

Why Pro Bono is Good for Business

Solosezzer Ignatio Pinto-Leon writes about why pro bono is good for business in the Jan/Feb 2012 issue of GPSolo magazine. Read all about it at

<http://jurismex.wordpress.com/2012/02/02/thegoodfightisgoodbusiness/>

Excellent article

Carolyn Elefant, District of Columbia

I don't like to be negative, but I'm afraid that article seems to have brought out the worst in me...

I practice almost exclusively divorce/family law, and have done my fair share of pro bono -- both in terms of taking on a full case, and in terms of volunteering for the lawyer of the day program (where you sit in a little room at the courthouse, and essentially explain to people which forms they should fill out, help them fill them out, and explain the process to them, for the next step or two.) I do this for the warm fuzzy, because it certainly doesn't give me most of what appears in the article. To my surprise, I do not find that people are generally grateful, instead, after the first few minutes, or after the first court appearance, they act as if they're entitled. Yes, I've had them refer people to me -- people who start off by saying things like 'You represented X, at no charge, and I'd like the same thing', or 'You helped X with forms, when you were at court, so I'd like to come into your office so you can do the same for me'.

When I explain that my pro bono time is limited, but I'm willing to discuss my fee with them, they typically get angry. With regard to other counsel, I don't find much appreciation, either. Even if you cut out the group that is annoyed, because if you weren't helping people fill out forms, for free, those people would have to go to attorneys (potentially, them), and pay for that service.. you have opposing counsel that is annoyed because, since your client isn't paying for your time, you lose the ability to encourage them to agree to pay \$140/week, instead of \$135/week, since it's not worth the legal fees to fight it. You go in front of the judge, and even if the judge orders the number more beneficial to the other side, they've paid more than it's worth, in legal fees. I will acknowledge that the judges and the court staff are very appreciative.

But if it weren't for the warm fuzzies, and the feeling of an obligation to give back to the community -- there's no way I would ever do pro bono, again.

YMMV

Laurie

Laurie Axinn Gienapp, Massachusetts

In criminal law, pro bono = not a "real" lawyer.

In my experience, people value things that they pay for, based on price. I don't know how many times I've heard a criminal defendant represented by the PD, say "I want a real lawyer, not a PD."

On the other hand, I do pro bono all the time. There are people in situations that practically mandate my giving them help, but I do it on a limited basis these days. In the past, I've even been pro bono on homicide cases.

As for previous clients, I won't desert them simply because they're currently broke.

Family law sounds similar (I don't practice family law). Thinking about it, it's probably worse since the clients are not used to adversity and cannot understand why everyone doesn't just agree with them. At least, repeat criminal clients understand that they'll probably have a price to pay at the end of the case.

Pro bono is, IMO, required of each of us. The extent of pro bono is up to each of us. It's supposed to benefit our society, not us personally - at least, not monetarily.

Using pro bono as a marketing tool seems out of place to me. IMO, we should do it merely because we *can* do it.

Laurie has the right idea - do it when you feel you must, and get paid otherwise.

Good luck.
Russ Carmichael

My \$0.02 on this is that the basic premise of the article is good, but perhaps not presented in the best light. I think we must perform some services pro bono, but it should be a small percentage of our practice and should only be done through an organization that is legitimately there to screen for pro bono clients. For example, when I was in Huntley, IL, we had Prairie State Legal Services. It's sole purpose was to perform a "means test" to assure that a person could not afford legal services, do the initial intake (what kind of case or legal help they needed, get the basic facts, etc.), and then find local attorneys to take the case. It was recognized throughout the area as "THE" pro bono organization to work with.

I strongly recommend AGAINST taking on pro bono yourself or screening for pro bono yourself. Most solos and small firms don't have the right resources or time to investigate whether someone is just looking for free services when they can otherwise afford them.

But I will also agree that doing pro bono DOES reward you with good will, referrals, and experience (especially if it is an area that you are new to - say guardianship or divorce or child custody or bankruptcy, etc.). In the long run, it WILL bring you more paying business because others in the community will know that you do good work.

Robert C "TJ" Thurston, Pennsylvania

I will acknowledge that the judges and the court staff are very appreciative.

I've done way more than my fair share of pro-bono bankruptcy cases, and I volunteer to defend collection suits one day a month in my local small claims court. I'm certainly not rich, but I have the respect of the judges and trustees. There's nothing better than standing in a lunch line at a conference and having judges you appear before thank you for your efforts. I'm also on the porcupine list of all the debt collection attorneys in this state, and I consider that a badge of honor because it means they don't mess with my clients.

There is a crass side to this, too -- since legal services groups can't take fee-generating cases, when a stay violation or FDCPA counterclaim comes along, I'm free to ask for a 1/3 contingent fee.

Walter Oney, Massachusetts

I have handled criminal and immigration cases pro bono. It did nothing for me. I agree with Russ. Clients with criminal issues thought I was not a real lawyer and clients with immigration issues sent people like them who did not have enough to pay me or thought they too were entitled to free help. I no longer do anything for free but I still adjust me fees if I feel like taking a case.

Hersh
Harsharn Makkar, Georgia

Years ago I penned an editorial for Lawyers Weekly when on the Massachusetts Board advocating charging for pro bono in certain circumstances. I accept and champion the notion that no person should have to face a tribunal of any sort alone because of poverty. On the other hand I understand that providing counsel for every defendant when charged and brought before a magistrate of any sort. Liberty is our most important product.

However, there is nothing in the Law as I understand it that says a *convicted* defendant cannot be made to pay restitution for damage done or caused by the criminal act. Accordingly I propose that whenever a defendant is provided counsel and therefore exonerated the legal assistance is provided without any charge for such services and expenses by the authority having jurisdiction. No court action need be required. If that proposition is accurate, then I see no restriction on the court and jurisdiction from assessing all costs of prosecution and *defense. *The court may entertain proper relief if amount or justification is challenged since the Court is likely to have an opinion of the value pf such services.

Second offenders if found guilty might have and added penalty either in time or additional assessment really for giving the revolving door another spin. I believe that this should emphasize the desirability of hiring one's own attorney in a future case, or of course not misbehaving.

I also do not believe that penalty is an adequate measure to reduce crime. No serious criminal with whom I have come in contact has spoken about knowledge of or, much less what the penalty is. I was told by a three time bank robber doing life in Danbury Federal Prison that answering my question, "Why did you risk a third try," he stated that "I wasn't planning on being caught!"

The editorial was not published.

Dick Howland, Massachusetts

I'm going to echo the "it doesn't help" folks. I did well over 150 hours last year and didn't realize any referrals from that work (and had one client short me \$100 for my troubles on fees on collecting after I pulled a win out of nowhere).

This is going to sound really awful, but poor people don't have rich friends. Any referral you get is going to be along the same income level from an existing client 99% of the time. That's my experience, at least.

Regards,
Jason
J. Jason Boyeskie, Arkansas

Maybe we ought to consider posting something on our websites about accepting pro bono matters referred to us from local pro bono organizations so that the prospective client has gone through that organization's careful screening process. Maybe even include a link to the organization(s). Could be FAQ or blog post material. It tells prospective clients that we do pro bono and how to get to us - via the pro bono org - and ought to help reduce calls for free help. And include how the interest on our trust/IOLTA accounts funds legal services, especially for those of us who elect that option even when we don't have to do so.

I don't think the public understands sometimes how much many of us do for non-paying clients, probably because we don't tell them. If we do tell them, then we have distinguished ourselves from colleagues who are silent on the point - and probably made ourselves more attractive to paying prospective clients in the process. I all the time have people say they picked me because I seemed nice based on my website and Facebook page, which I would be pleased for you to visit and *like*

<https://www.facebook.com/pages/Law-Office-of-Deborah-G-Matthews/489196440021>

Deb Matthews, Virginia

Deborah raises a good point - pro bono is not the work that you do for free because a client hasn't paid. It's representing a client who comes from a bona-fide clinic or legal aid organization.

I have always had a very positive experience doing pro bono for these groups. One of my first clients came through the Washington Legal Clinic for the Homeless. The gentleman wanted to sue the Hyatt Hotel for kicking him out of the coffee shop because he was homeless even though he was well dressed and had money to pay for breakfast. OK, not the type of case I'd take today, but as a baby lawyer, it seemed compelling. I won the guy \$2500 and he used the money for down payment on an apartment and got a job at the Better Business Bureau where 2 years later, he referred me a breach of contract case that resulted in an \$85k jury verdict.

A second pro bono matter that I took through the ACLU gave me some experience doing EEOC work. As a result of that one case, I was able to talk my way into a contract position on a team of 10 lawyers representing the US Postal Service in hundreds of administrative hearings related to a restructuring gone wrong. That part time contract position helped pay for my first office.

My most recent pro bono case involved a foreclosure action that I spent probably several hours fighting, as well as ancillary matters as well. The client insisted on paying me a few dollars here and there but my satisfaction was when I won him a great deal so he can stay in his house at 1/2 of his original mortgage for the next 10 years (after the rate goes up but still 30% below what he pays now).

With so many ways to market a practice, plus families to feed and so much to do, I certainly understand the desire to avoid pro bono. But I really believe in the power of karma and even for those of you who have done pro bono without any return, I truly expect that it come back to you many times over.

Carolyn Elefant

Two more cents: I never thought of pro bono as a profitable income resource. I paid every associate I hired to undertake pro bono for six months. They were expected to get to know local lawyers, clerks, judges, mechanics and dynamics courts and procedures. They were also expected to get a sense of the bargain a lawyer made with state and nation to use the law for the benefit of society, their own self-respect, and learn the vagaries of litigation among the less equipped citizens and not other law students.

We walked out with JD in hand and found that we knew (at least I knew) we didn't know Zed about law* practice. *In short we needed a baptism and pro bono was a splendid way to do it. My associates were instructed that they would not be paid (by me) without doing thorough jobs, motions, objections, knowing the facts, investigating, etc. I never had a problem. I also felt that I had made an appropriate contribution to profession and community.

I was also known in the courthouse and local circles for doing it and always willing to accept referrals pro bono knowing that payment was not an issue, service was. I think there is a lot to learn when most new lawyers do not know much that is useful.

I also reviewed their work to be sure they had learned the tools available to them. Dick

Dick Howland

Two quick true stories about personal experiences I had with the screening process by legal aid organizations (I have several more but won't mention them)

1. I was sent a "screened" pro bono case for an Immigration case. I started reviewing his finances (which were relevant to his case) and discovered that he made more than I did at the time. When I called the pro bono office to find out how they could send someone to me who was making a decent

salary they said that he met the guidelines because he was supporting a wife and 3 kids . I mentioned to the person on the phone that my wife and I had 4 kids and that she and I both worked so that we could afford the expenses for the size family that we chose to have. The pro bono referral's wife was able bodied and the kids had no special needs. She just chose not to work. And thus he qualified under the guidelines for thousands of dollars of free legal work.

2. Had a pro bono referral come into my office accompanied by her unmarried son who was wearing a well tailored suit and an expensive watch. He was quite upfront about the fact that he was more than capable of giving his mother the money to hire a lawyer but why should he, since she qualified for a free attorney.? At the time our waiting room was filled with paying clients who had raised our fees by having friends and family pool their funds so that they could retain my (then) employer and me. After the consult I watched out my office window as the woman and her son got into his BMW and drove away.

I have had a few good experiences with Pro Bono cases but have found that for most of them, they were perfectly capable of finding the money to pay an attorney. They just didn't have any incentive once they knew they had a free alternative.

Ken Forman, Florida

I think we can all cite some challenges or people who didn't (or shouldn't) qualify for pro bono work. I hope we don't get so jaded by these experiences to stop doing pro bono work. It is not only the right thing to do, it is mandated by not only some of our states' rules, but also by our Rules of Professional Conduct.

For example, in NJ here are the REQUIREMENTS re pro bono:
<http://www.judiciary.state.nj.us/probono/index.htm>

Although I've had a very small minority of clients who could afford the services, 95% or more of my pro bono clients have been legit and well-screened by the agency.

Perhaps, before becoming too cynical, consider using another agency that provides pro bono services?

TJ

Robert C "TJ" Thurston

Guilty to the jaded allegation and I honestly don't feel like I'm too jaded. I feel after 30 years of providing Pro Bono work that I'm the right amount of jaded.

I have found that my experience has been almost the opposite of yours. The majority of my Pro Bono clients might have needed a reduced fee and/or payment plans, but they did not need Pro Bono services. Some of my paying clients make less than my Pro Bono clients. They just value my services and will find alternatives such as seeking the help of friends and family or reducing non-necessities in order to afford my fees.

Would I still do Pro Bono work even if it wasn't mandated? Probably.

Did I feel like you do at the beginning of my career (and wish that I still did)? Absolutely yes.

Unfortunately I have found that real world experience over the past decades have repeatedly smacked me in the face no matter which agency has done the referring.

Mostly I just feel bad for the paying clients who have made sacrifices because they value what I offer.

Ken Forman

"majority of my Pro Bono clients might have needed a reduced fee and/or payment plans, but they did not need Pro Bono services"

I'm reminded of the scene in "To Kill a Mockingbird" in which Atticus Finch accepts various food items for legal services. Quite frankly, I think there are very few instances in which someone shouldn't pay at least *something*

for legal services. I feel this is particularly true in the civil litigation realm. Instead of the payments going to the attorney, why not have a sliding scale and have the payments go to the referring pro bono agency themselves?

Ryan C. Young, Virginia

Hallelujah. Praise the Lord. Can I Get A Witness?

Really. Look, I understand lawyers are expensive. And I understand that not everyone can afford full freight on law work; particularly if it's litigation. But old siggy, that is Freud, was of the opinion that having psychotherapy clients PAY for psychotherapy was, in and of itself, theraputic; don't know his theoretical basis but I like the conclusion.

And, I think having to pay, something, for legal services, helps the client to resolve the case. They need something at risk in the case other than simply 'losing'. They need to understand that there are certain decisions that need to be made, there may need to be some compromises made as well and that their decisions on how and when to litigate has an impact on them. Which is why, EVEN IF I'm doing something on contingency, I provide in my fee contract that if client instructs me to file suit a cost deposit of some small but still significant amount is due prior to my filing suit. If client is being reasonable and I recommend suing, fine, I'll ignore that provision and advance costs; on the other hand, if I've got what I consider a reasonable offer on the table and client is being difficult and tells me to file suit, then my response is, fine, I'll need this deposit for filing fee, issuance of summons and service; get me the money and I'll file suit. Which usually brings them up short. Because their bucks are on the line at that point; they got some skin in the game, they got something on the line out of their pocket. Likewise, if clients' paying nothing, they got nothing to lose other than the case.

It's one thing to discount, it's another thing entirely to say someone gets full, free ride.

Ronald Jones, Florida

So, again, I have to question from where you are getting your pro bono clients. I'd say 95% or more of mine were literally destitute. They either couldn't pay their rent or were just paying that and enough food and utilities to survive. I wasn't about to take away their food money because I was jaded about providing pro bono services.

Let's face it, in most cases legal services are a luxury (civil, not criminal). But in many cases, it is a necessity and the poor simply can't pay. Let's take guardianship as an example. If people didn't have access to legal services, the potential ward is at risk for health, financial and other problems (I had one client, albeit a paying one, whose mother and father were literally sitting around

their house with lunch bags of cash on the floor - I'm NOT joking - and would give a \$100 bill to a neighborhood kid to go buy them milk and not ask for change). If the people are truly destitute, the ward will likely die because of failure to address health, safety and financial risks. Do we really want to be known as the profession that let's these people die simply because we think we're entitled to some payment????

There are legitimately poor people out there who have serious legal needs and can not afford to hire a lawyer (even on a miniscule payment plan) without sacrificing food or shelter or heat.

So, again, all of your comments raise the issue of the source of your pro bono referrals. Maybe that is where you need to express your contempt, rather than for the clients who are seeking legal help. Shame on an agency that doesn't adequately serve the community by vetting the financial status of the potential client.

TJ
Robert C "TJ" Thurston

Almost all of my Pro Bono cases comes through the local county bar association which acts as a clearing house for most of the Pro Bono work here.

I'm glad that 95% of your clients were literally destitute. My experience was quite different. You can throw around inflammatory phrases about letting people die and having contempt for the clients all you want. That does not change my experience.

I generally take Pro Bono cases in my area of greatest expertise because I do not want to use Pro Bono as a means to learn something new at the clients expense. I want all my clients (whether paid or unpaid) to have the best possible representation.

In my main field of expertise (Immigration) I have never, and I mean never had a client in a position where they would die if they paid a lawyer. Nor do I have contempt for the Pro Bono clients referred to me.

The vast majority of the Pro Bono clients sent to me could in fact pay something. I'm glad your experience has been different but just because I have consistently had a very different experience it does not mean that my potential client's will die or that I have contempt for them.

Ken Forman

I wasn't suggesting that ALL clients will die without representation, nor was I suggesting that any of yours would. I was making a more general statement about the ethics and public opinion of lawyers. Because you know the first time that the press hears that a person couldn't get pro bono legal services and died as a result, we will be the goats (regardless of the facts).

Robert C "TJ" Thurston

Our Western Montana Bar Association took on the task of formalizing a Pro Bono Program referral service. Montana Legal Services is not only overloaded, its funding was again cut and some folks lost their jobs.

So they've been very willing to do the intake and qualification for the PBP. So I refer the callers to the PBP. If I hear enough that I want to take the case myself, I have the caller phone MLS to be financially qualified and referred to the PBP. Both organizations collect stats for the Montana Bar Assoc., whose pro bono statistics go to a national organization, I think, and otherwise inform legislatures and courts about the general need for pro bono attorneys, what areas of show up most often, etc.

cj

CJ Stevens, Montana
