

## Doing Better Work by Working Better Together: Law Firms and Legal Services Surveyed on Successes and Challenges of the Pro Bono Relationship

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### ***“No road is long with good company” – Turkish Proverb***

On a mission to do more pro bono in the most effective way, we set out to survey and analyze what works and what doesn't when legal services, nonprofit, and public defender organizations collaborate with law firms on pro bono.<sup>[1]</sup> We set our sights high and tried to investigate and uncover both basic, day-to-day issues and systemic challenges. While finding challenges would enable us to try to improve our model, we also felt it crucial that we identify areas where our collaborations are successful in our goal of creating greater access to justice. Talking about what works would encourage enthusiasm about working through tough obstacles, letting us fix what is wrong. We're delighted to report that where we are succeeding—creating community and building relationships—has the potential to provide the means necessary to overcome the challenges we face in maximizing the impact of our pro bono work.

Based on our own experiences as pro bono counsel at two large law firms and pro bono director at a large and well-established legal services organization, we had some fairly good guesses about where we were succeeding in working together and where usual frustrations could be found. However, our perspectives were limited by our shared New York City geography and the relatively large size of our organizations. We therefore determined that in order to have a broad-based understanding of the issues, we would conduct a nationwide survey of law firms and legal services organizations of varied structures and sizes.

We created two simple surveys (one for legal services organizations and one for law firms) that offered multiple choice options to questions about successes and challenges in working together on pro bono matters. We also solicited demographic information and provided an opportunity for respondents to give narrative answers about best and worst experiences in partnering on pro bono work.<sup>[2]</sup> We distributed the survey through various outlets nationwide, including bar and professional associations.<sup>[3]</sup>

This community is committed to working together, and our survey yielded a significant national sample size. There were 156 legal services respondents and 74 pro bono professionals responded from law firms.<sup>[4]</sup> Geographically, a significant number of respondents were predominantly from New York, California, and Washington, D.C. An actual majority of legal services respondents, however, came from a myriad of locales outside those major pro bono centers, and approximately one-quarter of law firm respondents came from outside the typical large metro areas. The majority of legal services respondents

worked in offices with twenty or fewer attorneys and, in contrast, the majority of law firm respondents worked in firms with 500 to 1,000 attorneys. Most surprisingly, the number of pro bono matters that legal services respondents partnered with law firms on each year was almost evenly distributed among options ranging from 1-10 to greater than 500, no matter the size of the organization—possibly a result of the different legal services organizational models, varying from holistic in-house legal services organizations to clearinghouse models that refer all clients to law firms.

We were overwhelmed by our results and are still processing the details of what we have learned from our community. We have been impressed and inspired by the candor of the commentary that our colleagues offered. The willingness of professionals to express difficult, negative feelings about what it sometimes means to work together and yet describe the value-add that successful collaboration causes in glowing terms leaves us hopeful. We believe that as a community, we can build upon the existing national focus on pro bono as one way to help provide lawyers to needy litigants.

After analyzing our survey results, we facilitated two candid—and dare we say meaningful—conversations with the pro bono professional community: one at the 2016 ABA/NLADA Equal Justice Conference and one at a New York City Bar Association Pro Bono and Legal Services Best Practices series session. The qualitative data proved a useful tool to help structure conversations that might not have otherwise happened. The written commentary we collected gave us a starting point that allowed us to push past our collective discomfort and have a real discussion about the difficulties we encounter when working together.

Our dialogue in these sessions was so positive that we will certainly continue talking. That said, some clear issues and potential solutions are already emerging—issues and solutions that we might take on with some level of coordination as a community.

### **The Pro Bono Culture Wars**

A steady current throughout our conversation about what doesn't work in our relationships with each other was the clash between law firm and legal services organizations' cultures. It is clear that we (and the lawyers who work in our organizations) do not fully understand each other's workplace cultures and missions. Law firm lawyers struggle to understand—and fail to consider—that their legal services counterparts carry a tremendously large caseload with little administrative support and spend much of their time in court and responding to client emergencies. They do not think about how this should impact their expectation that their legal services mentors will answer their emails with lightning speed. Legal services lawyers, on the other hand, don't understand the pressures of working in a for-profit business and fail to appreciate the large-scale corporate transactions that absorb their law firm counterparts' time, making it difficult for law firm lawyers to handle clients who are late to meetings or cannot come to the office. Each may wrestle with judgments about the others, struggling with the for-profit focus of the daily work of law firm lawyers or the realities of high volume poverty work of legal services attorneys.

### **The Main Issues**

**Beyond the cultural issues, several fundamental and practical issues emerged repeatedly in our survey results:**

- **Screening:** The importance of thorough screening of the cases and clients referred to law firms was highlighted by both legal services and law firm respondents, and was pointed to as both a great strength and need in partnerships, and as a troubling pitfall when not handled in a way that met expectations. Both of the group discussions revealed that the screening issue may be closely tied to another oft-expressed concern by legal services respondents: that law firm attorneys do not understand their clients' lives, in particular the complexity of what it means to live in poverty. In other words, while law firm lawyers may prefer to have clients with well-defined, isolated legal issues referred to them, no matter how thorough the screening, separating one piece of a person's life from another for the ease of legal representation may be nearly impossible. Legal services participants indicated frustration that law firms only want glamorous, single-issue pro bono matters with easy clients while law firm participants expressed concern that legal services organizations at times fail to correctly identify the legal issues involved in a given case, making it difficult for the firms to appropriately staff the matters or assess and account for the risk in taking on clients who have legal needs outside of the firm's areas of legal expertise. The issue of screening also touched on another critical element of the pro bono relationship: risk management. Law firms view effective screening as a critical component of limiting and managing the risk they are assuming in handling a pro bono matter, while legal services organizations expressed a discomfort with the notion that the responsibility of managing risk for the law firms would fall to them. This tension is particularly acute given that most legal services organizations necessarily assume a fair amount of risk to do the work they must do to help those most in need.
- **Human Resources:** Who has the resources and who needs the resources is a classic question and, in this context, a fundamental challenge. Our survey respondents honed in on expertise and time as opposing resource needs. Law firm lawyers taking on pro bono matters outside of their expertise need close mentoring by the legal services attorneys who refer the cases to the firm. In some instances, partnering with a law firm on an issue outside typical poverty law may enhance the expertise of the legal services organization that is attending to a differently complex legal need. For the most part, however, there is a tension between law firm attorneys' need to consult with attorneys who have expertise in a given area and the limited time that legal services attorneys have to act as mentors when they are managing a high caseload and significant client emergencies. When legal services attorneys are unable to respond as quickly as their law firm partners would like or require, the pro bono relationship fractures.
- **Money:** Charitable giving and pro bono are inextricably entwined, but should they be? When you layer the issue of money, i.e., charitable giving, on top of an already complicated pro bono relationship, the tension around resources can take on an even saltier taste. Legal services respondents made clear that financial donations to their organizations are in many cases the obvious, crucial, and even expected benefit to partnering with law firms on pro bono. When those donations do not materialize, hard feelings abound. Not all law firms agree, however, and many pro bono professionals have no control over the charitable giving decisions regardless of the depth or significance of a given pro bono relationship. Some law firm pro bono respondents reported experiencing awkwardness in dealing with requests for support, and anxiety in dealing with budget constraints given the large number of requests for financial contributions from a growing number of worthy organizations.

## **The Takeaways and Proposals for Change**

Though our survey revealed significant challenges in the relationship between law firms and legal services organizations, the sense of necessity about working together and the optimism about the benefits of collaboration on pro bono far outweighed the negatives. Both constituencies expressed strong sentiments about how pro bono partnerships can both expand and leverage resources, increasing the number of clients served, the range of legal issues handled, and the potential for a boost in legal services funding.

### **Communication is Key**

Setting expectations about basic issues—such as how clients are screened and referred, when charitable giving requests will come and be best received, the way that firms will staff the matters, and the reasonable time that mentors need to respond—are best practices that can smooth the way. A written tool developed by legal services organizations and law firms that would facilitate relationship initiation and address these touchy issues might go a long way toward level setting expectations.

### **Law Firm Pro Bono is Not the Only Answer**

Both sides must continue to advocate for full funding for civil legal services. On a parallel course, legal services development professionals can benefit by working to understand the individual cultures and processes of giving in the law firms that they work with, including the variations in calendar year, budgeting process, and decision-making authority. Law firm management needs to expand its understanding of what it costs a legal services organization to do the work they do and support pro bono work so that high-level decision makers are informed when making choices about where to direct their charitable giving budget.

### **Should We Change the Game Completely?**

Typically, individual attorneys select pro bono clients who are dealing with issues that speak to them in a personal way, and most law firms therefore work in a broad range of areas within their pro bono programs. But could we do more in a totally different way? There is a growing notion that we might need to get structurally radical if we want to make the most impact with our constrained resources. Should each law firm pick one or two areas of typical poverty law for their pro bono programs, and develop expertise in order to not have to pull on legal services organizations to mentor their attorneys? Should firms form issue area coalitions that are regional among a number of law firms and legal services organization in order to do more efficient client service? Would we serve more clients using either of these models? More drastically, instead of funding law firm pro bono programs, should firms simply fund more fellows at legal services organizations? Should private firms do pro bono at all, or just increase legal services funding in their charitable giving? These questions run directly up against ideas about each lawyer fulfilling a professional obligation to give back through pro bono work and experience that says that lawyers do better pro bono work—and come back for more—if they are allowed to work on matters that they care about personally. These are uncomfortable questions, but when we keep our eye on the prize—the wish of perfect access to justice—we have to at least ask and try to answer them.

### **Someone Should Mind the Store**

The fact that relationships matter was evidenced by an interesting quirk in our data when we filtered the New York City responses and compared them to the nationwide responses. Like the nationwide responders, most New York City legal services responders identified the ability to expand their services as a big benefit of partnering with law firms, and most New York City law firm responders pointed to excellent screening and mentoring as a success in working with legal services organizations. Unlike the nationwide responders, both constituencies in New York City elevated the importance of relationships with a specific point of contact—a Pro Bono Director at a legal services organization and a Pro Bono Counsel at a law firm—to a position of critical importance in making pro bono partnerships successful. This is a hopeful fact. In a region where there are a sizable number of both legal services organizations and law firms that have dedicated professionals in the role of pro bono management, many candid conversations are happening, and individual and organizational relationships are tended to regularly. We are seeing encouraging outcomes in the pro bono community’s ability to come together to work through the systemic and detail-oriented challenges identified in the survey. The importance of having a dedicated pro bono professional, who ensures that pro bono relationships flow smoothly and is there to manage the occasional crises, cannot be overstated. With these relationships, the culture gap is bridged and case-specific challenges are navigated appropriately; this is evident in our survey results. These benefits give rise to the possibility of broad-based positive change across geographies, limiting obstacles, and promising greater access to justice. We should be investing in pro bono professionals as we would any other remedy to our access to justice crisis.

## **Moving Forward**

We have to take on both big and small structural changes if we want to improve the effectiveness and experience of pro bono and, most importantly, increase the number of people who have lawyers who need them. Though we are still unpacking the data, it is clear that one critical step is for legal services organizations and law firms to hire pro bono professionals to manage their programs, create relationships, and have candid conversations about crucial issues. The pro bono work that legal services organizations and law firms do together is the work of champions, and it is an endeavor that requires commitment, perseverance, and communication to work together until we get it right.

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[1] Though our survey results include responses from legal services, nonprofit, and public defender organizations, for the purposes of brevity, we will be using the term “legal services organizations” in this article to refer to all three.

[2] We also created and distributed a survey to in-house legal departments that asked similar questions. The responses to this survey were limited in number and require additional study.

[3] We are grateful to the American Bar Association, the Association of Pro Bono Counsel, One Justice, the New York City Bar Association Pro Bono and Legal Services Committee, the National Association of Pro Bono Professionals, and the Public Interest Pro Bono Association for helping us to distribute our survey.

[4] Legal services respondents were further broken down into 127 legal services organizations, 4 law schools, 7 bar associations, 2 impact litigation organizations, and 16 other legal services entities. Law firm respondents broke down into 57 pro bono counsel, 7 administrative managers, 3 pro bono committee members, and 7 with other positions.