

SECTION 3:

**INITIAL CONSIDERATIONS IN DEVELOPING A
PRO BONO PROGRAM**

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What Is Your Corporation Hoping to Achieve with Your Pro Bono Program?

Although the objectives might change over time as your pro bono program evolves, it is a good idea in the initial stages of the program to identify what goals you have for the program and to design the program to achieve those goals. It is, after all, against those goals that the success of your program ultimately will be measured. As any business consultant will tell you, if you cannot measure it, you cannot manage it.

Common goals that corporations have set for their pro bono programs are discussed below. These goals, as you will see, are not mutually exclusive and most successful pro bono programs will incorporate some or all of these objectives. They are also not exhaustive. The goals you set for your program are limited only by your imagination and the culture of your corporation.

I. Satisfying Attorneys' Desire to Give Back to the Community

The impetus for and goal of many pro bono programs is to provide an outlet for attorneys to give back to the community. Corporations are blessed with amazing resources and talents and yet there are profound unmet legal needs among the poor and disadvantaged. Pro bono is a way to bring the two together in a way that ultimately benefits not only the participants but also society as a whole.

II. Promoting Your Corporation and Its Image

Pro bono engagements can raise the visibility of your corporation and help burnish its reputation in the community as a corporation that cares about its community. Your corporation's pro bono efforts can enhance and complement the corporate citizenship efforts that the corporation is already undertaking. It is likely that your corporation already has identified philanthropy or community relations objectives, and that pro bono opportunities exist that match these objectives.

III. Building Stronger Relationships Within Your Corporation

Many successful pro bono programs are expressly designed to foster closer relationships between persons within the same corporation. Pro bono projects provide excellent opportunities for attorneys as well as the non-attorney legal staff to work together on matters in ways that they might not ordinarily in the course of business.

IV. Building Stronger Relationships Between In-House and Outside Lawyers

By partnering with outside lawyers, in-house counsel can foster closer relationships with attorneys and firms with which they have existing relationships, or "test out" attorneys and firms that might be retained in the future.

V. Training Your Lawyers and Legal Staff

Pro bono programs can provide wonderful training opportunities, especially to newer lawyers or lawyers who simply wish to broaden their horizons.

What Are Realistic Goals for Your Pro Bono Program?

When you are establishing your pro bono program, you need to be realistic about the goals that you set. There is a value in setting goals that are aspirational in nature to encourage the growth of the program and to remind people of why you thought there was value in pro bono in the first place. While there are a number of structures that corporations have successfully used to provide support to their attorneys for pro bono work, the common denominator is strong and visible support from the corporation and legal department's leadership.

I. Setting Aspirational Pro Bono Hour Targets

In PBI's experience, successful pro bono programs are voluntary in nature and succeed because lawyers and legal staff are enthused about giving back to the community, not because they have to put in their time to reach some preset hours goal. PILI therefore encourages corporations to adopt aspirational pro bono standards rather than requiring a set number of hours.

II. Tracking Your Investment in Pro Bono

For your program to be successful, it is important to track not only the number of lawyers and legal staff who participate in the program but the hours they spend each year on pro bono matters and the value of those hours. For many corporations, this is difficult because hours are not tracked. The reality of legal practice is that any individual's time on pro bono cases will vary from year to year. Because of this, corporations should look more broadly at average pro bono hours to ensure that over time the program is growing. You should also track expenses incurred by the program and charitable contributions made by your corporation as a result of its involvement in pro bono matters so you can be prepared to quantify your corporation's financial commitment to pro bono.

III. Collect Pro Bono Success Stories and Monitor the Impact of the Program

The pro bono coordinator or committee should continually and enthusiastically promote the program by disseminating information about the program's successes, recognizing lawyers and legal staff who participate in it, and documenting the achievements of the objectives set for the program. When trying to drum up participation in and support of a pro bono program, there is simply no substitute for good press and honest enthusiasm for the program. Publicity should occur within the department, as well as throughout the rest of the company. The department should set as a goal to be recognized by outside organizations for their pro bono involvement, as this provides a means to demonstrate the public relations impact of the efforts.

IV. Expect Better Participation from Younger Lawyers

Although pro bono work should appeal to lawyers of all experience levels, it is simply a fact of life that younger lawyers seem to participate in pro bono work on a more frequent basis. This is a product of many factors, from the relative idealism of younger lawyers, to their desire for more training and the busy schedules of more experienced lawyers who are balancing not only work, but management or other responsibilities. A good pro bono program will try to appeal to more experienced lawyers for support and involvement but will realize that participation rates will be higher among younger attorneys. That being said, a well organized and well promoted pro bono program that engages young lawyers is likely to be one that keeps those lawyers committed and involved as they progress in their careers.

Setting Up Your Pro Bono Program

I. Getting Buy-In at Your Corporation

The first challenge in initiating a pro bono program is to build the necessary support among the leaders of your organization. You need to be prepared to dispel the “myths” of pro bono and to articulate why having a program will not only benefit the clients you intend to serve, but your organization and individual attorneys and staff as well. PILI’s Pro Bono Initiative can help your corporation get started.

Here are some means to get corporate buy-in:

- Request funding for an annual pro bono award to recognize an attorney for their involvement in pro bono with a small cash award that benefits a charity;
- Identify awards received by other corporations for pro bono work;
- Ask senior management to provide input into the types of projects the department should look for; and/or
- Request that outside law firms provide information on their pro bono program in any Request for Proposals and consider their pro bono commitment in evaluating the proposal.

II. Promulgating a Pro Bono Policy

The less experience your corporation has with pro bono work, the more important it will be to promulgate a policy explaining how the program will work. The policy should address:

- What your organization considers to be pro bono work;
- What areas of focus are encouraged, particularly if the corporation has specific community relations goals or areas of interest;
- A means to track time and money spent on pro bono activities, and to differentiate pro bono from important, but not legal, community affairs work;
- Who will approve the engagements and what type of information will need to be provided before a pro bono matter is accepted;
- Whether and how much credit will be given to pro bono matters;
- Whether and what insurance is available for pro bono services rendered;
- What type of support will be available on pro bono cases (e.g., use of administrative staff, copy equipment) and what type of expenses will be reimbursed (e.g., expert fees); and
- That pro bono work is encouraged and valued and whether pro bono work is expected or required of each attorney and if so, in what amount.

III. Rolling Out the Program

Once your pro bono policy has been adopted, you must take steps to ensure that the program gets off to a good start. You should consider:

- Encouraging corporation and legal department leaders to lend their vocal support and encouragement to participation in the program, ideally by their own example;
- Having a few pro bono opportunities in hand to distribute to interested lawyers; and
- Announcing publicly the purposes and goals of the program.

IV. Maximizing the Program's Potential

As your pro bono program gains traction, maximize its potential by:

- Appointing a program manager to cultivate and identify good opportunities for the corporation to encourage participation, track involvement and promote successes;
- Partnering with one or more pro bono or legal aid agencies to pre-screen cases for your organization;
- Involving your legal staff in the program and encouraging them to spot worthy matters or causes for your organization to handle or support;
- Publicizing your pro bono program's success and linking up the program with your corporation's marketing, recruiting and professional development efforts;
- Reporting pro bono efforts at legal department meetings;
- Reporting pro bono efforts to internal communications personnel;
- Including pro bono in annual reviews as a personal development opportunity area;
- Participating in the legal community's efforts to identify and share best pro bono practices;
- Considering the creation of a pro bono partnership with a law firm that you have engaged as outside counsel; and
- Developing a program that is self-sustaining in order to ensure the program's viability during times of staffing changes, particularly in the role of General Counsel.

The Importance of a Pro Bono Policy

I. Why a Pro Bono Policy?

There are numerous advantages to adopting a written pro bono policy within your corporation. For example, a written pro bono policy emphasizes your corporation's commitment, and that of your senior management, to pro bono work and to your community. A written pro bono policy can provide guidance and encouragement to members of your corporation as they consider integrating pro bono work into their professional life. A written pro bono policy is a reflection to both your own corporation and to the broader community of your corporation's desire to serve the needs of disadvantaged members of the community.

Developing a written pro bono policy for your corporation promotes a shared understanding of the corporation's pro bono process and its commitment to public interest law. A written pro bono policy documents the corporation's tradition of encouraging pro bono activity and establishes the procedures by which the corporation will handle pro bono cases. A written pro bono policy can establish consistent guidelines and procedures for how the corporation will recognize or "value" pro bono work performed by employees of the corporation. Finally, and oftentimes most importantly, adopting a written pro bono policy can help build and maintain the necessary support for pro bono work among the leaders of the corporation and ensure the sustainability of the program for the future.

II. Components of a Pro Bono Policy

There are many "model" pro bono policies available through the Pro Bono Initiative that can provide your corporation with guidance in drafting its own written pro bono policy. Of course, each corporation will have different reasons for establishing a pro bono program and will have adopted different procedures for implementing and managing that program. Nonetheless, it can be helpful for a corporation that is considering establishing a new pro bono program or revising an existing pro bono policy to review a variety of policies to get an idea what other corporations have incorporated into their pro bono programs.

The first step is to define the corporation's pro bono vision or mission statement. Why is pro bono important and what is the corporation's commitment to pro bono work? In addition to this statement, which is typically found at the beginning of the pro bono policy, a written pro bono policy should address the following:

- Definition of Pro Bono – What type of work will qualify as pro bono work in your corporation? Not all volunteer work typically qualifies as pro bono work. You should consider using the definition of pro bono that has been adopted by the Illinois Supreme Court in Rule 756.
- Process for Taking On a Pro Bono Case – What is the process for preventing business or positional conflicts and taking on a new pro bono matter?
- Professional Liability Insurance – Will the corporation provide it, or must the legal service provider?
- Use of Corporate Resources for Pro Bono Work – What type of support will be available for pro bono work? May pro bono work be done during business hours? If so, is there any limit for work during business hours?
- Recognition of Pro Bono Work – How will pro bono work be recognized? Is it considered in performance evaluations?
- Staffing and Supervision of Pro Bono Projects – How will pro bono matters be staffed and who will supervise these matters?
- Management of Pro Bono Program – Who will be responsible for managing and overseeing the pro bono program, reviewing and approving new pro bono matters, keeping track of the pro bono work

being performed by the corporation, encouraging participation in the pro bono program, and working with local pro bono and public interest agencies, other corporations and law firms to identify new projects and cases?

What Are Your Attorneys' Pro Bono Interests?

This is another important preliminary question for which you should seek input from your attorneys in the early stages of developing your pro bono program. Particularly for newer or smaller programs, it is recommended that you consider identifying a limited number of legal aid agency partners or affiliated law firms that will provide your attorneys with a suitable variety of pro bono options.

You should consider conducting a survey of your attorneys at the outset of the program development to inquire as to attorneys' interests. You should also encourage newly hired attorneys to complete a pro bono interest survey upon joining the corporation. These surveys vary but may include questions regarding the types of opportunities, i.e. litigation versus non-litigation or specific practice areas; the types of issues confronted or groups served by the opportunities (i.e. domestic violence, children, civil rights); or the amount of time the attorneys would typically expect to spend on a pro bono matter. You might also inquire about organizations with which your attorneys have existing relationships that might be potential partners for your pro bono program.

Based on the interests of your attorneys, you might find that one or two agencies have sufficient opportunities to meet their needs. Or, you might need to identify multiple agency partners to cover the spectrum of interest. If you choose to focus your agency partnerships based on a survey, you will likely find that the selected partners may not meet the interests of all of your attorneys. As part of your pro bono management structure, you may want to allow your attorneys the ability to submit unique opportunities to the pro bono coordinator or committee for approval. This is particularly important when the chosen agency partners do not provide an opportunity that meets the interests of every attorney in the corporation. Once you've identified your attorneys' areas of interest, one effective way to communicate with them is to establish an e-mail distribution group by interest area in order to disseminate relevant pro bono opportunities.

SAMPLE PRO BONO INTEREST SURVEYS

As part of a PILI Pro Bono Consultation, members of the Consultation Team from other Illinois corporations will share sample interest surveys that they have used at their own corporations. PILI also maintains a library of sample pro bono interest surveys used by a variety of corporations. Please contact PILI's Director of Programs, Michael Bergmann, at 312.832.5129 or mbergmann@pili-law.org, for a Pro Bono Consultation.

Malpractice Coverage for Pro Bono

Malpractice coverage is an important consideration in developing your pro bono program. Most legal aid and public interest law agencies carry a policy that will cover pro bono attorneys who handle cases through the agency. There are a few, however, that do not. You should consult with any potential agency partner as to whether they provide coverage. The agency should be able to provide you with the pro bono endorsement and coverage from their policy at your request. You may also purchase an additional policy covering your pro bono activities.

There are many malpractice providers for you to choose from. Below is information on a few of these choices:

National Legal Aid and Defenders Association (NLADA)

NLADA provides malpractice coverage and is a popular option. Your corporation must become an NLADA Member in order to purchase insurance through NLADA. Visit NLADA's website at www.nlada.org/Insurance/ or contact them directly at 800/725-4513 for more information about their insurance program.

AIG Insurance

Provides Employed Lawyers Professional Liability Insurance. Visit their website at www.aig.com.

CNA Insurance

Provides a variety of Insurance products, including professional liability policies. Visit their website at www.cnapro.com.

Complete Equity Markets

Provides a variety of malpractice products. Visit their website at www.cemins.com or contact them at 800/323-6234.

Special Considerations for Corporations in Designing a Pro Bono Program

Much of what is written about successful pro bono programs comes from the marketing departments of large law firms. While there is no question that these firms have served as influential leaders of the pro bono movement, corporations also have a proud history of commitment to pro bono legal services. There are, however, unique challenges faced by corporations in establishing and growing a successful program.

I. The Blank Slate Problem

The person who wants to start a pro bono program usually starts with a blank slate. No program is on the books and whatever pro bono work that has been done by the corporation's lawyers in the past is probably not well coordinated or documented. Fortunately, PILI can provide you with forms and advice like this Guide, as well as introductions to legal aid agencies and corporate pro bono coordinators, to help get you started.

II. The Resource Challenge and Solutions

Many lawyers at corporations meet resistance from their superiors and colleagues that the company cannot "afford" a pro bono program given its limited resources. There are ways to ameliorate this concern:

- Select projects that will not require a large commitment of time or money from the corporation;
- Require the referring agency to screen matters for you and to train your lawyers in how to properly handle their matters; and
- Partner on matters with other corporations, law firms or legal aid agencies.

III. The Need for Sounding Boards

In-house counsel providing pro bono services frequently need a resource outside the corporation to serve as a sounding board on issues that arise during the course of pro bono representation. Pro bono coordinators should scrutinize referring agencies to ensure that they do not simply hand off matters to pro bono attorneys and leave the individual to his or her own devices. Good legal aid agencies will provide not only continuing staff support but also networks of other pro bono lawyers who can assist you with background on the process or the law, as well as advice on strategy.

IV. Getting the Word Out

Because many corporations only have a small legal department, it is sometimes a challenge to promote the successes of the pro bono program. Most of the agencies that refer cases will help promote news of their successes through awards, newsletters and their websites. PILI, as well as other bar associations and organizations, can also help to promote your program.

Developing an Effective Pro Bono Policy

A well drafted and organized pro bono policy is an integral part of a successful pro bono program. Developing some parameters around your pro bono program will provide clarity for your attorneys in their pro bono efforts, allow for the success and growth of your program and allow for ease in managing your corporation's pro bono efforts.

I. Define Pro Bono

The critical first step in developing your policy is to define what constitutes pro bono service. Through Rule 756(f), the Illinois Supreme Court has enumerated what counts as pro bono for the annual reporting of pro bono work. However, many corporations have their own internal definition. Your policy should clearly establish what the corporation considers to be pro bono work. Some of the possibilities include:

- Direct legal representation for the poor;
- Legal representation to not-for-profit organizations serving the poor; and
- Developing and presenting a training session on a substantive law topic for pro bono attorneys.

Many corporations also encourage and promote community service in conjunction with their pro bono policies. While these are valuable contributions, you should note that these are not considered pro bono as defined in Illinois Supreme Court Rule 756. Two examples are:

- Serving on a not-for-profit organization's board of directors; and
- Community service activities such as volunteering at a homeless shelter or soup kitchen.

II. Identifying a Leadership Structure

The typical leadership structure for a corporation's pro bono program is usually either: (1) the identification of one individual, a pro bono coordinator, who is responsible for administering the corporation's program; or (2) the establishment of a committee that will bear responsibility for the program. Typical responsibilities of the pro bono coordinator or committee include:

- Developing, monitoring and implementing the corporation's pro bono policy;
- Reviewing and accepting or rejecting pro bono projects;
- Coordinating and monitoring all pro bono activities, ensuring that proper assistance, supervision and resources are available for services;
- Monitoring the hours and costs spent on approved pro bono projects;
- Monitoring projects for conflicts or undesired public relations implications;
- Communicating the options and available services which constitute pro bono to all lawyers in the corporation, including incoming attorneys not yet familiar with the corporation's policies; and
- Providing periodic reports on the corporation's pro bono activities.

PBI maintains a list of many of the pro bono contacts at Illinois corporations. While there are a number of structures that corporations have successfully used to provide support to their attorneys for pro bono work,

the common denominator is strong and visible support from the corporation and law department's leadership.

III. Process for Approving Pro Bono Matters

Next, you should explain the approval process at the corporation for pro bono matters. You might allow approval to occur from the bottom-up, wherein you allow your attorneys to identify their own opportunities and then present them to the committee or coordinator for approval. You might choose a top-down approach, wherein the committee or coordinator identifies the permitted opportunities. Or, you might choose to permit a combination of these models. If your attorneys are able to identify their own opportunities for approval, determine what information your corporation will require in the approval process. Information you might request could include:

- Legal aid agency description;
- Opportunity description;
- Agency process for screening clients;
- Information necessary for conflict check;
- Support and training provided by agency;
- Malpractice insurance provided by agency; and
- Expected duration of representation.

IV. Available Corporation Support for Pro Bono Matters

An effective policy will state what corporation support and resources are available to attorneys in their pro bono matters. What you will be able to provide is driven by the pro bono program's budget and the size and success of the corporation. The greater the support you are able to provide, the easier and more attractive pro bono service will be to your attorneys. Types of support that might be available include:

- Use of staff, including paralegals, secretaries, and document preparation staff;
- Reimbursement of ordinary costs associated with the matter, including: reproduction, postage, telephone calls, faxing, messenger service, etc.;
- Payment of "extraordinary" costs that may be associated with some matters, including: expert testimony, court reporters, research, travel, service of process fees, etc.

You might choose to set limits and then provide for an approval process for additional funds when necessary. Many legal aid agencies have agreements with low-cost or free process servers, court reporters and other services that you should explore with your agency partner. Also, under 735 ILCS 5/5-105.5, many of the court costs can be waived, without the necessity of a motion, when civil legal services are being provided to an eligible client through a legal aid agency.

V. What Credit Will Attorneys Receive for Their Pro Bono Work?

The answer to this question varies widely depending on the size of the corporation and its culture. Some questions to consider regarding this question include:

- Is participation in the pro bono program mandatory or optional?
- To what extent does the corporation permit pro bono service to be conducted during regular work hours? If there is a specified limit, is there a process for obtaining approval for additional hours?
- Will pro bono work (or a lack thereof) be considered when determining performance ratings, salary increases, bonuses, and promotions?

VI. Supervision of Pro Bono

Most policies contain a provision regarding the supervision of pro bono cases. Substantive supervision of the pro bono case and corporate attorney are often assigned to a partner of an affiliated firm or an individual at the relevant pro bono organization.

SAMPLE PRO BONO POLICIES

As part of a PILI Pro Bono Consultation, members of the Consultation Team from other Illinois corporations will share samples of their pro bono policies. PILI also maintains a library of pro bono policies. Please contact PILI's Director of Programs, Michael Bergmann, at 312.832.5129 or mbergmann@pili-law.org, for a Pro Bono Consultation.