

ABA/ NLADA 2004 EQUAL JUSTICE CONFERENCE

**Addressing Environmental & Housing Issues  
through Private Bar Partnerships**

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**Brief Description:**

Have you ever considered using partnerships with the private bar to address environmental issues? In this workshop, the panel of private and legal services attorneys will discuss the models for and the benefits of such partnerships. The session will also include identifying environmental and housing causes of action and obtaining the resources needed to pursue such claims.

**Topical Outline:**

**I. Aaron's Story**

**II. When should legal services seek partnerships with private bar?**

**A. When should you consider a partnership? Why not just hand off the case?**

**1. Type of Case/Causes of Action**

**2. Who is the Client(s)? (legal services provides)**

a. Language capacity

b. Cultural awareness/sensitivity

**3. Resources Needed (firm provides)**

a. Better, less expensive experts

b. Support staff

**4. Client Eligibility**

**III. What projects interest the private bar and what does the private bar get out of the partnership?**

A. Legal Service Perspective

1. Challenges for firm personnel

- a. New subject areas
- b. Fighting injustice, issues are more clearly cut
- c. Morale builder

2. Publicity and recognition

3. Firm's understanding of poverty law clients and issues

4. Better stories to tell family and friends

B. Private Bar Perspective

1. Amazing litigation experience (especially for junior associates)

a. Provide young associates with an opportunity to get first hand trial and motion practice experience and a chance to work with clients. Most large law firm clients are huge companies and young associates sometimes never get a chance to meet the client.

b. Trial experience – many legal service cases are on the verge of trial. When a private firm steps in, associates at the private firm get an excellent opportunity to either first chair or second chair a trial. Also, with these types of matters, private firms get an opportunity to learn how to try a case under pressure.

2. Pro bono requirements --

a. State bar requirements – Many states have either mandatory or “aspirational” requirements of 50 hours a year. Getting involved in these cases help private bar attorneys meet that requirement.

b. Law firm requirements – In addition, many firms require junior attorneys to commit a certain amount of hours to pro bono work. These partnerships allow junior associates to meet that requirement.

3. Awards --

a. Individual attorneys – individual attorneys often receive awards for work on legal service matters that help bolster their career and recognition in their legal community.

b. Law firm recognition – many firms also receive awards for their excellent and commitment to pro bono work. This helps these firms with recruitment and retention of attorneys (often problems for large law firms).

4. Variety of cases and doing work that helps the everyday person --

a. Different types of cases than typically work on – By doing pro bono work, young associates have an opportunity to learn about other types of legal issues that they would have never even looked at if they had strictly worked on private bar cases.

b. Making a difference – This kind of work can be quite rewarding. This plays a big role in getting private firms involved in partnerships.

**IV. How to “sell” your case to the private bar?**

A. Tell a compelling story: You are speaking to lawyers and individuals. So tell both a rational story and an emotional story. Get their interest as lawyers and as mothers, fathers, sons and daughters.

B. Tell a story that will reflect well on the firm: Simply obtaining money for people who lived in slum conditions is not sufficiently different than winning money for a corporation. But, fixing homes, protecting children and so forth sets the firm apart.

C. Learning opportunities for associates: As has pointed out this is a big selling point. Identify these opportunities in your case, be willing to hand over the opportunities to firm associates and point out these opportunities when telling your story to the private firm.

**V. How to "sell" your organization to the private bar**

A. Organization’s track record

1. Reputation for strong cases and clients

2. Expertise in area of law

**VI. What to look for in co-counsel?**

A. Legal Services Perspective

1. Expertise in the area of law: Just as the private attorney desires legal services expertise in unfamiliar areas of law (rent control, landlord/tenant, public benefits), the legal services attorney gains from working with a private firm with expertise in the area of law. For

example, a landlord/tenant case may be founded in contract or have important, ancillary personal injury theories--areas in which some private firms can provide extraordinary insight and experience.

2. Committed resources: Go in knowing what resources private counsel has committed to the case. Is one associate expected to find time to work on the case and cover her regular work? Or has the firm assigned the case to a partner who has several associates and a paralegal at her disposal?

3. Must it be pro bono? Consider partnerships with firms that will recover attorneys fees if they are awarded or even those that will represent on some issues “low bono” or “modified contingency.”

#### B. Private Bar Perspective

1. Need to make sure cases are screened: Because private firms can only work on so many pro bono cases a year, need to make sure that they are screened for merit.

2. Need to work with people who are also trust worthy and reliable. Private bar tends to work with people who are well-known and respected in the legal service community. Many times private bar needs to rely on facts that legal services provides (in many instances, the case is often going to trial the next day). It could be extremely embarrassing and detrimental to the client if the legal service group provided inaccurate information.

3. Need to partner up with environmental groups or legal service groups that are knowledgeable and have been successful in what they do. Typically, the type of pro bono cases that big firms get involved with do not involve the areas of law that our firms typically work on (e.g., housing issues, toxic torts, etc.). If a lawyer from a large firm took on a case that was unfamiliar territory without a good legal services support group, the case could be a serious uphill battle. The other side in these types of case will spend large amounts of money hiring the best firms who *DO* know something about the specialty legal issues at stake. With a knowledgeable legal service group, the other side’s advantage goes away.

3. Have unique or ground breaking issues: While we do most of our work on smaller cases that do not have huge global effects, the private bar likes to get sexy pro bono cases that involve ground breaking issues (e.g., changing housing laws, cases of first impression, etc.).

### VII. **Logistics of forming partnership for a particular case**

A. Legal protections are necessary – even if you have long standing/good relationship.

1. Co-counseling materials – these types of agreements are helpful in maintaining all appropriate privileges as well as the confidentiality of documents involved in the case.

2. Work out sharing expenses in writing

B. Figure out a plan early on how to best divide up the case

1. Dividing by strengths of groups involved

a. Look to strengths --

- (1) Have environmental groups work with technical experts
- (2) Big law firms do pleadings and discovery
- (3) Legal service groups work directly with clients (usually

have Spanish speakers if necessary and good resources to help clients with daily needs)

b. Under this plan, it is necessary, however, to determine who will be lead counsel. While most likely there will not be any issue, it is important to raise this issue at the forefront so all of the attorneys have a common understanding during the course of litigation.

2. Sometimes it is useful to divide a big case up by clients -- for example, in the lead paint poisoning case we divided by client because OMM had resources to take the lion share and Legal Aid already had a relationship with some clients already. Dividing by clients often dilutes any problems over who is lead counsel on the case.

3. Sometimes by dividing by cause of action is helpful -- for example, when a particular group has an expertise in a particular area.

C. Experts

1. Costs of Experts

a. Get experts to work at discounted rates. Appeal to pro bono spirit and chance to work on ground breaking case.

b. Private bar can help contribute to large expert costs

2. Finding the right experts is very difficult – especially on a case with a particular focus.

a. Publications (e.g., in LA, California, there is a great expert directory published by the Los Angeles Lawyer Magazine).

b. Good agencies (e.g., TASA who will often waive their finders fee for a pro bono case).

c. Asking around – talking to other attorneys (including defense attorneys who thought experts on the other side were particularly good).

3. Retaining letter -- Draft a good expert retaining letter to make sure cover any potential legal problems.

4. Motivating the expert to get involved and stay involved

a. Often experts do very little, especially when working at low rates.

b. Need to stay on top of expert and make things easy for them to get what you need (e.g., drive children to be examined by doctor to doctor's office, get records doctor needs and hand deliver to office, etc.).

### **VIII. Environmental causes of action**

A. Complaint for lead paint hazards and lead poisoning case.

1. Be creative in what causes of action you bring. In a case that we worked on, which involved lead poisoning of several young children we found a great local statute that required landlords to ensure lead safety compliance. Unfortunately, there was no private right of action under the statute. However, we realized under California law, that we could bring an action pursuant to the unfair business practice code, which would allow us to bring a cause of action under the statute.

2. Depending on your state, there are generally strong environmental regulations that are useful in civil litigation. For example, in California we have a law known as Prop 65 that requires landlords to post notices if toxic chemicals are present in the building. Also, there are many relevant federal regulations. For example, Title 10, which unfortunately applies only to units with at least one bedroom.

B. Discussion of some causes of action and potential experts

1. Try to find experts who have a specialty in the particular environmental issues (e.g., we found a doctor who specialized in lead intoxication as well as a California Certified Lead Inspector/Assessor.) It takes more time to find such specialists, but it really is worth the extra effort on the back end.

2. Get the state or local authorities involved. We brought a cause of action under Proposition 65, which required us to notify the California attorney general about the illegal activities of the landlords in our case.

### **IX. Questions**