



CYRUS R. VANCE  
CENTER FOR  
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JUSTICE



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**PRO BONO HANDBOOK:  
A GUIDE TO ESTABLISHING A PRO BONO  
PROGRAM AT YOUR LAW FIRM**

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## Acknowledgements

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## **SECTION I INTRODUCTION**

### **1.1 Context**

An increasing number of lawyers at law firms are undertaking pro bono work. For the purposes of this Guide, we will confine the definition of pro bono to the essentially identical definitions applied by the Pro Bono Institute and the American Lawyer (and interpreted as to NGOs, as discussed in Section 4.1.1 below, by the Association of Pro Bono Counsel). We recognize that many other types of activities in the public interest are considered by many to be pro bono work, and there are times herein where we discuss some of those other types of activities.

### **1.2 Purpose of the Guide**

The development of a permanent pro bono practice is similar to a firm's development of a new practice area or new department in that it requires the systematic implementation of a formal structure and support system so that pro bono work is fully integrated into the firm. The institutionalization of a formal pro bono program also helps to ensure high quality and efficient legal work with far-reaching impact.

A pro bono program should establish mechanisms that allow attorneys to partake in pro bono work, such as: removing potential internal obstacles to doing pro bono work (or the perception of obstacles); promoting participation in pro bono work among the firm's attorneys; providing clear indications that the firm supports the practice of pro bono; establishing mechanisms to identify pro bono opportunities; and promoting pro bono work internally.

A well-organized pro bono program is not only necessary to manage the pro bono work being done, but also to improve the quality of pro bono services. By establishing mechanisms to mentor and/or supervise pro bono work, and to develop internal expertise about various types of pro bono matters, a strong pro bono program can immeasurably increase the likelihood that pro bono clients' legal matters are handled appropriately. Moreover, a well-structured pro bono program can help develop strong institutional knowledge about how to handle various types of pro bono matters, and can provide constructive comments on lawyers' pro bono work that will lead to improved work on both pro bono and billable matters.

Finally, a formal pro bono program permits a firm's pro bono practice to function in an efficient and effective manner. By institutionalizing their pro bono efforts, law firms can save resources, money and time, thereby accomplishing more with less.

### **1.3 About the Guide**

The Vance Center has prepared the initial version of this Guide, entitled *PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm*, in conjunction with personnel at Skadden, Arps, Slate, Meagher & Flom LLP (Skadden, Arps) in 2009, soon after the adoption of the Pro Bono Declaration of the Americas (PBDA), to assist Latin American law firms in its implementation. The participating personnel from Skadden, Arps' pro bono team have considerable experience in structuring a pro bono practice and providing the support necessary for attorneys to undertake a broad range of pro bono work. The New York City Bar

and the City Bar Justice Center also provided valuable input to the development of this Guide. In drafting the initial version of this Guide, the Vance Center reviewed existing materials in this field, including pro bono manuals, best practices guides, and articles on the subject, and relied on the experiences of firms, bar associations, and pro bono provider organizations in the United States.

In 2011, the Vance Center published a supplement to the Guide, entitled *Frequently Asked Questions: A Supplement to the PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm*.

In 2014, PILnet asked the Vance Center and Mr. Tabak of Skadden, Arps for permission to modify and use the Guide to help law firms around the world develop pro bono practices, including translation of the Guide into languages of the countries where PILnet is active in promoting pro bono. For this purpose, Ronald Tabak of Skadden, Arps kindly edited the initial version to update it; final editing was performed by PILnet and included the incorporation of the 2011 Supplement into the main text of the Guide for the ease of use. Again, the updated version does not necessarily reflect the views of Mr. Tabak or Skadden, Arps.

This Guide is divided into seven sections. Section II focuses on the administration of the pro bono program. Section III describes the development of a pro bono policy manual. A model pro bono policy manual and corresponding attachments are provided as annexes to this Guide. Section IV describes systematic ways in which firms can identify pro bono opportunities. Section V concerns the encouragement and recognition of pro bono work within the firm. Section VI is a guide for evaluating attorney pro bono work as well as the pro bono program itself. Section VII describes the benefits of a pro bono program for a law firm.



## SECTION II ADMINISTRATION OF PRO BONO PROGRAM

### 2.1 Introduction

The first step for the firm in developing a pro bono program is deciding who will manage the program and setting the functions and responsibilities that this person or group of people will have.

The management of a pro bono program consists of two main components. The first is routine administration, commonly the responsibility of a pro bono coordinator. The second involves developing the broader objectives and direction of the firm's program, often the responsibility of the firm's pro bono chair or pro bono committee.

### 2.2 Pro Bono Coordinator

#### *2.2.1 Designation of Pro Bono Coordinator*

It is up to the firm's leadership to decide who is best positioned to direct the pro bono program. The pro bono coordinator in small to midsized firms may be one of the firm's partners or associates who assumes this role in addition to his/her role as an attorney of the firm. In the case of large firms, the pro bono coordinator may or may not be an attorney whose sole or greatest responsibility is managing the pro bono program. Regardless of who is ultimately selected as the pro bono coordinator, the firm must ensure that the individual has sufficient time and resources to fulfill all of the responsibilities the role requires. At very large firms, the pro bono coordinator may be an experienced attorney, supported by one or more legal assistants/administrative coordinators centrally and by pro bono point people in particular offices.

#### *2.2.2 Role of a Pro Bono Coordinator*

- (a) A pro bono coordinator who is not an attorney must not perform duties that require legal training, such as supervising the legal aspects of pro bono work of attorneys at the firm, or playing a key role in identifying or dealing with legal ethics issues that may arise.
- (b) Should the pro bono coordinator supervise legal assistants/administrative coordinators, it is important to ensure that the latter have the level of experience and knowledge required for the delegated duties, and that there is sufficient coordination so that coordination/administrative work doesn't go unattended.
- (c) The pro bono coordinator, if not a partner, must have ready access to a partner (or in some instances, of counsel who has long been a partner).
- (d) Regardless of the status of the pro bono coordinator, (s)he should have ready access to one or more people at the law firm who have expertise/responsibility for legal ethics issues/policies. At a growing number of firms, there is a General Counsel, with whom the pro bono coordinator should interface closely.

#### *2.2.3 Duties of the Pro Bono Coordinator*

In general, the duties of a pro bono coordinator are as follows:

- (a) ***Administrative Management:*** The pro bono coordinator is responsible for the daily administration of the pro bono program, which includes opening, maintaining, and

closing pro bono matters. Where the firm has adopted a pro bono manual that contains procedures for undertaking these tasks, the coordinator must ensure that each step is completed. The pro bono coordinator's duties also include ensuring the proper organization and maintenance of matter-related documents, as well as any pro bono forms and manuals, and recording pro bono hours per attorney and per pro bono client (see Section 3.6.4).

- (b) ***Oversight of Pro Bono Cases:*** The pro bono coordinator must regularly check rigorously on the status of all pro bono matters that the firm, or lawyers at the firm, handle. This includes knowing the current status of all pro bono matters to ensure that all pro bono work is handled in a timely manner and to address any problems that arise. A good way to keep abreast of each case is through the use of status update reports, which the pro bono coordinator circulates, reviews, and acts upon with regard to things that need attention.
- (c) ***Changes of Staffing of Pro Bono Matters:*** It is vital that the pro bono coordinator be aware of the following, and other changes in the situations of lawyers and others working on pro bono matters: leaving the firm; going on a leave of absence (which may occur unexpectedly); or working for a period of time for a firm client or a pro bono group (during which time, conflicts considerations may preclude continuing work on existing pro bono matters).

It is crucial that when such changes occur—particularly with regard to lawyers who have entered appearances or communicated with clients, opposing or other counsel elsewhere, courts, administrative agencies, etc. — notice be given regarding the changes and concerning permanent or temporary replacement counsel. In some instances, permission may be needed from a court, administrative agency, etc., to withdraw or appear, even temporarily. The pro bono coordinator must ensure that there are procedures in place to ensure that these necessary actions take place.

With regard to changes in legal assistants working on a pro bono matter, the pro bono coordinator should work to ensure that there is continuity in legal assistant staffing, and that files and databases with regard to pro bono matters continue to be maintained properly.

- (d) ***Relationships with Pro Bono Organizations:*** The pro bono coordinator must routinely communicate with organizations with which the firm has formed pro bono partnerships to receive descriptions of available pro bono opportunities and periodically inform them of the status of the pro bono cases that lawyers at the firm undertake (see Section 4.2.1). The pro bono coordinator should periodically discuss with each such organization what improvements could be made on either side or both sides of the relationship. If the firm decides not to form pro bono partnerships, the pro bono coordinator should identify through some other means the pro bono opportunities that come within the mission of the firm's program.
- (e) ***Notification of Available Pro Bono Matters:*** Another responsibility of the pro bono coordinator is to notify (via email or other form of communication) attorneys at the firm of pro bono opportunities and, in general, to promote the pro bono program within the

firm (section 5.1). In addition, individual lawyers should be encouraged to suggest pro bono matters about which they may learn.

- (f) **Accountability:** The pro bono coordinator must inform the pro bono chair or committee (or whomever else may be responsible) of the status of the pro bono program and of notable developments in particular matters.

## **2.3 Pro Bono Chair or Committee**

### *2.3.1 Position of Pro Bono Chair or Committee*

Various factors determine the direction of a firm's pro bono program, such as the firm's size, culture, and hierarchical structure. At large law firms in the United States, a partner (or, sometimes, counsel who had been a long-time partner) typically oversees the pro bono program. In addition to any other role(s) at the firm, (s)he is responsible for overseeing the overall direction of the pro bono program. The pro bono partner (or of counsel) may chair a pro bono committee that should include the pro bono coordinator and some or all of the following: partners, counsel, and associates from various offices. At some firms, there is a pro bono committee but not a pro bono partner (or of counsel).

### *2.3.2 Role of the Pro Bono Chair or Committee*

It is crucial that at least one partner (or long-term partner who is now of counsel) be involved (at least in an oversight role) in the management of the pro bono program. It is strongly preferable that the law firm's managing or executive partner, or (if applicable) one or more of the firm's founders, be knowledgeable about and visibly supportive of the pro bono program.

As noted below, overseeing the directions in which a pro bono program moves should involve strategic decision-making in which at least some of the firm's partners participate (see Section 2.3.3). The participation of partners in the oversight and strategic direction of the pro bono program can have the positive effect of giving a strong indication to all levels of attorneys that the firm encourages and endorses pro bono work (see Section 5.1(a)).

### *2.3.3 Responsibilities of the Pro Bono Chair or Committee*

In general, the duties of the pro bono chair or committee are as follows:

- (a) **Oversight of the Pro Bono Program:** The pro bono chair or committee must monitor the pro bono program to ensure that it is functioning effectively. This includes oversight of the work of the pro bono coordinator.
- (b) **Oversight of the Pro Bono Manual:** The pro bono chair or committee should participate in the initial drafting and periodically should consider the contents of the firm's pro bono manual, even where most of the contents are prepared and revised by the pro bono coordinator (if any) (see Section 3.1).
- (c) **Development of Pro Bono Partnerships:** The pro bono chair or committee should help develop the firm's pro bono partnerships, and to some extent should consider potential additional types of pro bono partnerships (see Section 4.2.1.). If the firm decides that it will not enter into pro bono partnerships, the pro bono chair or committee will need to

work with the pro bono coordinator (if any) to establish another mechanism for identifying pro bono opportunities (see Section 4.2.2).

- (d) ***Approval of New Pro Bono Matters:*** As indicated below, it is advisable that firms establish a procedure to open, monitor, and close pro bono matters (see Section 3.6). The pro bono chair or committee either (a) in conjunction with the pro bono coordinator, should approve the opening of all new matters or (b) should be comfortable with the parameters that the pro bono coordinator utilizes in approving the opening of most new cases and should be consulted (as should one of the firm's ethics experts or its General Counsel, if any) by the pro bono coordinator in unusual situations (see Section 3.5.1(b)).
- (e) ***Promotion and Acknowledgement of Pro Bono Work:*** Another function of the pro bono chair or committee is to work with the pro bono coordinator (if any) to determine the ways in which the firm will encourage and recognize pro bono work internally (see Section V).
- (f) ***Assessment of the Pro Bono Program:*** The pro bono chair or committee should consider the successes and setbacks of the pro bono program, making or suggesting adjustments to it as appropriate (see Section 6.2).
- (g) ***External Marketing and Publicity:*** The pro bono chair or appropriate firm leadership should define or participate in the process of defining the external marketing and publicity of the firm's pro bono program (see Section 7.4).
- (h) ***Administration:*** At some firms, the chair of the pro bono committee may also carry out some or all of the administrative aspects of the program.

## **SECTION III DEVELOPMENT OF A PRO BONO MANUAL**

### **3.1 Introduction**

An important aspect of a pro bono program is the development of a pro bono policy manual. Although pro bono manuals differ in their depth and range, the manual generally serves four functions.

1. The manual defines pro bono work and what types of pro bono matters the firm or its lawyers may undertake.
2. The manual articulates the firm's commitment to pro bono practice.
3. It defines those who are responsible for the administration of the firm's pro bono program.
4. Finally, the manual sets forth, at a minimum, the high-level procedures to be followed in connection with the pro bono program. (There may be a considerably more detailed pro bono policy and procedures document, which may also be a part of the firm's overall policies and procedures.)

The firm must first decide who will draft and approve the initial pro bono manual. Because the pro bono manual establishes the firm's official position with respect to pro bono, it is advisable that the first three aspects of the manual described in the preceding paragraph be approved by the firm's executive or managing partner and discussed with the firm's partners. The pro bono chair or committee should also participate in this process, as well as in the consideration of the detailed pro bono policies and procedures. Often, the drafting will be largely or entirely undertaken by the pro bono coordinator (if any) (see Section 2.3.3(b)).

Annex A provides a sample pro bono manual (a "*Model Pro Bono Manual*"), which contains standard clauses often used in manuals at large firms in the United States. The Model Pro Bono Manual is written in such a manner that it can be easily adapted by any firm.

### **3.2 Pro Bono Commitment of the Firm, and Attorney Goals/Expectations**

The introductory section of the pro bono manual articulates the firm's commitment to pro bono practice. In particular, it contains a declaration that the firm supports and encourages its attorneys' participation in pro bono work.

This section normally contains specific pro bono goals or expectations adopted by the firm. Goals can include an annual minimum number of pro bono hours per attorney or for the firm as a whole, a pro bono percentage of attorney billable hours, and/or a percentage or number of attorneys who will undertake at least a particular number of pro bono hours each.

Attorneys are not the only people at law firms who can provide pro bono services. Paralegals, clerks, secretaries, summer associates and administrative personnel also make valuable contributions, and are often enthusiastic about participating in pro bono matters.

### **3.3 Definition of Pro Bono Work**

This section of the pro bono manual defines what kind of services and types of legal issues the firm will consider “pro bono” and what categories of clients will qualify for pro bono assistance. Some firms, for internal purposes, will label some matters as “pro bono” that do not come under the generally accepted definition used by the Pro Bono Institute and the American Lawyer. Others will do free legal work regardless of whether or not it fits under the generally accepted definition. Where this occurs, the firm should clearly delineate in the manual the “pro bono” work that comes within the generally accepted definition and, if it does sometimes permit additional work to be done for free, should make it clear that such work will not be reported externally as being “pro bono,” even if for some purposes it may be internally referred to as “pro bono”. For the purposes of this Guide, we will refer only to “pro bono” as defined by the Pro Bono Institute and the American Lawyer, or that is defined less broadly than their definition.

A firm’s concept of pro bono legal services may include free legal services provided to the poor or to nongovernmental institutions (NGOs) that primarily benefit the poor. It may also include legal services that are provided in matters of public interest (such as civil rights matters that would not likely be brought in the absence of free counsel) and in matters on behalf of marginalized populations. It may also include free legal services to NGOs that do not primarily benefit the poor, but are so relatively small that they cannot afford counsel.

Furthermore, so that the firm’s attorneys have a high level of understanding of the scope of pro bono, firms should not only define what they will consider to be pro bono services, but also what activities will *not* be considered pro bono. For example, pro bono should not include providing legal services at reduced fees. Nor should it include non-law-related assistance, lecturing, publishing books or articles on subjects not specifically directed at legal issues that come within the pro bono definition, or providing free legal services to friends and family (at least if they are not poor). Many of these activities are desirable and represent contributions to the community, but should not be categorized as pro bono work.

#### *3.3.1 What is the difference between corporate social responsibility and pro bono legal services?*

It is important to keep the definition of “pro bono” in mind. Without a full and deep understanding of what pro bono actually entails, a law firm will not be able to institutionalize the kind of pro bono program that will enable it to meet its pro bono goals in a meaningful way.

To begin, pro bono is a professional obligation, one that stems from the nature of the attorney’s role in society, and the privileged position attorneys occupy in terms of providing access to justice. It is a particularly important obligation in addressing the expanding gaps that preclude the neediest in society, and the nonprofits that provide them with services, from securing paid counsel. The importance of the obligation also is great where public interest matters would not otherwise have access to legal advocacy were it not for pro bono lawyers.

Pro bono legal work—while crucial for the reasons just stated—is different from non-legal volunteer work and other forms of charity. This difference arises from the facts that pro bono legal work (a) helps to fill the gap between the legal needs of the most disadvantaged in society

and their ability to find counsel, and (b) helps to address other access-to-justice gaps (such as when nonprofits or public interest groups cannot afford counsel). It is crucial to keep pro bono legal work completely separate from volunteering and other forms of charity in establishing the firm's pro bono structure (even if the same person may, for example, coordinate pro bono legal work and volunteer activities). The only circumstance in which charity and pro bono work may coexist in a structural way is for budgeting.

Business trends and globalization have spurred an ever-increasing interest in “corporate social responsibility.” Corporate social responsibility is a form of corporate self-regulation by which businesses embrace responsibility for the impact of their activities on stakeholders and other members of the public sphere. Clients and consumers are increasingly placing demands on corporations and professionals to maintain responsible practices that benefit not only the consumers but also employees, the environment, and society as a whole. Because corporate clients often seek a law firm that is “socially responsible,” the concepts of (a) corporate social responsibility in a legal environment and (b) pro bono legal services can create confusion. An additional factor, in some instances, is that a corporate client may take into account a law firm's pro bono program in determining the extent to which they think the law firm is “socially responsible.”

There should remain, within each law firm, a clear distinction between charitable contributions, volunteerism, socially responsible business practices, and pro bono legal services. Charitable contributions are the easiest of the first three of these to distinguish from pro bono, in that they consist of direct financial contributions to charitable organizations, nonprofits, civic organizations, churches, or other entities. While some of these financial donations may *contribute* to or assist these organizations in the provision of services (sometimes, including or entirely consisting of legal services) to poor or marginalized individuals, groups or communities, the donations themselves do not qualify as pro bono work. Furthermore, an attorney or law firm does not meet its pro bono commitment by making financial contributions to these organizations, regardless of the organizations' beneficiaries and ultimate purposes. It should be noted, however, that, as pointed out in section 4.2.1 below, law firms should plan on making financial contributions to organizations that are sources of (and often have further involvement in) pro bono matters.

Community service, or volunteerism, is also distinguishable from pro bono legal services. Community service includes collecting items for persons in need or providing *social* (and not legal) services to these same people. This includes, but is not limited to, food, clothing or blood drives (or any type of tangible resource collection for the disadvantaged); painting a school; cleaning debris from a park, etc.

Community service is valuable for the betterment of society, and can also serve to solidify and build relationships with clients and the wider population. Volunteer service allows for open collaboration between lawyers and other members of the community, without the level of formalization and specialization necessary for pro bono legal work. It can also be an extremely rewarding team-building exercise. Therefore, while it cannot be considered pro bono legal work, volunteer community service remains a valuable experience for lawyers and firms.

Environmental efforts on behalf of a law firm—for example, paper, cell phone or plastic recycling programs—are also not pro bono work.

### 3.3.2 *Can participation in educational programs be considered pro bono work?*

It depends. Law firms disagree as to whether particular kinds of such activities should be counted toward an attorney's pro bono hours. In determining whether a particular project should be considered pro bono, it is helpful for a law firm to keep in mind both the *purpose* of the project and the *necessity of legal skills* for completing the project. The greater the need for legal skills in order to successfully accomplish the project's goals, the more likely it will be that the project should be considered pro bono.

A useful example can be found in juxtaposing high school student mentoring and educational programs that train lawyers to handle certain cases that fall within the definition of pro bono. The former—mentoring or tutoring students—should not be considered pro bono work because it does not involve the delivery of legal services. When legal skills or knowledge are not required, the project should be considered volunteerism.

### 3.3.3 *Can service as a member of an NGO's Board of Directors be considered pro bono work?*

While board service is not generally considered pro bono work, it is an important aspect of generating a pro bono culture and (if the NGO is a clearinghouse) cementing a clearinghouse's vital role in the pro bono chain. It is very important for a lawyer who is a board member of an NGO to make it clear when (if ever) he or she is acting in the capacity of a lawyer for the NGO. Some law firms do not ever permit legal work to be done for an NGO whose board of directors includes a lawyer from the firm. Ethical considerations should be taken into account, in light of the particular circumstances, by those law firms that do permit legal work to be done for such an NGO.

## 3.4 **Administration of the Pro Bono Program**

This section of the pro bono manual establishes who will administer the firm's pro bono program, outlining the responsibilities of the various program roles of, as applicable, the pro bono coordinator, pro bono chair, and pro bono committee. The administration of the program includes the general coordination of pro bono projects and management of the pro bono program, and is usually the responsibility of the pro bono coordinator or committee. For general descriptions of the positions, qualifications, and duties of the pro bono coordinator and the pro bono chair or committee, see Section II of this Guide.

## 3.5 **Financial Considerations for Establishing a Pro Bono Program**<sup>1</sup>

### 3.5.1 *If a firm's pro bono program has a budget, what is the best way to structure it?*

There are costs and expenses associated with all pro bono programs. These include both internal and external costs. Internal costs are such routine course of business expenses as photocopying, phone calls, postage, transportation, and messenger services. External costs include non-routine,

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<sup>1</sup> This section was adapted from *Frequently Asked Questions: A Supplement to the PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm*.



out-of-pocket expenses, such as filing fees and fees for experts and investigators. Firms may have different policies on how to allocate such costs as between the law firm and the pro bono client, which will be discussed later.

Regardless of what a firm's policy is, establishing a pro bono budget for costs and expenses is considered by many firms to be a crucial aspect of the institutionalization of pro bono, and the development of a sustainable internal pro bono program. Firms that adopt pro bono budgets believe that doing so makes possible a smoother transition into a fully integrated pro bono practice. (It should be noted, however, that some firms with successful pro bono programs do not adopt pro bono budgets, believing that this enables the pro bono program to have greater flexibility.)

A clear policy regarding a pro bono budget can send a message about the firm's pro bono commitment that can be important for the development of a firm-wide pro bono culture. Although the budget may be used to guide the extent of involvement, it should not be used to preclude the firm's involvement in complex pro bono matters, particularly those that have potential for a significant positive, social impact, and which the firm could otherwise afford to undertake.

Additionally, a pro bono budget can enable associates to understand the firm's expectations regarding pro bono, and may permit a more complete evaluation of the firm's pro bono program in a way that allows for yearly expansion and continued sustainability.

As is the case with most administrative and managerial matters, budgeting for pro bono is handled somewhat differently at every firm that has a pro bono budget, and is tailored to meet the needs and goals of the individual firm. All aspects regarding the development of an internal pro bono program at a law firm—including the budget (unless firm management decides not to have such a budget)—should be modeled in a way that not only fits the firm's "corporate culture" but also enables the most efficient use of resources and a fully integrated pro bono practice.

Law firms need not "reinvent the wheel" when it comes to establishing a pro bono practice. Instead, law firms can rely on well-established firm policies and procedures for the pro bono realm. In other words, to ensure that pro bono is an integral part of the law firm, law firms should strive to make the administrative aspects of pro bono as integrated as possible within an already existing infrastructure. Using established mechanisms enables law firms to more effectively handle pro bono matters, streamlining the ease of process. Well-integrated structures make pro bono more user friendly for the firm's attorneys, and ensure high-quality legal services to all firm clients.

While there are many different ways to structure a pro bono budget, a few of the most commonly utilized options are described below.

- (a) **Option 1: Separate Pro Bono and Charitable Contribution Budgets:** To avoid confusion, or simply because it more closely fits the law firm's business model and institutional structure, some law firms prefer keeping pro bono and charitable contributions separate for all purposes, including budget management. Because allocations for pro bono work and charitable contributions at these firms are discrete, the firm's annual charitable contributions will neither increase nor decrease the amount

that can be spent on pro bono and vice versa. Similar to what is described above, law firms who opt for this choice should distinguish between financial contributions and the provision of free legal services.

- (b) **Option 2: Expand the Charitable Contribution Budget:** Another possible option for establishing a pro bono budget is for the firm to expand its annual charitable contribution budget (if it has one) and include its pro bono practice under this larger umbrella. Many law firms have historically allocated an annual budget for charitable contributions to social or civic organizations. Once such a law firm considers incorporating pro bono as one of the firm's practice areas, it will often choose to combine the budget for charitable contributions with the costs associated with pro bono work. Thus, any costs associated with the delivery of free legal services will essentially come from the same source as the firm's charitable contributions. This means that—unless the firm also increases its overall budget once it incorporates pro bono work—the implementation of a formal pro bono program could mean a decrease in the firm's annual charitable contributions.

Firms that maintain a budget for charitable contributions will often assign a committee to handle all requests for charitable disbursements (the “Charitable Contributions Committee”). When this is done, the Charitable Contributions Committee develops the procedures whereby firm partners can request disbursements for financial contributions to their preferred charities. The Charitable Contributions Committee can be expanded to make the same determinations with respect to pro bono work. If feasible, the firm may also designate a new committee to handle the pro bono budget (the “Pro Bono Budget Committee”), using the same or similar procedures as those used by the Charitable Contributions Committee. In some cases, the Pro Bono Committee carries out budgetary functions, and a separate Pro Bono Budget Committee is not established.

In practice, the committee structure could work as follows: a partner wishing to fund the expenses for a new pro bono project or case can approach either the expanded Charitable Contributions Committee or the Pro Bono Budget Committee as he/she would when requesting a charitable disbursement, and the committee would make a determination with respect to granting, denying, or adjusting the amount requested for the pro bono project or case. If the pro bono project or case later incurs unexpected costs, the same committee will determine whether the firm will cover the additional costs, whether the client will be responsible for these expenses, or how else the firm may handle these unanticipated expenses. Clients' responsibility for expenses associated with their pro bono representation will be discussed in Section 3.5.2.

Even when law firms choose to combine their budgets for charitable contributions and pro bono work, it is important to note that when it comes to *defining* the concept of pro bono and what qualifies as appropriate pro bono work, there is and should be a clear distinction between financial contributions and the provision of free legal services. In short, pro bono work is not charity but rather a professional obligation; charitable contributions are not considered pro bono work, regardless of the budgetary structure.

- (c) **Other Budget Considerations: Distinguishing between Routine and Non-Routine Expenses:** Firms should be aware of the types of internal expenses involved in maintaining a pro bono program. Because these costs are expected and necessary to

providing high quality legal services, many law firms do not require prior approval for these expenses. It would be an administrative burden to obtain approval for each of these kinds of expenses. Because these costs tend to be predictable, law firms tend to refer to them as “routine” costs and many law firms allocate a fixed annual amount to such routine expenses. As described above, a committee will often determine what this amount will be every year and which pro bono projects or cases will benefit from a disbursement under this budget.

External costs, on the other hand, are costs that are not routine and therefore at most law firms with organized pro bono programs require advance committee or partner approval. These are generally higher ticket items, such as the provision of filing fees or paying for expert witnesses or investigators, which—while necessary to the provision of legal services--extend beyond routine costs.

Firms vary with respect to their understanding of routine and non-routine costs. The important thing to ensure is that the firm’s attorneys understand the importance of using good judgment when it comes to expenditures associated with pro bono matters, and that firm policy is made explicit in the firm manual on pro bono policies and procedures. It should be very apparent when an attorney must seek prior approval and when he/she does not need to do so. Again, where a law firm has an annual routine expense budget for pro bono, it should determine what kinds of costs fall into this budget based on the needs and characteristics of the firm and set clear guidelines so that attorneys understand what costs are considered routine and which require additional approval.

Regardless of a firm’s ultimate choice regarding budgeting for pro bono work, the law firm’s pro bono manual of policies and procedures should clearly outline the firm’s pro bono budget (or if there is no budget, the firm’s practices regarding the subjects discussed herein). To further highlight the importance of being mindful of costs associated with pro bono work, attorneys who have recently been assigned to a new pro bono matter or project should also receive or be explicitly referred to a detailed written articulation of the firm’s pro bono budget/cost policies and procedures. It should also be made clear that attorneys should make every effort to keep costs associated with providing free legal services at a minimum, including asking for fee waivers when appropriate or available, as is often possible with regard to indigent clients. If fee waivers are denied or not available, the attorney should otherwise determine if other ways exist to waive or lower the costs associated with the pro bono matter.

### *3.5.2 Is it ever appropriate to charge a fee to a pro bono client?*

It is never appropriate for a law firm to charge a fee to a pro bono client. If a law firm charges its client any kind of fee for its legal services, the work cannot be considered pro bono work. A law firm and pro bono client can agree, however, that a client will be responsible for paying some or all of the expenses associated with the client’s pro bono representation or with effectuating the advice provided by pro bono counsel. These expenses may include court fees, charges associated with obtaining official documentation, registration fees and other such costs.

If there is a possibility of the recovery (by judgment, settlement, or otherwise) of attorneys' fees, costs, or both, this subject should be discussed with the client and dealt with in the Pro Bono

Commitment Letter. Wording should be developed that avoids creating ambiguity that may make it impossible to deal with contingencies, such as settlement offers that are conditioned on waiving attorneys' fees, costs, or both.

### 3.5.3 *Allocation of Expenses*

A firm's policy on the allocation of expenses typically depends largely on the firm's pro bono budget, the amount of the fees associated with the specific pro bono project or case (*e.g.*, some pro bono matters will have many more costs associated with it than others), and the client's own financial circumstances. Options include the pro bono client bearing no costs, bearing external costs only, bearing internal and/or external costs up to a certain amount, bearing both internal and external costs in the full amount, or making the decision on who bears expenses on a matter-by-matter basis, depending upon the financial resources of the client and whether the client is an individual or an NGO. For example, some firms will pay all reasonable and ordinary expenses associated with the pro bono representation of an indigent client, but will require NGOs to pay for such fees as those associated with registering the NGO. In any event, the firm's policy on the allocation of costs should be included in the firm's pro bono manual of policies and procedures.

This policy also should be clearly communicated to the client, and the pro bono client should always have a clear understanding of those expenses for which he/she/it will be responsible. In an effort to avoid confusion and establish a healthy relationship with the pro bono client, the pro bono attorney and client should determine and discuss this before the pro bono attorney undertakes the representation. Just like a paying client, the pro bono client should read, understand and sign a written agreement or form outlining who will ultimately be responsible for the expenses associated with the representation or with effectuating the advice or other legal work provided by pro bono counsel. This "expenses agreement" should be incorporated into the client engagement letter (for an example of a client engagement letter, please see [Annex 2](#) of the Guide, Format of Pro Bono Commitment Letter). The firm should consult with the pro bono client before incurring any material expenses for which the client will be responsible.

Sometimes, it is not possible to identify all expense items prior to undertaking the client's representation. After agreeing to take on the client's representation, an attorney may begin to investigate the client's particular situation only to find that there are unforeseen or unexpected circumstances that may lead to unanticipated costs. Because of the surprising nature of these expenses, the attorney and client likely will not previously have agreed on the responsible party to bear these expenses. If unanticipated costs arise after the attorney-client relationship has been established, they should be addressed immediately and (unless covered by the existing client engagement letter) in a similar formal (documented) way, to avoid confusion and/or ethical breaches.

### 3.5.4 *What are the tax implications (benefits and liabilities) associated with pro bono work?*

There may be local or federal tax implications for performing pro bono work. Because tax law is country- and often region-specific, the implications of doing pro bono work from a tax perspective will vary depending on which country, region, and perhaps even city in which the law firm is located. Some jurisdictions may even have tax benefits for performing pro bono work.

Furthermore, each country will have different compliance requirements for the legal profession in terms of its tax consequences. While all of these innumerable differences cannot be detailed here, it is important for a law firm to research any tax implications associated with pro bono work as the law firm develops its pro bono program. Understanding these tax benefits and liabilities will allow the firm to establish a more appropriate and favorable pro bono structure, one that works to meet its needs and helps the firm achieve its goals.

### **3.6 Procedures for Pro Bono Matters**

#### *3.6.1 Opening of New Pro Bono Matters*

The firm must establish formal procedures for initiating, undertaking, and completing pro bono work. For a description of the mechanisms through which firms can identify pro bono opportunities, see Section IV of this Guide.

Initiating a pro bono matter includes the following procedural steps:

- (a) ***Pro Bono Request:*** After the firm has chosen a mechanism for identifying pro bono opportunities (see Section IV) and informing its attorneys of those opportunities (see Sections 2.2.3(d) and 5.1) and once an attorney has expressed interest in working on a particular pro bono matter, the first step will be to complete an application for a new pro bono matter (the “Pro Bono Application”). The Pro Bono Application should contain basic information, such as the description of the pro bono client and the required services. The Pro Bono Application should be agreed upon and perhaps signed by the attorney responsible for the pro bono matter, a partner supervising or otherwise responsible for the matter, and, in some instances, the pro bono coordinator (if any) (see Section 3.5.2 and [Annex 1](#), “*Application for Opening a New Pro Bono Matter*” – Model Pro Bono Manual).
- (b) ***Conflict of Interests Check and, Where Required, Further Review:*** Pro bono matters could present conflicts of interest. As a result, a firm must undertake a conflicts check for each Pro Bono Application. The firm should use the same process it uses for conflicts checks with commercial clients and record the results in the Pro Bono Application.

At least where legally required in the applicable jurisdiction and perhaps (a firm may decide) in other circumstances, the firm should undertake further review—such as, in some countries, a “Know Your Client” review.

- (c) ***Approval of the Pro Bono Matter:*** The firm must establish who will be responsible for approving new pro bono matters. As already noted, often the pro bono chair or committee will perform this role and otherwise will oversee the pro bono coordinator in performing this role (see Section 2.3.3(d)). The firm should establish certain essential criteria for use in considering Pro Bono Applications.

Some of the criteria that can be considered in approving new pro bono matters are: potential conflicts of interest, potential business conflicts (such as asserting a legal position on behalf of a pro bono client that is contrary to the legal position that the firm takes on behalf of other clients), whether the required services correspond to the firm’s

definition of pro bono outlined in its policy manual, or if there are any extraordinary circumstances warranting rejection of the pro bono case.

The firm should also consider whether attorneys interested in the particular pro bono case have the experience or would be able to obtain the training necessary to provide the quality and standard of service expected of the firm and its attorneys. Firms can avoid rejecting complicated pro bono cases by finding ways to mitigate or compensate for lack of experience or training, such as staffing cases with a team of attorneys, including some with more advanced experience. If the application for a new pro bono case is rejected, it is recommended that the reasons be briefly explained.

Where pro bono matters are likely to be particularly large in scope, time and commitment, additional approval may be required, such as from the leader of a particular practice group, the office leader, and/or the firm's executive or managing partner. Their approval or rejection should be based not on their personal opinions of the matter, but should represent a consideration of the firm's ability to handle the matter effectively. They should weigh, rather, whether or not the matter can be properly handled despite potential departures, including lawyers from the firm, or lawyers from the matter.

- (d) **Commitment Letter:** Once a new pro bono matter has been approved, and often preferably after an initial discussion with the prospective client, the firm (or in some instances, the firm lawyers involved) and the pro bono client should sign a commitment letter setting forth the parameters of the representation. Even when a firm does not use this type of letter for its commercial clients, it is recommended that it do so for its pro bono clients. Among other topics, the letter should establish the nature, description and range of the representation, which are important for the client's understanding of the exact scope of services that will be provided. Similarly, it should specify who will be responsible for paying any related expenses (see Annex 2, "*Format of Pro Bono Commitment Letter*").

The firm might consider adding an advance waiver position clause to the letter, for example, "Our law firm has many other clients. If you have a conflict of interest with another one of our clients, we will explain that to you and expect that you will waive that conflict of interest unless it involves the same project we are working on for you, or a related matter, or we have confidential information that could be used to your detriment in that other matter."

In order to preserve the attorney-client privilege and other protections, the commitment letter should, where applicable, mention the role(s) that a pro bono clearinghouse or other pro bono partner may or will play, such as getting status updates, providing mentoring, or serving as co-counsel.

- (e) **Co-Counsel Agreement:** Where there is co-counsel, there should be a co-counsel agreement setting forth the respective roles and responsibilities of the firm (or the firm lawyers involved) and the co-counsel. This should include how expenses that will not be borne by the client will be paid, and how decisions will be made (in the event of disagreement with co-counsel) regarding advice to be provided to the client and decisions that are up to counsel to make. Where it is possible to seek legal fees, the co-

counsel agreement should (to the extent possible to anticipate) articulate the key principles that will be followed in such situations. This should include (where feasible) what will be done where settlement may be impossible unless some or all possible attorneys' fees (or recoupment of expenses) are waived.

- (f) ***Pro Bono Matter Files***: The firm should open and maintain a physical or electronic file for each pro bono matter, using the same procedure that is used for commercial clients. Firms that use a "coding system" to identify their commercial clients should use the same system for their pro bono clients. These files can be updated by the attorney assigned to the pro bono matter and maintained by (or under the oversight of) the pro bono coordinator.

### 3.6.2 *Supervision, Oversight, and Possible Evolution of a Pro Bono Matter*

It is necessary that a firm establish a formal supervising/oversight system for pro bono work in order to ensure that its attorneys provide pro bono services in a professional manner and follow the same standards of service that the firm provides to its commercial clients. As such, every pro bono matter should have a supervising partner who, directly or through the pro bono coordinator (if any) or otherwise, is regularly informed about and reviews associates' work and provides feedback or assistance as necessary. The supervising partner can be a particular associate's mentor, or associates can ask partners with specific knowledge or experience in a particular issue whether he/she can serve as the supervising partner for a particular pro bono matter. It is further recommended that the pro bono coordinator regularly monitor the status of each pro bono matter (See Section 2.2.3(b)).

Firms should implement a formal written reporting mechanism as a means by which attorneys responsible for pro bono matters inform the pro bono coordinator and (directly, or via the pro bono coordinator) the supervising partner of the status of the pro bono matter. These attorney-generated reports should include information about the most recent accomplishments or setbacks, potential next steps and the existence of any hindrances or problems (see [Annex 3](#), "*Format of Pro Bono Work Report*"). The regularity of the reports will depend on the nature of the representation and services provided, with reports every four months often being reasonable.

The pro bono coordinator should not only seek to ensure that attorneys complete their pro bono reports, but they should also review and follow up on them, and file (physically or electronically) all submitted reports, and should, where reports are not submitted or are incomplete, pro-actively get the missing information (see Section 2.2.3 (b)).

It is crucial that the firm impresses on each attorney working on a pro bono matter that if the pro bono client asks for additional legal work to be done, or if existing pro bono work evolves to, potentially, involve additional parties or legal issues, the attorney notifies immediately the pro bono coordinator (if any), or the pro bono committee or pro bono chair. Requests to handle additional legal work should be dealt with in the same manner as the initial requests to do legal work for a pro bono client. It should not be assumed that the existing matter's legal staff is appropriate for additional legal work, or that the additional work fits within the pro bono program's mission, or that it can be handled effectively and without conflict. When approval is given to handle additional legal work, the commitment letter should be supplemented or else there should be a separate commitment letter for the additional legal work.

Where additional parties or legal issues are potentially to be added to an existing pro bono matter, conflict checks should be done and consideration given to potential implications for business conflicts and for the sufficiency of matter staffing.

As provided above (see Section 2.2.3(b)), it is crucial that staffing changes in existing pro bono matters be made when appropriate, and that notifications thereof be made promptly.

### *3.6.3 Standard of Services*

It is important that the firm clearly indicate in its pro bono policy manual that pro bono services are provided with the same standard of quality provided to commercial clients. Attorneys at the firm should understand that pro bono work does not have a lower priority or standard of excellence than commercial work. This is especially important because attorneys who are under time pressure can be tempted to defer or give lesser attention to work on pro bono matters, thereby potentially prejudicing their pro bono clients' interests.

This does not mean that an attorney must always handle both the time-pressured commercial work and the attorney's existing pro bono matters. It does mean that the attorney must advise a supervising partner, the pro bono coordinator (if any), the pro bono chair, or the pro bono committee of the situation—so that one or more additional lawyers can be added (at least temporarily) either to the attorney's commercial or pro bono matters.

### *3.6.4 Record of Hours*

Firms must maintain a recording system for attorneys to enter their pro bono hours. Without this record, firms cannot determine whether they are achieving their numerical pro bono goals and cannot properly evaluate their pro bono programs quantitatively (see Sections 3.2 and 6.2). Also, institutions with which firms create pro bono partnerships often request annual records of hours spent on pro bono matters (see Section 4.2.1), as do, frequently, particular pro bono clients as to work done for them.

Such records should, where appropriate, be maintained in essentially the same manner that the firm maintains its hours for commercial clients. In the event that the firm does not have a timekeeping system for its commercial clients, or if that system does not provide all the detail desired with regard to pro bono matters, it should implement a special or supplemental system for its pro bono matters. Depending on the firm's size, different systems ranging from complex software systems to simpler Excel spreadsheets or basic paper forms may be used. Firms must also decide whether pro bono hours will be considered "billable" hours for the purposes of attorney expectations, performance evaluations and compensation (including bonuses) (see Sections 5.1(b) and 5.1(c)).

### *3.6.5 Multiple Clients*

If there is more than one client, or if there are co-counsel, the additional relationships beyond the more usual situation with a single counsel and a single client will need to be handled in somewhat different ways, which over time should be set forth in standardized formats that can be adapted to particular circumstances. In particular, efforts should be made to avoid ambiguities as to how and by whom and through what process decisions will be made—and, where possible, on the basis of relatively specific guidelines. The failure to provide for appropriate decision making may lead to the inability to continue with co-parties, co-counsel, or both. The firm's manner of



dealing with multiple clients, co-counsel, or both in commercial representations can be instructive in drafting provisions at the outset.

### *3.6.6 Completion of a Pro Bono Matter*

When pro bono services on a matter have been completed (either when a matter has ended or the firm has decided that it will not continue providing its services), the firm (or firm attorneys working on the matter) should communicate this fact to the pro bono client. It is advisable that such communication be in writing through a “termination of services” letter (see [Annex 4](#), “*Format of Pro Bono Services Termination Letter*”). If the matter came from a pro bono clearinghouse, such organizations usually require that they be notified so that they can also close the matter in their own systems.

Additionally, the pro bono policy manual must indicate what will happen with the records of the completed or terminated pro bono matter. It is good practice for the firm to use the same procedures it uses for its commercial clients. These procedures should be set forth in the commitment letter.

Finally, the manual must establish procedures for when an attorney is not able to continue working on pro bono matters or leaves the firm altogether (and either does or does not wish to continue work on one or more pro bono matters). Regardless of the procedure, it is important to establish one and implement it properly, so that pro bono clients do not remain without representation and their rights are protected.

### *3.6.7 Evaluation*

To ensure high quality pro bono representation, the firm must evaluate each associate's and counsel's pro bono work on a matter with the same regularity, and using the same standards as with work for commercial clients (see Section 6.1).

## SECTION IV PRO BONO OPPORTUNITIES

### 4.1 Balancing Legal Need with Attorney Interest

Once a firm has established who will administer the pro bono program and has finalized a pro bono policy manual, the next step is to determine the means through which the firm will identify pro bono opportunities. Regardless of how pro bono cases are identified, in choosing which pro bono cases to approve firms should consider both (a) the existing legal needs of the people and communities it considers to be accessible and appropriate for its services and (b) the expertise and interests of its attorneys.

Usually, the definition of pro bono services focuses largely on free legal services to the poor and the disenfranchised; to the organizations that assist them; and to matters of public interest (see Section 3.3.1). Firms should also consider channeling some or much of their pro bono efforts in an organized way towards exigent or significant legal needs of the community or communities considered needing and worthy of services.

It is important to emphasize that pro bono opportunities are not limited to litigious matters. Attorneys have many opportunities to do transactional pro bono work for NGOs (both those encompassed by the preceding paragraph and others that cannot afford any counsel) in the areas of labor, property, tax, intellectual property, and corporate law. Also, pro bono services can be provided on matters in the public interest, such as preparing a legal report discussing access to public information held by government agencies.

In addition, firms should keep their attorneys' expertise and interests in mind when identifying pro bono opportunities. An effective way to encourage attorney participation and ensure retained interest in pro bono is to offer opportunities in areas where attorneys' experience and interests lie. One way to identify this is through a firm survey that asks attorneys what kind of pro bono work they would like to do (see format of the "*Pro Bono Questionnaire*" in [Annex B](#)). An aspect of attorneys' interests, particularly early in their careers, is gaining certain types of legal experience—which may be independent of the type of matter. This might be the subject of questions on the survey. Many firms distribute such surveys annually so the firm can have up-to-date information.

Attorneys may, notwithstanding their survey answers—which deal with types of matters in the abstract—be interested in matters of types other than those mentioned in their survey answers. Therefore, emails, voicemails, phone calls, and personal contacts should be used to elicit interest in particular matters.

Ultimately, firms must balance attorney ability and interest with the legal needs of their communities. For example, a firm may find that the most pressing legal need in the community is family law litigation, but only 3% of its attorneys have expressed interest in this area. In circumstances like this, the firm will have to decide how to create the greatest amount of synergy between legal need and attorney interest. One possibility may be donating to groups providing family law litigation services—which will enable those groups to meet more of the legal need

and also to provide sufficient training and ongoing mentoring to make working on family law litigation more attractive to the firm's attorneys.

Another way to do so (which can be facilitated by the first mentioned possibility) would be to have some lawyers develop expertise in family law litigation, so that there is maximum opportunity for in-house mentoring. In this way, family law litigation could become, in effect, a pro bono practice group, with group meetings and even a group website.

A third way to increase attorney interest could be to work with an in-house law department on family law litigation. Attorneys may be attracted to such litigation by the opportunity to work closely with in-house lawyers.

#### 4.1.1 *What is an effective way of determining whether a particular NGO is an appropriate pro bono client?*<sup>2</sup>

Pro bono representation goes beyond the representation of poor or otherwise marginalized individuals. NGOs are also appropriate pro bono clients, especially for non-litigators who are accustomed to transactional work. Just as not all individuals are appropriate pro bono clients, not all NGOs should be eligible for pro bono legal services. The following section from the Association of Pro Bono Counsel's *Statement on the Eligibility of Non-Profit Entities for Pro Bono Legal Services* (the "Statement") provides a useful methodology for determining which legal work for NGOs should be considered under the firm's pro bono definition. While this formula is certainly useful, it should be noted, as APBCo itself notes, that "every situation is unique [and] there should always be room for the application of professional judgment in determining whether a representation qualifies [for pro bono legal services]."

#### **Mission, Matter, Means Test**

A) **Mission:** A nonprofit organization qualifies [for pro bono legal services] when its mission is to serve the indigent or protect or preserve civil rights, civil liberties, public rights, as well as human rights, *regardless of its budget or means to pay attorney fees* [emphasis added]. While the term "public rights" is not defined, APBCo members agree that "public rights" may include environmental matters, public health care issues, peace building initiatives and activities related to government regulations that affect the public at large.

*Once a particular organization satisfies the mission test, no further review is necessary.* The provision of free legal services to an organization that has a qualifying mission benefits those served by the nonprofit organization's work. Therefore, in the case where the organization's mission qualifies, the budget of the organization itself is irrelevant. Law firms should, however, consider whether some or all very large and well-funded nonprofit organizations that meet the mission test should not be included in these firms' pro bono definitions—or otherwise should not be permitted under particular circumstances. For example, some firms represent large, well-funded charitable institutions with constant legal needs on a fee-generating basis. These firms often, for client relations reasons, choose not to offer pro bono services to organizations with similar funding to that of the firm's fee paying clients.

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<sup>2</sup> This section was adapted from *Frequently Asked Questions: A Supplement to the PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm*.

- B) **Matter:** A nonprofit organization with an overall mission that does not fit the criteria above nonetheless may be eligible [for pro bono legal services] if the specific matter proposed itself presents a qualifying mission. In cases where a non-qualifying organization proposes to engage in a qualifying activity, i.e., one that serves the indigent or fosters human, civil or public rights, the matter should qualify [for pro bono legal services] regardless of the entity's ability to pay attorney fees. If the specific matter satisfies the mission test, no further review is necessary.
- C) **Means:** Where neither [Mission nor Matter] above is satisfied, most law firms will still allow an organization to qualify [for pro bono legal services] if the organization does not have the means to pay for legal services. In these circumstances, the question is whether the organization has sufficient means to afford competent legal counsel to handle the matter presented. This is not always a simple determination. In evaluating whether a nonprofit organization has sufficient means to afford legal counsel, many factors may be examined, including:

*Referral by a legal services organization:* In many communities, there are sophisticated legal services organizations that screen and refer nonprofit organizations to law firms for pro bono legal services. Law firms rely heavily on such referrals, and absent any clear indication that pro bono representation of a nonprofit organization would be inappropriate, such a referral should be a sufficient indication that an organization qualifies for pro bono services.

*Financial criteria:* If not pre-screened by a trusted legal services organization, a firm may want to examine statements reflecting the organization's financial condition. In particular, firms may wish to consider nonprofit organizations' revenues as compared to their overall budgets, executive compensation, and debt-to-asset ratios. If the organization has budgeted for legal fees to cover the proposed matter, this may be an indication that the entity has the means to pay for legal fees.

*Past payment of legal fees or other professional fees:* An organization's past payment of legal fees and other professional fees may also be considered. Payment of legal fees in the past should not automatically disqualify an organization from pro bono representation. On the other hand, the ability to pay for fees in the past may well be a good indication of a current ability to pay, although this is not always the case. The payment of other professional fees may also be considered.

*Nature and extent of legal services required:* Firms may also consider the nature of the specific matter when determining whether an organization can afford legal services. Some matters require specialized legal expertise, the cost of which may be prohibitive. Some matters might not be undertaken but for the availability of pro bono assistance. Some matters might be crucial to the continued viability of the organization. On the other hand, certain matters, like some plaintiff-side litigation, can routinely be handled by contingent-fee lawyers.

*Constituency served:* If a nonprofit organization is exclusively or primarily serving a constituency of persons of relatively substantial means, the organization may be able to afford legal fees even though the organization itself may not have funds immediately available to pay legal counsel. For instance, a nonprofit homeowners'

association fueled by members' dues, not in a low-income area, would likely fail to qualify for pro bono assistance if it has the ability to obtain funding through its membership.

It should be noted, however, that some law firms will not allow an organization to qualify for pro bono unless that organization meets the mission and/or matter test, irrespective of the organization's inability to pay for legal services. Moreover, some law firms will not allow (either at all or depending on the circumstances) an organization to qualify for pro bono, even if it meets the mission test, if the organization has a particularly great ability to pay for legal services. Finally, some law firms may permit free legal services to be provided despite failure to comport with the mission-matter-means tests. Where this occurs, these firms do not include these legal services in their pro bono definitions (see section 3.3 above).

## **4.2 Identifying Pro Bono Opportunities**

Once legal needs and attorney interests have been assessed in the abstract, the next step is to determine how the firm will find appropriate pro bono opportunities. Particularly in the absence of well-functioning pro bono clearinghouse groups (see Section 4.2.1 below), identifying pro bono opportunities is not an easy task, and should be given substantial attention. The need for a particular type of free legal services may be great but, absent proper client vetting, training, and mentoring, may be inappropriate for pro bono services.

Before a firm can determine whether a pro bono opportunity is appropriate, a series of steps must occur (where a good pro bono clearinghouse group is not in position to undertake them). Some of these steps include, but are not limited to, contacting and interviewing potential pro bono clients, and obtaining and initially reviewing a potential client's documentation to determine whether the firm's definition of pro bono is met.

The next section describes some of the most common methods used to identify pro bono opportunities. As in all aspects of pro bono program development, law firms should remember to tailor their programs to their individual characteristics and resources. Thus, firms should utilize existing networks and already developed relationships to find pro bono opportunities.

### *4.2.1 Creation of Partnerships*

The creation of pro bono partnerships is one of the most efficient and convenient ways to identify pro bono opportunities and is widely used by U.S. firms. In this approach, the firm collaborates with public interest or social welfare organizations, law schools, or government agencies, among others (the "pro bono provider") to obtain pro bono referrals that are then circulated internally to gauge attorney interest in particular matters. If there is sufficient interest, and the pro bono provider does not give the matter to a different firm, the firm initiates the acceptance process (see Section 3.6.1). A benefit of this approach is that the pro bono provider frees the firm from the responsibilities of initial intake: interviewing of clients, examining case history documents, and other administrative tasks.

Using this approach, firms can forge partnerships with NGOs or other institutions that function as "*clearinghouses*" connecting pre-screened pro bono clients to firms that will provide legal

services. NGOs, bar associations, government agencies, universities, law school clinics, hospitals, and churches can all serve as clearinghouses.

Once established, local clearinghouses are important sources of pro bono work for their participating law firms and lawyers. Basically, a clearinghouse's function is to develop pro bono projects that it can then offer to law firms or individual attorneys. The clearinghouse then should oversee and manage the firm's relationship with the pro bono client, providing support to the pro bono attorneys as they work toward a successful resolution of the project or matter.

Clearinghouses can also be useful sources of information and technical assistance as law firms develop their pro bono cultures. Moreover, some clearinghouses provide extensive ongoing mentoring, as well as initial training, and may sometimes be co-counsel on pro bono matters. As noted above, the roles that clearinghouses will or may play after matters are placed should be covered in commitment letters and, sometimes, be the subject of co-counsel agreements.

It should be noted that, to sustain the various services that clearinghouses offer, law firms should plan (including in budgeting, as applicable) to make financial contributions to organizations that are sources of (and in some instances, have further involvement in) pro bono projects.<sup>3</sup>

#### 4.2.2 *Advisory Boards*

It is a good idea for each local clearinghouse to establish some kind of advisory board in addition to its Board of Directors. This advisory board could consist of younger attorneys who not only can assist the clearinghouse in its programming but can also serve as points of contact at each of the participating law firms, giving the clearinghouse additional information about how to improve its functioning in the pro bono chain.

#### 4.2.3 *Pro Bono Coordinators Network*

If no local clearinghouse, bar association referral program, or advisory board has been established—and even if one or more has been established, pro bono coordinators from different law firms may choose to meet on a regular basis to discuss the pro bono implementation processes at their respective firms. By sharing experiences and strategies, this network can more strongly promote the pro bono initiative to the legal profession, and together devise solutions to shared challenges.<sup>4</sup>

#### 4.2.4 *Internal Systems*

Firms also can choose to identify pro bono opportunities that do not involve such partnerships. A firm might find pro bono clients by inviting potential clients to a legal clinic. At such a legal clinic (as with ones organized in conjunction with a partnership), lawyers from the firm might provide one-time, on-the-spot advice to most of those seen, but agree to represent some with full-fledged pro bono representation.

Some law firms have chosen to create private foundations that serve as referral agencies between the community and the firm. Whereas pro bono partnerships have more administrative

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<sup>3</sup> The last two paragraphs were adapted from *Frequently Asked Questions: A Supplement to the PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm*.

<sup>4</sup> Subsections 4.2.2 and 4.2.3 were adapted from *Frequently Asked Questions: A Supplement to the PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm*.

advantages, these foundations can give firms greater control over the identification of potential clients and the verification of their information.

#### 4.2.5 *Attorney or Commercial Client Identification of Pro Bono Opportunities*

There is no greater resource for a pro bono coordinator or committee than a law firm's own people. No one knows better the challenges and successes of undertaking pro bono work than the attorneys and administrative staff who work to ensure that pro bono work is not only undertaken, but performed efficiently and with the highest quality. Pro bono coordinators should develop periodic workshops, roundtables, or discussion groups, through which attorneys participating in pro bono work can voice their opinions and offer suggestions about ways in which to improve the pro bono program. Not only does this help the pro bono coordinator or committee to be more effective, it also fosters the development of a firm pro bono culture and gives positive recognition to those participating in pro bono work.<sup>5</sup>

In addition, commercial clients, or their in-house lawyers, can be a source of pro bono clients. This can occur, for example, as a byproduct of an in-house lawyer's serving on the board of directors of a group that provides legal services to the poor or a group that provides non-legal services to the poor but itself needs legal help. Moreover, in some circumstances, in-house lawyers can work effectively with firm lawyers on pro bono matters—after careful consideration of how the arrangement will work and the preparation of a written agreement thereon.

As mentioned above, however, attorney interest must be balanced with the greater goal of addressing unmet legal need in the community. And all potential pro bono projects, including those proposed by attorneys, must meet the firm's definition of pro bono work.

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<sup>5</sup> This paragraph was adapted from *Frequently Asked Questions: A Supplement to the PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm*.

## SECTION V PROMOTION AND RECOGNITION OF PRO BONO WORK

### 5.1 Promotion of Pro Bono Work

Once a firm establishes how it will identify pro bono opportunities, the next step is to decide how to promote and encourage the pro bono program internally, recruit attorneys to participate in it, and provide incentives for doing pro bono work. Successful pro bono recruiting requires that attorneys first learn of potential pro bono opportunities.

Usually, the pro bono coordinator is responsible for disseminating information regarding available pro bono projects (see Section 2.2.3(e)). An effective way of staffing pro bono projects, which is also the practice in most U.S. firms with organized pro bono programs, is for the pro bono coordinator to send emails to all or selected groups of attorneys with brief summaries of pro bono matters currently in need of staffing. Sometimes, such emails (or, on occasion, group voicemails) are sent only to attorneys in particular practice groups. Attorneys who have not previously expressed interest in a particular type of matter may wish to work on a matter summarized in an email.

Firms must not only inform its attorneys of pro bono opportunities, but also encourage and create incentives to do pro bono work. Some of the most common methods used to encourage pro bono practice are:

- (a) ***Partner Participation***: The first and most important way to attract attorneys to pro bono work is through active partner participation. When partners actively participate in the pro bono program through (1) their involvement in the pro bono committee; (2) providing pro bono legal services with the help of associates or counsel; or (3) supervising associates or counsel who are doing pro bono work, associates or counsel are more likely to feel that the firm values pro bono work. Additionally, partner participation is an effective means of debunking negative perceptions about doing pro bono work. For example, a partner's positive evaluation of an associate's or counsel's pro bono work, when articulated to the associate or counsel, will likely disabuse associates and counsel (including, but not limited to, the associate or counsel getting the positive evaluation) of the fear that spending time on pro bono projects is harmful to advancement at the firm.
- (b) ***Categorizing Pro Bono Services***: The firm can encourage participation in its pro bono program by treating pro bono work the same as commercial client work. This includes counting pro bono hours as the equivalent of billable hours and considering pro bono work in the firm's evaluation, compensation, and promotion decisions. If this is not done, associates and counsel may feel that the firm is in effect creating an opportunity cost for those doing pro bono work instead of more billable work.
- (c) ***Evaluation of Pro Bono Work***: To elaborate on part of the preceding point, pro bono work can be greatly encouraged if the quality of pro bono work is considered in performance evaluations that the firm conducts and mentioned in evaluation sessions. Just as firms positively evaluate attorney efforts to expand contacts and search for new



clients, pro bono work should also be seen as a plus in attorney performance *if* the work is of high quality. Since much pro bono work early in an associate's career presents the first opportunity for the associate to do particular types of legal work, constructive criticism can be valuable to the associate's development. And when associates or counsel do particularly good pro bono work, they not only gain valuable experience, but should be acknowledged for their initiative and fine work.

- (d) ***Pro Bono Program Orientation for New and Lateral Attorneys***: Another effective way to promote the pro bono program is by introducing it to new and lateral attorneys through a brief and informal introductory talk or a more formal orientation, either of which the pro bono coordinator can organize. Ideally, a partner member of the pro bono committee or another senior partner of the firm, as well as associates who have participated in the pro bono program, should contribute to this discussion and share their experiences. Copies of the firm's pro bono policy manual should also be distributed as part of this introduction.
  
- (e) ***Involvement of Summer Associates and/or Student Interns in Pro Bono Projects or Cases***<sup>6</sup>: Law firms commonly hire law students as summer associates or year-long interns. These students work with the firm for a given period of time prior to their graduation from law schools and are often asked to join the firm as full-time associates upon graduation. As is the case with young law firm associates, such law students are generally enthusiastic about participating in pro bono work because it gives them opportunities to learn about new practice areas and exposes them to the different ways the law can be utilized to help individuals and NGOs, advance reform legislation, and ultimately change society for the better. Students are also eager to participate in pro bono projects because they get greater responsibility than on the law firm's traditional (i.e., remunerated) client matters.

By allowing students to be involved in pro bono work, a law firm can train and prepare these future lawyers for career-long commitment to pro bono work. Additionally, instilling pro bono ideals in students helps solidify a local pro bono culture and can strengthen relationships between the law firm and universities (law schools) who may then establish signature projects together and collaborate on matters that benefit the public interest. These signature projects can foster a sustained relationship between the law firm and the law schools, multiplying a project's overall impact by allowing students to capitalize on the firm's resources on a continual basis. While the students who work on an extensive project will usually change over time, the established partnership between the entities should ensure successful continuity of the project.

Pro bono opportunities for law students also benefit a law firm by enhancing assessment of the students' time management skills and professional abilities. Because pro bono work gives students greater responsibility, it is an opportunity for the law firm to evaluate the students' individual performance. It should be noted, however, that law students' pro bono work—as is the case with commercial work—should always be supervised by a more senior attorney as well as being part of the oversight by the lawyer (typically, a partner) overseeing the matter. Thus, while a law student's involvement

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<sup>6</sup> This subsection was adapted from *Frequently Asked Questions: A Supplement to the PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm*.

may reduce full-time attorney participation in a pro bono matter, it should not eliminate it. Indeed, firms should make sure that the law students they employ recognize that attorneys should be involved in pro bono work—not only as a professional obligation that helps those most in need of legal help, but also as a valuable opportunity to advance and progress in one’s career; a way of strengthening relationships with clients; and a means to participate in an integral part of the firm’s culture.

This orientation might be supplemented by a group experience in doing a one-shot pro bono project, such as first year associates' staffing a well-organized one-shot clinic.

## **5.2 Recognition of Pro Bono**

Public recognition of the pro bono work attorneys perform is another way to promote the pro bono program and encourage participation in it. For example, emails highlighting pro bono successes can be circulated firm-wide. Similarly, pro bono accomplishments can be featured in firm newsletters. Also, pro bono reports containing summaries of notable pro bono work and the names of the attorneys who work on them can be distributed periodically (either annually or semi-annually), perhaps along with feature stories about particular types of pro bono projects or initiatives in particular offices.

Annual recognition of pro bono achievements—such as completing a particular number of pro bono hours or doing particularly outstanding work on a pro bono matter—is another way to reward and encourage pro bono work. The firm can also bestow awards for various levels of pro bono work, including at a special ceremony or celebration. This can be combined with a Pro Bono Fair, where principal sources of pro bono matters are available to discuss individually with potentially interested lawyers the types of matters they offer.

## SECTION VI EVALUATION

### 6.1 Evaluation of Attorney Pro Bono Work

Attorneys who engage in pro bono work should be evaluated with the same frequency and in the same manner as attorneys who work on commercial matters. Even in firms where attorneys are not regularly evaluated, pro bono evaluations should be conducted annually or more frequently. This not only rewards high quality pro bono work, but also provides constructive criticism, to help ensure that attorneys provide high quality legal services to their pro bono—and other—clients (see Annex 5, “*Format of Attorney Pro Bono Work Evaluation*”). As discussed above, attorney-generated status reports can assist supervising partners and pro bono coordinators in their assessments of pro bono work (see Section 3.5.2).

### 6.2 Evaluation of the Pro Bono Program

In addition to individual attorney evaluation, a firm's pro bono committee should evaluate the firm's pro bono program periodically (see Section 2.3.3(f)). If no committee exists, the pro bono coordinator or chair should designate who will evaluate the program's performance and suggest possible improvements.

In order to conduct a pro bono program evaluation, the evaluator(s) ideally should have all relevant quantitative information available, specifically:

- total number of pro bono hours for the year;
- number and percentage of associates, counsel, and partners that performed at least a particular number of hours of pro bono work during the year;
- average number of pro bono hours per attorney during the year;
- pro bono hours as a percentage of billable hours;
- all of the above, by practice groups within offices;
- data regarding practice groups whose lawyers did on average less than the office average of billable work and also did less than the office or firm average of pro bono work;
- number of pro bono clients served during the year;
- number of hours devoted to each pro bono client/matter during the year;
- list of pro bono matters categorized by type;
- list of pro bono matters referred to firm by institutional partnerships;
- list of other sources of pro bono opportunities; and
- the effectiveness, or lack thereof, of any "impact" or "signature" pro bono projects.

Using this information, firms can analyze the quantitative aspects of their pro bono programs, and along with discussions with or anonymous surveys of lawyers, can determine whether the firms are fulfilling their pro bono goals, whether partners are actively participating, and whether the institutional partnerships have been effective in providing interesting pro bono opportunities.

Firms can use their evaluations to make appropriate adjustments to improve their pro bono programs, engage in new pro bono partnerships, modify the supervisory structure, or seek new incentives for attorney participation.

## **SECTION VII BENEFITS OF A PRO BONO PROGRAM**

The next section presents the principal benefits that can derive from a pro bono program.

### **7.1 Help in Filling Some of the Gaps in the Availability of Legal Representation**

A well-organized pro bono program can enhance lawyers' ability to fill the gaps between the legal needs of the most disadvantaged in society (and those nonprofits who try to help them) and their ability to find counsel. It can also enhance lawyers' ability to fill in other gaps, such as when nonprofits or public interest law groups cannot afford counsel, and need legal help to handle matters effectively on behalf of public interest litigants.

### **7.2 Attorney Training**

Pro bono practice represents a way in which a junior attorney can enhance skills and help build a professional network. New attorneys generally fill secondary roles in their firms' litigation or transactional practice. Pro bono work enables new associates to draft court filings, or contracts, prepare legal arguments, and appear in administrative or court hearings. Additionally, pro bono attorneys frequently develop communication, deliberation, and negotiation skills. Matters can provide an opportunity for direct client contact or close interaction with adversaries, court officials, and other attorneys. Pro bono work generally gives attorneys more responsibility and prepares them for the tough decision-making they will encounter throughout their careers. In summary, pro bono work is an effective way for young attorneys to accelerate their development from law school graduates to skilled attorneys.

### **7.3 Recruitment and Retention of Attorneys**

Another benefit that pro bono work offers firms is in recruiting new attorneys and retaining existing attorneys.

Finding and retaining qualified attorneys can be difficult in a competitive legal market. A strong institutionalized pro bono practice can help distinguish a law firm from its competitors. Recent law school graduates tend to have more idealistic views of their careers and the ways in which they can utilize the law as a vehicle to deal with inequality in their communities than more experienced lawyers.

Accordingly, many of the highest quality young attorneys prefer working at law firms where they will be able to do fulfilling pro bono work. Moreover, many young attorneys equate the quality of a firm's pro bono practice with its overall merit and values.

An effective pro bono program can materially help in a firm's retaining of valued attorneys. Pro bono practice presents an attractive alternative to billable casework and can produce a sense of accomplishment (both for the public good and for one's professional development) that associates may not find in much of their first few years of work for commercial clients. Participation in a well-organized pro bono program tends to improve morale while generating a

sense of pride and loyalty in one's firm. This benefit typically extends well beyond junior associates to more senior attorneys and support staff.

#### **7.4 Marketing and Publicity regarding the Pro Bono Program**

A firm's pro bono work can result in helpful publicity. Firms can include references to their pro bono programs on their websites or in newsletters sent to clients. The pro bono chair and the firm's marketing group should consider how best to market externally the firm's pro bono program (see Section 2.3.3(g)). A firm's pro bono partnerships with recognizable institutions (perhaps sometimes including in-house lawyers), its providing pro bono services in important matters of public interest, and its receipt of pro bono awards or positive media recognition can help attract new clients (as well as new attorneys). The firm thus can distinguish itself from competitors. Overall, successfully run and appropriately publicized pro bono programs can improve a firm's image in the community, media, and government, as well as among its current and prospective clients and its current and prospective attorneys and support staff.

Media publicity can also benefit society by informing and awakening the public's consciousness about the public interest, and in particular instances of injustice, social need, or areas of the legal system requiring reform. This can improve the image of attorneys in the community and lead to changes that enhance trust in the legal system overall.

It is important to note, however, that firms should research local law before publicizing their pro bono services. Certain types of publicity may be restricted or limited by law or bar associations.

Aside from publicity *per se*, lawyers may, on the basis of their pro bono work and because they did the work without pay, have particular credibility in advocating legal reforms.

#### **7.5 Building Relationships with Members of the Global Legal Community**

Pro bono engagement can help law firms build relationships with other firms around the world through collaboration on multi-jurisdictional projects. Several pro bono clearinghouses offer firms such opportunities.

**ANNEX A**  
**MODEL PRO BONO MANUAL**

**PRO BONO MANUAL**

**[LAW FIRM NAME]**

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## **1. The Firm's Commitment to Pro Bono Services**

At our firm, we believe that each attorney has the responsibility to offer pro bono legal services. This responsibility comes with the role that attorneys play in society, and from their commitment to a just and equitable legal system.

The firm has a commitment to pro bono work, striving in particular to offer free legal services to benefit impoverished or disenfranchised people and communities, and the organizations that help these individuals. Offering pro bono services to those in such need demonstrates professional integrity and professional ethical values highly regarded by us. The firm is also committed to offering free legal services to nonprofit organizations that cannot afford such legal services, and to enable representation on matters of great public importance (such as civil rights) that would be unlikely to be handled by any attorneys if fees were charged.

Specifically, our firm has committed or will commit to completing a minimum average of 60 pro bono hours per attorney per year, of which a majority should be within the description set forth in the first sentence of the preceding paragraph. The firm recommends that all attorneys complete this minimum number of hours.

Even though pro bono work is voluntary, our firm encourages all partners, counsel and associates to participate in the pro bono program. The firm also encourages partners to actively supervise associate and counsel pro bono work. Additionally, the firm expects that new and lateral attorneys will undertake work on at least one pro bono matter within the first year of starting work at the firm.

## **2. Purpose of the Pro Bono Program**

### **2.1 Definition of Pro Bono Legal Services**

The term "pro bono legal services" means offering legal services either for free, or without the expectation of payment, and which benefit:

- (a) impoverished or disenfranchised people or communities;
- (b) organizations that assist these people;
- (c) people, communities or organizations on matters of public interest where legal counsel would otherwise be unlikely to be secured;
- (d) nonprofit civic, cultural, and educational institutions that would not likely obtain legal counsel if required to pay legal fees.

### **2.2 Services not Considered Pro Bono**

Although many of the following services and activities are ones our firm both approves of and supports attorney involvement in, they are not considered pro bono legal services, for purposes of this Manual:

- (a) volunteer services or activities that benefit the community, but do not involve legal services;
- (b) legal services benefiting family members or friends, at least if they do not come within 2.1(a);
- (c) serving as a director of—or otherwise helping (without providing legal services) organizations (for profit or nonprofit), serving on bar association committees (except to the extent that one's committee activity includes research, analysis, reporting or testifying on subjects or populations encompassed within 2.1), or doing work (including legal work) for trade groups that do not come within 2.1;
- (d) serving an academic post at a faculty of law;
- (e) writing law review articles or books (except where part of an articulated effort to support a legal strategy of one or more organizations described in 2.1);
- (f) free legal services that do not come within 2.1 and are performed as obligatory to a law or regulation; and
- (g) legal services for which payment by the attorney's client is subject to a contingency, including obtaining a favorable judgment, or with the expectation of being paid, either in the present or in the future.

### **3. Structure of the Pro Bono Program**

#### **3.1 Pro Bono Coordinator**

The firm will have a pro bono coordinator ("Pro Bono Coordinator") in charge of supervising the pro bono program.

The Pro Bono Coordinator will have the following responsibilities:

- (a) Implement all program measures and ensuring that the program complies with "The Pro Bono Process" contained in Section 4;
- (b) identify attorney fields of expertise in the firm, and identifying attorneys' interests in performing particular types of pro bono work or particular pro bono matters;
- (c) maintain daily contact and communication with the institutions that the firm has engaged as pro bono partners (among them NGOs, bar associations, governmental organizations and other institutions);

- (d) distribute information about the types of opportunities available through the pro bono program, and about currently available pro bono matters and upcoming pro bono trainings to firm attorneys, especially to new or lateral attorneys);
- (e) ensure proper staffing, including proper supervision, on pro bono matters;
- (f) ensure that suitable conflicts checks and consideration of business conflicts are undertaken, and suitable engagement letters and co-counsel agreements are entered into;
- (g) monitor the status of active pro bono matters, and help guide attorneys in their pro bono work;
- (h) deal properly with changes of staffing on pro bono matters (permanent or temporary), and with efforts to change or expand the scope of representation;
- (i) obtain approval of large expenses relating to pro bono matters;
- (j) regularly inform the Pro Bono [Chairperson] [Committee] at the firm about the program and nature of the matters that the firm has undertaken.
- (k) publicize within the firm successes on pro bono matters, and work with the firm's marketing people on publicizing the pro bono program's highlights externally.

### **3.2 Pro Bono [Chairperson] [Committee]**

The program will have a pro bono [chairperson] [committee] ("Pro Bono [Chairperson] [Committee]") in charge of oversight of the pro bono program.

[The Pro Bono Committee will contain [\_\_\_] members, comprised of [\_\_\_] partners, [\_\_\_] associates, and the Pro Bono Coordinator.]

The Pro Bono [Chairperson] [Committee] will have the following duties:

- (a) oversee the firm's pro bono program and possibly assist in the functions of the Pro Bono Coordinator;
- (b) approve particularly large-scale new pro bono matters, and ensure "buy-in" thereto from relevant parts of the firm—so that these matters may continue to be handled as staffing availability changes or the matters being more active;
- (c) approve the creation of pro bono partnerships (with institutions such as NGOs, bar associations, governmental bodies and other institutions) or, if deemed appropriate, involvement with in-house counsel in work on pro bono legal matters;
- (d) determine policy regarding promoting and recognizing pro bono work within the firm;

- (e) determine policy regarding marketing and external promotion of the pro bono program;
- (f) if the pro bono program has a budget, approve it, and monitor the success or lack thereof in adhering to the budget; if there is no budget, ensuring that the Pro Bono Coordinator undertakes to see that expenditures on each particular pro bono matter are reasonable under the circumstances; and
- (g) annually evaluate the firm's pro bono program.

#### **4. The Pro Bono Process**

##### **4.1 Opening of New Matters**

The following process should be followed when opening a new pro bono matter (whether the matter comes—as most probably will—from pro bono opportunities that the Pro Bono Coordinator refers to attorneys through regular emails, whether an attorney directly proposes a pro bono opportunity, or otherwise).

- (a) Pro Bono Request: If one or more attorneys are interested in opening a new pro bono matter, one of the attorneys, the Pro Bono Coordinator, or someone working under the supervision of the Pro Bono Coordinator should complete a "*Request to Open a New Pro Bono Matter*" that conforms to the format in Annex 1 ("*Pro Bono Request*"). The Pro Bono Request should be signed by the responsible attorney (the "Responsible Attorney"), the supervising partner (the "Supervising Partner") and the Pro Bono Coordinator. Among other things, the Pro Bono Request should contain information about the potential pro bono client and describe the required services and other parties involved.
- (b) Review of Conflicts of Interest: Regarding Clients and Issues: Possible Additional Considerations
  - a. Once the rest of the Pro Bono Request has been completed but before it is signed, any conflicts of interest that may exist with current, past, or prospective firm clients should be checked—using the same procedure as with new commercial clients. The result of these reviews should be included in the Pro Bono Request, as should the result of any checking described in the next two paragraphs.
  - b. In addition, prospective conflicts with positions taken on behalf of other clients (commercial or pro bono) should be considered and discussed with relevant partners. It ordinarily is not desirable to create precedents in pro bono cases that are then used against other clients.

Where required by law, and at the firm's discretion otherwise, further background checking must or may be undertaken with regard to prospective pro bono

clients—including, with regard to nonprofits, their officers, directors, and key staff.

The firm usually will not consider other business considerations when deciding to take on particular pro bono matters, beyond the issues described in the three preceding paragraphs.

- (c) Approval of the Pro Bono [Chairperson] [Committee]: Upon completion of the review of the issues described in (b) above, the Pro Bono Application must be submitted to the Pro Bono [Chairperson] [Committee] for the approval of the pro bono matter.

The Pro Bono [Chair] [Committee] should review:

- i. if there are conflicts of interest with past, existing or potential clients, including pro bono clients;
  - ii. if there are or may be "issue" conflicts;
  - iii. if there are other facts about the prospective client that may be deemed to make the representation unwise;
  - iv. if the required services correspond to those defined here as pro bono legal services;
  - v. if the firm is prepared to staff and supervise the case properly, even if its scope or length turn out to be materially different than initially anticipated, and even if the initial key lawyer(s) on the matter leave the firm or are otherwise unable to continue working on it. This is a particularly important subject to consider where the matter is initially expected to be especially time-consuming and costly; but the same issues should be considered where there is a reasonable possibility at the outset that the case may become especially time-consuming and costly;
  - vi. if the matter will involve co-counsel, whether the relationship with and responsibilities of the co-counsel (and of the firm) are clearly set forth in writing and agreeable to the firm; and
  - vii. If a pro bono matter that has gotten to this stage of review is not accepted, the reason(s) for the decision should be recorded on the Pro Bono Request.
- (d) Pro Bono Commitment Letter; and Situations with Multiple Clients or Lawyers: After the opening of a new matter is approved, the firm and the client must sign a "Pro Bono Commitment Letter", according to the format that is attached as Annex 2 ("Pro Bono Commitment Letter"). The Pro Bono Commitment Letter should describe the nature, characteristics, and scope of services to be provided, and the treatment of costs.

If there is a possibility of the recovery (by judgment, settlement, or otherwise) of attorneys' fees, costs, or both, this subject should be discussed with the client and dealt with in the Pro Bono Commitment Letter. Wording should be developed that avoids creating ambiguity that may make it impossible to deal with contingencies, such as settlement offers that are conditioned on waiving attorneys' fees, costs, or both.

Often, it is wise to have an initial discussion or meeting with the prospective client, at the end of or soon after which the Pro Bono Commitment Letter is signed. Proceeding in this fashion can avoid having a Pro Bono Commitment Letter that provides for different services to be provided than the firm and client agree upon during or shortly after their initial discussion.

If there is more than one client, or if there are co-counsel, the additional relationships beyond the more usual situation with a single counsel and a single client will need to be handled in somewhat different ways, which over time should be set forth in standardized formats that can be adapted to particular circumstances. In particular, efforts should be made to avoid ambiguities as to how and by whom and through what process decisions will be made—and, where possible, on the basis of relatively specific guidelines. The failure to provide for appropriate decision making may lead to the inability to continue with co-parties, co-counsel, or both. The firm's manner of dealing with multiple clients, co-counsel, or both in commercial representations can be instructive in drafting provisions at the outset.

(e) File Creation: No later than, and often prior to, the signing of the Pro Bono Commitment Letter, a file must be opened for the new pro bono matter. For such purposes, the file creation should follow the same procedure as that used with new matters for commercial clients. Each file on a pro bono client should be kept in the same way as those maintained for commercial clients.

## **4.2 Supervision and Reporting**

Each pro bono case should have a Supervising Partner. The Supervising Partner should review the work product of, and otherwise assist, the Responsible Attorney as the firm deems appropriate, given the circumstances of the matter. If a firm partner is the Responsible Attorney in a pro bono matter, then it is not necessary to have a different partner serve as the Supervising Partner.

Each Responsible Attorney should inform the Supervising Partner and the Pro Bono Coordinator regularly of the status of the pro bono case—including any needs for help, problems in interacting with the client, new potential parties or issues, or other new developments.

Each Responsible Attorney should *immediately* inform the Supervising Partner and the Pro Bono Coordinator in the event of any actual or reasonably possible adverse developments, and of the immediate or near-term need for additional help.

Each Responsible Attorney should send a "Pro Bono Work Report", in the format as attached in Annex 3 to the Pro Bono Coordinator (with a copy to the Supervising Partner) every 4 months. To the extent possible, the Pro Bono Coordinator (or someone working for the Pro Bono Coordinator) should complete the portions of the Report that describe

what was previously known about the matter. If possible, a means for disseminating, completing, and returning the Report electronically should be developed.

#### **4.3 Changing the Responsible Attorney**

When a Responsible Attorney for a pro bono matter leaves the firm, permanently or temporarily, goes on a leave of absence, or otherwise finds that (s)he is unable to work on the matter or be its Responsible Attorney, (s)he should inform the Pro Bono Coordinator and the Supervising Partner of this situation, as well as inform them of the state of the matter and if there are any urgent tasks. The Pro Bono Coordinator will make best efforts to find a new Responsible Attorney at the firm as soon as possible. Where necessary, the firm will assign an attorney to become the new Responsible Attorney. The prior Responsible Attorney should take all the measures necessary for proper representation of the pro bono client in the interim.

The firm, through the Pro Bono [Coordinator] [Chair] [Committee] must adopt procedures to ensure that all appropriate people and entities are advised (formally, where required or desirable) of the change in Responsible Attorney. Similarly, the firm must ensure that any requirements for securing approval of the withdrawal of the pre-existing Responsible Attorney or the appearance of the new Responsible Attorney must be followed.

Moreover, the Pro Bono [Coordinator] [Chair] [Committee] must ensure that any communications, by whatever means, regarding the matter are directed appropriately—either to the new Responsible Attorney (if there already is one) or to the Pro Bono [Coordinator][Chair] [Committee]. Secretarial, legal assistant, mail handling, and other staff must be clearly advised of this policy, and that none of them should simply let communications of whatever nature not be communicated regarding the new Responsible Attorney or the Pro Bono [Coordinator] [Chair] [Committee].

#### **4.4 Consideration of Potential New Parties or Issues**

New potential parties or issues may raise the types of concerns discussed above in Section 4.1 (b), and may require consideration by those involved in dealing with such concerns prior to the initiation of a representation. In some instances, they may result in the firm's deciding that it should, or should seek permission to, withdraw from the representation.

#### **4.5 Pro Bono Client's Seeking Additional Legal Services**

If the client seeks legal services beyond the scope of the agreed-upon representation, the same approval process set forth in Section 4.1 (a), (b), and (c) must be undertaken, and if approval is granted, there must be a supplement to or amendment of the Pro Bono Commitment Letter, or a new Pro Bono Commitment Letter. It is possible that there will be a different Responsible Attorney for the additional legal work than for the originally agreed-upon work.

#### **4.6 Standard of Services**

The pro bono legal services provided by our firm's lawyers must meet the same standards as those provided to our business clients. The attorneys who work on a pro bono matter must have the same dedication and professionalism that they have when working on matters involving commercial clients, and the Supervising Partners should ensure that these standards are met.

Because pro bono matters often involve subjects not part of the firm's business practice, achieving the standards of representation described in the preceding paragraph will often be facilitated by training and mentoring from public interest law organizations, and over time should, in particular areas of law, be facilitated by the development of in-house expertise.

#### **4.7 Registration of Time and Details of Work Performed**

The attorneys (as well as law students, legal assistants and other staff who record their time on commercial client matters) who work on pro bono matters should register their working time regularly. For these purposes, attorneys must register their time with the same promptness and in the same level of detail as time is recorded for commercial clients.

Regarding expectations of hours, compensation, and attorney promotion, the firm will consider hours worked for pro bono clients just as if they were hours billed to commercial clients.

#### **4.8 Expenses**

Pro bono clients should not pay for routine office expenses, such as photocopies, telephone usage or postage.

Unless otherwise agreed to in the Pro Bono Commitment Letter, expenses that are not routine will be borne by the client, such as costs or charges in connection with obtaining copies of authorized or authentic documents; license applications; submission of documents; requests or complaints before courts or government entities; notary or clerk costs; translations; technical reports; long distance or international calls; shipping of documents; and travel costs.

Where non-routine costs will be borne by the firm, the Responsible Attorney must obtain authorization from the firm (via the Pro Bono Coordinator) [Chair] [Committee] prior to incurring any such expenditure.

All attorneys who work on pro bono cases will make their best efforts to ensure that the costs associated with them are reasonable.



#### **4.9 Completion of a Pro Bono Matter**

When a pro bono matter ends, the Responsible Attorney must inform the Pro Bono Coordinator and the Supervising Partner of the situation and the result, if any. The Responsible Attorney should, likewise, send the pro bono client a "*Pro Bono Services Termination Letter*", in the format as attached in Annex 4, informing the completion of the pro bono matter and thus, of the agreed services.

The files of the completed pro bono matters will be preserved or otherwise disposed of in the same manner the files of commercial clients, pursuant to provisions set forth in the Pro Bono Commitment Letter.

#### **4.10 Evaluations**

Pro bono work will be included in the general evaluations the firm periodically performs of its attorneys. The handling of pro bono work in an evaluation period is looked upon favorably.

Beyond that, pro bono work will be evaluated in accordance with the firm's evaluation policy, utilizing the format of the "*Attorney Pro Bono Work Evaluation*" which is attached as Annex 5.

**ANNEX 1**

**FORMAT OF REQUEST TO OPEN A NEW PRO BONO MATTER**

Request to Open a New Pro Bono Matter

For	:	
From	:	
Date	:	
Ref.	:	

**NAME OF RESPONSIBLE ATTORNEY:**

**NAME OF SUPERVISOR:**

**NAMES OF OTHER MATTER STAFF:**

**NAME OF REFERRING ORGANIZATION (IF APPLICABLE):**

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**WHAT MENTORING, IF ANY, WILL THE REFERRING ORGANIZATION (IF THERE IS ONE) PROVIDE?**

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**NAME OF PRO BONO CLIENT:**

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**NAME OF THE CONTACT PERSON (AT ORGANIZATION, IF IT IS AN ORGANIZATION):**

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**PRO BONO CLIENT CONTACT INFORMATION:**

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**IF PRO BONO CLIENT IS AN ORGANIZATION, NAMES AND WORK AFFILIATIONS OF OFFICERS, OTHER BOARD MEMBERS, AND KEY STAFF:**

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**NAMES OF THE OPPOSING PARTIES (IF APPLICABLE):**

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**DESCRIPTION OF THE PRO BONO MATTER AND SERVICES REQUIRED  
(INCLUDING ARRANGEMENTS IF ANY AMONG CO-CLIENTS AND/OR CO-  
COUNSEL – WHICH SHOULD BE IDENTIFIED HERE):**

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**ESTIMATE OF TIME REQUIRED:**

**ESTIMATE OF COST:**

**REVISION OF CONFLICT OF INTEREST:**

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**RESULTS OF ANY FURTHER CHECKING MADE (SUCH AS ISSUE CONFLICTS OR  
REVIEWS, INCLUDING INFORMATION FOUND ONLINE ABOUT THE CLIENT OR  
(WHERE RELEVANT) THE OFFICERS, DIRECTORS AND KEY STAFF):**

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Responsible Attorney

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Supervising Partner

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Pro Bono Coordinator

**APPROVED BY PRO BONO [CHAIR] [COMMITTEE] ON**

---

**REJECTED BY PRO BONO [CHAIR] [COMMITTEE] ON**

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**WHERE NO FINAL DECISION REACHED BY PRO BONO [CHAIR] [COMMITTEE]  
or PRO BONO COORDINATOR, ADDITIONAL INFORMATION SOUGHT:**

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**COMMENTS BY PRO BONO [CHAIR] [COMMITTEE]:**

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## ANNEX 2

### FORMAT OF PRO BONO COMMITMENT LETTER

#### Pro Bono Commitment Letter

[Date]

[Where client is or is to be an organization]: Name of Client Contact  
[Name of Client, except where client is at the time an organization not yet in existence]  
[Client's or (if organization not yet legally existing, Client Contact's) Address]

Ref: Pro Bono Representation

Dear [name of client or client contact]:

This letter is to confirm that we have agreed to provide the pro bono services identified herein. It also establishes the relations between the parties and the scope and terms of such services.

We have agreed to represent you [or where applicable you, on behalf of the organization being created, and then after its creation, the organization] in connection with [*description of pro bono matter*]. Our services will consist of [*description of pro bono services*]. Services will be limited to the above and will be normal and reasonable for this type of matter.

If additional services are desired beyond those detailed in this letter, we will gladly discuss the possibility of continuing, modifying, or beginning new representation based on the circumstances. If you and we come to an agreement thereon, either this letter will be amended or a new commitment letter will be signed by both of us.

The aforementioned legal services will be offered on a pro bono basis, meaning they are free and no fees will be charged for providing them. Neither will you be charged for routine office expenses, such as routine photocopies, telephone usage, or postage.

**[OPTION ONE:** Our firm will also pay, without reimbursement, all other reasonable costs and expenses in connection with the rendering of our services. These include costs and expenses arising from obtaining authorized or authenticated copies of documents; license applications; submissions of documents; requests or complaints before courts or government agencies; notary or clerk costs; translations; technical reports; long distance or international calls; shipping of documents; and travel costs.]

**[OPTION TWO:** Consistent with the above, you will be responsible and must pay (aside from the routine office expenses referred to above) the costs and other expenses that are incurred in connection with the rendering of our services. Such costs and expenses include, but are not limited to, those arising from obtaining authorized or authenticated copies of documents; requests for certificates; presentation of documents; requests or complaints before the courts or governmental agencies; notary or clerk costs; translations; technical reports; long distance or

international calls; shipping of documents; travel costs; fees to consultants or expert witnesses; and costs of transcribing testimony. Our firm will record such costs and expenses, and will ask for reimbursements.]

**[OPTION THREE:** Consistent with the above, you will be responsible and must pay (aside from the routine office expenses referred to above) the costs and other expenses that are incurred in connection with the rendering of our services. Such costs and expenses include, but are not limited to those arising from obtaining authorized or authenticated copies of documents; requests for certificates; presentation of documents, requests or complaints before the courts or governmental agencies; notary or clerk costs; translations; technical reports; long distance or international calls; shipping of documents; travel costs; fees to consultants or expert witnesses, and costs of transcribing testimony. Before incurring any costs and expenses mentioned above, you will be informed in time to advance us the amount required, if known or once it is known.]

We reserve the right, consistent with law and ethical requirements, to terminate the provision of our services at any time, where this can be done in a way that adequately protects your rights—including by our taking all emergency measures that may be necessary for adequate protection of your rights. If such termination occurs, we will send a letter of termination of services. One circumstance that may cause us to terminate the provision of our services could be the addition of parties or of legal issues beyond those now known to be involved in this matter.

You agree to (i) cooperate in everything that is necessary for the adequate provision of our services; (ii) timely report any changes in your telephone number, email or address (and, where applicable, the name of and/or telephone number, email or address of your contact person); (iii) pay or reimburse, as appropriate, costs and expenses incurred as described in this letter; (iv) timely report any new developments regarding the matter or changes in circumstances that may be relevant—recognizing that any addition to the parties involved or the legal issues involved are always relevant; (v) contact us regularly to learn and/or discuss the status of your matter; and (vi) inform us in writing if you would like to terminate our services, or you would like us to modify or add to the services we are hereby agreeing to provide.

[Add language, based on the firm's paying client letter, waiving conflicts regarding other representations by the firm, including advance waivers of future representations that would be adverse to the client, provided that those do not directly relate to the legal services being provided hereunder.]

[Add language, based on the firm's paying client Commitment Letter, regarding what will be done with matter materials, whether they be in traditional or electronic form, once the engagement ends.]

If you agree with the contents of this letter and in particular with the scope, characteristics and conditions of the services detailed in it, please return a signed copy of it as soon as possible.

Sincerely,

[Name of the law firm]

I accept the terms and conditions of this letter on \_\_\_\_\_.

[Where applicable, add name of organizational client]

[Where an organizational client, add: BY:]

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

[Where an organizational client, add position with the organization]

Signature: \_\_\_\_\_

**ANNEX 3**

**FORMAT OF PRO BONO WORK REPORT**

*(To be adapted if sent and able to be responded to electronically)*

Pro Bono Work Report

[Date]

Pro Bono Client/Matter Code:

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Pro Bono Client/Matter Name:

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Name of Responsible Attorney:

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Name of Partner Supervisor:

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We would appreciate it if you would send as soon as possible a copy of this report to the Pro Bono Coordinator [Chair] [Committee] and a copy to the Partner Supervisor.

1. Most recent status of the matter known to the Pro Bono Coordinator [Chair] [Committee] (inserted before disseminating the form, indicating the date and source of the information):

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2. Indicate the current status of the matter:

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3. Indicate if you have had or now have a problem or an inconvenience in relation to the matter (and if so, please provide details):

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4. Indicate the work done and the progress (or lack thereof) that has taken place since the last update or (if this is the first update) acceptance date of the pro bono matter:

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5. Indicate what next steps or efforts you expect to take or to otherwise occur:

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6. Indicate when the last date of contact with the pro bono client was:

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7. Indicate whether there have been, or you reasonably expect that there may be, one or more additional parties or legal issues, including details thereon and whether conflicts checks and/or other actions have been taken in light thereof to secure approval to proceed:

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8. Indicate any additional or relevant comments, including in particular whether the client has asked, or you anticipate that it may ask, for additional legal assistance:

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Responsible Attorney

ANNEX 4

**FORMAT OF PRO BONO SERVICES TERMINATION LETTER**

Pro Bono Services Termination Letter

[Date]

[Name of Client]

[Where applicable, Name of Client Contact, and such person's position with the client]

[Client's, or where necessary, Client Contact's, Address]

Ref.: Pro Bono Representation [matter name].

Dear [client or client contact name]:

**[OPTION ONE:** This letter is to inform you [brief description of the case and its conclusion] and, consequently, of the termination of our legal services in connection with above-referenced case.

**[OPTION TWO:** Through this letter, in accordance with the Pro Bono Commitment Letter [date, and copy enclosed], we inform you that at this time we have decided to terminate our legal services in connection with the above-referenced case. [Where appropriate, give reason(s).]

We are pleased to have been able to represent you. If you should need legal representation in the future in any other matter, please feel free to contact [the referring group, if there was one], [or us, if there was not one—the bracketed language re "us" should not be included if the termination is due to the client's unresponsiveness or other irresponsible or unethical conduct] to discuss the option of our representing you.

[Add language, based on the Commitment Letter, regarding the handling of matter materials, whether they be in traditional or electronic form, once the engagement ends]

If you have any questions or queries regarding this letter, please do not hesitate to contact us.

Wishing you the best in the future.

Very truly yours,

[Name of the law firm]

ANNEX 5

**FORMAT OF ATTORNEY PRO BONO WORK EVALUATION**

Attorney Pro Bono Work Evaluation

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

Evaluated  
Attorney: \_\_\_\_\_

Evaluating  
Attorney: \_\_\_\_\_

Matter: \_\_\_\_\_ Code: \_\_\_\_\_

—

[The below is merely suggestive: The same format should be used, with as minimal changes as appropriate, as would be used if this were a billable matter.]

1. Designate a value from 1 to 10 representing your opinion of the attorney evaluated for each of the following areas of evaluation:

- Drafting of Documents \_\_\_\_\_
- Presentation of Documents \_\_\_\_\_
- Attention to Details \_\_\_\_\_
- Research Capacity \_\_\_\_\_
- Capacity to Follow Instructions \_\_\_\_\_
- Initiative \_\_\_\_\_
- Critical Thinking \_\_\_\_\_
- Ability to Accept Criticism \_\_\_\_\_
- Relationship with Co-Workers \_\_\_\_\_
- Ability to Prioritize and Manage Multiple Tasks \_\_\_\_\_
- Timely Delivery of Documents \_\_\_\_\_
- Professionalism \_\_\_\_\_
- Dealing with Pro Bono Client \_\_\_\_\_
- Regular Contact with Pro Bono Client \_\_\_\_\_

2. Description of strengths of the attorney evaluated:

\_\_\_\_\_

\_\_\_\_\_

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3. Description of weaknesses of the attorney evaluated:

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4. Additional Comments:

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5. Have you shared the essence of your views on the attorney's work with the attorney?

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If not, it is strongly suggested that you do so.

**ANNEX B**  
**PRO BONO QUESTIONNAIRE FORMAT**

## PRO BONO QUESTIONNAIRE

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

Area: \_\_\_\_\_ Extension: \_\_\_\_\_

*My areas of interest for pro bono work are (in the abstract) the following (recognizing that based on the circumstances, I may be interested in matters in additional areas):*

- |  |                                   |
|--|-----------------------------------|
| _____ Administrative Hearings                | _____ Civil Rights                |
| _____ Constitutional Law                     | _____ Consumer Rights             |
| _____ Criminal Matters (incl. Death Penalty) | _____ Domestic Violence           |
| _____ Environmental Law                      | _____ Family Issues               |
| _____ Human Rights                           | _____ Immigration/Asylum          |
| _____ Landlord/Tenant                        | _____ Litigation in Initial Court |
| _____ Litigation on Appeal                   | _____ Non-Profit Organizations    |
| _____ Real Estate Law                        | _____ Small Businesses            |
| _____ Tax Law                                | _____ Wills & Life Planning       |
| _____ Women's Right                          | _____ Workers' Rights             |

Please include below any more detailed interests, such as particular types of work for Non-Profit Organizations, particular types of Family Law, particular types of Administrative Hearings (such as unemployment, disability, or public housing hearings):

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

*I would like to be informed of pro bono opportunities (In the areas I have indicated above):*

Yes \_\_\_\_\_ No \_\_\_\_\_

*(On other issues, since based on the context I may be interested):* Yes \_\_\_\_\_ No \_\_\_\_\_

*I am available now or in the near future to work on one or more pro bono matters:*

Yes \_\_\_\_\_ No \_\_\_\_\_

*I am interested in mentoring or supervising on a pro bono matter:* Yes \_\_\_\_\_ No \_\_\_\_\_

If so, indicate areas: \_\_\_\_\_

**ANNEX C**  
**SELECTED INTERNATIONAL, REGIONAL AND NATIONAL**  
**PRO BONO DOCUMENTS**

## **International Bar Association's Pro Bono Declaration<sup>7</sup>**

*Approved by the IBA Council October 2008*

The Council of the International Bar Association, the global voice of the legal profession:

- a) Inspired by the vision of a better, more just world;
- b) Affirming the vital role of the legal profession in achieving that vision;
- c) Recognizing that access to justice is essential to liberty, fairness, dignity, progress, development and the Rule of Law;
- d) Advocating that barriers to justice wherever they exist should be broken and dismantled as a matter of the highest priority;
- e) Deploring the fact that access to the courts and effective legal representation and advice are not afforded to all who need them, especially the poor, underprivileged and marginalized;
- f) Recalling that access to justice for all individuals is a human right and that governments have the primary responsibility to realize and protect that human right through measures such as state funded legal aid, as underscored in article 10 of the UN Declaration on Human Rights, article 14(3)(d) of the International Covenant on Civil and Political Rights, other major international, regional and national instruments, and also the Legal Aid Resolution adopted by this Council in 1996;
- g) Urging governments to allocate sufficient resources to make legal aid available to meet the critical legal needs of the poor, underprivileged and marginalized and not to use pro bono legal service as an excuse for reducing publicly funded legal aid;
- h) Realizing that public confidence in governmental and judicial institutions is eroded by the absence of justice or the existence of barriers to justice;
- i) Considering that the delivery of pro bono service by the legal profession is of vital public and professional interest and helps to fulfil the unmet legal needs of the poor, underprivileged, and marginalized and restore public confidence in the efficacy of governmental and judicial institutions;
- j) Conscious that the legal profession, given its commitment to a fair and equitable legal system, holds a unique and privileged position in matters of justice, and accordingly, has the duty and opportunity to provide pro bono legal service, together with the state, the judiciary, law schools and legal services organizations;
- k) Observing the value of existing traditions and new initiatives, including collaborations among bar associations, private and public interest law firms, law schools, foundations, and other non-

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<sup>7</sup> Source: <http://www.ibanet.org/Document/Default.aspx?DocumentUid=C4B06FD6-A807-44D4-A98A-C73B464589C6>.



governmental organizations to improve access to justice, and to provide effective pro bono legal service;

l) Noting that ‘pro bono’ is derived from the Latin phrase pro bono publico, which refers to work or actions carried out ‘for the public good’;

m) Believing that a determined effort is needed to advance access to justice through pro bono work and to strengthen the commitment to public service in the legal profession;

n) Mindful that the motivation for innovative pro bono standards and practices can be derived from the diversity to be found among nations’ legal systems and traditions; and

o) Reflecting upon the valuable declarations made in this field on a domestic and regional level, notably the Pro Bono Declaration for the Americas, and encouraging more such declarations to be adopted and implemented;

Declares and resolves that:

1. The Council calls on lawyers, law firms and bar associations to provide pro bono legal service, which is work by a lawyer of a quality equal to that afforded to paying clients, without remuneration or expectation of remuneration, and principally to benefit poor, underprivileged or marginalized persons or communities or the organizations that assist them. Pro bono legal service may extend to: advice to or representation of persons, communities or organizations, who otherwise could not exercise or assert their rights or obtain access to justice; activities supporting the administration of justice, institution building or strengthening; assisting bar associations and civic, cultural, educational and other non governmental institutions serving the public interest that otherwise cannot obtain effective advice or representation; assisting with the drafting of legislation or participating in trial observations, election monitoring, and similar processes where public confidence in legislative, judicial and electoral systems may be at risk; providing legal training and support through mentoring, project management and exchanging information resources; and also other similar activities to preserve the Rule of Law.

2. The legal profession reaffirms its commitment to pro bono legal service, as an integral part of the profession, and lawyers and law firms are encouraged to specify a proportion of their time or resources which they will devote per lawyer to pro bono legal service each year.

3. Pro bono legal service should be provided on a consistent year-round basis, in all manner of criminal, civil and administrative matters where legal aid may be limited, and on a national and international level.

4. The importance and practice of pro bono legal service should be emphasized and promoted in legal education and practice, by making pro bono opportunities a part of the academic or practical programs for law students and by giving credit to lawyers taking continuing legal education or working in this field.

5. Lawyers, judges, law firms, bar associations, governmental and non governmental organizations and other interested persons should promote the awareness of domestic as well as

cross border pro bono legal service, and implement measures designed to monitor and report to the profession and the public at large on the extent to which access to justice is being facilitated by pro bono measures.

6. Lawyers, law firms, bar associations, and other organizations employing lawyers, whether non profit or for profit, are strongly encouraged to develop or improve specific pro bono policies and programs, to create the conditions and incentives so that pro bono work is encouraged, valued and rewarded, and to pursue or provide continuing legal education in this field, as pro bono legal service is closely linked to the corporate social responsibility of the legal profession.

7. The Council calls on governments to promote and support the pro bono efforts of the legal profession in their countries and to desist from in any way deterring the provision of such service. Further, governments should assist and encourage pro bono legal service, through measures such as treating it as not being subject to tax, and where such service is presently taxed, such taxes should be rescinded.

8. The IBA recognizes and expresses its gratitude for the efforts of many lawyers and law firms who have already devoted or are devoting a portion of their professional activities to pro bono legal service. The IBA is committed to actively encouraging lawyers, judges, law firms, bar associations, law schools, governmental and non governmental organizations to participate in pro bono legal service, and invites them to use and contribute content to the information resources developed by the IBA in this field, notably the web sites [www.internationalprobono.com](http://www.internationalprobono.com), [www.ibaprobono.com](http://www.ibaprobono.com) and [www.roldirectory.org](http://www.roldirectory.org).

9. Lawyers, judges, law firms, bar associations, governmental and non governmental organizations, and other interested persons are particularly invited to organize, attend and support pro bono and access to justice conferences so that the design and delivery of pro bono legal service can be improved and so that those involved in pro bono legal service will have an extensive pool of resources on both the supply of and demand for such service from which to gain relevant experience.

10. This declaration launches a broad educational campaign and a multi-year process of consultation by the IBA to establish or promote a pro bono culture, to appreciate the meaning and the importance of pro bono legal service, to identify and agree best practices and desirable specific commitments of time and resources, to deepen the consensus and to make further progress in this field. The Pro Bono and Access to Justice Committee is charged to continue and expand its work in this field and to monitor and report on the application of this declaration.

## **Pro Bono Declaration for the Americas<sup>8</sup>**

WHEREAS, access to justice and legal representation are essential to democratic societies;

WHEREAS, the resources of government and of legal services organizations are insufficient to satisfy the critical legal needs of poor and underprivileged persons and communities, often leaving these needs unmet;

WHEREAS, consequently, not all members of society have meaningful access to justice or effective legal representation, and this is especially the case for poor and underprivileged persons and communities;

WHEREAS, the absence of access to justice and legal representation undermines public confidence in governmental and judicial institutions and democracy;

WHEREAS, the legal profession has a privileged role and is uniquely positioned in matters of justice and therefore has the duty, means and opportunity to promote a fair and equitable legal system and respect for human and constitutional rights in collaboration with the State, the judiciary and legal services organizations;

WHEREAS, traditions exist across the Americas and new efforts are underway in several countries, including collaborations among bar associations, private and public interest law firms, law schools, foundations, governmental actors and non-governmental organizations, to address these pressing and unmet legal needs;

WHEREAS, a concerted movement across the Americas to promote access to justice through pro bono work would strengthen commitments to democracy and public service in the legal profession;

WE, the undersigned, solemnly declare our commitment to pro bono by stating as follows:

Members of the legal profession have a responsibility to provide pro bono legal services. This responsibility stems from the profession's role and purpose in society, and from its implicit commitment to a fair and equitable legal system.

Pro bono is derived from the Latin phrase *pro bono publico*, which refers to actions carried out "for the public good."

For purposes of this Declaration, pro bono legal services are those provided without a fee, or expectation of a fee, principally to benefit poor or underprivileged persons or communities or the organizations that assist them. They may include representation of persons, communities or organizations in matters of public interest who otherwise could not obtain effective representation.

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<sup>8</sup> Source: <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/english.pdf>.

In addition, pro bono legal services can also benefit civic, cultural and educational institutions serving the public interest who otherwise could not obtain effective representation.

Pro bono legal services should be provided with the same quality of representation as services provided to paying clients, and in a manner upholding the applicable ethical norms and standards.

Effective delivery of pro bono legal services requires cooperation among the different actors in the legal profession—including bar associations, private and public interest law firms, law schools, foundations, governmental actors and non-governmental organizations.

WE, the undersigned, each in a manner consistent with our respective roles in the legal profession, commit to:

Act to improve effective legal representation for poor or underprivileged persons and communities;

Enhance widespread and effective access to justice and to legal services for persons and communities who lack such access;

Provide, on a pro bono basis, more than 20 hours or three days of legal services per individual lawyer per annum, or in the case of law firms, institutions or other groups of lawyers, an average of more than 20 hours per lawyer per annum. This commitment should be met within three years of endorsing this Declaration;

Strengthen the profession's commitment to the provision and expansion of pro bono legal services by emphasizing its importance and practice in legal education;

Support the establishment, development and operations of non-governmental organizations dedicated to the delivery of legal services in the public interest; and

Advocate and promote within the profession for the recognition and promotion of pro bono legal services as part of lawyers' ethical standards and obligations.

This Declaration is not intended to alter or supersede any existing legislation, resolution or ethical code in any jurisdiction, firm or institution that is more conducive to the provision of pro bono legal services.

This Declaration will be effective from January 1, 2008.

## **Czech Republic: Pro Bono Declaration<sup>9</sup>**

We, the undersigned members of the Czech legal profession, hereby declare our solemn intention to bear our share of responsibility for protecting human rights and the public interest and to carry on the tradition of volunteer work by attorneys in these areas.

Our society is developing rapidly, both economically and socially. The law plays an important role during this development. We are convinced that it is very important not to forget that it is the task of a modern state, based on the rule of law, to provide the widest possible access for all to qualified legal aid.

By signing this Declaration we are supporting the idea, expressed in the Code of Conduct for European Lawyers, that ‘In a society founded on respect for the rule of law the lawyer fulfils a special role.’<sup>10</sup> We also build on Recommendation Rec (2000) 21 on the freedom of exercise of the profession of lawyer, which encourage to promote access to justice of persons in economically weak position, in particular provision of legal aid and advice.<sup>11</sup>

We therefore support the development of the provision of pro bono legal services. We believe it is important for attorneys to voluntarily devote some of their capacity, as far as they are able, towards providing free legal services to the benefit of disadvantaged individuals, groups and interests.

In this context we must point out the irreplaceable role played by the state in providing access to legal aid. We hereby emphasise that the development of the pro bono concept does not relieve the state of its own responsibility in this area.

Aware of these circumstances, we want to support the development of the idea of pro bono in order to express not only our interest in public and social affairs and to encourage ethical conduct within the legal profession. As an influential professional group, we also want to contribute to the development of civil society.

Our aim is to support, to the greatest possible extent, those institutions and individuals contributing to the protection of the public interest, including the protection of human rights. We recall the exceptionally important role played in these areas by non-governmental, non-profit organisations (NNOs). We consider cooperation between attorneys and NNOs to be both natural and desirable.

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<sup>9</sup> Pro Bono Declaration was drafted... by Pro Bono Alliance ([www.probonoalliance.cz](http://www.probonoalliance.cz), [www.probonocentrum.cz](http://www.probonocentrum.cz)). Declaration was opened for signature at the official clearinghouse opening in Prague, 25.6. 2008. Source: <http://www.probonocentrum.cz/english/pro-bono-declaration>.

<sup>10</sup> Preamble, Code of Conduct for Lawyers in the European Union, adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998 and 6 December 2002.

<sup>11</sup> Recommendation Rec(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000).

We are aware that not all attorneys in the Czech Republic have the capacity to set aside a significant part of their time and capabilities for pro bono work. Nevertheless, we are convinced that there is outstanding potential for developing the pro bono concept in this country, and we are ready to contribute to that development as far as we are able.

### **Germany: Definition of Pro Bono by Members of Pro Bono Deutschland e.V.<sup>12</sup>**

The members of Pro Bono Deutschland e.V. have developed the following definition for their pro-bono work:

“Pro bono legal advice is gratuitous legal counselling for a good cause and consists of the counselling and representation of non-profit organizations, non-governmental organizations, trust funds and needy individuals who pursue legitimate causes yet do not benefit from the statutory legal aid system, as well as engagement to promote and spread the rule of law and human rights. The aim of the pro bono legal counselling is to make the professional expertise and resources of a law firm available for a good cause, in most cases a charitable cause, and to therewith develop civic engagement as a part of the professional activities. Pro bono legal advice is committed to meeting the same professional quality standards as fee-based legal services. In principle, pro bono legal services are also only rendered in those cases for which no or a very limited one “market” exists. Parties requesting such advisory services are mostly not in a position to bear the costs of legal counselling due to their economic situation or by-laws, or are unwilling to do so on grounds of a preferential use of their funds for their own charitable purposes.”

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<sup>12</sup> An association of over 30 law firms, domestic and international, founded in 2011 in Germany: <http://www.pro-bono-deutschland.org>.

## **Hungary: Hungarian Lawyers' Role in Advancing the Public Good (Pro Bono Publico)<sup>13</sup>**

In making this Declaration, we recall the long and proud heritage of the Hungarian legal profession in advancing the public good.

We acknowledge that in recent decades the change of our political system and the growing need for legal services generated by our economic transformation placed severe burdens on practicing lawyers, resulting in increasingly heavy workloads and insufficient attention to the public good.

Because of this, we Hungarian lawyers signing this document feel the need to reaffirm our ethical and professional commitment to the longstanding principles of pro bono legal service by obliging ourselves to contribute in some way to providing free or reduced cost legal services to individuals who cannot otherwise afford them and to organizations which dedicate themselves to worthy causes in the service of our country.

We firmly believe that all of our colleagues can find an appropriate balance between working for their clients who can afford to pay and for those who cannot, since it is our ethical responsibility to ensure that all members of the Hungarian society are provided with legal services.

We note, with agreement, the Council of Europe's recommendation that "[l]awyers should be encouraged to provide legal services to persons in an economically weak position"<sup>14</sup> as well as its explanation that "equal access to the law for rich and poor alike is essential to the maintenance of the rule of law. It is therefore important to provide effective legal services to all those whose rights and interests are threatened, including persons who are not able to pay for them. The primary obligation to provide these services and to guarantee their quality is the responsibility of the legal profession and arises from its independence. However, the state (and the community as a whole) has an obligation to assist the legal profession in carrying out this responsibility."<sup>15</sup>

By joining in this Declaration, we acknowledge and embrace the spirit of the Code of Conduct for lawyers in the European Union<sup>16</sup>, which asserts that "[i]n a society founded on respect for the rule of law the lawyer fulfils a special role."

While we are aware that not every lawyer in Hungary has the capacity to commit to the same level of pro bono work, we nonetheless encourage all lawyers to look for ways to share the responsibility to help.

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<sup>13</sup> Adopted in 2006.

<sup>14</sup> Council of Europe Recommendation No. R(2000)21 on Freedom of Exercise of the Profession of Lawyer.

<sup>15</sup> Council of Europe Recommendation No. R(2000)21, Explanatory Memorandum ([http://cm.coe.int/ta/rec/2000/ExpRec\(00\)21.htm](http://cm.coe.int/ta/rec/2000/ExpRec(00)21.htm)).

<sup>16</sup> Adopted by the Council of the Bars and Law Societies of the European Union (CCBE) in 1988, amended in 1998 and 2002. ([http://www.ccbe.org/doc/En/code2002\\_en.pdf](http://www.ccbe.org/doc/En/code2002_en.pdf)).



## **Nigeria: Pro Bono Declaration for members of the Nigerian Bar Association<sup>17</sup>**

WHEREAS, access to justice and legal representation are essential to democratic societies;

WHEREAS, the resources of government and of legal services organizations are insufficient to satisfy the critical legal needs of poor and underprivileged persons and communities, often leaving these needs unmet;

WHEREAS, consequently, not all members of society have meaningful access to justice or effective legal representation, and this is especially the case for poor and underprivileged persons and communities;

WHEREAS, the absence of access to justice and legal representation undermines public confidence in governmental and judicial institutions and democracy;

WHEREAS, the legal profession has a privileged role and is uniquely positioned in matters of justice and therefore has the duty, means and opportunity to promote a fair and equitable legal system and respect for human and constitutional rights in collaboration with the State, the judiciary and legal services organizations;

WHEREAS, new efforts are underway in Nigeria, including collaborations among bar associations, private and public interest law firms, law schools, foundations, governmental actors and non-governmental organizations, to address these pressing and unmet legal needs;

WHEREAS, the NBA is leading a concerted movement in Nigeria to promote access to justice through pro bono work that would strengthen commitments to democracy and public service in the legal profession;

**WE, the undersigned, solemnly declare our commitment to pro bono by stating as follows:**

Members of the NBA have a responsibility to provide pro bono legal services. This responsibility stems from the profession's role and purpose in society, and from its implicit commitment to a fair and equitable legal system.

Pro bono is derived from the Latin phrase *pro bono publico*, which refers to actions carried out "for the public good."

For purposes of this Declaration, pro bono legal services are those provided without a fee, or expectation of a fee, principally to benefit poor or underprivileged persons or communities or the organizations that assist them. They may include representation of persons, communities or organizations in matters of public interest who otherwise could not obtain effective representation.

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<sup>17</sup> Prepared by the Office of the President, Nigerian Bar Association, NBA Secretariat, Abuja. Source: [http://www.internationalprobono.com/resources/item.291360-Nigerian\\_Pro\\_Bono\\_Declaration](http://www.internationalprobono.com/resources/item.291360-Nigerian_Pro_Bono_Declaration)

In addition, pro bono legal services can also benefit civic, cultural and educational institutions serving the public interest who otherwise could not obtain effective representation.

Pro bono legal services should be provided with the same quality of representation as services provided to paying clients, and in a manner upholding the applicable ethical norms and standards.

Effective delivery of pro bono legal services requires cooperation among the different actors in the legal profession—including bar associations, private and public interest law firms, law schools, foundations, governmental actors and non-governmental organizations.

**WE, the undersigned, each in a manner consistent with our respective roles in the legal profession, commit to:**

Act to improve effective legal representation for poor or underprivileged persons and communities;

Enhance widespread and effective access to justice and to legal services for persons and communities who lack such access;

Provide, on a pro bono basis, more than 20 hours or three days of legal services per individual lawyer per annum, or in the case of law firms, institutions or other groups of lawyers, an average of more than 20 hours per lawyer per annum. This commitment should be met within three months of endorsing this Declaration;

Strengthen the profession's commitment to the provision and expansion of pro bono legal services by emphasizing its importance and practice in legal education;

Support the establishment, development and operations of non-governmental organizations dedicated to the delivery of legal services in the public interest; and

Advocate and promote within the profession for the recognition and promotion of pro bono legal services as part of lawyers' ethical standards and obligations.

This Declaration is not intended to alter or supersede the LPA or any other existing legislation, resolution or ethical code of the NBA that is more conducive to the provision of pro bono legal services.

This Declaration will be effective from January 1, 2009.

## **Poland: Polish Lawyers for the Public Good / Pro Bono Publico Declaration<sup>18</sup>**

Through this Declaration, we, the undersigned representatives of the Polish legal profession, recall our long-standing tradition of work for the public good.

Due to economic growth and social development in our country, we note an increase in demand for free legal services to the most needy, including both individuals and the non-governmental agencies representing the interests of the disadvantaged and excluded, as well as an increase in the duties of representatives of all legal professions. As a result, our profession has not always been able to fulfil the expectations and needs of the society in which we live and work, and action for the public good now requires greater commitment and dedication from us.

Consequently, as representatives of the Polish legal profession, we wish to revitalize the concept of work for the public good, to demonstrate our regard for professional ethics and encourage all lawyers to seek means to enable them to work for the good of society.

We believe that it is our duty to ensure that all members of society, irrespective of their financial situation, are able to receive professional advice when necessary. It is our intention that to the extent possible our profession should serve those institutions and organisations that work for the good of society and all persons who have insufficient means to obtain necessary legal advice, free of charge or for a symbolic fee.

In signing this declaration, we support the spirit of the Code of Conduct for European Lawyers, which subscribes to the principle that “*In a society founded on respect for the rule of law, the lawyer fulfils a special role*”<sup>19</sup>. We believe that our profession has always fulfilled this role and will continue to do so.

Employing our professional knowledge we wish to serve this principle and contribute to building of a true civil society in Poland.

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<sup>18</sup> Adopted in 2007.

<sup>19</sup> Code of Conduct for European Lawyers (CCBE), point 1.1 of the Preamble

## **United Kingdom: Joint Protocol for Pro Bono Legal Work<sup>20</sup>**

The Pro Bono Protocol, developed jointly by the Bar Pro Bono Unit and LawWorks, sets out how pro bono work should be delivered. It has been signed by a wide range of those involved in provision of pro bono services including the Bar Council, the Bar Pro Bono Unit, sets of Chambers, law firms and law schools.

<...>

### **JOINT PROTOCOL FOR PRO BONO LEGAL WORK**

At all stages throughout their career many lawyers regard Pro Bono Legal Work as an integral part of being a member of the legal profession, in providing access to justice and meeting unmet legal need. This Protocol has been agreed to set out the core values of such work and to assist both those who undertake it and their clients. Many lawyers undertake charitable work of many different kinds. However, the purpose of this protocol is to concentrate specifically on the provision by lawyers of their legal skills in the form of Pro Bono Legal Work.

#### **What is Pro Bono Legal Work?**

- 1.1. When we refer to Pro Bono Legal Work we mean legal advice or representation provided by lawyers to individuals and community groups who cannot afford to pay for that advice or representation and where public funding is not available.
- 1.2. Legal work is Pro Bono Legal Work only if it is free to the client, without payment to the lawyer or law firm (regardless of the outcome) and provided voluntarily either by the lawyer or his or her firm.
- 1.3. Pro Bono Legal Work is always only an adjunct to, and not a substitute for, a proper system of publicly funded legal services.

#### **How should Pro Bono Legal Work be done?**

- 2.1. Pro Bono Legal Work should always be done to a high standard. That means in particular that:
- 2.2. The availability of appropriate publicly funded legal advice or representation should always be considered before a lawyer undertakes Pro Bono Legal Work.
- 2.3. When a lawyer is requested to agree to undertake a piece of Pro Bono Legal Work the lawyer should give his/her decision within a reasonable time.
- 2.4. The terms on which the Pro Bono Legal Work is undertaken including the circumstances in

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<sup>20</sup> Source: [http://lawworks.org.uk/?id=protocol\\_text](http://lawworks.org.uk/?id=protocol_text).

which the relationship may be terminated should be made clear at the outset.

2.5. The Pro Bono Legal Work should only be undertaken by a lawyer who is adequately trained, has appropriate skills and experience and, where necessary, is adequately supervised for the work in question.

2.6. The lawyer undertaking a piece of Pro Bono Legal Work (and where appropriate his or her supervisor) should have no less than the minimum level of legal expertise and experience as would be required if the particular work in question was paid work.

2.7. In no case should the client be misled as to the lawyer's skill or ability to undertake the Pro Bono Legal Work.

2.8. Once a lawyer has agreed to undertake a piece of Pro Bono Legal Work the lawyer (and if appropriate his or her firm) must give that work the same priority, attention and care as would apply to paid work.

2.9. Pro Bono Legal Work must not be undertaken without appropriate insurance.

2.10. A lawyer in doubt or difficulty in relation to a piece of Pro Bono Legal Work should seek advice from a Pro Bono organisation or from the Bar Council, the Law Society or the Institute of Legal Executives.

## ***ANCILLARY PROVISIONS***

### **1. RELATIONSHIPS BETWEEN PRO BONO ORGANISATIONS AND LAWYERS**

1.1. Where practical, lawyers able to undertake pro bono work are encouraged to do so through a pro bono organisation, through the not-for-profit sector, or through both.

1.2. Pro Bono Legal Work will be more effectively delivered through co-ordinating the relationships between lawyers, pro bono organisations, and not-for-profit agencies such as Law Centres and CABx.

1.3. When a lawyer is asked by a pro bono organisation or not-for-profit agency to undertake a particular piece of Pro Bono Legal Work, the lawyer is expected to have proper regard to any prior confirmation given to the pro bono organisation or not-for-profit agency that the lawyer was prepared to undertake Pro Bono Legal Work.

1.4. Sets of chambers, law firms and legal departments should, wherever possible, seek to encourage and support the undertaking of appropriate Pro Bono Legal Work by their lawyers, including the undertaking of that work "in-house".

### **2. THE CONTRIBUTION OF PERSONS WHO ARE NOT FULLY QUALIFIED, OR WHO ARE OTHERWISE UNABLE, TO DO PRO BONO LEGAL WORK**

2.1. Non-lawyer staff within a set of chambers or a firm should be enabled to make the same contribution to the undertaking of a piece of Pro Bono Legal Work as they would for a piece of paid work.

2.2. Law students, pupil barristers and trainee solicitors have an important contribution to make to Pro Bono Legal Work. However that contribution must be properly supervised and must be preceded by proper training.

2.3. Where suitably qualified and experienced, academic lawyers and employed lawyers are particularly encouraged to consider providing training to others to enable them to undertake Pro Bono Legal Work if they are not able themselves to provide legal advice or representation. The provision of pro bono legal training without charge is an important contribution to Pro Bono Legal Work.

### 3. PARTICIPATION IN PRO BONO LEGAL WORK AS A CHARACTERISTIC OF BEING A MEMBER OF THE LEGAL PROFESSION

3.1. A commitment to the delivery of Pro Bono Legal Work is encouraged throughout a lawyer's professional life, as a student and in practice, through to and including retirement.

## **United States: American Bar Association's Model Rule 6.1 Voluntary Pro Bono Service<sup>21</sup>**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking 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, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

### **Comment<sup>22</sup>**

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or

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<sup>21</sup> Source: [http://www.americanbar.org/groups/probono\\_public\\_service/policy/aba\\_model\\_rule\\_6\\_1.html](http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html)

<sup>22</sup> Source: [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_6\\_1\\_voluntary\\_pro\\_bono\\_publico\\_service/comment\\_on\\_rule\\_6\\_1.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service/comment_on_rule_6_1.html).

her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.



[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

## **PRO BONO POLICIES AND PROCEDURES**

**(AUGUST 2006)**

<...>

### **I. POLICIES AND PROCEDURES FOR LARGER LAW FIRMS**

Pursuant to Resolution 121-A, the American Bar Association urges larger law firms to adopt effective strategies to provide their lawyers with opportunities to do pro bono work and to adopt internal policies and procedures to support such work, including policies and procedures that ensure that firms:

- (a) count pro bono hours as billable hours;
- (b) consider attorneys' commitment to pro bono activity as a favorable factor in advancement and partner and associate compensation decisions;
- (c) set annual goals regarding the number of hours contributed through firm pro bono programs and the number of attorneys who participate;
- (d) establish and maintain systems that ensure that firm pro bono programs are managed effectively, that participating attorneys receive training and guidance, and that the highest levels of firm management oversee and participate in their programs;
- (e) support the pro bono commitment and involvement of senior and retired lawyers; and
- (f) report to law school placement offices specific information regarding their pro bono policies, practices and activities, including:
  - (i) their stated goals regarding the number of pro bono hours to be contributed by the firm each year;
  - (ii) the number of actual pro bono hours contributed by the firm in each of the last three years;
  - (iii) the average number of pro bono hours contributed by junior associates, midlevel associates, senior associates, and partners at the firm in each of the last three years;
  - (iv) whether and to what extent pro bono hours are counted as billable hours (if attorneys are expected to meet billable hours targets);
  - (v) whether and to what extent attorneys' commitment to pro bono activity is considered a favorable factor in promotion and compensation decisions;

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<sup>23</sup> Source:

<http://www.americanbar.org/content/dam/aba/migrated/leadership/2006/annual/dailyjournal/hundredtwentyonea.doc>.

(vi) what formal structures the firm maintains to manage its pro bono program and to provide training and guidance to participating attorneys; and

(vii) whether the firm provides opportunities to participate in pro bono activities through sabbatical and part-time pro bono programs, fellowships, or rotation programs.

<...>

## United States: Law Firm Pro Bono Challenge<sup>® 24</sup>

Recognizing the growing severity of the unmet legal needs of the poor and disadvantaged in the communities we serve, and mindful that major law firms must—in the finest traditions of our profession—play a leading role in addressing these unmet needs, our firm is pleased to join with other firms across the country in subscribing to the following statement of principles and in pledging our best efforts to achieve the voluntary goals described below.

1. Our firm recognizes its institutional obligation to encourage and support the participation by all of its attorneys in pro bono publico activities. We agree to promulgate and maintain a clearly articulated and commonly understood firm policy which unequivocally states the firm's commitment to pro bono work.
2. To underscore our institutional commitment to pro bono activities, we agree to use our best efforts to ensure that, by no later than the close of calendar year 2015, our firm will either:
  - (1) annually contribute, at a minimum, an amount of time equal to 5 percent of the firm's total billable hours or 100 hours per attorney to pro bono work; or
  - (2) annually contribute, at a minimum, an amount of time equal to 3 percent of the firm's total billable hours or 60 hours per attorney to pro bono work.
3. In recognition of the special needs of the poor for legal services, we believe that our firm's pro bono activities should be particularly focused on providing access to the justice system for persons otherwise unable to afford it. Accordingly, in meeting the voluntary goals described above, we agree that a majority of the minimum pro bono time contributed by our firm should consist of the delivery of legal services on a pro bono basis to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations in matters which are designed primarily to address the needs of persons of limited means.
4. Recognizing that broad-based participation in pro bono activities is desirable, our firm agrees that, in meeting the minimum goals described above, we will use our best efforts to ensure that a majority of both partners and associates in the firm participate annually in pro bono activities.

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<sup>24</sup> Obtained from the Pro Bono Institute and reprinted with its kind permission. For the Pro Bono Institute's Commentary to the Statement of Principles, see: <http://www.probonoinst.org/wpps/wp-content/uploads/Law-Firm-Challenge-Commentary-2014.pdf>. Also, the National Pro Bono Resource Center, an Australian NGO that supports and promotes pro bono legal services in Australia, had developed a similar Statement of Principles that incorporates, in part, language developed by the US Pro Bono Institute for its Law Firm Pro Bono Challenge<sup>®</sup> above: <http://www.nationalprobono.org.au/page.asp?from=8&id=170#LawFirm>.

5. In furtherance of these principles, our firm also agrees:
  - a. To provide a broad range of pro bono opportunities, training, and supervision to attorneys in the firm, to ensure that all of our attorneys can avail themselves of the opportunity to do pro bono work;
  - b. To ensure that the firm's policies with respect to evaluation, advancement, productivity, and compensation of its attorneys are compatible with the firm's strong commitment to encourage and support substantial pro bono participation by all attorneys; and
  - c. To monitor the firm's progress toward the goals established in this statement and to report its progress annually to the members of the firm and to the Law Firm Pro Bono Project.
6. This firm also recognizes the obligation of major law firms to contribute financial support to organizations that provide legal services free of charge to persons of limited means.
7. As used in this statement, the term "pro bono" refers to activities of the firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice and consisting of (i) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations in matters which are designed primarily to address the needs of persons of limited means; (ii) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; and (iii) the provision of legal assistance to charitable, religious, civic, community, governmental, or educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.

**Please return the signed Challenge to: Law Firm Pro Bono Project/Pro Bono Institute**

**1025 Connecticut Avenue, NW, Suite 205 ~Washington, DC 20036**

**202.729.6699~202.296.0303 fax~[probono@probonoinst.org](mailto:probono@probonoinst.org)~[www.probonoinst.org](http://www.probonoinst.org)**

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