

Corporate Support for Legal Services

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Abstract: The gap in pro bono legal services provided by corporate legal departments and large private law firms is not surprising: The formalization of pro bono work by large firms has been underway on a significant scale for far longer than it has within corporations. This process has made large firm pro bono efforts more efficient and effective through improved practices. It has also led firm leaders and lawyers generally to expect more volunteerism of this sort. Companies that apply their resources, business experience, or other assets have successfully expanded the impact of their pro bono hours. Because of the scale of this need, and because legal-services lawyers have specialized expertise that corporate lawyers can't easily replicate, corporate pro bono efforts will not, on their own, close the justice gap. But these efforts have the potential to contribute significantly more to the ability of legal-aid organizations to serve their clients, and to help close this gap.

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When the Trump administration sought to end federal funding for civil legal aid in 2017, a broad cross section of the American legal community spoke up in support of legal services for the poor. General counsel from nearly two hundred top American corporations joined together in a letter to members of Congress that favored increased funding.¹ They described how their companies worked to support access to justice for all with “countless hours of pro bono representation provided by corporate legal departments and in-house attorneys.”²

These lawyers undertake a significant amount of volunteer legal services. While they usually address matters of family law, immigration law, and corporate law for nonprofit organizations, they also deal with many other types of legal problems.³ Over the past decade, corporate legal departments have increasingly expanded and formalized their pro bono commitments. Corporate pro bono efforts have a potentially significant and multifaceted role in helping meet the needs of poor and low-income Americans.

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The volunteer activities of attorneys in private practice, particularly those at large law firms, are well documented.⁴ The “Pro Bono Scorecard” published annually by *The American Lawyer* reports on the contributions of the top two hundred American law firms (ranked by revenue, size, and other indicators). In 2017, the average number of annual volunteer hours reported at these firms per attorney was 59.7, or about one and one-third weeks of average billable hours per year.⁵ To a lesser extent, there is information about “low bono” efforts, done at reduced fees by smaller firms, where pro bono cases tend to come in through personal contacts and existing clients.⁶

There is not equivalent data about efforts by large corporations, nor is there a strong understanding of the pro bono activities of smaller businesses. But a survey conducted by the American Bar Association Standing Committee on Pro Bono and Public Service found that, in 2016, across firms and businesses of all sizes, lawyers in private practice contributed roughly 3.5 times more pro bono hours on average than lawyers who were employees of corporations.⁷ In-house attorneys have some catching up to do, but the gap is not surprising. The formalization of pro bono programs by large law firms has been underway on a significant scale for far longer than at corporations. Unless there is some undiscovered and immutable feature of corporations that would prevent a transformation on that scale, the trajectory of pro bono efforts in that setting should continue to increase substantially.

In 2006, when the Pro Bono Institute entered its second decade and launched a Corporate Pro Bono Challenge Initiative for major American corporations, only twenty-five agreed to participate.⁸ By the start of 2018, this number had jumped to 180. Participants have reported that,

while only a minority of companies employ sophisticated practices to increase this work, like giving corporate lawyers financial incentives to do so, the vast majority of large corporations have laid a foundation for a culture supportive and encouraging of pro bono work.

The National Legal Aid and Defender Association, which is devoted to excellence in the delivery of legal services to those who cannot afford to pay for legal counsel, asked leaders at twenty civil legal aid programs to describe their experiences working with in-house lawyers providing pro bono services. Law firms and corporations often rely on legal-services organizations to make their pro bono efforts possible. Legal-aid programs extend access to clients, offer guidance on the types of pro bono work needed, and provide substantive expertise, supervision, and training to ensure effective service.

A common view is that clients would have more successful outcomes if corporate lawyers doing pro bono work had more training and were more comfortable working in the substantive areas of law relevant to their pro bono clients’ cases. The mismatch between corporate lawyers’ expertise and pro bono clients’ needs presents a dilemma. Training requires investment of time and resources by a legal-aid program, which is difficult to justify if the commitment of a lawyer being trained is transitory. This issue can most effectively be addressed by leadership of a company. If pro bono work is not a priority for a general counsel or chief legal officer, it can be difficult for an in-house lawyer to feel free to engage in or maintain a commitment to pro bono work, which can prevent a legal-aid program from developing a partnership with that company. But the opposite is also true: leadership can cultivate a

culture of pro bono commitment that is broad in scope and impact.

Almost without exception, corporate pro bono efforts come with other resources that strengthen or add capacity to the business functions of a legal-aid program. Companies that apply their legal expertise such as in corporate or contracts law, or other nonlegal assets such as business process, marketing, or IT expertise, have successfully expanded the impact of their pro bono hours by improving the functioning and operations of legal-aid programs themselves. Examples include providing nonprofit clients with assistance in governance and management, in-kind specialized contributions in real estate matters or cybersecurity issues, as well as traditional financial support.

The Pro Bono Partnership, an innovative corporate initiative that seeks to maximize corporate assets, was founded in 1997 by GE, IBM, Pepsi, and other corporations in Fairfield County, Connecticut, and Westchester County, New York. The concept was to use corporate funds to hire independent staff lawyers experienced in working with the underrepresented. These attorneys would learn the critical legal issues facing nonprofit social-service agencies in those counties and find lawyers with requisite expertise inside the participating corporations to provide pro bono services to address them.

The issues covered a wide range of key operating problems for nonprofits: employment and human resources, taxes, corporate law, governance, nonprofit mergers and consolidations, contracts and leases, and more. These pro bono legal services addressed prominent day-to-day problems of the agencies and saved substantial expenditures that could instead be used for the community. The Partnership met the desire of corporate

lawyers who wanted to provide pro bono services but could not easily find pro bono clients from corporate headquarters.

In the first year of its operation, the Partnership assisted 81 clients on 130 matters with the assistance of 186 volunteer corporate lawyers. By 2017, it assisted 800 clients on 1,772 matters. In its twenty-year history, the Partnership has assisted 2,800 nonprofits on more than 13,000 legal matters with 5,000 volunteers. It has spawned partnerships in Atlanta, Georgia, and Cincinnati, Ohio. In addition, the original Partnership expanded to use lawyers from major New York-area law firms, not just corporations.

This is one of many viable models for the much-needed expansion of pro bono services that corporate America can provide. Because of the scale of the need, and because legal-services lawyers have a depth of expertise and experience that corporate lawyers cannot replicate, pro bono efforts will not, on their own, close the gap between the need for and availability of legal services for low-income individuals. But these efforts have the potential to contribute significantly more – in myriad ways – to the ability of legal-aid organizations to serve their clients and to help close this gap.

AUTHOR'S NOTE

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ENDNOTES

- ¹ Sara Randazzo, "General Counsel Join Fight to Save Legal Services Corp.," *The Wall Street Journal*, March 28, 2017, <https://blogs.wsj.com/law/2017/03/28/general-counsel-join-fight-to-save-legal-services-corp/>.
- ² "Letter to All Members of Congress," *The Wall Street Journal*, March 28, 2017, <http://online.wsj.com/public/resources/documents/CorporateCounselLSCLetter.pdf>.
- ³ The top three areas of law that corporations reported working on pro bono in 2016 were: immigration law, family law, and corporate law (including nonprofits). See Pro Bono Institute, *2016 Benchmarking Report: An Overview of In-House Pro Bono* (Washington, D.C.: Pro Bono Institute, 2017).
- ⁴ For a comprehensive review of this literature, see April Faith-Slaker, "What We Know and Need to Know About Pro Bono Service Delivery," *South Carolina Law Review* 67 (2016): 267, 268–277.
- ⁵ Ben Seal, "The American Lawyer's National Pro Bono Rankings," *The American Lawyer*, June 27, 2018, <https://www.law.com/americanlawyer/sites/americanlawyer/2018/06/27/the-american-lawyers-national-pro-bono-rankings>. Sixty-two of the top two hundred firms declined to provide information on their pro bono activities.
- ⁶ Leslie C. Levin, "Pro Bono Publico in a Parallel Universe: The Meaning of Pro Bono in Solo and Small Law Firms," *Hofstra Law Review* 37 (3) (2009).
- ⁷ The average number of pro bono hours volunteered by corporate lawyers was 11.4, compared with 41 for lawyers in private practice. See American Bar Association, *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers* (Chicago: American Bar Association, 2018).
- ⁸ The "challenge" requires chief legal officers to "encourage and promote pro bono service by their legal department staff" and to "use their best efforts to encourage their staff, including at least one-half of their legal staff, to support and participate in pro bono service." Pro Bono Institute, *CPBO Challenge Report, 2017: The Endurance of In-House Pro Bono* (Washington, D.C.: Pro Bono Institute, 2018), <http://www.cpbo.org/wp-content/uploads/2018/08/2017-CPBO-Challenge-Report-Abridged-Final.pdf>.