

PITCHING PRO BONO: GETTING TO FIRST BASE WITH THE “BIG FIRM”

By Karen A. Lash¹

Like most marriages, partnerships between nonprofits and Big Firms doing pro bono generally begin with a proposal. The best predictor of whether a firm will say “yes” to your pro bono pitch is whether you ask. But obviously there's more to it. Who do you ask? Which matters do you pitch? What information do you need to include when you ask? What kind of training and support should your pro bono program provide? Success in creating a pro bono program and enrolling more lawyers in your work depends on these answers. While each pitch should be tailored to the lawyers and specific legal issues that the lawyers intend to take on, some general principles always apply.

I've been pitching pro bono in one form or another for twenty years, but working with the Mississippi Center for Justice (MCJ) to help alleviate the staggering legal problems left in the wake of Hurricane Katrina has been like a laboratory for learning about pro bono. MCJ has partnered with volunteers from across the country, serving-up pro bono opportunities ranging from long-distance projects done on desktops a thousand miles away to projects requiring on-the-ground involvement. Sometimes the cases require hundreds or even thousands of hours, and others fewer than ten. Some projects have been half-baked and others fully formed.

When asked to speak to the Equal Justice Works fellows last fall on lessons learned about pro bono pitching, I asked for input from those who I worked with on various pro bono initiatives. I invited about a dozen “Big Firm” pro bono counsel, directors and coordinators to share their quick and dirty “top tips” regarding the ways a nonprofit organization can successfully work with a law firm on a pro bono project. Thanks to their illuminating responses and generosity in sharing their experience in coordinating and providing pro bono services, this article mines both sides of the pro bono ask, suggesting effective methods for getting to “yes,” especially with the Big Firms.

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These recommendations are intended for both novice and seasoned pro bono providers, offering ideas for developing and nurturing good relations with pro bono firms. If you pitch for a living, you have your own effective practices. If you're starting out in this game, you will want to know more about other parts of the pro bono continuum, like establishing program priorities, delivery design and technology, the intake mechanics, getting volunteers to report on their progress (I hope someone writes an article addressing this topic), and the importance of crafting myriad ways to say "thank-you." I don't cover these or many other parts of the delivery continuum here, and instead highly recommend resources like the ABA *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means*² and the ABA's Pro Bono Center website.³ What I *do* focus on are the "Big Firms," because while they represent only a fraction of the pro bono rich universe, they offer unique resources and have particularized interests. Happy pitching!

1. Res Ipsa

You are pro bono counsel at Big, Bigger & Biggest, the largest firm in the country. Which case would you consider if both were pitched to you?

Case # 8890768

Client seeks assistance with a Conservatorship over her sister whose husband is deceased. Client's sister suffers from paranoid schizophrenia, and she has lived with client for the past five years. Client states her sister is incapable of handling her own affairs.

OR

WOMAN CARING FOR MENTALLY ILL SISTER NEEDS HELP SECURING CONSERVATORSHIP

Ms. Martha has taken care of her younger sister Ms. Jane ever since Ms. Jane's husband died of cancer. Ms. Jane was diagnosed with paranoid schizophrenia just before moving in with her sister five years ago. Her illness makes her easily confused when she leaves home, and she has spent many days scared and on the streets before the police or her sister found her. Ms. Jane requires constant supervision. Because Ms. Martha is also the primary caretaker for their aging mother and her own two teenage children, obtaining a Conservatorship would give this family some sense of stability and access to benefits necessary to help care for Ms. Jane, keep the family together and safe in their home.

² AMERICAN BAR ASS'N, STANDARDS FOR PRO BONO PROGRAMS (1996), <http://www.abanet.org/legalservices/probono/standards.pdf> [hereinafter ABA PRO BONO STANDARDS].

³ American Bar Ass'n Ctr. on Pro Bono, <http://www.abanet.org/legalservices/probono/home.html> (last visited Nov. 15, 2008).

Timeframe: ideally completed by December 15; Training available, model petitions and step-by-step manual available; staff attorney Cait Clarke available for questions at: 202-222-2222; opportunity for court appearance; uncontested conservatorships average 15 hours; conflicts information available upon request.

Many of the Big Firm pro bono counsel's top tips elaborate on why the second pitch -- and yes, they are the same case -- is far more likely to help you get what you want and what your client or organization need. The rest of this article sets out an annotated to-do list of effective practices, drawn in large part from Big Firm pro bono counsel's own words, to incorporate into your own pitching strategies. I conclude with a smorgasbord of potential pro bono asks as a reminder of the many ways to partner with Big Firm allies, beyond the traditional direct service and impact litigation fare.

2. Pro Bono Isn't "Free"

Before deciding how to make your pitch, you must first properly staff your end of the deal. Pro bono doesn't seamlessly and effortlessly happen. Hardly. It takes an enormous amount of work to do pro bono effectively and ensure that clients are well-served. Whether you're expanding, reviewing or creating your pro bono program from scratch, it's essential that the program be *properly staffed*. Otherwise, the best pitch in the world will ultimately fail for lack of support, likely taking the relationship with the pro bono attorneys, if not the entire Big Firm resource center, down with it.

There's no magic formula for determining how to provide appropriate staffing. Each nonprofit will incur *significant* expenses in establishing an effective pro bono program. The nonprofit must first analyze legal needs to determine which are well-suited for pro bono assistance, cultivate relationships with volunteer pro bono attorneys and set up intake clinics. Nonprofits must then develop trainings, update manuals, track cases, provide malpractice insurance, and be available to answer questions and work with, mentor, or serve as co-counsel. Unfortunately, furthering the law's core value of protecting justice through quality pro bono programs is expensive.

Consequently, decisions to create or expand existing pro bono programs should not be made without serious attention as to whether sufficient resources, human and otherwise, exist. It's important to note that some firms help fund the pro bono delivery process by making donations primarily, and sometimes exclusively, to the nonprofit organizations that they have a pro bono relationship with. Indeed, pro bono programs often become a critical part of a nonprofit's overall fundraising strategy, in the hopes that the firms will not only underwrite their share of the matters they receive, but also help ensure the overall financial security of the nonprofit. Bottom line: the rest of the discussion assumes you have dedicated enough resources to provide high quality legal services to clients by leveraging the cost of working with Big Firm volunteers.

Before-you-start to-do list:

- Make sure a staff member is charged with coordinating all aspects of the pro bono delivery process, from cultivating Big Firm relationships, to saying “thank you” when cases conclude
- Implement systems for screening matters appropriate for pro bono representation
- Acquire software programs for placing and tracking placed matters, including all forms of correspondences
- Get malpractice insurance for volunteers
- Ensure that staff are committed to devoting a portion of their time to support volunteers through means of developing trainings and providing materials and serving as mentors or co-counsel
- Implement public recognition strategies for your volunteers
- Incorporate fundraising staff into the process

3. Everyone Loves a Winner: Screen for “Winnable” Cases

We expect good analysis of the issues so nothing particularly out-of-the-ordinary will surprisingly arise. Obviously no one can ever anticipate everything that might present challenges, but you better anticipate/identify potentially dispositive issues, big legal hurdles, and difficult facts. Thorough and expert intake is crucial. - David Lash, O’Melveny & Myers

Tell me all the problems with the case that you know from the get-go. It might make it easier for you to sell that one case if you don't disclose but I will never want to take another case from you. - Kathi Pugh, Morrison & Foerster

Worst thing in the world is to give the volunteer a bad experience. Refer cases that have substantive merit, that are likely to be winnable or to achieve some sort of feel-good result, including an interesting or challenging legal issue, even a losing one. You want your volunteers to come back! - David Lash, O’Melveny & Myers

There’s little question that success increases the chances a volunteer will take another case. William Mitchell College of Law Professor Deborah Schmedemann’s recent study concludes that volunteers are most likely to return if their previous case was “straightforward” (rather than “difficult”) and the attorney was able to say she “won” (rather than “lost”) her previous pro bono case.⁴ However, Kathi Pugh’s advice is key: disclose any weaknesses or unknowns, which includes informing the volunteer attorney if you believe the chances for winning a case are slim.

This principle applies a little differently for impact cases or signature projects, which may be less straightforward. Here, thoroughly develop your pitch by identifying potential problems, ensuring client and organization preparedness, and evaluating the chances of “winning.” This

⁴ SCHMEDEMANN, DEBORAH A., PRO BONO PUBLICO AS A CONSCIENCE GOOD 21 (William Mitchell College of Law 2008), available at <http://ssrn.com/abstract=1121042> (last visited Nov. 15, 2008).

may include gently reminding the pro bono counsel of Atticus Finch’s insight that “just because you’re beat before you start, is no reason not to try.”⁵ Fortunately, many firms will relish tackling a righteous – albeit likely losing – impact matter, if you can propose it as part of a compelling larger or longer-term strategy.

Some legal services attorneys, and the cultures within which they work, will resist giving away many of the “good” cases to volunteers. But a successfully executed pro bono program will ensure that those “good” cases are being handled, which will free up valuable staff resources for other purposes, at the same time expanding the nonprofit’s capacity and building valuable relationships.

Bottom line: treat your volunteers as if they are your clients. Do what you can to ensure a positive experience working with you, your organization, and most importantly, the client that they serve.

Screening to-do list:

- Make sure the matter is sufficiently ripe
- Ensure a good chance of “winning” or explain the significance of taking on the matter anyway
- Provide information to manage expectations, candidly disclosing what the case involves, including any weaknesses or unknowns
- Ensure that staff are committed to devoting a portion of their time to support volunteers through means of developing trainings and providing materials and serving as mentors or co-counsel
- Make sure staff will let some good ones get away

4. Screen for “Likable” Clients

At a minimum, a quality screening means...full disclosures are made regarding known “interesting factors” about the client’s personality or history (i.e. psychological issues, history of repeated referrals). - Cristin Zeisler, Manatt, Phelps & Phillips

Make sure that clients are well-screened (financially, psychologically, etc.) and projects are well thought out before proposing them. - Elly Spiegel, Kaye Scholer

No clients so difficult that they will overwhelm the volunteer lawyer’s experience. - David Lash, O’Melveny & Myers

In some ways, doing intake for staff attorneys differs from intake for pro bono attorneys. We can’t do justice to the needs of those we aim to serve if we continually screen out challenging or unsympathetic clients. But pro bono counsel have their own interests. Heed their advice about not referring “difficult” clients and disclosing any red flags if you want volunteers to come back

⁵ HARPER LEE, TO KILL A MOCKINGBIRD 121 (J.B. Lippincott 1960).

for more. At the same time, it is important to alert volunteers to the realities that the clients face, including poverty, juggling several jobs, inability to respond quickly because of a lack of access to email, life experiences that may cause them initially to be distrustful, or lack of ability to read documents and fear of directly saying so.

In addition to the initial screening, you may use follow-up strategies. One nonprofit coached me on its procedure to make sure the client is responsive and responsible by screening for “SID”: “See If Dependable.” The nonprofit established procedures such as having the client send documents within two weeks of the initial intake, or having the client keep a follow-up telephone appointment before saying “yes” to trying to place the case.

Volunteers will absolutely expect that you have verified that the client is income-eligible, satisfying your program’s income guidelines or providing a compelling reason for placing the case if she is not.

More screening to-do list:

- Verify the client is income-eligible
- Verify the client is cooperative and responsive

5. Explain the Staffing, Expertise and Money Expected to Handle Each Particular Matter

It’s always a good idea to specifically describe the level of expertise likely to be needed to handle the given circumstances. Examples: (A) The case is a very straightforward adoption – indicate that “case is appropriate for anyone new to the area of adoptions law”; (B) The case involves a complicated IEP with many back-end issues – indicate that “experience with special education law is required”; (C) the case involves filing a class action law suit in an obscure area of law against a fierce and well-represented adverse party – indicate that “active involvement of a highly experienced partner is required to lead a team of at least 3 associates.” - Cristin Zeisler, Manatt

Learn how to co-counsel with big firms. Tell us upfront the role you wish to play & what you expect from your co-counsel. I always recommend having a "sit down" at the very beginning and hashing out a co-counseling agreement. It's kind of like a pre-nup - it's much easier to talk about these things at the beginning of the relationship than to fight it out when the relationship is breaking up. - Kathi Pugh, Morrison & Foerster

Be as specific as you can regarding what you need: time commitment, type and level of expertise, size of team, budget, etc. - Elly Spiegel, Kaye Scholer

If a firm is not willing to make an up-front pledge to donate any potential fees to your organization upon successful conclusion of the case (minus hard cost recoupments), you may want to find yourself another partner. - Cristin Zeisler, Manatt

Note relevant deadlines and/or when you expect work product. - Susie Hoffman, Crowell & Moring

If pitching a project (as opposed to a single case), it's important to provide a thorough presentation of the scope, the training needed (and who will provide it and when), the expertise level needed, whether there will be out-of-pockets that the firm will be expected to bear; what type of mentoring will be made available, what the time frame will be. - Debbie Segal, Kilpatrick Stockton

Some needs, like deadlines, are straightforward. Others require a delicate balancing act. When you genuinely need years of experience in an area of law, clearly say so – but don't preclude the firm from offering assistance if they can come close. An unsupervised first-year associate with no appellate or employment law experience should probably not take on your precedent-setting Fifth Circuit Title VII appeal. If you need appellate and retaliation law expertise, tell the law firm. And if the record is thick and complex requiring many hours to review, note that an associate would be beneficial to the team.

Your goal is to avoid the situation where a firm's pro bono counsel circulates your matter and enrolls an enthusiastic volunteer, only to have you say "sorry, we need more and better." Similarly, guard against the scenario where pro bono counsel delegate a technical project to a paralegal or brand-new attorney who stand little chance of giving you a usable product. If a reasonable team for your matter involves active involvement from a partner familiar with the work required, be upfront about it.

Also delicate is the topic of fees. Try to find out how the firm has handled both the paying of case-related costs and who gets any award of attorney's fees in prior pro bono matters. Ideally, you would have a baseline policy and communicate it to the firm, but be willing to negotiate depending on the firm's policy, the circumstances of the particular case and the interests and needs of both the firm and the nonprofit organization. Not everyone agrees with Cristin's opinion about donating fees.

But the most important part of your pro bono request is to precisely describe the legal assistance needed from the law firm. Investigation and analysis? Advice and counsel to your organization or to a client? Full representation? Client education and training? Research only? Litigation co-counseling? Whatever it is, state it clearly.

Articulating expectations to-do list:

- Clearly state what the "ask" is -- precisely what kind of legal help is needed
- Estimate the number of hours expected to handle the pro bono matter
- State deadlines and/or timeframe for work product
- Specify the number of lawyers and experience level needed (or preferred)
- If the help requires specialized expertise, say so

- Clarify co-counsel role, especially with large matters, and have a draft co-counsel agreement ready when you make your initial pitch
- Clarify responsibility for other financial considerations such as who will pay costs of discovery, filing fees, depositions, expert witnesses, travel and other significant expenses
- Clarify how attorney's fees will be divided

6. Everyone Loves a Good Story

Offer compelling facts/story. A large part of what pro bono coordinators do is "sell" the project to our attorneys. Doing pro bono work often entails putting in those extra hours on nights and weekends, so we need to make a compelling case to our attorneys that there is a worthwhile client or cause that will motivate them. For example, telling us that you have a "client who needs representation in an eviction proceeding" does not get the juices flowing. Try "our client faces homelessness if evicted, and is battling to stay in his home. The landlord, who has a reputation as one of the city's worst slumlords, has not addressed housing code violations in the apartment, such as rat infestation, an inoperable stove, etc..." - Susie Hoffman, Crowell & Moring

[A] [m]ajor goal is have the pro bono lawyers have a good experience, professionally and personally, be sure they feel they are doing something that touches a life or involves a cause for which they feel passion, be sure they come back for more and be sure they tell their friends/colleagues who, in turn, will become volunteers. - David Lash, O'Melveny & Myers

An ideal set-up: 3 sentences of the core facts, followed by "what's in it for me" info for the potential volunteer (not all attorneys see value in "merely" rendering service to those in need), followed by contact info for whomever has the longer version of the story with conflicts and financial info. Emphasize how a case/project will benefit the volunteer.

Some examples, (1) "Great opportunity to appear in court" (2) "Great opportunity to conduct negotiations and develop client contact skills" (3) "Perfect for busy partners" – This beautiful phrase actually attracts a wide range of attorneys (including associates who fancy themselves partners) (4) "Learn new skills while earning CLE credit [and – add only if true and appropriate – working with an expert mentor]" – This is a fantastic phrase to use when pitching areas of law that are typically unfamiliar (and therefore rather terrifying) to "Big Law" attorneys, such as immigration and family law. - Cristin Zeisler, Manatt

A growing body of psychological, sociological, and legal literature reveals the wide range of reasons that attorneys perform pro bono.⁶ Professor Schmedemann offers an excellent overview of the leading studies on the topic by social psychologists and sociologists, as well as

⁶ SCHMEDEMANN, *supra* note 4, at 13.

studies focusing on the legal profession by Deborah Rhode,⁷ the American Bar Association,⁸ and Robert Granfield.⁹ Professor Schmedemann also includes findings from her own comprehensive study of lawyers, law students and undergraduates.¹⁰ Although motivations vary, themes emerge and are captured beautifully by David, Susie and Cristin’s advice. The most appealing case descriptions speak to core values of fairness and justice, and help lawyers realize that they’re making a real difference in a real person’s life, while at the same time enhancing their professional expertise.

Cristin Zeisler wisely recognizes that many prospective pro bono attorneys may wonder, “what’s in it for me?” Whenever possible, you want to weave the answer into your storyline when you pitch pro bono to a law firm. In addition to new skills or experience, this can also include rich opportunities for business developments that sometimes accompany pro bono work. For example, MCJ has brought together big firm attorneys with in-house counsel for companies like Bank of America and Citi for particular projects, offering valuable opportunities to make connections with new clients and foster relationships with existing ones. Sometimes that overlap cultivates pro bono support. An example of this occurred when a handful of attorneys persuaded their firm leadership to pay their way to staff Katrina clinics in Biloxi by pointing out that they would be working alongside a big client’s in-house corporate counsel.

Storytelling to-do list:

- Tell a compelling story that shows how the volunteer can prevent or correct a wrong
- Imbed fairness and justice values alongside a few telling details and an emotional hook
- Identify “what’s in it for me” storylines for the volunteer such as skills and/or business development opportunities

7. Conflict Avoidance

Pet Peeve: Incomplete Conflict information and misspelled conflict information. This is a problem for two reasons. First, if incomplete, and we wind up being adverse to a firm client, it's not pretty internally when it's discovered. Secondly, it means we have to give the case back, which is not fair to the client or to the organization. - Debbie Segal, Kilpatrick Stockton

Leave the employee-rights cases and anything involving a large national or regional bank as an adverse party off of the big-blast list. Virtually no large law firm can touch these cases. I can't

⁷ See generally DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS (Stanford Law and Politics 2005).

⁸ See generally AMERICAN BAR ASS’N STANDING COMM. ON PRO BONO & PUBLIC SERV., SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS (2005), <http://www.abanet.org/legalservices/probono/report.pdf>.

⁹ See generally Robert Granfield, *Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Programs*, 54 BUFF. L. REV. 1355 (2007)

¹⁰ See SCHMEDEMANN, *supra* note 4, at 10-16.

wade through 45 cases that I have no chance of placing in order to try to uncover the one or two gems that might be buried in there. Save those for a much smaller universe of firms/attorneys whom you have cultivated to take on such projects specifically. - Cristin Zeisler, Manatt

Conflicts notwithstanding, think in terms of connecting groups with traditionally opposing viewpoints around pro bono work. Not only might this leverage important resources for the project at hand, but can also develop better communication and understanding among these groups more generally. For instance, I recently counseled a friend that oversees the in-house pro bono efforts for a large pharmaceutical company to consider directing her team's pro bono resources to developing law and policy in sub-Saharan Africa as it relates to healthcare access and availability of pharmaceuticals. - Seth Levy, Davis Wright Tremaine

Some conflicts issues couldn't be more straightforward: identify all knowable parties and spell their names correctly. This includes corporate entities, their DBAs, and sometimes the individuals in leadership and on the board of directors.

Conflict avoidance has additional nuances. Firms face conflict of interest problems that differ from the kinds of conflict questions nonprofit Executive Directors and legal services attorneys face. Accordingly, when you have a lot of foreclosures or employment law cases, which commonly pose conflicts for many firms, do not send them in your generic email blast to all of your pro bono partners. However, you would be well served to research the client and pro bono history of plausible firms, and after concluding that a firm is a "maybe," call its pro bono counsel. Even if the firm still conflicts out, they may have recommendations for where to head next. Big Firm pro bono counsel meet annually and participate in national or regional listserves and conference calls, so they often know which firms handle, or have the potential to represent, which categories of clients. For example, when the insurance problems began pouring in post-Katrina, we feared all the Big Firms would conflict out. But Amos Hartston at Latham & Watkins told us that his firm does plaintiff-side insurance work, and urged us to also reach out to Covington & Burling and Gilbert Randolph. That one call hit the mother lode – all three firms provided critical help with insurance matters.

Nonprofits, however, have their own ethical concerns. Remember you could unwittingly be calling the firm that despite initial research turns out to be opposing counsel. Withhold lists of all actual parties, local and opposing counsel and other key players until a firm is interested and ready to do a conflicts check. Otherwise you may reveal confidential information about your client, or litigation strategy.

Conflicts to-do list:

- Carefully list all parties, correctly spelling all names and identifying corporate entities
- List names of all known local counsel and opposing counsel
- Be thoughtful and savvy about the firm's issue conflicts, but not overly shy – sometimes a phone call will get a surprising result
- Don't send cases in an email blast if most recipient firms will conflict out

8. It's Not What You Know But Who You Know: Deciding Whom to Call or Email

Seek out board members from law firms/corp law departments and ask who to contact at their offices so that you are pitching to the right person; Use pro bono coordinators (that's what we're here for!) - they can help you customize your pitch... - Elly Spiegel, Kaye Scholer

As American Lawyer magazine reports a record number of pro bono hours in 2007 for the nation's largest law firms, there has been an increase in the number of Big Firms with an attorney (or committee) dedicated to coordinating pro bono activities.¹¹ Over the last eight years, the number of "Am Law 200" firms with at least one full-time pro bono lawyer or coordinator jumped from only about a dozen to about 100.¹² But whether the firm has a full- or part-time pro bono coordinator or a committee structure, their role is to serve as the firm matchmaker, determining attorneys' interests, ensuring the attorneys and clients have as good an experience as possible, and finding matches for the firm's and individual attorneys' interests, resources, expertise, retention and training needs.

Although you'll want to find that pro bono portal, sometimes other channels work just as well, if not better. Do not hesitate to contact friends, acquaintances or even cold-call an attorney you know has a particular expertise you need, even if the firm has a pro bono coordinator. Most Big Firms invite their attorneys to propose pro bono matters, or automatically accept matters that meet certain criteria. An attorney excited about taking on a pro bono matter (with no conflicts) is likely to get a "yes" from the otherwise pro-bono-supportive decision makers, so fully exploit your relationships to get your cases placed.

Who you know to-do list:

- Reach out to Big Firm pro bono counsel or pro bono committee members
- Cultivate contacts with friends, classmates, and other attorney acquaintances who might consider pro bono matters

9. Playing the Field: Which Firms Get Pitched Which Cases?

Don't expect me to do your individual client cases that you are trying to get off your desk and then go to another firm with your juicy impact cases. - Kathi Pugh, Morrison & Foerster

It nearly goes without saying: firms LOVE impact work. If there is some huge, oppressive issue looming out there that makes you sick to your stomach both because it is a terrible injustice and because it seems utterly overwhelming for you to even contemplate taking on - that is EXACTLY the kind of issue I want to hear about. - Cristin Zeisler, Manatt

¹¹ Daphne Eviatar, *Pro Bono: The Pros*, THE AMERICAN LAWYER, July 2008, at 104, available at <http://www.law.com/jsp/PubArticle.jsp?id=1202422503713>.

¹² *Id.*

It is helpful to let us know if you are shopping the case around elsewhere. It is difficult when we spend hours lining up attorneys to work on the case (getting them all psyched for "the compelling cause") and then let them down. I know that firms sometimes let you down by considering the case for a long time and then not coming through. Hopefully, there is a middle ground -- like a time-limited option. For example, "If I don't hear from you by Tuesday, I am going to have to start looking at other firms because the client is nervous about finding representation." - Susie Hoffman, Crowell & Moring

If you are courting several firms for a particularly juicy project, be up-front about who else is in the game and about what you need/want from us if you are going to stay involved with the case as co-counsel. - Cristin Zeisler, Manatt

Every organization has to decide whether to pitch “first-come-first-served” in response to an email blast to all pro bono contacts, or aim at a short list of firms based on needed expertise or overall loyalty, or conduct a one-at-a-time outreach effort, which can often be very time consuming. Many nonprofits opt to give impact cases to the most “loyal” firms that they work with, and gauge loyalty by evaluating which firms do the most bread-and-butter cases, which firm has the best reputation as a highly responsive and respectful pro bono partner, which firms have given cash donations, or some combination of the above. Your approach may well depend on whether you’re pitching lots of small direct service cases or the more coveted impact cases.

Many factors can influence which pitching process makes the most sense for your nonprofit’s needs, including: how many relationships with Big Firms you have in your stable, expertise needed, prior negative experience (such as returned cases, no partner supervision, high maintenance) or positive experience with the firm, respect shown for legal services attorneys and staff, financial contributions to your organization, and longevity. No matter how a nonprofit opts to choose what firms to pitch for a particular project, it is paramount to implement the process fairly, consistently, and keeping the clients’ needs as the number one concern.

When you opt for an email blast to place a high volume of small matters, firm pro bono counsel know that the email is going to multiple firms at once. If you do this for large or more specialized matters, you should state from the outset whether you are contacting more than one firm. Explain that the specialized nature of the case, or anticipated conflict issues, or necessity for prompt action, require you to ask other firms simultaneously.

The trickiness of the options becomes more vivid when you have an impact case or proposed signature project you expect will be highly desirable. For example, to place a strong FEMA class action case at the moment when the nation is frustrated with FEMA, you might go through your roster of firms that have taken individual FEMA appeals, and look for those firms with class action experience. From that list of four firms with both qualities, say, three have made financial contributions. I would send the pitch to those three. If none of the four firms have made contributions, but a fifth firm with class action experience and no prior experience taking

individual matters from you has made a big cash donation and asked for a big “juicy” case involving FEMA, I’d go first to the original four.

Usually, national news is not a consideration. In this hypo you have a good solid legal issue that needs representation by dedicated lawyers, but doesn’t inspire a bidding war. Casting a broad net in the form of an email blast can save a lot of time, from time on the phone explaining the case, to time spent checking for conflicts, only to be told “sorry,” and having to start over again before getting to “yes.” On the other hand, when time is not of the essence, this may be a good relationship building opportunity. Each phone call is like a touch, letting the pro bono counsel know you are interested in partnering with the firm, understanding why they are saying “no” to this particular case or project and learning what might be a more likely match in the future.

If you pitch to multiple firms at once, and one firm expresses interest, be cautious about telling the second firm to contact you that the matter has already been taken. Sometimes a fast-acting pro bono counsel will say “yes” and may have already identified a partner and an associate excited to take the case (exactly what you asked for), only to find out many days later that they have a conflict and can’t take the case. Let firm #2 know that firm #1 is still waiting to clear conflicts and promise to let them know the status as soon as you do.

Playing-the-Field to-do list:

- Fairly and properly balance the need for a particular expertise with the firms that have been handling your individual direct service matters and/or making financial donations, but keep client needs the top priority as you deal fairly with your pro bono firms
- Offer your exciting impact cases to the firms who have shown their dedication and earned their bona fides
- Disclose when you are shopping the matter to other firms simultaneously or giving the particular firm a first crack
- If you give a firm the right of first refusal, also give a precise deadline by when you must hear before going to another firm
- When placing the matter is not time sensitive, the seriatim phone call approach could help cultivate relationships, even when you get a “no”
- Make sure the first “yes” is solid before telling the other interested firms that it’s taken

10. With Big Matters, Start with a Phone Call – Usually

The most helpful way to approach large law firms with a big pro bono pitch is with a telephone call followed by a short email summarizing the project, including the nature of the proposed client and a short description of the proposed project. Longer descriptions, especially descriptions that include confidential information of the potential client, should not be sent. Law firms should not be reviewing confidential information of proposed clients, and longer emails (unless they describe the underlying issues being addressed in a useful way) may not be effective.

- Amos Hartston, Latham & Watkins

I like to hear from the person by phone first (or in person if it's a big deal). It should be followed up by a concise blurb about the nature of the matter, including any deadlines. That should be in a forwardable form - something I could cut and paste into an email and send out. If I have to correct grammar, edit out unimportant stuff, shorten it or do anything else to it, it won't go out as quickly. - Debbie Segal, Kilpatrick Stockton

Don't call me to discuss a new pro bono project. Send me an e-mail. If you call me, then I have to draft the e-mail and it might never happen. If you send me an e-mail, I can shoot it around to the attorneys ASAP. Draft your e-mail in a form that lends itself to be sent out so that I don't have to change all the pronouns, etc. and verbiage. - Kathi Pugh, Morrison & Foerster

If you have not opted for big blast and first-come-first-served for big projects, most pro bono counsel seem to prefer an initial phone call followed by an email, though there are exceptions. Keep a record of how various pro bono counsel prefer to communicate, keeping in mind the premium on developing and maintaining good relationships to place pro bono matters over time. Avoid wasting the firm's time by scanning the firm's website to determine whether this is the type of pro bono work that the firm might take on. Research on volunteering shows that invitations from someone you know, such as a business associate or friend, are the most effective.¹³ Cultivating on-going, friendly contacts with attorneys will help you make that initial pitch.

Initial contact to-do list:

- Find out how pro bono counsel prefer to be contacted
- Study firm websites to see what kind of pro bono they do, and the substantive expertise they have for possible matches to your pro bono needs
- For small matters send short summaries of compelling case stories via email and follow-up with phone calls as needed
- For large matters call to discuss and follow-up immediately with a detailed memo

11. Going for High Impact: Pitching “Signature” Projects and Big Cases

Use concrete examples. Tell us how other law firms have handled similar cases - and then tell us how our project will be different. - Steven Schulman, Akin Gump Strauss Hauer & Feld

Can your group co-counsel? This can be reassuring to law firms/in-house attorneys. Have a sample co-counsel agreement ready for them to look at. - Elly Spiegel, Kaye Scholer

Large law firms have tremendous resources. We want to use them in a meaningful way to benefit large swaths of society. Although we may know that homelessness is a huge problem, what we

¹³ SCHMEDEMANN, *supra* note 4, at 22.

probably don't know is that "if agency X just eliminates or changes policy Y, then X-100 people would be able to ..." Your in-the-trenches perspective about root causes or perpetrators is exactly what we need to hear so we can understand how and why to mobilize our forces. - Cristin Zeisler, Manatt

Start small. Even a signature project is best started with test cases. - Steven Schulman, Akin Gump Strauss Hauer & Feld

Like impact cases, many firms are in hot pursuit of “signature” projects. These projects typically involve a large number of lawyers and often non-lawyer staff addressing an unmet need and will make a lasting improvement in the community. Signature projects give the firm ownership of the issue, which they can then trumpet to recruits, clients, and in their marketing materials. Other firms also rely on a firm’s signature expertise. For example, a Big Firm may well be willing to take on something new when they hear you say “‘Big Firm Down the Street’ developed the manual and sample forms after handling more than 25 of these cases themselves. Two of their attorneys can be available to answer questions.”

Bragging rights are important. As reported in *Metropolitan Corporate Counsel*, Miriam Buhl, pro bono counsel at Weil Gotschal, described her firm’s program with Legal Aid:

An exciting project started by the New York office is a housing court project in conjunction with the Legal Aid Society.[...] For the Legal Aid Society, having a firm help represent tenants has been a big help. We hope to build a larger team and a model that Legal Aid can use for other firms as well.¹⁴

Firms’ relationships with other firms, existing and potential clients, community organizations, the bench and bar, and law students, are all served by this kind of signature work. Nonprofits building relationships with pro bono attorneys do well to remember that firms have their own relationships to cultivate.

A good example of a “signature” project is the manual O’Melveny & Myers attorneys created on contractor fraud cases in the wake of Katrina. The firm took on more than 50 of MCJ’s contractor fraud cases, which arose when con men and roofers, masquerading as general contractors, swooped down after coastal Mississippians finally collected insurance proceeds and homeowner assistance grants to begin repairing their devastated homes. O’Melveny & Myers told MCJ what pro bono attorneys could reasonably accomplish in these cases, how much could be done remotely, and what matters required local counsel. Their work further benefitted everyone involved when they drafted a manual to help other attorneys manage the hundreds of contractor fraud cases pending in the wake of Katrina, and allowed MCJ to share that manual, reflecting O’Melveny & Myers’ newly acquired expertise, with volunteers at other firms.

Similarly, when it became clear to the lawyers at the Lawyers’ Committee for Civil Rights Under Law (Lawyers’ Committee) and to MCJ attorneys that many families had cloudy

¹⁴ Al Driver, *Pro Bono Work: Helping Dreams Come True*, THE METRO. CORPORATE COUNSEL, Aug. 2008, at 52, available at <http://www.metrocorpocounsel.com/current.php?artType=view&artMonth=August&artYear=2008&EntryNo=8643> (emphasis added).

title to their ancestral homes that prevented them from obtaining grants, DLA Piper (DLA) stepped up to the plate. By sending talented lawyers to Mississippi, DLA overcame what seemed like insurmountable obstacles to pro bono help relating to the arcane and uniquely local process of clearing title to real property. The on-the-ground team figured it out, wrote the manual, handled the first 50 cases and even conducted the outreach to families with this legal need. As with the O'Melveny & Myers contractor fraud manual, the Lawyers' Committee and MCJ can use the DLA manual with other volunteer attorneys.

Signature projects do not always create something as concrete as a manual. When the Mississippi Health Advocacy Program (MHAP) told MCJ that more than 60,000 children had been dropped from the Medicaid rolls in the prior 18 months, apparently due to onerous new requirements, MCJ contacted Manatt, Phelps & Phillips (Manatt). Their signature health practice group, called Manatt Health Solutions,¹⁵ provided the essential expertise so that Manatt could provide ground zero help. MCJ was thrilled, since many firms are often reluctant to sign on during the early investigative stages, even before knowing whether and how they would proceed. MCJ and MHAP gathered the on-the-ground data, while the Manatt health lawyers and policy analysts used their expertise in survey design, policy and administration, and substantive knowledge of health law and Medicaid regulations to pinpoint the problems and craft a series of strategies that included legislative fixes, informal advocacy, public education, and ultimately litigation. Everyone benefitted, from children in Mississippi whose health care needs received attention, to Manatt, whose health care practice further solidified its already impressive expertise.

A few final tips on getting ready for the signature project or impact case pitch. Prepare an internal memo that addresses questions firms are likely to ask. As my mentor Nancy Anderson of the Lawyers' Committee says, in order to be ready for placement, the pro bono matter must be well thought out and fully understood in advance, and the nonprofit organization must be ready to move forward immediately. Key staff must be available, ready to work with pro bono attorneys, and be in regular contact with the volunteers, at least initially. Use the detailed memo to draft a short description for pitching. If a firm expresses interest, send them the longer memo with a conflict list.

Once there is a clear "yes," and a volunteer team is in place, immediately draft the co-counsel agreement and client engagement letter (though inquire first since many firms will want to draft their own). Schedule a first all-hands meeting, in person, if possible -- mutual trust and clarifying responsibilities is paramount for big matters and best accomplished face-to-face. Execute these documents at the outset of that first meeting. Ideally you would piggy-back a first meeting with the client(s) at the same time. Volunteers become even more engaged and buy-in deeper when the client is not a faceless person hundreds of miles away but someone they meet and hear from firsthand how this legal problem affects real lives.

Signature Project/Impact Case to-do list:

¹⁵ Mannatt Health Solutions, <http://www.manattthealthsolutions.com> (last visited Nov. 5, 2008).

- Creatively identify and frame a project a firm can “own”
- Clarify how your program will support the volunteers
- Prepare an internal memo thoroughly analyzing the project or case before pitching, anticipating and answering all basic questions
- Clearly articulate the “ask,” making sure that all affected legal staff concur in the strategy, since signature projects and impact cases can absorb a lot of staff time
- Have a co-counsel agreement ready to go
- Meet in person at the outset, whenever possible
- Arrange for the volunteers to meet with the clients in person, as soon as possible

12. After the Pitch: Training and Support

The best organizations stay involved, provide substantive expertise and back-up, and someone who is readily available to work with a young lawyer. Sometimes training sessions can be valuable. - David Lash, O’Melveny & Myers

Regardless of the size, scope or nature of a pro bono project, having expert resources at/through the referring agency can be a huge help (e.g., staff attorneys with particular expertise, sample briefs, etc.). - Seth Levy, Davis Wright Tremaine

Offer training - but don't over-train. Three hours is the maximum for an initial training. Even if law firm attorneys can attend a longer training (and really, they can't), they won't absorb it all the first time. It's ok if they aren't experts right off the bat.... Call to follow up. Don't wait for problems to come to you - call attorneys to offer advice. But don't nag. - Steven Schulman, Akin Gump Strauss Hauer & Feld

If possible, offer to train and mentor - attorneys you are pitching to are undoubtedly smart and experienced in their fields, but may have never encountered, e.g., an indigent teenager with immigration problems.... Have materials easily available online and in hard copy. - Elly Spiegel, Kaye Scholer

The trainings and support services you offer will depend on the needs of volunteers, program priorities, scope of services, and the size and resources of your organization. The ABA Standards for Pro Bono Programs section 3.5-3 offers excellent advice.¹⁶ The bottom line: you’ll usually need to provide trainings and/or sample materials, *and* have someone available on an on-going basis, whether it’s a small direct service case or the more time-intensive partnering or co-counseling for impact litigation or signature projects.

In addition to the substantive training, incorporate some cultural and sensitivity training. If you can provide CLE credit for the training, all the better. Not all volunteers will need it, but some will have little experience working with clients who may come from different socio-

¹⁶ ABA PRO BONO STANDARDS, *supra* note 2, at 76.

economic and ethnic backgrounds. Training can be invaluable to ensure that the client and volunteer attorney relationship is positive and that the attorney's responses to the client are appropriate.

Bottom line: recognize that the volunteers are eager to serve clients effectively. Our role is to make sure they can by providing relevant and quality training and back-up.

Training to-do list:

- Be sure a staff attorney is ready with training materials and/or a willingness to schedule a live training, and be “on call” to the volunteer when the volunteer has questions
- Incorporate into trainings awareness of working with people from different socio-economic, racial, ethnic or cultural backgrounds, and how to effectively communicate with a person whose first language is not English
- Provide sample documents and be sure they are easily accessible, preferably online or by email
- Have someone at your organization check in regularly with the attorney to confirm progress and find out if more training or support is needed
- Facilitate a good relationship between the pro bono attorney and the client
- Implement and use thank-you procedures when the matter concludes

13. Baker's Dozen: A Smorgasbord of Pro Bono Asks

Consider how firms can provide resources other than attorney time and financial support. For instance, paralegal assistance on large litigation matters or volunteer time from staff in a letter-writing campaign can be creative ways to tap different resources and engender an even more robust relationship with a firm.... Use pro bono attorneys for mentorship and internal training. Staff attorneys at public interest organizations may need CLE credit, might want to develop a relationship with a seasoned attorney in a particular area of law with whom to discuss case strategy on occasion, etc. Think creatively about how we can be part of your team. - Seth Levy, Davis Wright Tremaine

Working for a nonprofit organization in Mississippi after Hurricane Katrina confirmed the old adage, “necessity is the mother of invention.” When MCJ opened a brand new office in the wake of Katrina, it was vital for us to think creatively about the ways that firm staff and lawyers could help us deal with the avalanche of legal issues that we faced, but that our staff attorneys had little experience handling.

Below is a list of familiar asks, alongside a few possibly new ways Big Firms might help advance your organization's work.

Lawyer Asks: From Desktop Pro Bono to the Great Beyond¹⁷

¹⁷Many items on this list can be done in collaboration with or exclusively by non-lawyer staff.

- Direct representation of clients with small matters
- Brief service and advice at a legal clinic
- Bi-lingual lawyers to represent mono-lingual client communities
- Impact litigation at various stages of development, including investigation before any documents are drafted and filed, representation after a lawsuit has been filed, and on appeal
- Investigation of matters in which the firm has the expertise to determine whether to move forward with a lawsuit or to come up with another strategy to address a major problem, and then help the nonprofit implement the findings
- Tackle a new area of law and draft a manual and sample documents
- Develop, review and update the nonprofit's form pleadings
- Recruit a seasoned volunteer to be available as a resource to a new volunteer
- Have a seasoned volunteer conduct a training for new volunteers
- Have a pro bono attorney lead a community training
- "Coach" a public interest attorney on a substantive area outside her expertise when questions of law or strategy arise
- Propose and draft legislative fixes for bad law
- Lobby the legislature, agencies, or other policy- and decisionmakers
- Secure declarations to support a pleading or legislative advocacy
- Incorporate a 501(c)(3) nonprofit and fill an ongoing general counsel-like role for the nonprofit
- Provide advice on tax, employment law, intellectual property, land-use, leases and other legal questions often needed by nonprofits
- Research and draft memos for possible litigation
- Write policy papers
- Fundraise
- Write articles for the nonprofit organization's newsletters, external papers, magazines, and op-eds
- Provide free CLE credit whenever possible
- Serve as co-counsel

Non-lawyer Staff Pro Bono Asks¹⁸

- Provide media contacts and strategic communications advice
- Have marketing departments convert data into attractive charts for reports and public presentations
- Facilitate community outreach
- Have bi-lingual volunteers do intakes and translate "Know your rights" materials Have IT staff prepare a multi-media presentation for trainings or community meetings
- Have marketing staff prepare press releases or brochures
- Donate equipment, furniture, computers, and technology support
- Review documents on big cases
- Provide meeting space

¹⁸ Many items on this list can be done in collaboration with or exclusively by lawyers.

- Have paralegals and summer associates help with intake, pursue attorney progress reports, conduct follow-up needed by attorney volunteers, and help review files for “good” illustrative cases for newsletters and other venues to describe your organization’s work
- Print materials and informational brochures

CONCLUSION

Be patient with these folks - they are used to getting their way, but when managed carefully, they can be a powerful asset to you. - Elly Spiegel, Kaye Scholer

After all this, you may wonder if the overall benefit of a pro bono program is worth the investment of time and resources. Sometimes the target for a “good” pro bono matter seems so narrow it may be tempting to ask “why bother?” This is especially true when building a strong pro bono program represents a significant change from a nonprofit organization’s cultural and historical paradigm, and when it may initially take more time and effort than simply doing the work in-house. Sometimes, the nature of an organization’s work simply doesn’t lend itself to the pro bono model. There will certainly be nonprofits that reasonably and wisely decide a pro bono program is not a good fit.

But when a pro bono program is successfully implemented, the dividends paid can be exponential. Client services are multiplied, dockets are significantly expanded and new resources are brought to the table. Additionally, a wider swath of the profession gets enrolled in your organization’s work and there is a heightened awareness within the legal field about the need to close the justice gap in the United States. Further, financial contributions can, and should, follow pro bono work.

We live in the richest country in the history of the world. Most industrialized democracies provide free legal services to ensure that the justice system works.¹⁹ The United States does not.²⁰ Pro bono is not the solution to providing full representation for this nation’s indigent and underrepresented causes. I firmly believe that it is the government’s responsibility to ensure fairness within our adversarial system, which requires that each side be represented. At MCJ we continue to be overwhelmingly grateful for the on-going pro bono support we get, and we know there are legions of lawyers doing similar and exemplary work for legal aid and advocacy organizations throughout the country. However, until this nation is ready to fulfill the promise of “equal justice under law,” lawyers have to do more to close the justice gap. Private attorneys can and should expand their programs providing pro bono services and financial contributions to legal services programs, and nonprofits should expand their own pro bono

¹⁹ Justice Earl Johnson, Jr., *The Right to Counsel in Civil Cases: An International Perspective*, 19 LOY. L.A.L. REV. 341, 345, n.18 (1985).

²⁰ *Id.* Although the Sixth Amendment ensures the right to counsel in a criminal case, and Congress has implemented the Legal Services Corporation to provide funding for legal aid, legal representation in civil matters is not guaranteed in the United States. See Legal Servs. Corp., <http://www.lsc.gov> (last visited Nov. 15. 2008).

programs to make it easier for private attorneys to say “yes” when justice, in the form of a pro bono pitch, is tossed in the “big lawyer’s” direction.