

PRACTICE POINTER: HOW TO DO IT

THE POWER OF *PRO BONO* PARTNERSHIPS

Implementing a Sustainable *Pro Bono* Program
for In-House Departments and Law Firms of All Sizes

By Jessica Kitson and Jessica Hodkinson

“Pro bono work is vital to our court system.”

Chief Justice Stuart Rabner

According to the Legal Services Corporation (LSC) *2022 Justice Gap Study*,¹ U.S. residents experiencing poverty “did not receive enough legal help for 92% of the problems that substantially impacted them in the past year.”² While that number is shockingly high, it is not surprising when factoring in that “3 in 4 (74%) low-income households experienced 1+ civil legal problems in the past year” or that “2 in 5 (39%) experienced 5+ problems and 1 in 5 (20%) experienced 10+ problems.” The numbers indicate a gap between people’s ability to access justice and the magnitude of the work that must be undertaken to reduce it.

In the United States, there is no right to counsel for individuals with non-criminal (civil) legal issues.³ That means, for example, a tenant facing eviction has no right to an attorney. For a survivor of domestic violence seeking a restraining order, no right to an attorney. For parents seeking special education

services for their children, no right to attorney. For a veteran whose claim was denied for service-connected disability compensation from the U.S. Department of Veterans Affairs, no right to an attorney. And while the consequences of those legal proceedings are not the same as incarceration, they can be nearly as catastrophic. The U.S. legal system is adversarial in nature by design, putting *pro se* litigants at a significant disadvantage.

There are, however, nationwide nonprofit organizations trying to meet this need. LSC-funded organizations operate in 50 states and are persistently trying to do more with less as they see an increased need for funding that has remained woefully inadequate for decades.⁴ As a result, LSC-funded organizations are only able to provide some degree of legal help for about one-half of the civil legal problems brought to them.⁵

Closing the Gap: The Power of *Pro Bono*

Without question, there is an urgent need for a significant increase in funding to LSC and other nonprofit legal services providers. We cannot have true access to justice for all in the U.S. without a robust, properly funded legal services network.



That should be a priority for legislators at both the state and federal level.

But we can't stop there. Right now, there are more than 1.3 million licensed attorneys in the United States, and more than 40,000 right here in New Jersey.⁶ That is an army of individuals who have the power to address the access to justice gap right now. And yet, a 2018 report by the American Bar Association (ABA), *Supporting Justice—A Report on the Pro Bono Work of America's Lawyers*, found that only one out of five attorneys had ever undertaken *pro bono* work.⁷ This suggests that there is significant potential for *pro bono* services to make a meaningful dent in the access to justice gap, and that the power of the remaining 80% of attorneys is just waiting to be harnessed.

Given this pool of untapped legal talent, the question becomes how best to use their skills and expertise in a way that will do the most good for those most in need.

Getting Started: Finding the Right Fit

All lawyers can do *pro bono* work, but not all *pro bono* projects are right for every attorney. Given the myriad of practice

areas that exist within the profession, it would be silly to think that every attorney would be interested in taking on just any *pro bono* matter. In fact, an unhappy and unwilling lawyer is not good for the client. The good news is that there are enough unique *pro bono* opportunities available that, with good systems and partnerships in place, every law firm and corporation can find the right project(s) that will work for their team.

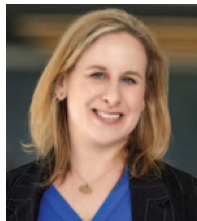
One way to get started is to reach out to an organization such as Volunteer Lawyers for Justice, New Jersey Reentry Corporation, or Legal Services of New Jersey, that specializes in helping residents access justice.

These types of groups can offer various opportunities for volunteers (attorney and non-attorney alike) from speaking engagements at Know Your Rights seminars, mentoring less experienced volunteers, writing thought pieces and white papers on current events and important legal issues, hands-on limited-scope legal clinics, and of course, the traditional full representation cases.

Volunteers include people working for law firms, corporate legal departments, solo practitioners, retired attorneys, and lawyers just beginning their careers.



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The work they do ranges from “do what you know” (i.e., bankruptcy attorneys who regularly take on *pro bono* bankruptcy cases) to “learn something new” (such as in-house attorneys at Merck learning how to do Chapter 7 bankruptcy cases) and everything in between. Whether it is a family law attorney representing a survivor of domestic violence with their divorce, or a corporate transactional attorney volunteering at a veterans clinic, these types of organizations strive to provide the training, tools, and mentorship needed to help every volunteer succeed.

Some of these organizations are also New Jersey Supreme Court certified *pro bono* providers. This entitles volunteers to several benefits. Most importantly this designation allows all volunteers who complete 25 hours of *pro bono* service in the prior year to claim an exemption from court-mandated *Madden pro bono* assignments. Unlike mandatory court assignments, lawyers who volunteer with a court-certified provider can take a case in an area of law that is of interest to them and at a time that works with their schedules.

A Case Study of Corporate Partnership

In 2017, the lawyers and legal staff at Panasonic focused their efforts on assisting U.S. military veterans and service members. Panasonic co-founded VLJ's Veterans Legal Wellness Clinic—the first legal clinic at the East Orange VA Hospital, and served as dedicated *pro bono* volunteers and strong financial partners of VLJ. Through the provision of vital legal services, Panasonic is transforming the lives of veterans experiencing poverty in New Jersey.

For the leadership at Panasonic, *pro bono* directly ties into the company's longstanding commitment to DEI (diversity, equity, and inclusion) and social justice work.

As part of its efforts to use company policies and procedures to shift culture, Panasonic grants its staff 40 hours a year of volunteer time, and encourages their legal staff to do something that is meaningful and not forced, while also encouraging them to be willing to step outside of their comfort zone. The Veterans Legal Wellness Clinic is a perfect example—none of the volunteers are experts in working with veterans or in the many legal issues they face, but with VLJ's support, they received training, found law firm partners to work with them in teams, and have been helping veterans for the past six years.

Panasonic regularly attributes the success of that program to finding an organization that specializes in access to justice as a supportive partner.

Getting Started—What's Next?

Great! You are convinced that you are ready to join the army of *pro bono* attorneys fighting the good fight to close the access to justice gap! But what comes next? How do you bring *pro bono* to your law firm or in-house corporate department? It's easier than you think, and the good news is that you can (and should) start small.

Transitioning from the “We should do this!” to “We did that!” doesn't have to be a Herculean effort. In fact, chances are an applicable roadmap is already in existence that can help guide you while avoiding a reinvention of the wheel. It is best to make sure there is not just an appetite for *pro bono*, but a hunger. A hunger to do good using your company's/firm's resources and the time and talent of its staff. Before making a formal pitch to the managing team, go on a listening tour. Speak with coworkers, especially those who have undertaken *pro bono* efforts at prior companies/firms. Informally raise the idea with your supervisor who may point you in the direction of an even more senior staff member willing to champion your cause. As with any new pitch, do your homework so that you make a “yes” more possible.

Discuss any new *pro bono* venture with the executive/managing team. Feel them out. Make your case and listen and learn from their response. If their response is lackluster or non-committal, you may need to adjust. A mindset that will save you time, stress, and a few gray hairs is to limit your expectations. Rome wasn't built in a day and neither will your ideal *pro bono* program.

Teamwork Makes the Dream Work—Identify Core Supporters

As with any new idea, there may be a tendency to want to keep close control over it to see it grow into your dream. However, dreams, much like children, can only be parented so much. At some point you will have to share your idea with coworkers not just for their feedback, but for their help. Any successful *pro bono* program, whether at a small firm, mid-sized firm, or “Big Law” usually involves more than one person, so when developing a new *pro bono* program for your

company/firm, find those like-minded staff who are part of the choir that does not need preaching. They're already sold on *pro bono*, so you don't have to spend any time or energy convincing them. Use their energy to nurture the *pro bono* vision.

When looking for companions in your new "Fellowship of Pro Bono," don't limit your pool to attorneys. As with many of VLJ's partners, for example, non-attorney staff and paraprofessionals (e.g., paralegals, legal assistants, accountants, and social workers) play a big role in the success of the *pro bono* program. In fact, many non-attorney staff volunteer at VLJ's legal clinics assist with document collection, interviewing, note taking, and other client support activities. This type of partnership only enriches the experience and success of the company's/firm's *pro bono* program.

Start Small—Under Promise and Over Deliver

Once the managing team has given the green light to transform the *pro bono* dream into a reality, your next job is to focus on two key words: scalability and sustainability. This will likely be determined by the parameters set down by the managing team, along with available resources. All that to say, you may have to do more with less, so start out in a way that ensures resources (which very much includes you) are not quickly depleted. Also, make sure your initial efforts are scalable, so that your dream isn't so small that it can never grow, or too large that it never gets off the ground. Some specifics that may help guide your "sustainability and scalability" review:

- I. Determine capacity, parameters, and limitations
 - a. Internal requirements: Does your company/firm provide any staff time for volunteering? If so, how much time?
 - b. How will the company/firm handle timekeeping, monitoring and oversight of *pro bono* cases and conflict checks? And by whom?
 - c. How will your company/firm gather and track information?
 - i. You absolutely want to gather and track the information required to keep the firm in legal and ethical compliance, but you also want to gather and track information that tells a story. The story of your company's/firm's *pro bono* efforts is more than numbers: it is the people doing the work and the community members who need your help. A helpful reminder is to think of output and outcomes:
 1. Output—The numbers
 - a. Hours volunteered
 - b. Value of legal services donated
 - i. The billable rate of every individual volunteer + the number of hours they volunteered (Example, a billable rate of \$200 per

hour with 30 hours donated/volunteered = \$6,000)

- c. Number of staff volunteering
- d. Number of clients helped
- e. Number and type of legal matters
2. Outcome—The narrative
 - a. Client's background and lived experience prior to *pro bono* legal help
 - b. Result(s) of *pro bono* service
 - i. How did the *pro bono* service impact the client?
 1. Depending on the structure of your *pro bono* program and whether you have a partnership with a local legal aid, this information may be tracked externally.
 2. Impact at time of case closing vs. impact one year after?
 - ii. How did the *pro bono* service impact the volunteer? The company or firm?
 - c. Capturing client and volunteer stories
 - i. Not all stories are "successes." Some are indicative of the unjust nature of the civil justice system.
 - ii. Make sure to have necessary consent and media releases.
 - iii. Be mindful of "poverty porn" and not portray your client's story in a way that exploits or exudes white saviorism, stereotypes, and generalizations. Remember, the story and experience belong to the human telling it, so recognize, respect, and honor that.
- II. Have investigatory/preliminary conversation with local legal services organization ("legal aid")
 - a. There is at least one LSC-funded legal services organization in every congressional district and many more who are funded outside of LSC.⁸ Federal regulations mandate that organizations receiving LSC funding allocate at least 12.5% of their Basic Field-General grant to *pro bono*⁹ (what LSC calls "Private Attorney Involvement (PAI) requirement") which means it is very likely your local legal services organization will have a dedicated *pro bono* team.

The organization Corporate Pro Bono (CPBO) created a Pro Bono Development Guide that may help kick off a *pro bono* program. The Pro Bono Development Guide is the cumulation of CPBO's work with hundreds of diverse legal departments and provides a starting point for in-house teams.¹⁰ This guide details concerns and considerations that may not be readily apparent, saving time, resources, and avoiding the dreaded "going back to the drawing board."

Final Thoughts

No two *pro bono* models will be the same. Indeed, rarely should a *pro bono* model be a “one size fits all” as that could lead to the exclusion (even if inadvertent) of volunteers, and more significantly, potential clients in need of *pro bono* services. Our

collective experience shows that when you design a competent *pro bono* program that is human centered (clients, volunteers, and staff) and mission driven, it can not only be fun, it can be life-changing. ■

Endnotes

1. For this study, LSC used the benchmark of 125% of the federal poverty level. The report indicated that “About 50 million Americans have household incomes below 125% of poverty, including more than 15 million children.” justicegap.lsc.gov/the-report/
2. LSC Justice Gap Report 2022 (justicegap.lsc.gov/the-report/), page 48.
3. See [constitution.congress.gov/browse/essay/amdt6-6-3-1/ALDE_00013437/#:~:text=e.g.%2C%20Wheat%20v.-,United%20States%2C%20486%20U.S.%20153%2C%20158%20\(1988\)%20\(for%20any%20serious%20crime.%20\)](https://constitution.congress.gov/browse/essay/amdt6-6-3-1/ALDE_00013437/#:~:text=e.g.%2C%20Wheat%20v.-,United%20States%2C%20486%20U.S.%20153%2C%20158%20(1988)%20(for%20any%20serious%20crime.%20))
4. See reuters.com/legal/government/top-company-lawyers-ask-congress-fix-stagnant-federal-legal-aid-budget-2022-05-18/
5. LSC Justice Gap Report, page 71.
6. See americanbar.org/news/abanews/aba-news-archives/2022/06/aba-lawyers-survey/
7. *Supporting Justice—A Report on the Pro Bono Work of America’s Lawyers*. Published by the American Bar Association, April 2018
8. See lsc.gov/about-lsc/what-legal-aid/get-legal-help
9. See 45 CFR 1614.2(a). See also [ecfr.gov/current/title-45/subtitle-B/chapter-XVI/part-1614#p-1614.2\(a\)](https://ecfr.gov/current/title-45/subtitle-B/chapter-XVI/part-1614#p-1614.2(a))
10. See cpbo.org/wp-content/uploads/2012/03/Pro-Bono-Development-Guide-10-31-17.pdf



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