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Sargent Shriver National Center on Poverty Law

Thoughts on **Better Practices** for Pro Bono Legal Services for Clients of Legal Services Organizations

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The Legal Services Corporation requires its grantee organizations to spend 12.5 percent of their funding on the provision of pro bono legal services by private attorneys.¹ Here I explore other reasons and better ways for legal services organizations to cultivate this form of assistance for their clients.

As a legal services practitioner, I have been involved in developing pro bono work by private attorneys in the Charlotte, North Carolina, metropolitan area since 1984. I gather four principal reasons for legal services advocates to utilize private attorneys as volunteers for our clients. First, volunteers can help us serve more clients within our high-priority areas. One firm in Charlotte, for a shining example, donated thousands of hours in cocounseling a statewide class action on behalf of disabled persons to seek or preserve their benefits from the Social Security Administration. And in neighboring Gaston County, for a most impressive rural pro bono example, 70 percent of Gaston County bar members over a sustained period of years have handled cases, many of which were contested child custody matters. Both undertakings were awarded the American Bar Association's Harrison Tweed Award, its highest honor for individual firms or local bar organizations. In Charlotte we have developed very talented volunteers to handle defenses and counterclaims in landlord-tenant cases. They have assisted hundreds of tenants in avoiding homelessness. Four different firms obtained judgment awards of \$18,000, \$21,000, \$26,000, and \$55,000 for tenants against landlords of substandard housing.²

Second, some private attorneys can deliver certain kinds of assistance more efficiently than legal services' staff attorneys. Private attorneys provide wills and advance directives on a large scale to individual clients. They provide corporate and tax services to nonprofit organizations that are governed by or serve low-income people. Attorneys in corporate counsel offices assist clients in expunging criminal records, which are barriers to employment, housing, and credit. Most of this work is by private attorneys who are transactional specialists and are not comfortable with litigation. They can provide services to clients who might not otherwise be assisted by legal services staff with limited resources.

¹Legal Services Corporation Private Attorney Involvement, 45 C.F.R. § 1614.1 (2010).

²Legal Aid of North Carolina's Charlotte office had a very productive pro bono practice in housing work in 2009. Among the sixty "ordinary" housing cases closed in 2009, the volunteer attorneys generally succeeded in keeping tenants from being evicted, helped them obtain repairs for their dwellings, defeated landlords' monetary claims (rent and others) totaling \$55,986, and recovered damages against the landlords in the total amount of \$75,709 (averaging \$1,165 per client). The volunteers spent an average of 18.75 hours per case. The office also closed four extraordinary housing cases handled by volunteer attorneys, who averaged 143 hours per case. These were especially difficult matters. The volunteers defeated a total of \$2,660 in landlords' claims and recovered \$4,993 in damages for their clients.

Third, a strategic reason to cultivate pro bono assistance is that in many jurisdictions some judges may be more receptive to the claims of indigent clients when represented by private attorneys of established firms. If that is the reality, engaging the best available advocates to reach clients' goals makes sense. In some instances legal services specialists may provide expertise on the law to support the lead counsel on a case. Everybody wins in this scenario. The client obtains justice, the pro bono counsel gets recognition, and the groundwork for similar claims is laid for all.

And, fourth, a secondary benefit from the successful delivery of services by private attorneys is the intangible value of creating relationships of trust and respect among legal services and private attorneys. When private attorneys stand in the shoes of legal services advocates, they learn things. They see the multiple challenges of clients without good record keeping, education, or health care and with myriad other disadvantages. Some private attorneys are shocked by the abusive treatment that our clients receive from insensitive bureaucrats, landlords, creditors, and other adversaries. Volunteers see the pressures that we face daily with clients who experience serial crises interfering with the orderly preparation of litigation. The volunteers gain respect for what legal services practitioners provide for the legal system and the community. This respect can lead to support of legal services programs in seeking resources from legislative bodies and philanthropic institutions.³ The relationships lead to opportunities for legal services advocates to consult with

more experienced practitioners about tactics and strategies. As legal services advocates develop expertise, private attorneys may rely upon our advocates for advice and have us participate in bar committees and continuing legal education (CLE) programs. And when some of these private attorneys show up on the opposite side of legal services cases, there is a foundation from which to reach reasonable settlements.

The Value to Volunteers

Why do volunteer lawyers volunteer? Most private attorneys are not obligated to provide free legal services to low-income people. Doing so may mean that those attorneys forgo billable hours or simply add to their work weeks, frequently at night or on weekends. They generally have to learn new areas of law, risk being uncomfortable or embarrassed, and wonder how the presence of poor people in their office may affect other clients and their staff. Why do they take these risks? Legal services staff must understand private attorneys' reasons for doing pro bono work and tailor their recruitment and support in ways that will motivate the volunteers to participate.

Volunteer attorneys have differing reasons, in differing degrees, for performing pro bono service. In my experience, there are, however, key factors that consistently motivate volunteer attorneys. In order of importance, these are to volunteer lawyers the benefits of their pro bono service:

1. Making a significant difference in people's lives⁴

³In a 2009 national survey by Fidelity Charitable Gift Fund and VolunteerMatch, the average amount of money donated to nonprofit organizations by Americans who volunteered in the previous twelve months was ten times the average donated by Americans who never volunteered; two-thirds of Americans who volunteered in the previous twelve months said that they donated to the same organizations where they volunteered (Press Release, Fidelity Charitable Gift Fund, Fidelity Charitable Gift Fund and VolunteerMatch Form Alliance and Release Landmark Study on Volunteering (Dec. 3, 2009), <http://bit.ly/m8V2WT>; Caroline Preston, *Volunteers Give 10 Times More Than Other Americans, Survey Finds*, CHRONICLE OF PHILANTHROPY (Dec. 3, 2009), <http://bit.ly/k9y5YJ>).

⁴When I close pro bono files, I write the volunteers letters that recount the difference they made. A 2004 survey of lawyers engaged in pro bono ranked thirteen factors that motivated them; the largest motivator was a combined sense of "professional responsibility" and the personal satisfaction derived from providing the service (70 percent), and the second biggest motivator was the recognition and understanding of the needs of the poor (43 percent). In comparison, only 15 percent of the attorneys mentioned any form of "professional benefits" as a motivator (ABA [(American Bar Association)] Standing Committee on Pro Bono and Public Service, *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers* 17 (Aug. 2005), <http://bit.ly/j4Fgr>).

2. Appreciation expressed directly by clients (words, tears, hugs, and cakes)
3. Positive recognition of their service by peers and the media
4. Enjoyment in doing something different or in working with colleagues in a joint venture
5. Learning new areas of law and acquiring practical skills that are useful in their career (a plus for inexperienced associates)
6. Recognition by members of the judiciary
7. Satisfying goals or expectations of their law firms, by policy or custom

Legal services programs must consider all of these factors. To the extent feasible, a successful legal services pro bono program should affirmatively cultivate the first five benefits for its volunteers and attempt to influence the sixth and seventh benefits when opportunities are available. What are the various methods of delivering these motivating benefits to volunteer attorneys?

Selecting the Best Clients and Matters

The single most critical step for a legal services office to take is to make a smart and careful selection of clients to refer to pro bono attorneys. Legal services staff should select the most sympathetic clients available. Generally we should offer the most meritorious claims to volunteers. Investigating cases preliminarily in order to make the best selection is worth a legal services office's time. For example, the staff should hand over the cases of tenants likely to recover the highest damages from abusive landlords. Domestic violence victims with the best evidence similarly would ensure the best results for volunteers. The staff should retain cases with higher levels of risks and unknowns. Selecting referrals to volunteers needs to be an integral part of the office's case acceptance and assignment procedure. Legal services offices must ensure that there is enough lead time for the volunteer to

prepare for a successful representation. Some veteran volunteers, however, are capable and willing to proceed on shorter notice.

The concomitant considerations by legal services staff are the kinds of clients and cases to avoid. Generally offices should not refer clients with mental difficulties. That means more than clients with low IQs and poor memories. That means clients with unrealistic goals, proclivities to blame everyone but themselves for their problems, or a quick temper. Legal services staff must identify such personalities and not expect volunteer lawyers to overcome their difficulties. For similar reasons, legal services offices should not refer cases that will be decided in particularly hostile forums—unless the volunteer has a special relationship that works in that forum.

Supports that Enable Success

The legal services program must provide the supports that enable volunteers to succeed. Typically there are four kinds of support necessary. First, unless the volunteer attorney already has a retainer agreement, a legal services office provides a model for the volunteer. The volunteer attorney and client should define the scope of services, at least initially, with the understanding that the representation can be expanded as appropriate. This protects the volunteer from unrealistic and unlimited expectations and demands of clients who may otherwise assume that they have found an "attorney for life."

Second, for volunteers who do not already have experience in the substantive area involved, legal services should provide model pleadings, memoranda of law, discovery requests, demand letters, and tools for gathering and presenting evidence. Offers of these materials should be tailored to the particular needs of the volunteer. We should not systematically inundate every volunteer with mounds of paper or electronic materials. The volunteer does not want to sift through voluminous documents to find what is needed. The goal is to save the volunteer's time.⁵

⁵The ABA survey revealed that the perception of a "lack of time" was the primary demotivator for lawyers to do pro bono work (69 percent). The lack of expertise or needed skills ranked next (15 percent), followed by "cost concerns" (12 percent) (*id.* at 18).

Third, when legal services offices are recruiting volunteers for particular types of individual cases or projects, conducting training is useful.⁶ We have had success with three different approaches: (1) We have organized formal CLE programs for local and state bar organizations on landlord-tenant, family, consumer, and other areas in which we have expertise. Our offices or bar partners offer significant discounts on these CLE programs to attorneys who agree to accept one or more pro bono matters from us within an advertised time frame. (2) We offer the training inside a particular firm. Sometimes the training is a catalyst for beginning a project within the firm to handle a series of related cases. In some firms we time the training sessions to engage new summer associates. Similarly other training programs are aimed at the starting times for new associates. These events are more attractive when breakfast or lunch is offered and are more effective when partners give opening endorsements and testimonials about their own successful pro bono experiences. (3) We offer practical skills training via digital video discs (DVDs) to potential volunteers. We have videos of simulated trials for landlord-tenant and domestic violence cases. These videos are especially helpful to attorneys and law students with no or limited court experience. Playing these videos can be part of a formal CLE program or an informal training session. Legal services offices also can simply lend the DVDs to individual volunteers to view as part of their trial preparation for particular cases.

Fourth, for the volunteer in the middle of handling a matter, mentoring and consulting can be the most important kind of support that legal services can provide. When hitting a barrier, the volunteer needs to know whom to call. Legal services should have a knowledgeable person accessible to answer practical and strategic questions. In most instances, that knowledgeable consultant is a staff attorney with sufficient experience to answer most “how-to” and “what-next” questions. In some instances, however,

legal services might refer the volunteer to another pro bono attorney familiar with the practice area and the forum. Legal services should recruit a few volunteers who are amenable to serve in that role. This may be particularly useful in areas such as child custody, bankruptcy, tax, and other areas in which legal services offices do not specialize. Some of the most experienced family law practitioners in Charlotte were willing to mentor novice volunteers. Wherever the consulting attorneys may be, they must be reasonably accessible on short-notice consultations, which often occur the day before a hearing. Meeting these needs makes our volunteers confident in trying new areas; volunteers are most grateful when we come to their rescue.

In Charlotte legal services offices have expanded pro bono work with targeted projects. These ventures succeeded in magnifying the positive impact on the lives of needy people and in increasing the fun for the volunteers. Three diverse examples of successful projects:

When the general counsel of the former First Union National Bank promulgated a mandatory annual thirty-five-hour pro bono policy for his legal staff, an opportunity arose for the legal services office. Approximately two-thirds of the bank’s attorneys were not licensed in North Carolina, and probably 95 percent of them had no litigation experience. Nevertheless they had to perform thirty-five hours of service. We trained approximately two dozen of the bank’s attorneys in landlord-tenant law or unemployment compensation law. Most of them staffed a landlord-tenant clinic for low-income tenants. They interviewed and counseled tenants under the supervision of one of our housing lawyers for several years. Their counseling enabled many tenants to represent themselves *pro se* in defeating evictions and recovering damages against landlords in small claims court. After a while, some of the volunteer lawyers with North Carolina licenses ventured into the courts and won sizable judgments. The volunteers who special-

⁶The ABA survey found that “free training and CLE credit for services provided” was the best incentive to encourage more pro bono participation (*id.* at 19).

ized in unemployment cases served as advocates for workers in a three-county area. They were highly successful and took pleasure in sharing war stories and securing thousands of dollars in benefits for unemployed workers.

A second project, initiated by a large corporate firm in Charlotte, was called “wills on wheels.” The firm had operated the project in several cities. It was supervised by a partner who specialized in trusts and estates. Legal services offices assembled at each turn some two dozen elderly or disabled clients who needed wills and advance directives. Clients filled out questionnaires in advance of the event day, and the firm’s lawyers and paralegals drafted documents based upon the questionnaires. On the event day the clients came in waves to the legal services offices for appointments spaced at one-hour intervals. Volunteer lawyers and paralegals reviewed the drafts with clients, made changes on laptops, and had the originals notarized and copied—all within an hour. Clients and volunteers shared bagels, fruit, coffee, and juice in a semifestive atmosphere. There was a sense of considerable accomplishment in a compact period.

The third project involved a partnership among Legal Aid of North Carolina, a large corporate firm, and a very low-income neighborhood in Charlotte. The catalyst for the project was the neighborhood group’s desire for assistance in abating a public nuisance. A strip shopping center had become a gathering place for drug dealing, intoxication, fights, public urination, and excess noise threatening and disturbing residents. The Charlotte-Mecklenburg Police Department and neighbors wanted to file a civil public nuisance abatement action against the owners of the shopping center. Legal Aid recruited a large firm to serve as cocounsel for the lawsuit in superior court. The lawsuit resulted in a consent order with injunctive relief that requires monthly reports regarding the actions of the owners in banning criminal activities on the property and having perpetrators arrested. The firm also agreed to represent all eligible low-income residents from the neigh-

borhood; they were screened for priority civil claims by Legal Aid. Most of those clients were federally subsidized tenants, and through this project, now in its twelfth year, the volunteers learned from Legal Aid how to represent tenants in the federal Section 8 housing program.

Marketing the Program and Match Making

Who markets the pro bono program, and who markets specific cases? Those are different questions, and the answers depend on local circumstances. Thus I will relate different approaches that work in metropolitan and rural markets.

In a large metropolitan market such as Charlotte with a history of pro bono activities, there are multiple ways to market “the program,” defined broadly to mean the whole menu of projects and individual cases offered by legal services providers and other nonprofit organizations. Some formal promotions coming from the local bar can be helpful. If there is a standing committee of the local bar, often called the “volunteer lawyers program,” its members may do general promotions and recruitment campaigns. An excellent example of that in Charlotte was a campaign to recruit volunteers to handle domestic violence protective orders. Well-known litigators took the initiative to divide up a list of firms to call and solicit by e-mail. The family court judge who joined in the recruitment campaign put a stack of volunteer forms on his bench, where litigators stopped to present their petitions for attorney fees. This campaign netted over a hundred volunteers.

If local bar staff members can and are willing to join, they can take on roles such as publicizing the program in newsletters. If the local bar has a CLE program, the legal services program can collaborate with it. We have organized a formal landlord-tenant CLE program that annually sells out all available seats. Well-known private practitioners with expertise in commercial and residential rental matters are among the speakers. The panel members do pro bono “infomercials” with personal testimonials. The

bar charges market prices for admission. With video replays, the bar nets a considerable profit on the program and offers a deep discount (75 percent) to attorneys who commit to accepting pro bono cases.

The marketing of individual cases and projects differs from marketing “the program.” The legal services provider has the clients to offer and the materials and skills to support volunteers’ work; thus legal services staff members generally market the cases and projects. Two models work well in a developed metropolitan area such as Charlotte.

One model uses firms that have in-house pro bono coordinators. Some of these coordinators are lawyers, and some are nonlawyers who usually have other functions related to marketing and publicity. The legal services “salespersons” simply need to learn how to work best through these firm coordinators. Some firm coordinators can get conflict checks expedited and can market summaries of pro bono offers through e-mail in a matter of hours. Some coordinators also organize in-house events to promote projects, such as “lunch and learn” events with CLE credit.

Where there is a network of firm coordinators who can broker pro bono opportunities via practice groups or general e-mail within firms, the legal services salespersons may be nonlawyer staff members who can handle communications regularly and quickly. Such staff members need to rely on the legal staff to select the best matters for referral and to answer promptly questions from prospective volunteer lawyers.

Most pro bono programs cannot be built upon the firm-coordinator model. Most large firms do not have designated pro bono coordinators, and the same is generally true of firms in medium- and small-size cities and counties. Thus the solicitations to most potential volunteer lawyers must be done directly to individuals. Who can do that best?⁷ The answer depends on the skills and assignments of the personnel in each legal services

office. In our Gaston County office, for example, a paralegal with extraordinary knowledge and skills can handle virtually all of the sales and administrative needs of all pro bono matters. She is a native of the county and knows most of the lawyers from her many roles in the community. She carefully screens potential clients and declines to refer “difficult” personalities. Because she knows which lawyers can handle what types of matters well, she makes workable matches. When lawyers decline her request, they do so only because of unavailability or schedule conflict. She knows that she can try again and, with the right opportunity, succeed. If problems arise, she listens to volunteers’ concerns and complaints and accommodates them quickly. She is an artist of cultivating successful volunteers, and that accounts (along with extraordinary leadership by local bar and bench) for the 70 percent participation from this local bar.

Most other legal services offices probably do not have an indigenous staff person with the skills of the coordinator in Gaston County. The conventional office has a staff of attorneys and others with various skills and personalities that may be valuable for marketing cases. The marketing role does not have to reside in a single person. When it does, that office may suffer when the person leaves permanently (or even for short periods) unless the marketer creates an excellent record of relationships that other staff members can use.

Accordingly I recommend that a team of staff members perform the pro bono marketing for the office. Having people on the team who may elicit the most favorable responses to referrals of pro bono cases or projects makes sense. The office should draw up a strategic plan that identifies its best liaisons with potential volunteers. In some areas the managing attorney may be best for marketing some or all litigation matters simply because the managing attorney may have the best relationships with experienced litigators. In some offices having staff

⁷The ABA survey found that the fourth highest ranking motivator for doing pro bono work was a direct request from colleagues, and the fifth highest motivator was a direct request from judges (*id.*).

attorneys or paralegals market cases within their specialties may work best. They should be able to select the most meritorious cases, and they may serve best as the expert resources for volunteers needing tips and strategic advice. The lawyers may also have an advantage in recruiting among their peers in the bar, especially among those sharing their areas of expertise or those within affinity bar groups. The specialized advocates should have an added advantage in “telling the story” of the pro bono client in a realistic and appealing fashion. They ought to know, from experience, which kinds of clients and issues would match with which volunteer attorneys. Another advantage of having the pro bono sales and support activities distributed among different staff members is that the activities do not constitute an excessive time burden on one person. Once a decent number of satisfied, skilled, and repeat volunteers have been mustered, a nonlawyer volunteer coordinator may continue to refer cases to them. The staff lawyers can then focus on cultivating new volunteers.

If staff attorneys have not recruited volunteers, they may resist adding another role to their busy lives. Someone has to convince them to invest an hour in pro bono recruitment in order to save the ten, twenty, or more hours that handling the case later may take. These staff attorneys will also need to share their expertise with volunteers to help ensure the volunteers’ success. Managers need to accommodate these investments by staff attorneys, and they need to help the attorneys appreciate the longer-term benefits of these investments.

Handling Complaints and Conflicts

Even in the best pro bono operations, troubles arise. Some volunteers inevitably experience problems with their clients and contact someone at the legal services office. On the other side there are clients who register complaints to or about their volunteer attorneys. What should the legal services office do to prepare for these difficult situations?

The most common volunteer complaints are that the clients appear to be “uncooperative” or “uninterested” in their own cases. These complaints typically occur when clients fail to make appointments, produce documents, answer questions, find witnesses, or secure other items necessary for proving claims. I find that some volunteers suffer from what I call the “Cinderella expectation syndrome.” That is, some volunteers have little experience with generationally poor persons and imagine that their pro bono clients are idyllic Cinderella prototypes who are industrious, polite, modest, grateful, and the victims of an evil stepmother or some equivalent villain. In my view, all of the Cinderella clients are represented by Perry Mason or Matlock, leaving us with real clients who are burdened with economic and cultural disadvantages.

When volunteer attorneys report these frustrations, the most senior and sensitive staff attorney available must respond quickly. The legal services attorney should explore with the volunteer the possible reasons for the client’s apparent lack of cooperation and interest. In some instances the problem may be a lack of dependable transportation or a phone. But it could be a fear of riding in elevators in bank towers. It may be collateral issues from domestic disputes, problems with children, disconnected utilities, illnesses, or loss of a job. Sometimes clients’ not recording or remembering appointments may be due to cultural gaps. If the volunteer attorney is uncomfortable probing for the cause of the problem, occasionally we have to offer to contact the client and determine the problem and potential remedies.

Other frustrations expressed by volunteer attorneys often involve disagreements with the clients over goals, strategies, settlement offers, or a combination thereof. The legal services advocate must respond to these kinds of problems quickly before decisions are forced and relationships deteriorate. I find that some volunteer attorneys seriously underestimate the potential value of their clients’ claims, and legal services attorneys have had to convince them to

aim higher. I have had to help volunteer attorneys educate clients about the realistic merits of their claims, evaluate settlement offers, and explain the risks of certain forums. These education sessions often occur in the legal services office with clients and volunteers present. In some rare instances we have not been able to broker an agreement between the volunteer and the client on a critical issue, and in those instances we explain to the client that we do not provide a substitute volunteer if the client's desire is unfeasible.

Some clients complain to the legal services office about their volunteer attorneys. These complaints run a long gamut. One of the most memorable complaints occurred in the late 1980s. A woman who appeared to be 50 years old wanted to appeal the denial of her disability claim by the Social Security Administration. I proudly introduced her to one of our most experienced and distinguished volunteers—a past president of the local bar and of the North Carolina Bar Association and one of the kindest and most sympathetic lawyers ever known. After spending an hour reviewing her extensive medical records and comparing them to the grids of the Social Security Administration, the lawyer reluctantly concluded that she was not eligible and attempted to explain the reasons to her. The client could not accept the news, quickly became irate, and burst out of the interview room and yelled down the hall, “This volunteer doesn't know what he is talking about. I want a REAL Legal Aid lawyer!” The lawyer was somewhat chagrined but had heard the legal services staff complain that many of our clients did not consider us “real lawyers” because we did not charge fees for our services; he appreciated the irony of the situation (and continued to volunteer). We did calm the client and assure her that, though disappointing, the volunteer's analysis was correct.

Occasionally clients complain that their volunteer attorneys are unresponsive to their communications. Some of these complaints are legitimate. The legal services staff must investigate these complaints promptly in order to retain credibility with clients. I have found instances where the assigned attorneys leave their firms without informing their clients and without arranging for substitute representation. We have urged firms with pro bono policies to create protocols for such contingencies—among other procedures, notifying the legal services providers of changes in advocates. We view these clients as clients of the firm, and the ethical responsibility to take care of the clients is the remaining firm partners'. In rare instances where the firm is dissolving and no lawyer would be in a good position to provide ongoing representation, the legal services office has to become the client's substitute counsel. That is an undesirable result, but when the client's needs are put at risk, we regain the client's trust better by assigning a staff attorney with proven skills to finish the job. Most volunteer attorneys do not enjoy mopping up the messes left behind by other lawyers, and we need to acknowledge that.



To develop and maintain a successful pro bono program, we proceed in some ways like cultivating a garden. A considerable amount of preparation is required at the beginning. The legal services gardener has to do the necessary groundwork and select the right volunteers and clients. The gardener has to tend to the field continuously with the right nourishment. The steward must watch for and remove the weeds before they jeopardize the desirable crops. In the end the steward must share the bounty and give all the field hands their due credit. These procedures should yield a gracious plenty.



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