HOW LAW FIRMS CAN ACT TO INCREASE *PRO BONO* REPRESENTATION

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INTRODUCTION

It is widely recognized that the majority of indigent persons in the United States lack access to attorneys in civil matters, even when threatened with the loss of their residences or of the minimal government benefits which may enable them to subsist, or when they are seeking political asylum, divorces, or recompense for violations of their civil rights. This state of affairs, which has always existed, was severely aggravated by the cutbacks in funding for the Legal Services Corporation's grantees during the 1980's, which have never been fully restored thereafter, and by the restrictions implemented in the 1990's on the kinds of cases that these grantees could undertake. In addition, there are a growing number of small non-profit groups that need legal assistance. Moreover, incarcerated indigent persons often will be un-represented in state post-conviction and federal habeas corpus proceedings in the absence of *pro bono* representation – even when they are facing execution -- because the United States Supreme Court has held that there is no constitutional right to appointed counsel in such proceedings.

Hence, it is unsurprising that intense consideration is being given to the role that the private, non-legal services bar can play in increasing the numbers of the poor who are represented by qualified counsel in civil and post-conviction matters, and in representing small non-profits. In 1988, the American Bar Association adopted a resolution urging all attorneys to devote 50 hours per year to *pro bono* and other public interest work.[2] Beginning in the mid-1990s, many law firms have committed to the Law Firm *Pro Bono* Challenge that they will devote an amount of time equal to at least 3% or 5% of their billable hours to *pro bono* as it is defined by that project, and to devote a majority of that time to matters on behalf of poor people.

It is in the interest of law firms to take measures designed to increase the *pro bono* efforts of their attorneys, paralegals, and summer associates. This is so because: their attorneys should be fulfilling their ethical responsibilities to provide *pro bono* representation;[3] many lawyers at these firms would like to do *pro bono* work but feel unprepared to do it, or are concerned about overextending themselves by doing it; undertaking *pro bono* enables attorneys to develop a variety of skills earlier in their careers than would likely be possible otherwise; improved *pro bono* programs help law firms retain valued attorneys longer and secure the services of desirable law school graduates; and *pro bono* work is important to law firms' communities, upon whose future viability and good will the firms depend.

Sometimes, law firms that desire to improve their *pro bono* efforts are unaware of methods that may enable them to increase dramatically the amount of *pro bono* representation their attorneys provide. The following thoughts on how law firms can act to enhance their *pro bono* programs are

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[2] See Chauvin, *Pro Bono* Publico: A Century of Service, The Advocate, June 1989, at 9, 11.

[3] See, e.g., Model Code of Professional Responsibility EC 2-25 (1983).

based on my 18 years of coordinating *pro bono* programs at two large law firms, including over 16 years coordinating such work at Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden, Arps"); chairing the Committee on Civil Rights and membership on the Committee on Legal Assistance and the Capital Punishment Committee of the Association of the Bar of the City of New York; membership on the Council of the American Bar Association Section of Individual Rights & Responsibilities and chairing its death penalty committee; service on the boards of directors of the Appleseed Foundation, Lawyers' Alliance for New York, and the New York Civil Liberties Union; service on the executive committee of Lawyers for Legal Aid; discussions with attorneys at other law firms, at legal services offices, and at other public interest organizations; and service on the advisory committee for the Skadden Public Interest Fellowship (Skadden Fellowship) Program.

I. WHAT CONSTITUTES *PRO BONO*

At the outset, it may be useful to define what is meant by *pro bono* work for the purposes of this paper. Principally, it refers to the following: free legal services to the indigent; free legal services to not-for-profit organizations that cannot afford to pay for legal services; directorships or advisory positions in organizations (such as the Legal Aid Society) whose principal function is to provide free legal services to the indigent or to not-for profit groups; bar association activities or service on commissions that address legal problems of the indigent or of minority groups or public interest law reform; and free legal work for government on affirmative matters of interest to the least represented in society, such as civil rights enforcement, or in defending criminal appeals where, absent *pro bono* help, the prosecution would secure months of adjournments that would, where the appellants win, mean that they would have been incarcerated several months longer before being released. It also includes matters of great public importance where, although the client may not be indigent, the client would, as a practical matter not pursue the matter absent *pro bono* representation – such as where a middle income African American is the victim of housing discrimination but suffers little out of pocket damages.

A broader definition of public interest work could also include: other bar association activities; community service work not entailing the provision of legal advice; directorships or other work on behalf of not-for-profit organizations whose principal function is other than the provision of free legal services; free advice on judicial selection; or free policy advice to government officials. If a law firm uses the broader definition, it should also calculate hours under the more narrow definition, which is closer to (although somewhat broader than) that used by the Law Firm Pro Bono Challenge.

The following analysis does not include legal work done for free for a law firm's staff or for its attorneys (unless they come within the above definitions, such as by being indigent or having a case of public importance that they would not pursue without *pro bono* representation) or for political candidates. If such work is undertaken, it should not be counted in calculations of *pro bono* work.

II. HOW LAW FIRMS CAN ORGANIZE THEIR *PRO BONO* EFFORTS MORE EFFECTIVELY

The following suggestions concerning how to organize a law firm's *pro bono* efforts are not offered as a panacea. Indeed, the extent to which the basic approach presented herein has succeeded has varied somewhat among the different offices of Skadden, Arps, and at different points in time.

This approach usually will lead to major increases in the number of attorneys doing *pro bono* work, in the number of *pro bono* projects handled, and in the total amount of *pro bono* hours. That has occurred at all of Skadden, Arps' offices, even though the attorneys in those offices work intensively on their billable work. It is logical to assume that a similar approach could be effective at most firms.

A. Provide Top Level, Visible Partnership Support

A key to the success of a *pro bono* program is that it has credibility within the firm. Attorneys at major law firms are so busy and so subject to numerous pressures that even the majority who desire to do *pro bono* work usually will not undertake it unless they perceive it as something that the firm values, or at least does not view negatively.

A good way for a *pro bono* program to gain credibility is to have one or more top-level members of the firm's management provide support for *pro bono* work in a manner that both partners and associates will notice. This should include the use of a high level partner's name on memoranda concerning *pro bono* opportunities; the presence of such a partner at sessions at which attorneys and summer associates are encouraged to do *pro bono* work; discussing the *pro bono* program at partnership meetings and at firm events for associates; intervention by the firm's management when particular partners violate the firm's *pro bono* policies; and efforts by top management to persuade members of the partnership of the need to take the various other actions summarized below.

While it is possible to improve a firm's *pro bono* program without the visible support of the firm's top management, such support makes it far easier to attain and maintain a successful *pro bono* program. Where *pro bono* is perceived as being solely the concern of one or a few not particularly influential partners that may lead to the perception that the partnership considers *pro bono* work unimportant.

B. Avoid Negative Signaling By Partners

It is crucial that influential partners not be perceived as giving negative signals about *pro bono* work. Examples of such signaling include walking into a room where a *pro bono* recruiting meeting is occurring and pointing out that everyone present is urgently needed on a billable project; telling associates that in order to bill more hours, they should do *pro bono* work only at night or on weekends; instructing all attorneys in a partner's practice area that they must not handle *pro bono* cases from outside their practice area; and giving "friendly" advice to associates who are handling a *pro bono* matter that it would have been wiser, in terms of their advancement in the firm, not to have taken it on.

Frequently, the partners who give such signals are, in other respects, staunch supporters of *pro bono* work. Nonetheless, they need to be advised by a partner of equal or greater stature that actions such as those described above can badly damage the firm's *pro bono* program.

C. Create A Credible Coordination Mechanism

Far more *pro bono* work is likely to get done at a firm if there is a credible mechanism for coordinating the firm's *pro bono* activities. Some method of coordination is needed, because most individual attorneys, summer associates, and paralegals lack the time, the sources, and the initiative to uncover information about *pro bono* opportunities that they would find interesting. Moreover, if each person *were* willing and able to ferret out that information, and did so, there would be a huge duplication of effort.

To be successful, the coordination mechanism must have credibility within the law firm. It should involve one or more attorneys who – whether or not they are partners -- are widely respected within the firm and are actively supported by the firm's top management. Otherwise, *pro bono* may develop a reputation of being an activity engaged in mostly by attorneys who have time available because partners do not eagerly seek them out for billable work. At such a firm, extremely junior associates interested in gaining experience might also do *pro bono* work, but it would rarely be handled by widely respected partners or by mid-level or senior associates perceived to have a real chance of becoming partners.

To be effective, the attorney(s) undertaking the firm's *pro bono* coordination must be permitted to devote sufficient time to handle the various coordination functions discussed below. A good way to badly damage a *pro bono* program is to have a more senior attorney advise the *pro bono* coordinator to spend less time on *pro bono* coordination.

The *pro bono* coordination mechanism should (if possible) be centered on a well-regarded attorney with a designated block of time available for this activity. It should also include a paralegal or human resources person who can play a leading role in informing people about available *pro bono* opportunities, maintain records – or a database – on the status of *pro bono* cases and on attorneys' *pro bono* interests, and help the attorney *pro bono* coordinator in interfacing with groups that are sources of *pro bono* work and in developing an effective intranet about *pro bono* opportunities, training materials, and other resource materials. (See below.)

It is also useful to have a *pro bono* committee with partners, and possibly associates, from various practice areas throughout the firm. This committee can be extremely useful, even if it meets very rarely, or never – because there is much that members of the committee can do to advance the *pro bono* program. No single attorney is likely to have sufficient "eyes and ears" and "tentacles" to always know when particular attorneys are available for *pro bono* work, or to be able to put together several teams a year to handle complex *pro bono* projects. Moreover, it is difficult for one attorney to deal with all instances in which senior associates or partners undercut the *pro bono* program by giving more junior attorneys negative signals about their *pro bono* work. Indeed, associates are often afraid that if someone outside of their practice group intervenes in such instances, this may cause them more harm than good. While such fears are usually unfounded, many situations will go unreported that could be resolved if each major practice group has a partner who is an ombudsman for the *pro bono* program.

D. Undertake Effective Coordinating Activities

Those who coordinate pro bono work at law firms should take a series of important steps.

Assemble information on Types of Available Pro Bono Work. The first step is to determine all of the types of *pro bono* work that generally become available in the community sometime during the year, so that a list of kinds of *pro bono* work can be prepared for dissemination to all attorneys. This list can be prepared by contacting as many different potential sources of *pro bono* work as possible and asking them to describe all of their general categories of *pro bono* work.

It is important in this connection to stress the need for non-litigation *pro bono* opportunities, since the majority of lawyers at most law firms are not litigators and may be unwilling to handle litigation. Non-litigation should not be viewed as make-work for non-litigators. For example, helping to create and maintain a not-for-profit corporation that provides housing or services to hundreds of poor people can be at least as worthwhile as assisting one or two poor people to secure government benefits. Moreover, there are an increasing number of instances in which the non-litigation work involved is comparatively sophisticated, and thus utilizes skills of more experienced non-litigation attorneys.

My latest summary of New York *pro bono* categories includes the following types of matters: (1) not-for-profit corporations, (2) uncontested divorces, (3) political asylum, (4) Housing Authority eviction proceedings, (5) Social Security disability hearings, (6) criminal appeals, (7) petitions, under the Violence Against Women Act, to the Immigration and Naturalization Service against deportation of battered women, (8) representation of microentrepreneurs, (9) major civil litigations, (10) community development, (11) bankruptcy, (12) arts-related matters, (13) civil rights claims, (14) representation of the homeless, (15) death penalty post-conviction matters, (16) matters involving children, (17) employment and unemployment cases, (18) matters involving senior citizens, (19) First Amendment and other civil liberties matters, (20) representation of people with AIDS, and (21) *amicus curiae* briefs.
This list evolves significantly over time.

Where the firm has its own internal version of the Internet, known as an intranet, this list of available types of *pro bono* should be included in the *pro bono* part of the intranet. This part of the intranet should be included within an intranet section covering each of the firm's practice areas, and in alphabetical order. For example, the practice group section of my law firm's intranet includes *Pro Bono* in between Mergers & Acquisitions and Structured Finance. The list of types of *pro bono* matters, and most other materials, can be easily posted on the intranet after being created as a document on the word's word processing system.

Assemble information on Available Resources. Another preliminary step is to determine what kinds of manuals, treatises, and videotapes the law firm already has relating to issues in *pro bono* cases, what other materials can be readily acquired, what kinds of guidance are available from the organizations through which *pro bono* matters are secured, and what pertinent expertise and work product already exist at the firm. By assembling this information (and including it on the intranet, where feasible),[4] the coordinator will be better able to induce attorneys to take on *pro bono* cases and to help them avoid wasteful "reinventing of the wheel" thereafter.

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[4] If the law firm has the capability of doing so, exemplars, manuals, and other training materials can be "downloaded" from disks provided by source organizations, turned into documents on the firm's computer database, and then easily put onto the intranet. In other instances, these materials can be "scanned" or "imaged" to become documents on the firm's computer database, and then easily put onto the intranet.

Relevant parts of the *pro bono* intranet site can be linked to areas on www.probono.net – which contains, by city, a variety of practice areas, and also has national practice areas for capital punishment and political asylum (and will be adding one for civil rights).

It is particularly crucial to locate attorneys who can provide substantive guidance, because many attorneys at law firms have great trepidation about handling unfamiliar types of cases without the support of someone *at the firm* with more expertise. It can be particularly helpful to have people at the firm who have developed expertise about particular areas of *pro bono* serve as mentors for those types of *pro bono*. Such people can ease the burden on themselves, and on others, by preparing descriptions (that can be posted on the intranet) of the basics of a particular type of *pro bono*, including the relevant statutes and regulations and key contact people at relevant government agencies, and containing a list of frequently asked questions on that type of *pro bono*, along with the answers thereto.

Determine the extent to which there is insurance for pro bono work. The coordinator should determine whether the law firm's liability coverage encompasses firm-approved *pro bono* work and, if not, whether such work is covered by the liability policies of organizations through which the cases are obtained. A substantial number of attorneys will shy away from *pro bono* if they believe there is no liability coverage. If coverage does exist, that fact should be explicitly mentioned when recruiting lawyers to do *pro bono* work, lest they assume the contrary.

Survey all Attorneys about their Willingness to Handle Pro Bono Work Sometime During the Year. After taking the foregoing steps, the coordinator has the information to take the next step in a pro-active program: to survey all attorneys in the firm about their interest in doing *pro bono* work sometime during the year. The survey memorandum should be disseminated under the signature of a high level member of the firm's management, should contain a summary of the various categories of *pro bono* work, and should ask at the end whether the attorney would like to handle a *pro bono* matter sometime during the year, and if so, what types of cases the attorney is interested in handling. The survey memorandum should make it clear that the firm desires as many attorneys as possible to take on *pro bono* matters and that one way for many to participate is to take on small projects. The survey memorandum should also say that expressing interest in this way does not constitute a binding commitment actually to take on a *pro bono* matter within the next year, but rather provides the *pro bono* coordinator with information that will be useful in deciding to whom to provide information about particular types of opportunities that arise during the year.

This is particularly important with regards to types of *pro bono* work that never are listed on lists from *pro bono* clearinghouses because they are always generically available. Without a list of who might be interested in such matters, a *pro bono* coordinator might never contact anyone about handling them. But with a list of potentially interested attorneys, the coordinator can periodically contact these people to elicit actual availability. Since firms generally now have e-mail systems, creating, maintaining and using a list-serve of those who have expressed interest in a given type of pro bono can accomplish this.

Two additional measures will aid immensely in giving the survey process credibility. One is to hold a *pro bono* recruiting meeting to which all lawyers are invited and at which a senior member of the firm's management presides, at the outset of the survey process. The other is to mandate that

everyone complete and return the survey. This mandate must be effectuated through repeated follow-up memoranda, phone calls, and even personal visitations until every survey is returned.

Once the entire firm has been surveyed, future surveys can be conducted once a year, for all attorneys who have arrived during the preceding year. The survey memorandum should be handed out as part of each incoming attorney's orientation packet, but the surveying process can be deferred until the annual *pro bono* meeting for newly arrived attorneys.

In any event, no matter how effective the survey process is, the *pro bono* coordinator should try to meet personally with as many attorneys as possible. There is no more effective way to "sell" people on *pro bono* and for the coordinator to understand better what kinds of matters would really interest particular attorneys.

Have the Pro Bono Coordinator Speak as Part of the First Day Orientation for Each Group of New Associates. A clear signal to new associates (and summer associates) that the Firm considers *pro bono* to be important is to have the *pro bono* make a presentation about the firm's *pro bono* program as part of the orientation on each day that new associates begin work at the firm. In the case of lateral associates, who come to the firm from other law firms, the *pro bono* coordinator may periodically schedule meetings solely to orient lateral attorneys, and to answer their questions.

Encourage Potential Sources of Pro Bono Cases to Provide Cases of the Types Volunteer Attorneys Wish to Handle. When the surveys are completed, the coordinator can prepare a chart (or have a database created) showing which attorneys are interested in particular types of *pro bono* work, what their practice areas and level of experience are, and any indications they have given about when they may be available for a *pro bono* project. With this information assembled, the coordinator is in a position to have discussions with organizations that are sources of *pro bono* work.

At this point, there may be some modest degree of tension, because the types of *pro bono* in which a firm's attorneys are most interested may be different from the types of cases which sources of cases find to be in most desperate need of *pro bono* help. There is no perfect way to deal with this, but a few ideas have proven helpful. First, the coordinator should strongly encourage those attorneys who have not expressed a strong preference for any particular category of *pro bono* to take on cases of the types that the source organizations consider most vital. Second, the coordinator should point out to the source organizations that if they provide guidance on other types of *pro bono* work, the attorneys handling those cases will be more likely to provide long-term support for those organizations. Such support can include financial donations and the law firm's creating an externship program under which a firm attorney works full-time (at regular firm salary) for a public interest legal services group for a period of month (see part G below). Third, the coordinator can attempt to provide paralegal, word-processing, and photocopying support for the source organizations on their most crucial cases.

Hopefully, one outgrowth of this process will be that potential sources of *pro bono* opportunities will be more cognizant of the ways in which particular private law firms can best assist them and can develop procedures for finding cases suitable for volunteer counsel. By the same token, law firms should recognize that if their lawyers' interests or capabilities do not coincide with the most urgent legal needs of the poor or fledgling non-profits, the firm should help to meet those needs in other ways.

Encourage Firm Attorneys to Find Pro Bono Matters Through Their Own Initiatives. Attorneys at the law firm should be encouraged to locate their own sources of *pro bono* projects. Often, these attorneys are able to staff such cases themselves. Even when they do not self-staff cases, the coordinator's ability to invoke the name of another attorney, particularly when it is a partner, as having brought forward a *pro bono* project may materially facilitate the task of finding volunteers to handle the matter.

Determine Attorneys' Availability to Handle Particular Cases. Once the *pro bono* coordinator has identified currently available projects, the coordinator, or supporting paralegal, should – to the extent possible -- orally contact each attorney not presently handling a *pro bono* project who has expressed an interest in a type of case currently available and who is not already known to be unable to take on a new case. All such attorneys should be asked if any available case does indeed interest them and whether they believe they have time to take it on. When an attorney is both interested and apparently available, the quick clearance process described below should be put into play. When an attorney is either not interested in or not available for the current projects, the attorney should be asked when he or she could be contacted again.

Generally, the recipients of the oral contacts welcome, or at least do not resent, those contacts, because most of them genuinely want to do *pro bono* work and appreciate the firm's efforts to locate cases of the types they wish to handle. Obviously, those few who react by saying that they do not wish to be called again should thenceforth not be re-contacted orally.

The development of e-mail, voicemail, and firm intranets makes it possible to "cast a wider net" in eliciting possible interest in particular *pro bono* matters. When lists of available *pro bono* matters come in (sometimes arriving by e-mail), the *pro bono* coordinator should quickly determine which (if any) matters are clearly inappropriate for firm attorneys. The coordinator should create one or more e-mails describing appropriate matters that the coordinator thinks might interest attorneys at the firm. Rather than sending out one e-mail describing a huge number of matters, the coordinator should limit each e-mail to no more than a few items, which can be grouped by subject matter. (It is better to send out several e-mails in succession, each with an informative, lively caption and listing only a few cases, rather than to send out one humongous e-mail.) The dissemination of information about particularly interesting matters should *not* be limited to those who, via surveys, have expressed interest in a particular type of matter. Often, people who don't check off a type of matter on a survey will be enthusiastic about a *particular* matter, once they see its context.

Some e-mails should be sent to all attorneys in the office. But where a particular type of expertise is required, the e-mail should only go to people in the relevant practice group(s).

There are some circumstances where it makes sense to send group e-mail, with attachments, to those attorneys who have expressed interest in a particular category of *pro bono* matter. This particularly makes sense when there is a huge list of matters, such as contested divorces or prisoners' civil rights claims, from which people interested in such cases can choose.

In addition, the *pro bono* coordinator should send out a group voicemail when it is particular important to place, or reassign, a matter quickly. While this is not as effective as a personal phone

call to each person, it can reach a large number of people simultaneously, and have some elements of a "personal" touch.

The firm intranet's *pro bono* area should include the latest *pro bono* case lists from each source of *pro bono* (after the coordinator has culled out inappropriate matters from these lists). This enables people who were too busy at the time the coordinator sent out e-mails to look and see what's available when they later find they do have time. It also allows people who haven't expressed interest in a particular type of *pro bono* to see what particular matters are available that the coordinator did not circulate widely.

Attorneys should also be reminded, via e-mails and on the intranet area, that new *pro bono* matters of various types, about which the coordinator may not yet have been informed, are summarized on www.probono.net. A fair number of *pro bono* matters have been placed through that website.

Assemble Teams Capable of Handling Complex Projects Effectively. When a complex *pro bono* project is available and the coordinator feels it is a matter that the firm should try to take on or a particular attorney is interested in working on it, the coordinator should attempt to assemble a team of attorneys that is sufficiently large and with appropriate collective expertise to handle it effectively. The *pro bono* committee and the firm management can provide invaluable assistance in assembling such a team.

Secure Clearance for Pro Bono Quickly but Carefully. Once it is clear that there is a sufficient number of available lawyers – often, one is enough -- to handle a *pro bono* matter effectively, there should be a quick clearance process. Speed in this regard is often essential due to the needs of the case or because attorneys may quickly become unavailable if they receive unexpected new work assignments.

The first two parts of the clearance process should already have occurred by this point. First, the coordinator should have decided before soliciting attorney interest that the project comes within the firm's substantive guidelines for *pro bono* work. At Skadden, Arps those guidelines are relatively liberal,[5] provided that there is no conflict of interest – either a direct conflict or an "issues conflict", *i.e.*, where handling the matter successfully could lead the case law in a direction antithetical to positions being advance on behalf of paying clients, or other *pro bono* clients.[6]

Second, the coordinator should have determined that the attorneys who have expressed interest in a project are sufficient in number and experience[7] to handle the project effectively, with the aid of the available sources of guidance and help from paralegals and support staff at the firm. This is a crucially important determination. It is far better to turn down a *pro bono* project that is too

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[5] A by-product of this relatively liberal policy is that at Skadden, Arps, the firm's name and letterhead usually are not used in *pro bono* work, although the firm's liability insurance policy is applicable to approved *pro bono* work.

[6] To avoid future conflicts, the names of all parties (and their principals) involved in each *pro bono* project should be entered into the firm's conflicts clearance data bank.

[7] Where court appearances are involved, an attorney admitted to practice in the jurisdiction generally must handle the matter in court, even if an as-yet un-admitted attorney does most of the preparatory work. Un-admitted attorneys frequently can appear at administrative hearings.

complex for the available attorneys to handle effectively than to approve such a project and have it mishandled. That is a great disservice to the *pro bono* client, even if the client might not otherwise have had any counsel. Moreover, it can turn into a traumatic experience for attorneys who "get in over their heads." Their disappointment will likely be widely discussed within the firm, to the long-term detriment of the *pro bono* program.

While it is not essential that there be a partner overseeing each *pro bono* matter, matters that have even a modest level of complexity should be overseen by at least a mid-level associate, and in many instances, by a senior associate, a counsel, or a partner. Indeed, involvement in an oversight capacity may be an excellent means of involving more senior lawyers in the *pro bono* program – particularly since many such lawyers feel that they do not have sufficient time to play a more active role on *pro bono* matters.

An additional clearance should be from the assignment partner[8] for each associate who is to work on the project. An assignment partner's approval should mean that the pendency of the *pro bono* project will be taken into account when future assignments are handed out, just as would the pendency of any paying client project. It should also mean that an attorney who normally has a workload that is at or above the average for the attorney's practice area should undertake the *pro bono* project *instead of* other possible work, rather than *in addition to* the attorney's normal workload.[9]

This is not to say that an attorney can never be asked to forego work on a *pro bono* project if there is an urgent billable project. That can properly occur under circumstances where other billable work would also be temporarily put aside. It can also occur where there is also a pressing deadline on the *pro bono* matter, provided that the *pro bono* coordinator can find a different attorney within the firm to meet the *pro bono* deadline effectively. Assignment partners, members of the firm *pro bono* committee, and the firm's management can all be helpful in locating attorneys to meet *pro bono* deadlines, or to help meet the needs of the billable matter without taking an attorney away from a *pro bono* matter with an imminent deadline.

The process described above should minimize (if not eliminate) negative comments to associates about their unavailability for billable work due to their work on *pro bono* matters. An assignment partner should not approved an associate's working on a *pro bono* project if the associate does not have sufficient available time or is about to receive a major new assignment. After giving approval, the assignment partner should do everything possible to enable the associate to complete the *pro bono* project effectively.

An additional layer of approval may be required for extremely large *pro bono* matters. It can be unfair for one or more attorneys to be able to commit the firm to a huge *pro bono* matter of long duration, even with the *pro bono* coordinator's approval, where those attorneys may leave the firm long before the matter is completed and not take the matter with them. Practice groups can understandably feel "put upon" when attorneys in their groups are asked to take over a huge *pro*

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[8] An "assignment partner" is the partner through whom an associate receives new assignments or who coordinates other attorneys' uses of an associate's time.

[9] This part of the approval process can be facilitated if the *pro bono* coordinator receives information concerning which associates are swamped or are about to become swamped and which ones have available time.

bono matter from attorneys from a different practice group who have left the firm "holding the bag". A pre-emptive measure that can be used with regard to the very largest *pro bono* matters, is to require, with regard to each attorney who is going to work on the matter, that his or her practice group leader agree to the time commitment involved, and that the leader of the firm approve of the case's being taken on. This extra approval should not be subject to the personal views of practice group leaders about the nature of the case. Rather, such approval connotes an implied commitment that the practice group will see the matter through, so that if an attorney from that practice group starts out working on the matter but later leaves the firm, the expectation would be that someone from that same practice group will take over for the departed attorney. The approval of the firm's leader provides a firm wide institutional commitment to the largest *pro bono* matters.

Provide Attorneys Taking on Pro Bono Matters with Information about Sources of Guidance. Once clearance has been obtained, the coordinator, or supporting paralegal, should provide each attorney about to begin work on a *pro bono* project with useful information about available sources of guidance, possibly through the use of a printed form with blanks filled in. At Skadden, Arps the form indicates how to open up a *pro bono* account number, what pertinent manuals, videotapes, or briefs the firm library has, what other lawyers in the firm have handled similar cases, and which attorney at a source organization is available to provide guidance. The form also states that assistance from firm paralegals, process servers, and other staff can be arranged. In recent years, the form has been revised to note places on the firm intranet's *pro bono* area that have relevant information.

The *pro bono* coordinator should encourage attorneys handling *pro bono* matters to freely request the coordinator's advice. Even if the coordinator lacks substantive knowledge regarding the particular area, the coordinator may be able to provide sound strategic insights, as well as awareness of who does have substantive knowledge.

Have the Firm Defray Reasonable Out-of-Pocket Expenses, and Try to Minimize Those Expenses. A law firm ought to defray all out-of-pocket expenses reasonably incurred on *pro bono* matters, including, where appropriate, costs of computerized legal research and the costs of expert witnesses.[10] A law firm's refusal to pay reasonable out-of-pocket expenses can badly prejudice *pro bono* clients and can discourage the firm's attorneys from handling any but the most simple *pro bono* matters. Such refusals can also be self-defeating. For example, the extra time that attorneys spend doing legal research without computerized support usually could be billed out on paying client projects for far more money than the cost of using the computer.

Where it is possible that the *pro bono* client will secure a significant amount of money if the matter ends successfully (such as in a litigation where the client is suing for a substantial amount of damages), there should be an engagement letter providing that in the event of a money judgment of over a certain specified amount, the first portion of the judgment will go to paying back the law firm for particular types of out-of-pocket expenses it has incurred.

To the extent feasible, the firm should attempt to arrange with its regular vendors agreements for free or discounted services on *pro bono* matters. Court reporters, printers, and computerized

[10] Clients should pay certain customary fees, such as filing fees for not-for-profit corporations.

legal research firms have all been willing to provide free or discounted services in the United States on *pro bono* matters- at least some of the time, for some law firms.

Also, firm personnel working on *pro bono* matters should be encouraged to be extra sensitive to costs, without prejudicing the client. Thus, for example, special care should be taken to secure discounted air fares, to utilize free vouchers that the firm's travel agent may have secured based on volume, and to stay at suitable but relatively inexpensive hotels.

Check Regularly on the Status of Pro Bono Matters, and Take Pro-active Steps. It is crucial that *pro bono* coordination not come to an end once a matter has been placed. If coordination does end then, so may the effectiveness of the *pro bono* program. The coordinator must make sure to check systematically on how each *pro bono* case is being handled.

The coordinator should get data showing the hours spent on each *pro bono* project by each attorney and legal assistant, several times a year. (At Skadden, Arps, the *pro bono* database is now integrated with the firm's central computer, so that the *pro bono* coordinator is automatically provided data three times a year on the number of hours (if any) devoted to each particular *pro bono* matter by anyone – including people that the coordinator had not previously known were working on the matter.

Each attorney and legal assistant who has previously been known to be working on a *pro bono* matter and each additional attorney and legal assistant who the data shows to have worked on a *pro bono* matter should then be sent a form indicating the name of the matter, the number of hours the person has recorded for the matter since the previous status check, who else the coordinator believes to be working on the matter, and the last known status of the matter. Each such attorney and legal assistant should be asked on the form to indicate the matter's current status, whether any problems have arisen, whether new parties or issues have become involved in the case, whether anything on the form is inaccurate, and whether additional assistance is needed.[11]

Through such status checks the coordinator should learn of any instances in which the press of other work has led to *pro bono* projects not progressing, as they should. It can also enable the *pro bono* coordinator to find additional staffing when appropriate, and to learn of situations in which the nature of the matter changes.

The same approval process should be followed when the nature of a matter changes as when the matter is originally taken on. For example, conflicts checks should be done on any additional parties that become involved after the case opens. And if a new issue is injected into the matter, the *pro bono* coordinator should consider whether this could raise an issues conflict.

If a direct conflict or an issues conflict arises because of a new development in a matter, the law firm may seek to withdraw from the matter. The chances of a successful withdrawal will be enhanced if the *pro bono* coordinator is able to find substitute *pro bono* counsel from another firm that does not have a conflict. (Where it is foreseen at the outset that an after-arising direct or issues

[11] It would be better, of course, for volunteer attorneys to inform the coordinator contemporaneously about upcoming court dates, impending matters requiring assistance, and the like. Regular status checks can serve as a fail-safe mechanism where the coordinator has not otherwise been kept up-to-date.

conflict might arise, it would be wise to have an engagement letter providing that should that conflict indeed arise, the law firm would seek to find substitute counsel and, once such counsel is found, then endeavor to withdraw.)

Where the *pro bono* coordinator learns from the status updates that there has been some difficulty with the client – such as the client's failing to provide information, or falling completely out of touch with the attorney, the coordinator should take the initiative to contact the clearinghouse organization or other source of the matter, to ask that it contact the client to see whether the problem can be rectified. Sometimes the coordinator will learn that the *pro bono* client is refusing to follow the reasonable legal advice provided by the *pro bono* attorney. In some instances, the client may be taking advantage of the fact that it is not absorbing either legal fees or costs, and therefore may refuse to settle under circumstances that "cry out" for settlement on the available terms. Under circumstances where the coordinator concludes that the client is being unreasonable, the coordinator should try to enlist the support of the source of the matter, for an effort to persuade the client to act reasonably. In some circumstances, the coordinator should directly meet with the client, state his or her agreement with the legal advice that has been provided, and state that if the client still does not wish to follow that advice, the firm will seek to withdraw from the matter.

Ensure that All Substantial Pro Bono Work Is Regularly Evaluated. The *pro bono* coordinator should ensure that all attorneys (presumably, with the exception of partners) doing a substantial amount of *pro bono* work have that work evaluated as part of the firm's regular evaluation process.

Evaluations help attorneys learn from their *pro bono* experiences. That is particularly important to associates and the firm when associates assume major tasks on *pro bono* cases, such as the writing of a brief, the presentation of an oral argument, or negotiating a contract, before having had such responsibility on billable matters. Constructive criticism of such work should materially aid an attorney's professional development.

The evaluation of *pro bono* work helps ensure quality control. And it prevents a major deterrent to *pro bono* work: the perception that the time spent on *pro bono* projects constitutes what economists call an "opportunity cost": the taking up of time that, if spent on billable work, could impress partners and senior associates in position to advance one's career. The evaluation of *pro bono* work can, by advancing an attorney's career, be significantly more important than "counting" *pro bono* hours the same as billable hours – although that should also be done.

The best way for an evaluation to occur is to have a partner or senior associate assigned to oversee each *pro bono* project from the outset. Where that has not proven feasible, the *pro bono* coordinator, members of the *pro bono* committee, or other senior attorneys should review and comment on all substantial amounts of *pro bono* work.

Carry Out Other Coordination Functions. The remaining functions of a *pro bono* coordinator and *pro bono* committee can be described relatively quickly. One is to intercede, preferably via a *pro bono* committee member who is a partner in the practice group involved, when an attorney is criticized by a more senior attorney for handling an approved *pro bono* project, or when the firm's *pro bono* policies are otherwise violated.

Another function is to reassign *pro bono* matters when attorneys leave the firm and do not take these matters with them. This could occur either because the departing attorney or the attorney's next employer are unwilling to have the attorney keep the matter, or because the attorney is not in good standing when he or she leaves the firm. In the latter instance, allowing the attorney to keep the *pro bono* matter could be problematic, particularly if the source of the *pro bono* matter and the client are not advised that there might be a problem.

It is vital that the *pro bono* coordinator learn as early as possible when an attorney who is working on a *pro bono* matter is going to be leaving the firm. so that (i) if the departing attorney is going to keep handling the matter, the coordinator can arrange for a written agreement with the client agreeing to the firm's future noninvolvement (or in some instances, lesser involvement) in the matter or (ii) if the departing attorney is not going to keep handling the matter, the coordinator can arrange for a replacement lawyer who can confer with the departing attorney about the status of the matter and make an appropriate transition.

Another function of the *pro bono* coordinator is to publicize the firm's *pro bono* accomplishments and *pro bono* training events within the firm, using e-mail, the firm's intranet, and the firm's newsletter, and departmental luncheons when possible. It is useful to prepare a *pro bono* annual report, to be circulated to all personnel at the firm and posted on its intranet, and extracts from which can be included on the firm's website. Periodic *pro bono* newsletters can also be helpful. In addition, if the firm holds "retreats" for new lawyers, the coordinator should encourage the firm's leader to encourage the new lawyers to do *pro bono* – possibly stating that the leader "expects" that each new lawyer will do so within their first few months at the firm; and, if feasible, the coordinator should also lead a session at the retreat that is specifically devoted to *pro bono*.

The coordinator should also endeavor to make maximum possible use of summer associates, law students, and paralegals – as covered in more detail in E, below.

The coordinator should learn about *pro bono* administrative techniques that are proving successful at other firms. Firms that cooperate on little else are often happy to share information about their *pro bono* programs.

Finally, the coordinator should provide the firm's management with statistics on *pro bono* work, showing trends within practice areas and within lawyer categories. The coordinator should also supply firm management with suggestions for improvements in the *pro bono* program, in view of circumstances that the statistics may serve to highlight. And the coordinator should try to learn about internal practices at the law firm that could adversely affect the *pro bono* program. For example, if the firm's partnership or practice group evaluations do not give any recognition for *pro bono* being undertaken by attorneys in a practice group, that could deter *pro bono* work even if the individual attorneys in that practice group are given full credit for the hours they devote to *pro bono* work and are evaluated for the quality of that work.

E. Use Summer Associates, Law Students, and Paralegals Creatively

There are many *pro bono* matters on which most of the work can be done by summer associates, law school students whom the law firm may employ during the school year (and/or volunteer law students through the Pro Bono Students program that now exists at many law schools)

or paralegals -- in all instances under the supervision of an attorney. For example, law students may lawfully handle most types of administrative hearings. Experience has shown that summer associates and third-year law students supervised by attorneys can handle such cases effectively. This can be a particularly useful experience for summer associates, since if an administrative hearing is held during the summer and the client wins at the hearing officer level, the summer associate will have successfully handled a case from beginning to end.
Law students can also do most of the work in preparing applications for political asylum.

On several other types of projects, law students and paralegals can do most of the work, although an admitted-to-practice attorney must supervise the work and be counsel of record. Such projects include uncontested divorces, uncontested adoptions, incorporations of and securing tax-exempt status for nonprofit organizations, changes of name.

On all of these matters, it is even more vital than usual that guidance be obtained frequently from a lawyer who regularly handles such cases. This usually is an attorney at the legal services office or other organization through which the matter was obtained.

Moreover, when summer associates work on a project, the law firm must not only provide oversight during the summer from a regular firm attorney; it must also ensure that uncompleted projects are not "dumped" back on the source organization when the summer ends. "Dumping" can be avoided in three ways: the summer associate can voluntarily agree to keep working on the project when back in law school, under continuing guidance and supervision[12]; a law student working at the firm, or volunteering through the firm, during the school year can complete the project, under guidance and supervision; or, an attorney at the firm, preferably the one who provided the supervision during the summer, can take over the project.

Paralegals can also provide direct support to legal services offices and other public interest law organizations. For example, they can prepare digests of testimony or indices of documents in complex cases that those organizations handle. They can also assemble brief banks, collections of forms, and status reports on cases being handled by volunteer attorneys. They can provide information to indigent people about the workings of particular courthouses, without providing legal advice. They can also help in interviewing, in researching significant facts, in screening cases, in drafting certain documents, and in doing surveys of poor people about their legal needs.

F. Encourage Potential Sources of *Pro Bono* Projects to Enhance the Firm's Efforts

Pro bono coordinators or committees should encourage potential sources of *pro bono* projects to take steps that would make the firm's *pro bono* work more effective. To this end, firms should inform as many such organizations as possible about the types of resources that the firm potentially can provide on particular types of projects. (Often, the groups will not, on their own, be aware of all the ways that paralegal and other support could assist them.) The organizations hopefully will provide suitable projects for volunteers and will avail themselves of paralegal and other support for projects being handled solely by their own attorneys.

[12] Many summer associates welcome this opportunity. Moreover, in those law schools where doing unpaid *pro bono* is a requirement for graduation, this unpaid work generally counts towards that requirement.

Public interest law organizations could materially help *pro bono* coordinators at law firms by setting up or supporting a central clearinghouse encompassing as many such organizations as possible. It is highly inefficient for each law firm's *pro bono* coordinator to have to contact ten or more organizations regularly in attempting to learn about currently available projects. Unfortunately, in many cities, sources of *pro bono* projects are currently quite "balkanized." Where clearinghouses exist, they are able to send out requests for help via e-mail and faxes that can elicit virtually instantaneous responses. In cities specifically served by www.probono.net, available matters can be listed thereon by city and topic.

Public interest organizations can also aid firms in finding volunteer attorneys and can help clients receive better quality legal representation by informing law firm *pro bono* coordinators about available manuals, training tapes, training seminars, brief banks, memoranda of law collections, and form banks. (As noted above, many of these materials can then be put onto firm intranets, and, where feasible, onto www.probono.net.) In addition, the source organization's making an experienced attorney available to provide volunteer counsel with ongoing guidance enhances the quality of the *pro bono* work.

In cases in which volunteer attorneys fail to maintain regular contact with the source organization or refuse to follow its advice, the source organization should immediately contact the law firm's *pro bono* coordinator. That way, the problem can be immediately rectified. If such problems are not dealt with quickly, clients' interests may be prejudiced and public interest organizations may incorrectly conclude that it is generally a mistake to use volunteer attorneys.

One way to provide each source group with information about case statuses is for the firm *pro bono* coordinator to provide each such group with a summary of the status reports on each case originated by that group, following the coordinator's periodic compilation of status reports on every *pro bono* matter. If the firm is able to have a computerized *pro bono* database, assembling this information by source organization, and even by the particular attorneys at the source organizations, is quite simple.

G. Consider Alternative Mechanisms for Substantial Increases in *Pro Bono* Work

Several law firms have utilized special mechanisms to enable particular attorneys to handle great amounts of *pro bono* work. One approach that is increasingly utilized is to authorize a particular experienced attorney to spend a large percentage, or even all, of the attorney's time handling *pro bono* work and coordinating the firm's *pro bono program*, on an ongoing basis.

Another approach is to establish a *pro bono* department, in which one partner and several associates work full-time. This is usually done on a rotating basis, so that different partners and associates move into, and then out of, the *pro bono* department over a period of years.

"Released time", *i.e.*, an externship, is another alternative. This usually entails sending an attorney to work for four or six months at a legal services office or other public interest organization, at the firm's expense. At the end of a "released" attorney's stay, a new "released" attorney comes on as a replacement.

This can be extremely helpful not only for the public interest group but also for the firm's *pro bono* program. An externship is itself a way to reward associates who are in good standing with their practice groups and who are desirous of doing more *pro bono* work. Perhaps more important, attorneys who have completed externships have developed skills and substantive knowledge about particular areas of *pro bono* work that they can use on their own *pro bono* matters in the future and in mentoring other attorneys — who themselves may never be externs.

This can be an important vehicle for developing pockets of in-house expertise on areas of *pro bono* work and can significantly increase the willingness of others at the firm to undertake *pro bono* matters in areas of the law that are unfamiliar to them. Indeed, concern about possibly mishandling unfamiliar kinds of legal work, rather than lack of time, is probably the major reason why more lawyers do not undertake *pro bono* work.

Other possible mechanisms used at certain law firms include: offering associates the opportunity to spend a fixed, substantial percentage of time on *pro bono* work, while perhaps receiving somewhat less pay than other associates; and offering every summer associate the opportunity to spend a significant portion of the summer working for a legal services office or other public interest law organization, at the firm's expense.

Some of these mechanisms may prove more attractive than others. One benefit of most of them is that they make possible intense, sustained high-quality work on complex *pro bono* cases. They may also make possible the effective handling of certain types of cases that are particularly vital to the poor but that normally are not suitable for volunteer attorneys.

H. Provide Funding for Full-Time Lawyers in Legal Services Offices and Other Public Interest Law Organizations

Clearly, the most efficient way to provide additional legal services to the poor and to nonprofit groups is to add additional attorneys to the full-time staffs of legal services offices and other public interest law organizations. This can be especially worthwhile if the additional lawyers are exceptionally well qualified. Law firms can accomplish a great deal in this regard by providing funding to enable the hiring of such additional attorneys.

The leading effort by a single law firm in this regard is the Skadden Fellowship Program. Skadden, Arps set up a foundation in 1988 that has funded each year a new group of at least 25 graduating law school students and departing judicial law clerks who work for two years each at legal services offices or other public interest organizations. The program is designed to enhance the provision of civil legal services to the poor, the elderly, the homeless, the disabled, and those deprived of civil or human rights in the United States. Since there is a new group each year, there are at any given time at least 50 Skadden Fellows in the field.

Each applicant for a Skadden Fellowship must find a sponsoring organization that indicates its willingness to have that applicant work on a specified project there for two years. Recipients of the fellowships are paid, at the expense of the fellowship foundation, a salary equivalent to the pay of a second year federal judicial law clerk and receive all fringe benefits that an attorney at the sponsoring organization would get. In addition, the fellowship program defrays all debt service on

law student loans during the term of the fellowship, if a recipient's law school does not forgive loan payments under such circumstances.

There is no obligation for a Skadden Fellow to work for Skadden, Arps, or any other law firm, once the fellowship ends, and the vast majority remain in full-time public interest law. The fellowship program assists in this regard with ongoing career advice and networking.

The Skadden Fellows are selected by a board of trustees, a majority of whom are not affiliated with Skadden, Arps. The recipients are selected on the basis of their academic performance, their proven commitment to public service, the quality of the sponsoring organizations and of the specific projects, and regional diversity.

This program has demonstrated that there are many hundreds of well-qualified law school students who would gladly enter into full-time legal services or other public interest law work at much lower salaries than leading law firms now offer, if such jobs existed and there were a mechanism for handling payment of law school debts. Fortunately, fellowships awarded through the National Association for Public Interest Law ("NAPIL"), with the great assistance of the Open Society Institute, now provide dozens of others each year with fellowship opportunities. In most instances, the NAPIL fellowships are co-sponsored (and in some instances entirely sponsored) by one or two law firms. Others have created additional fellowships, in some instances by individual law firms.

One side benefit of the selection process for these fellowships is that applicants are introduced to the public interest organizations that sponsor them prior to or very early in their third year in law school, and, in the case of the Skadden fellowships, they learn who has been selected by early December. This gives the unsuccessful applicants and their would-be sponsors a substantial amount of time in which to seek alternative sources of funding. Prior to the initiation of the Skadden fellowships, most public interest organizations did not interview third-year law students at all, and the few that did waited until much later in the academic year to undertake such interviews.

Obviously, most law firms do not have the resources to establish a large foundation, as Skadden, Arps did. However, if every law firm that could afford to fund one or a few such fellowships were to do so, that would increase tremendously the job opportunities in legal services and other public interest law. It would also substantially increase the number of indigent people and nonprofits whom those organizations could serve effectively.

Such efforts must not be substitutes for *pro bono* programs. Skadden, Arps recognized this when it announced its fellowship program. It stressed that the firm would continue to increase the amount of *pro bono* work done by its attorneys, summer associates, and legal assistants. Indeed, the firm has utilized the Skadden Fellows to encourage Skadden, Arps lawyers to do more *pro bono* work. As a direct result of Skadden Fellows' appearances at the firm's *pro bono* luncheons, and other interactions between past and present Skadden Fellows and the firm's *pro bono* programs, many of the organizations at which present or former Skadden Fellows work have been provided with additional *pro bono* assistance by Skadden, Arps attorneys, summer associates, legal assistants, and support staff.

CONCLUSION

Law firms should systematically enhance their *pro bono* programs. Doing so helps the most deprived individuals and groups in our society. It also improves the legal and interpersonal skills of firm attorneys, summer associates, and paralegals.

Moreover, through *pro bono* work, many law firm attorneys are exposed to how our legal system actually handles matters involving the least powerful in society. In many instances, attorneys have used the knowledge they have gained through *pro bono* work to seek reforms in the legal system. Perhaps the most important as-yet unrealized reform is to guarantee all those unable to afford counsel with the legal right to effective counsel in civil matters – a right that, at least as a matter of constitutional principle, already exists in criminal matters.