. It would be both unethical and unprofessional to have volunteers relying on outdated materials. In addition, a volunteer could be subject to a malpractice suit if he or she does not verify that a statute or case is current before relying on it.

If the legal services nonprofit sends to a firm an updated manual or sample materials, the firm should circulate it to associates working on a case with topics covered by the manual. Some firms also have internal websites or portals to store pro bono reference materials and updated items of interest. These practices ensure that attorneys have an easily accessible and searchable set of resources to utilize.

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<sup>13</sup> For information on how to get a training approved for MCLE credit and become a State Bar-approved MCLE provider, please visit: <http://mcle.calbar.ca.gov/Providers.aspx>.

## **Chapter 3: Intake and Referral Issues**

### **I. 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 with the client 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.<sup>14</sup>

#### **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

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<sup>14</sup> 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.

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 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.<sup>15</sup>
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.<sup>16</sup>
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 services 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

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<sup>15</sup> 45 C.F.R. § 1611.5 (2005).

<sup>16</sup> OLDER AMERICANS ACT § 3002(24) (2006).

– 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 leaders to understand the complexity of funding sources for legal services providers and the varying financial eligibility requirements driven by the grants and revenue sources. In addition, legal services providers might educate law firm pro bono leaders about the funding requirements and the provider’s screening practices.

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 standard 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

**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.

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 onset of project development and firm recruitment. 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.

## B. Substantive Merits of the Case



- ◆ Law firms rely on providers to determine whether a case has legal merit before trying to place it.
- ◆ Thus, providers should assess the definition of “success” for each case with the client and discuss that definition in the case description.
- ◆ Providers 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, providers 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.<sup>17</sup>

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 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.

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<sup>17</sup> 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.

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.

Sometimes 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 to 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.<sup>18</sup>

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<sup>18</sup> See also Section II of this chapter, dealing specifically with conflicts checks.

## 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) language assistance; (2) disabilities; (3) 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 law firm attorneys.

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.

In addition to disclosing any particular client challenges when 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 that are 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.<sup>19</sup>

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.”<sup>20</sup>

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 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 is 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

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<sup>19</sup> 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](http://www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYdnho%3d&tabid=216).

<sup>20</sup> *Id.*

services. Additionally, legal services providers and firms can explore working together to request bulk discounts from existing telephonic interpretation service providers.<sup>21</sup>

## **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 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, then 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,

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<sup>21</sup> For example, providers 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.

using Form MC-410.<sup>22</sup> 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.

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.

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<sup>22</sup> CAL. R. CT. 1.100 (2010).

#### 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.
- ◆ Legal services 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.
- ◆ Providers 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 providers 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.

## II. Dealing with Conflicts of Interest



- ◆ Law firms and legal services providers should fully discuss and understand procedures for assessing conflicts of interest. 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.<sup>23</sup> 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.

**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.

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.<sup>24</sup> 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 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 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

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<sup>23</sup> CALIFORNIA RULES OF PROFESSIONAL CONDUCT Rule 3-310 (2009).

<sup>24</sup> Based on anecdotal information, legal services providers can expect the 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.

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.<sup>25</sup>

**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.

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 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 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 legal services provider.

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<sup>25</sup> 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.

## 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.<sup>26</sup> 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

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<sup>26</sup> 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).

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.

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.

### III. 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



- ◆ *By Website:* Legal services providers in California typically do not distribute pro bono matters on websites. The legal services providers that share administration responsibility for the online SoCal Pro Bono Center ([www.SoCalProBono.org](http://www.SoCalProBono.org)) have decided to share information about pro bono clinics but not individual cases. OneJustice made the same decision for the statewide website ([www.CAProBono.org](http://www.CAProBono.org)).
- ◆ *By 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, select 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.
- ◆ *During 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 providers 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 services 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.<sup>27</sup>

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<sup>27</sup> It is also more effective if the nonprofit has a designated contact person for pro bono administration.

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.

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.

**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.

## IV. 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.

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.<sup>28</sup> 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-

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<sup>28</sup> 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).

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.

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 accepted – 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.<sup>29</sup> 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.

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<sup>29</sup> It is difficult to set a reasonable time frame for acceptance that applies to all types of cases. For example, the turnaround 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.

## V. 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.

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



- ◆ Pro bono attorneys must apply the same standard of care they would apply to their for-profit clients.
- ◆ 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.
- ◆ If an attorney leaves the firm, it is the firm's responsibility to see that representation of the client is not adversely impacted.
- ◆ 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,<sup>30</sup> 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 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

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

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<sup>30</sup> 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.

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 support 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 their 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.<sup>31</sup>

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<sup>31</sup> 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).

## 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.
- If the new issue was not included in the firm's representation agreement 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.

## **VI. Summary and Conclusion**

In order to effectively and efficiently provide pro bono representation, law firms and referring legal services providers 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.

## **Chapter 4: Case Management**

### **I. Case Management**

Whether a legal services nonprofit co-counsels with a law firm on a pro bono matter or refers a client to a law firm for representation, both parties are responsible for managing the case. Proper case management requires that each party's expectations are clear from the beginning of the pro bono engagement – level of pro bono assistance, mentorship, resources, and how to conclude the case. Proper case management includes ensuring that pro bono attorneys have access to mentorship and supervision and that the legal services nonprofits remain updated on the status of the pro bono matter.

### **II. Consulting and Supporting Pro Bono Attorneys**



- ◆ Legal services nonprofits must provide access to mentorship and assistance from an attorney with expertise in the operative field.
- ◆ Mentorship and assistance can come from a staff member, an expert pro bono attorney(s), or a third-party organization with expertise in the field.

To ensure a successful pro bono relationship with a firm, legal services nonprofits must make particular members of their staff available for continued consultation and support of its volunteer attorneys during the pro bono engagement. Law firms commit their time and resources to pro bono matters, but often require experience or expertise beyond that which they accrued during the operative pro bono training. For that reason, the legal services nonprofit must serve as the support center for any substantive legal questions a volunteer attorney may have or, in the alternative, arrange for a third-party to provide such support (*e.g.*, another pro bono attorney with substantive expertise or a legal services support center like the Immigrant Legal Resource Center). The legal services nonprofit should offer this support at the outset of the pro bono engagement to ensure that the pro bono attorneys know they can reach out when they have questions.

Pro bono engagement of a law firm may not be in the form of a pro bono matter. Instead the legal services nonprofit may seek a law firm as a mentor to provide support and expertise in appellate or litigation matters.

In most cases, an attorney at the legal services nonprofit—often the person who conducted the requisite training—is made available to answer questions. A non-profit, however, can assign one or several attorneys to be on call and available to answer volunteer attorneys' questions throughout the case. Either way, the nonprofit should provide specific contact information for the individuals assigned to provide such support. It is of vital importance that the assigned contacts at the nonprofit respond to messages and emails asking for support in a timely matter, usually within 24 to 48 hours, to ensure that the pro bono attorney is not left without the expert support he/she may need in making important decisions that affect the client.

Another option is for legal services nonprofits to have a volunteer attorney (or a panel of multiple attorneys) with expertise in the operative legal field assigned to provide mentorship and assistance. In addition to ensuring specialized assistance for law firm pro bono attorneys, this

provides nonprofits with a special opportunity to engage expert pro bono attorneys who may not have the time to take on a case but can provide valuable knowledge in the field. In the rare instance that a legal services nonprofit does not have the expertise in the particular legal area, it is essential that the nonprofit identify an expert pro bono attorney to provide support.

### III. Supervision



- ◆ Law firms should have a system in place for notifying the legal services nonprofit and client when there is a transfer in the attorney handling the pro bono matter.
- ◆ Law firm partners will generally be responsible for supervising a pro bono associate's work.
- ◆ Law firms and nonprofits that co-counsel on a case should decide what the supervision structure is at the outset of a pro bono engagement.
- ◆ Whether it is a co-counseling or a direct referral pro bono matter, the division of attorney's fees should be discussed upfront.

In most instances, the pro bono law firm will have its own supervision structure to ensure the attorney assigned to the matter provides high-quality assistance. At most firms, a partner is assigned the task of supervising more junior attorneys in their pro bono work. Often the supervising partner will not, and need not, have the substantive background or knowledge of the legal issue involved in the engagement. Instead, the partner will have the general legal skills (*e.g.*, in federal court litigation, etc.) necessary to ensure high-quality representation and assistance is provided by more junior attorneys at the firm.

Legal services nonprofits should confirm the existence of such supervision with pro bono law firms. In the rare instance where such a structure does not exist, the legal services nonprofit should be prepared to provide such supervision. This is particularly important when the volunteer attorney has little or no experience in the operative substantive legal area.

### IV. Staffing and Transitions

Usually when a law firm takes on a pro bono engagement, it does so as a firm. Once the law firm is engaged, it will usually assign one or more attorneys to the matter who will have primary responsibility for the matter. Furthermore, as discussed above, a partner will usually be assigned to oversee the work of those attorneys with primary responsibility. If the individual attorney at the firm who was assigned primary responsibility over the matter leaves the firm, the engagement continues between the firm and the pro bono client.

It is also commonplace for staffing changes to occur when the volunteer attorney has to go on medical, personal or maternity leave or simply when their calendar does not allow time for proper work on the pro bono matter. In these instances all firms should have a system by which responsibility for pro bono matters is transitioned to another attorney, and the firm should provide immediate notice to the partner legal services nonprofit and the client when such a transition takes place.

## **V. Attorney's Fees**

Some pro bono matters come with the possibility of court-awarded attorney's fees. Whenever there is even a small possibility of attorney's fees being awarded, the legal services nonprofit and the law firm must have a discussion at the start of the pro bono relationship about the division of fees. Attorney's fees are sometimes donated back to the legal services nonprofit, used by the firm for their own pro bono foundations, or given to the client to settle any contingency fee agreement that may exist.

## **VI. Co-Counseling**

Co-counseling relationships are usually created when a legal services nonprofit seeks assistance in a matter. In rare instances a pro bono referral to a law firm will lead to a co-counseling partnership with the legal services nonprofit. As a best practice law firms and the legal services nonprofits should draft a written co-counseling agreement which outlines important issues like goals, costs, etc. In co-counseling matters, the organization and firm should determine at the beginning of an engagement who will take the lead in the case and whether particular individuals will take on supervisory roles.

## **VII. Client Issues**

Especially when working with low-income clients, issues might arise that pro bono attorneys might not necessarily be prepared to handle. Legal services nonprofits have a great deal of experience working with the needs of low-income clients and at the same time should be aware that firms may not have that same experience. It is the role of the organization to educate the firm and work with the firm to address the obstacles that low-income communities typically face, how those obstacles can affect the case or the attorney client relationship, and options for overcoming such hurdles. For example, a low-income client may not have reliable phone access, thus making it difficult for the volunteer attorney to contact the client.

Legal services nonprofits should try to provide pro bono attorneys with the tools they need to deal with these difficult client issues in advance. For example, trainings should include tips on how to work with barriers of poverty, especially when the pro bono attorney has no experience working with low-income clients. Furthermore, Legal Services nonprofits should include as part of their ongoing mentorship advice and instruction on how to deal with particular situations.

Legal services nonprofits should also educate clients about the pro bono relationship. It is important to explain to clients that a pro bono attorney might not have the same availability as a legal services nonprofit attorney. Also, it is important to explain to clients that attorneys from firms are taking time away from paying clients to provide assistance on the matter at no cost. Most importantly, a client should understand the scope of the pro bono relationship and the expected (or hoped-for) outcome.

Volunteers should initiate the pro bono relationship with the client by explaining their role, including issues relating to confidentiality, availability, and role and scope of assistance.

## VIII. Reporting Expectations



- ◆ Nonprofits should be notified of key developments, including hearing dates.
- ◆ Nonprofits should ask for updates on case status at least once every six months.
- ◆ Law firms need to be prepared to provide case status updates and case closure information at the end of the assistance.

Legal services nonprofits are obligated to report certain “outcomes” to various funders, even for matters placed with pro bono attorneys. And, each funder may require different data points. For that reason, and also to ensure the nonprofit is aware of the status and outcome of matters, the legal services nonprofit and the law firm partner should come to an agreement at the outset of the engagement as to what kinds of updates the nonprofit requires and how often it needs them. While status reports may occur naturally via mentorship or trainings, it is important to set a formal status reporting process. This should include an expectation that the law firm will notify the legal services nonprofit of important case updates (*e.g.*, receipt of a hearing date) and the ultimate resolution of the case, including significant developments, hearing dates and the issuance of any final order, termination or other cessation of the engagement. Providing these kinds of updates should not violate attorney-client confidentiality since the client is made aware of the role of the legal services nonprofit. Legal services nonprofits, however, may want to have clients sign a document acknowledging that certain information will be shared between the nonprofit and the pro bono law firm. This should be included in the actual engagement letter.

### A. Ask for Updates at Least Every Six Months

When working with a pro bono firm, it is recommended that every six months a case status request be sent to the firm. The request should include a list of all cases the legal services nonprofit has placed with the firm for representation. The request serves both to remind the firm that it needs to provide an update and to verify that particular cases have officially been taken on by the firm. The status report should be a simple form sent by the organization listing the open cases, asking whether they are still active, and requesting a summary of the current status of the matter, including upcoming milestone dates or deadlines.

Six month check-ins ensure that the client’s needs are being monitored and that no pro bono matter gets lost in the shuffle and no client’s matter suffers from neglect, misplacement, or misunderstanding between the firm and the legal services nonprofit. Furthermore, in many cases, the firm pro bono contact may not be supervising the pro bono matter. For that reason, a six month check-in allows the firm pro bono coordinator to keep informed of the status of cases. It also helps identify cases that may have been taken by a firm attorney without the firm’s knowledge. While six months is the recommendation, there may be cases which require more frequent reporting.

### B. Set an Expectation for Updates Even After Case Closure

Once a firm has finished its representation and completed all closing procedures, it might expect to no longer receive inquiries on the matter from either the client or the legal services nonprofit. However, various forms of grant funding and reporting have created a wide range of

information that legal services nonprofit have to collect after the case has closed. It may be that after a case has been closed a legal services nonprofit will need to call on the firm for additional information. While firms and legal services nonprofits are currently working together to minimize these instances by creating a standardized reporting process, the need may still arise. The legal services nonprofit should warn the firm of this at the outset of the pro bono engagement if possible.

## **Chapter 5: Case Closure**

### **I. Deciding When a Pro Bono Engagement Ends**



- ◆ At the beginning of an engagement it should be determined and agreed upon what event will signal the end of the engagement and what next-steps are expected of the two parties.

As a preliminary matter, the legal services nonprofit and pro bono law firm should develop a clear understanding, at the beginning of a pro bono engagement, of the scope of the representation and what event will trigger the end of the pro bono engagement. For instance, a pro bono engagement may end when the court issues a final order, when a complaint or response is submitted, or after a specified amount of time or particular event in the case (*e.g.*, hearing). It is up to the law firm and legal services nonprofit to decide, but the decision should be made at the beginning of a pro bono engagement to avoid confusion and possible distress. Identifying the event which ends a pro bono engagement is important not only to the law firm and legal services nonprofit, but also to the client who, at the outset of the engagement, must be informed of the extent and scope of the law firm's representation and/or assistance. The scope of pro bono assistance should be clearly set out in writing for the client and in the client's primary language. In addition to identifying the event which ends an engagement, the law firm and legal services nonprofit should also agree to the important steps that each party will need to take when the engagement terminates.

This chapter will cover recommended best practices and samples form to aid in the case closure process.

### **II. Case Closure Procedures**



- ◆ Law firms must inform nonprofits of case closures as soon as possible.
- ◆ Legal services nonprofits should provide law firms with explicit and clear case closure requirements.
- ◆ Clients should also be notified once the legal services have been fulfilled and the nonprofit and law firm's representation has ended.

#### **A. Updates on Case Closures**

At the initial stages of the pro bono relationship, an expectation should be set that the law firm will inform the nonprofit of any case-closing event as soon as possible. Since cases may take months or sometimes years, we encourage a quick call or email from the firm to the legal services organizations letting them know as soon as a case is closed. The legal services nonprofit should then remind the firm of any particular closing procedures.

## **B. Closing Letters**

It is good practice for the pro bono firm to send a closing letter to the pro bono client. The closing letter makes it clear that the representation has ended and should indicate any next steps the client needs to take, if any. The letter should include the outcome of the case, a clear statement that representation has come to an end, instructions to the client about what to do if any questions arise in the future (*i.e.*, contact the organization). The legal services nonprofit should always be copied on any closing letter sent to the client. If helpful, the legal services nonprofit should provide the pro bono firm with a template closing letter.

## **C. Collecting Data/Information**

At the end of an engagement, the legal services nonprofit will need to collect particularized data and information from the firm about its engagement. This data usually corresponds with information that the nonprofit is required to provide its funders. While a majority of California legal services nonprofits receive IOLTA funding, it is important to remember that IOLTA is only a partial funder, meaning that legal services nonprofits must rely on a plethora of different grant funders, each of which requires different information. In order to comply with specific grant requirements, as well as qualify for future grants, legal services nonprofits often have an extensive amount of reporting that they must do annually, biannually, or quarterly. The information requested by grant funders often varies greatly, requiring significantly different types of information.

Legal services organizations generally create their own case closure form to send to law firm partners. Case closure forms are tailored to collect any data that the nonprofit needs, including the amount of time spent by the pro bono attorney, the names of the individuals who worked on the case, the resolution of the case, etc.

Generally, Legal Services Nonprofit grant reports include some or all of the following:

1. Case result (*e.g.*, kinds of orders and issues)
2. Method through which the result was obtained (*e.g.*, contested, uncontested/settled, default)
3. Hours spent on the case (as some funders require this information provided bi-annually, annually, or just at the end of a matter)
4. Value of time spent on the case (*e.g.*, volunteers' standard hourly rate)

Legal services nonprofits and law firms are currently working together to develop a uniform document to collect all the information required by IOLTA.

## **D. Feedback from the Firm and Clients**

Legal services nonprofits should always ask for feedback from the law firm and individual participants on the pro bono engagement. This might include a survey sent to pro bono attorneys, an in-person meeting, or a personal telephone conversation. The feedback can help the nonprofit and law firm tailor trainings, mentorship, or other aspects of the pro bono relationship.

# Appendix A

## CHECKLIST OF ISSUES TO CONSIDER IN 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 B

## SAMPLE DOCUMENTS

For your reference, included are sample documents commonly employed in pro bono partnerships. These sample documents are provided as suggestions only. The authors of the Guide, by including these templates, are not providing legal advice in any manner nor advising that these documents be used or relied upon in any particular situation. Documentation should be drafted to meet the particular facts and circumstances of individual situations and engagements, and should be reviewed by the responsible attorneys.

The following sample documents are included:

- A. Co-Counseling Agreement
- B. Limited Scope Engagement Letter/Agreement
- C. Status Update Form
- D. Volunteer Attorney Closing Letter
- E. Client Closing Letter
- F. Case Closure Form
- G. Pro Bono Volunteer Evaluation Form

## SAMPLE CO-COUNSELING AGREEMENT

This co-counseling agreement (“the Agreement”) is entered into between [*legal services provider*] (“Provider”) and [*co-counsel*] (“Co-counsel”) collectively “the Parties,” regarding the representation of [*client name*] (“Client”) in litigation against [*name of defendants*] for [*describe claims or damages*], as defined in Provider’s retainer with Client.

The purpose of this Agreement is to memorialize the rights and responsibilities of the Parties with respect to this litigation.

### I. RELATIONSHIP OF COUNSEL

Lead Counsel for the litigation shall be [*insert either Provider or Co-counsel*]. [*Option 1: Lead Counsel is primarily responsible for ensuring that this litigation is prosecuted in a timely and professional manner, will draft pleadings, conduct discovery, and shall make all appearances in this matter. [Insert either Provider or Co-counsel] will act as Associate Counsel and be generally available for consultation, research and other co-counseling responsibilities as agreed upon.*] [*Option 2: Provider and Co-counsel agree that to the extent possible and practical, both firms shall participate in all duties and responsibilities, including the formulation of strategy, preparation of pleadings and other documents, attendance at court proceedings, participation in settlement discussions, and all other aspects of the litigation.*] [*Insert either Provider or Co-counsel*] will have primary responsibility for communicating with Client. [*Provider attorney name*] shall be the attorney primarily designated by Provider to act in this case. [*Co-counsel attorney name*] shall be the attorney primarily designated by Co-counsel to act in this case. The Parties agree to keep each other informed of all developments in the case, including communications with Client, the court, and opposing counsel, and will provide courtesy copies of all correspondence, pleadings, and discovery requests and responses (exclusive of documents produced). The Parties further agree that, absent compelling circumstances, no pleadings should be filed without the consensus of the Parties as to the substance and timing of the

filing of the pleading.

## **II. CLIENT RETAINER**

Client has entered a Retainer Agreement with Provider, which permits it to associate co-counsel. A copy of that Retainer Agreement is attached as Exhibit A. *[In multi-plaintiff action where co-counsel has entered retainer with another plaintiff: Co-counsel has entered a Retainer Agreement with [its client's name] which permits it to associate co-counsel. A copy of that Retainer Agreement is attached as Exhibit B.]*

*[Where each firm has entered agreement with a single client: Client has entered a Retainer Agreement with Provider and a separate Retainer or Letter Agreement with Co-counsel. A copy of each of those agreements is attached to this Agreement as Exhibits A and B.]*

## **III. MAINTENANCE OF TIME RECORDS**

Each Party agrees to maintain a complete, detailed and contemporaneous record of time to the nearest 1/10 of an hour spent by any timekeeper (lawyer, law clerk, legal assistant) in connection with the prosecution of this action.

## **IV. ATTORNEYS' FEES AND COSTS/EXPENSES**

### **A. Definitions**

1. "Outside Litigation Expenses" are the out-of-pocket expenses that are necessary for a lawsuit. The expenses might include, but are not limited to, the following: Sheriff's and process servers' fees, filing fees and other charges by the courts and other public agencies, court reporters' fees (whether or not they are paid by the Court Reporters Fund), jury, witness or expert witness fees, investigation expenses, consultants' fees, alternative dispute resolution services (such as mediators), translation or interpreting costs, and travel expenses other than local mileage and parking expenses.

2. "In-house Litigation Expenses" include the other expenses that are

necessary for a lawsuit but for which money does not typically need to be advanced to the vendor. These expenses might include, but are not limited to, the following: telephone calls, messenger and other delivery fees, postage, photocopying, automobile mileage, parking, charges for computer research or programs, and similar out-of-pocket expenses. They do not include wages for personnel.

## **B. Responsibility for Expenses**

*[Where client is eligible for a fee waiver and the Court Reporters Fund:* Provider represents that Client is eligible for waiver of all court fees and for reimbursement of the expense of deposition and court transcripts from the Court Reporters Fund. Accordingly, as to court costs, Provider will prepare the fee waiver application for filing with the complaint. As to deposition and court transcript expenses, Provider will advance those expenses with the understanding that it will submit them to the Court Reporters Fund for reimbursement. Nevertheless, these expenses shall be included when calculating the total accrued expenses in this action for reimbursement purposes since Provider and Client remain obligated to reimburse the court and Court Reporters Funds with any money received through this action.]

[Except for the deposition and court transcript expenses discussed above,] *[insert either Provider or Co-counsel]* agrees to advance all [other] Outside Litigation Expenses.

The Parties will each bear ultimate responsibility for one-half of the Outside Litigation Expenses accrued after the date of this agreement not otherwise paid by Client, recovered from the defendant, or reimbursed by the Court Reporters Fund. If there is no recovery of expenses, *[insert either Provider or Co-counsel, whoever is not fronting expenses]* will reimburse *[insert either Provider or Co-counsel, whoever is fronting expenses]* for one-half the Outside Litigation Expenses advanced.

## **C. Recovery of Attorneys' Fees and Costs/Expenses**

If attorneys' fees, costs and/or expenses are recovered through settlement, or are awarded by the court, they shall be apportioned between the Parties as follows and in the following order:

1. The Parties shall be reimbursed for the Outside Litigation Expenses they have incurred in relation to the litigation.

2. The Parties shall next be reimbursed for the In-house Litigation Expenses they have incurred in relation to the litigation.

3. The Parties shall be compensated for their attorneys' fees on a pro rata basis according to the ratio of one Party's lodestar (the number of hours reasonably expended by each party multiplied by the historic hourly rate of each party) to the other Party's lodestar. A copy of the Parties' respective fees schedules are attached and incorporated by reference.

#### **D. SANCTIONS**

The Parties will use their best efforts to avoid any conduct that might result in court-ordered sanctions. In the unlikely event that sanctions are assessed, court-ordered sanctions shall be borne equally by the Parties if the sanctions resulted from decisions or conduct jointly approved by both Parties. If, instead, the sanctions resulted from only one Party's conduct, they shall be paid by that Party.

#### **V. TERMINATION**

This Agreement will terminate at the conclusion of litigation and may be terminated prior to that time for any reason by written notice by either Party to the other. Upon termination, the originals of all documents shall be forwarded to, and/or shall remain with, Provider, unless Client directs otherwise.

#### **VI. DISPUTE RESOLUTION**

Prior to seeking judicial enforcement of this Agreement, the Parties shall attempt to resolve any and all disputes by mediation and/or arbitration. The Parties shall split evenly the cost of the

mediator or arbitrator. If the dispute is resolved through mediation, each Party shall bear its own fees and costs. If this dispute proceeds to arbitration or court, the prevailing party shall be entitled to its fees and costs, including its portion of the cost of the arbitrator. This Agreement shall be interpreted and enforced according to the laws of California.

## **VII. MEDIA**

The Parties agree that Provider shall be the primary, but not exclusive, spokesperson to the public and media. No press releases shall issue without prior approval by all Parties.

## **VIII. MALPRACTICE INSURANCE**

*[For use with pro bono Co-counsel: Co-counsel is covered by Provider's malpractice insurance for its actions undertaken within the scope of this Agreement.]*

*[For use when working with another agency or firm not on a pro bono basis: Provider and Co-counsel each represent that they carry and will continue to carry their own complete coverage of malpractice insurance during the pendency of this litigation.]*

## **IX. AGREEMENT TO TERMS**

The undersigned acknowledge that they understand and agree to the terms set forth in Agreement.

**DATED:**

*[LEGAL SERVICES PROVIDER]*

*[CO-COUNSEL]*

---

*[Provider supervising attorney]*

---

*[Authorized co-counsel name]*

## SAMPLE LIMITED SCOPE ENGAGEMENT AGREEMENT

This Agreement is made between

(NAME OF CLIENT) \_\_\_\_\_ and

(NAME OF LAWYER) \_\_\_\_\_, a volunteer attorney  
with the *[legal services provider]*.

1. The above-named Lawyer will assist Client by *[explain services]* \_\_\_\_\_.

**LAWYER AND [LEGAL SERVICES PROVIDER] HAVE NOT AGREED TO PROVIDE REPRESENTATION OR ASSISTANCE BEYOND TODAY'S DATE OR WITH ANY OTHER LEGAL PROBLEM. ANY ADDITIONAL ASSISTANCE WILL REQUIRE A NEW SIGNED RETAINER AGREEMENT.**

2. Client understands that he/she will not be charged any fees for the services received today.
3. Client understands that once he/she leaves the clinic, he/she is representing him/herself in the housing matter described above. Client will be responsible for handling any further action that needs to be taken in the case.
4. Client agrees to cooperate with Lawyer during today's meeting and provide Lawyer with all information and documents that Client has concerning the case. Client agrees to provide only truthful information to Lawyer directly and on any Intake Forms or Questionnaires.
5. Client understands that any information provided to the volunteer Lawyer today is confidential to the full extent permitted by the law and required by lawyers' ethical rules.
6. Lawyer and Client agree that any changes to this agreement must be in writing and must be signed by both Lawyer and Client.
7. Lawyer and Client understand that the *[legal services provider]* can destroy clients' file seven years after the date of service.
8. Client has been given a copy of this form to keep for his/her records.
9. (If non-English speaking) This agreement and all its provisions have been translated to me.

CLIENT INITIALS \_\_\_\_\_

NAME & SIGNATURE OF TRANSLATION \_\_\_\_\_

Client understands and fully agrees to all of the terms and conditions of this agreement.

DATE:

DATE:

\_\_\_\_\_  
LAWYER

\_\_\_\_\_  
CLIENT

## SAMPLE STATUS UPDATE FORM

Dear *[attorney name]*:

Our status as a pro bono legal services program depends on accurate and timely reporting of volunteer hours contributed each year. To remain in compliance, we are required to obtain periodic reports on open cases. Please take a moment out of your busy schedule to complete the following checklist and email back your hours. We truly appreciate the time and effort you dedicate to pro bono cases. **\*If another member of your firm has assisted on this case, PLEASE make sure they complete this form as well, as we want to recognize all individuals who have assisted on a given case (including paralegals and support staff).\***

Client Information:      Case # - *[case number]*  
                                 Client Name – *[client name]*

A. CASE IN PROGRESS – HOURS SPENT between *[month – month year]* \_\_\_\_\_

☐ I am representing this client. Potential completion date: \_\_\_\_\_

☐ There is a problem with this case, and I would appreciate being contacted.

B. CASE CLOSED – HOURS SPENT between *[month – month year]*: \_\_\_\_\_

☐ Counsel and Advice

☐ Brief Services (more than “Advice”)

☐ Client Withdrew or Did Not Return

☐ Insufficient Merit to Proceed

☐ Negotiated/Settled With Litigation

☐ Negotiated Settlement  
Without Litigation

☐ Court Decision

☐ Other (explain below)

☐ Administrative Agency Decision

☐ Change in Eligibility Status

C. COMMENTS & DISPOSITION:

\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

VOLUNTEER NAME(S): \_\_\_\_\_

Sincerely,

*[legal services provider attorney name]*

## VOLUNTEER ATTORNEY CLOSING LETTER

[*Date*]

[*Attorney Name*], Esq.

[*Address 1*]

[*Address 2*]

[*Address 3*]

RE: Case # [*Case number*]

Client: [*Client Name*]

Dear [*Attorney Name*],

On behalf of [*Organization Name*], I would like to express our appreciation for the assistance you provided to [*Client Name*].

The generosity and commitment of attorneys, law students and legal professionals like you have made this Program successful, and with your support we can continue to provide legal services to qualified [*City*] residents.

We are genuinely grateful for your participation in our program, and hope that your association with us will be long and rewarding.

Sincerely,

[*Managing Attorney*]

## SAMPLE CLIENT CLOSING LETTER

[*Date*]

[*Client Name*]

[*Address 1*]

[*Address 2*]

[*Address 3*]

Dear [*Client Name*]:

It has been our pleasure to assist you in resolving your [*legal matter*]. We will be closing your file as it appears that all legal work has been concluded. Please let us know if for some reason your case remains active with the volunteer attorney assigned to you. If you need additional assistance in this matter in the future, you may reapply for services at that time.

Sincerely,

[*Attorney*]

## SAMPLE CASE CLOSURE REPORT

Client Name:

Date Closed:

**Please tell us the disposition of the case by ticking the box for the highest level of service you provided:**

- |   |   |
|---|---|
| <input type="checkbox"/> <b>Counsel &amp; Advice</b> and/or review of documents   | <input type="checkbox"/> <b>Obtained Administrative Agency Decision</b> |
| <input type="checkbox"/> <b>Limited Action:</b> helped client without litigation in a limited manner, e.g., wrote a demand letter   | <input type="checkbox"/> <b>Obtained Court Decision</b>                 |
| <input type="checkbox"/> <b>Extensive Services:</b> helped client without litigation and did not settle the case, but did something beyond limited action, e.g., helped the client prepare a <i>pro per</i> pleading. | <input type="checkbox"/> <b>Client Withdrew</b> or did not return       |
| <input type="checkbox"/> <b>Negotiated Settlement without Litigation</b>  | <input type="checkbox"/> <b>Insufficient Merit to Proceed</b>           |
| <input type="checkbox"/> <b>Negotiated Settlement with Litigation</b>   | <input type="checkbox"/> <b>Other</b>                                   |

**Please describe the assistance you provided and the outcome of the case:**

<b>Benefits received by the Client</b>	<b>Settlement/Judgment Amount:</b>
Debt written off:	Home equity preserved:
Other (please specify):	

Who assisted this client?	Attorney	Paralegal	Student	
Name:				Hours:
Name:				Hours:
Name:				Hours:
Name:				Hours:
Name:				Hours:
Total firm costs:		Total firm hours:		
Fees/costs received:		Source of fees/costs:		

## SAMPLE PRO BONO VOLUNTEER EVALUATION FORM

Thank you for your amazing support! Your feedback will help us evaluate and continue to improve our work. This form should take less than 10 minutes to complete. Thank you!

Date: \_\_\_\_\_ Name: \_\_\_\_\_

Law Firm/Corporation: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

---

May we contact you in the future regarding your experience volunteering with this clinic?

☐ Yes ☐ No

Did you use an interpreter at today's clinic? ☐ Yes ☐ No If yes, what language? \_\_\_\_\_

What is your gender: ☐ Male ☐ Female ☐ Transgender

How do you identify with respect to your race or ethnicity (check ALL that apply)? (This question is optional but is helpful to our ability to report the diversity of the participating volunteers to potential foundation funders).

☐ Asian American  
Hispanic

☐ African American

☐ Latino or

☐ Native American

☐ White or Caucasian

☐ Pacific Islander

☐ Multiple races

☐ Other (please specify): \_\_\_\_\_

### Please rate your experience of the training and support provided.

	Excellent					Poor	N/A
Information about the clinic and what to expect	5	4	3	2	1		<input type="checkbox"/>
Substantive training available in advance of the clinic	5	4	3	2	1		<input type="checkbox"/>
Resources available in advance of the clinic	5	4	3	2	1		<input type="checkbox"/>
Interaction with [legal services provider] staff	5	4	3	2	1		<input type="checkbox"/>
Support by legal services staff on-site	5	4	3	2	1		<input type="checkbox"/>
Support by [legal services provider] staff on-site	5	4	3	2	1		<input type="checkbox"/>
		Very prepar ed					Unprepar ed
How prepared did you feel to provide limited-scope legal advice at today's clinic?	5	4	3	2	1		

Please provide suggestions on how to improve our training: \_\_\_\_\_

---

**As a result of today's experience:**

	Very likely				Unlikely
How likely are you to volunteer for a future clinic?	5	4	3	2	1
How much more likely are you to participate in other future pro bono opportunities?	5	4	3	2	1

**As a result of this experience, I (check all that apply):**

- ☐ Have a better understanding of the legal needs of low-income people.
- ☐ Learned a new area of substantive law.
- ☐ Learned new skills.

	Very positive				Not positive
How positive was your overall experience in volunteering with the clinic?	5	4	3	2	1

Would you recommend participation in this clinic to others at your firm or corporation?

☐ Yes ☐ No

Why or why not? \_\_\_\_\_

How can we continue to improve our clinics? \_\_\_\_\_

\_\_\_\_\_

Thank you for your participation in this important project!

# Appendix C

## 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 Pro Bono Project, *What Counts? A Compilation of Queries and Answers*, Pro Bono Institute (2003), available at <http://www.probonoinst.org/pdfs/whatcounts.pdf>