

# Be Bold, Mighty Forces or Not

## Pro Bono at Small and Medium Size Law Firms

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To seasonably borrow a bit from Old Jacob Marley, mankind *can* be a small firm's business. The common welfare *can* be a small firm's business; charity, mercy, forbearance and benevolence all *can* be a small firm's business. Quite realistically, the dealings of the legal trade can be but a drop of water in the comprehensive ocean of a small firm's business.

The obligatory lead-in anecdote: A former pro bono client of mine called the office last month to update me on his life. He is going to college. I didn't get him into college or even encourage him in the process. He did all that on his own. I did help him out with a legal issue that could have impacted, even indirectly, his college application process. To me, the legal problem was fairly minor; to him it was the biggest injustice of his life.

Associates at small and medium sized firms don't always have these stories — I am aware. Too often, the legal profession considers pro bono publico to be the bailiwick of the overworked nonprofit staff attorneys or the privileged and dedicated few at large firms. The time, the up-front costs, the personnel and the infrastructure needed for effective pro bono work seem at first glance unavailable to small and medium size firms — altruistic pipe dreams waiting for overflowing prosperity to become reality. Thus, the tidy response (oft unspoken) to the new attorney: Go work for a big firm with a "Pro Bono Department" or go ply your benevolence in "Public Interest Law" and decrease the surplus do-gooder population around here. Bah Humbug.

Stereotypes all, I'm afraid. Like cynical old partners and idealistic young associates of legal nostalgia, perceptions and oversimplifications are often mistaken. In truth, dedicated smaller firm attorneys handling pro bono cases can make real impact, generate real results and bring real rewards not only to their clients, but to their firms as well. To the skeptical small firm partners and associates that yet desire a pro bono caseload, the following three visitations may convince you — not in tripartite ghost form, thank you Marley, but compelling nevertheless. You have yet a chance and hope.

### DIPLOMACY, ANTI-DIPLOMACY

A firm with between five and 20 attorneys may be quite open to or quite unwilling to allow its attorneys to break out of the firm's mainstream business to explore pro bono work, greatly depending on how the attorney presents the work to firm decision-makers. The central theme to appreciate: Reduced tolerance for the risk of escalating time, cost and personnel demands are all completely manageable and can even benefit the case. With that theme in mind, a little honest diplomacy should present pro bono work as an opportunity rather than an obligation. The goal



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should be approval to take on the matter, nothing more. Firm decision-makers need reasons to dedicate resources.

First, particularly for new attorneys, experience and practice is one of the greatest selling points. Especially in the small firm environment, where oversight is a commodity, pro bono cases offer primary responsibility legal experience with decreased real-world risk.

Large firms justify entire pro bono programs on the experience argument. Litigators can take on interesting and complex litigation far afield from the firm's mainstay legal issues based on the certainty of pleadings, motions, arguments and courtroom practice. While smaller firms often tout "sink-or-swim" responsibility for new attorneys, dwindling trial schedules make battle testing a true benefit, no matter how quick a firm's attorneys are handed the reins to their own cases.

Second, pro bono work expands a small firm's legal horizon. For example, my own firm now offers a new practice area to paying clients based in part upon the legal education gleaned from a handful of pro bono matters. Important to firm partners, if the pro bono legal issues can be tied to the needs of paying clients, the pro bono work becomes more like real-time CLE and less like a donation. Building an expanded base of legal knowledge generates an expanded potential client base.

Third, pro bono promises insider education, new perspectives and needed variety to legal approaches. Tunnel vision at boutique firms can stifle creativity in legal approaches and foster creeping ennui. For instance, a firm representing businesses with employee, unemployment and workers' compensation issues may gain great insight by having one of its attorneys run the gauntlet of the various administrative courts while representing an indigent client seeking benefits. At the least, it will be a confidence builder, as even squeamish but dedicated counsel can do wonders for someone that otherwise would receive no legal help whatsoever. We all went to law school for everything — we can all flex some unused legal muscles.

Finally, more tangible benefits are surprisingly possible. Inescapably, large firms can afford to donate millions in hours and costs, while small firms cannot. However, pro bono work does not always mean a loss of fees and costs. Although I never recommend overselling the elusive recovery of fees and costs, small firm partners may

soften toward approval if they understand that the firm may not lose money in risking pro bono work.

For example, many civil rights, SSI and workers' compensation cases are fee-generating by statute. Many limits apply, but a wisely selected case can provide solid basis to recoup the firm's losses. Additionally, public interest organizations partnering with the small firm may willingly alter their typical fee award agreement in order to get dedicated representation to their clients and to press the greater human interests forward.

### MEET YOUR STAFF, THEY'RE NEW.

Smaller firms justifiably expect to assign no more than one or two members to a pro bono matter, but can still assemble a veritable army for a complex case. Inevitably, bigger, complex, sexy cases need people for document review, research, proofreading, drafting and other tasks that go into handling a sizable case. The self-contained BraveNewWorld megafirm can throw a team of personnel together with an internal public interest department e-mail. Smaller firms have other more diplomatic options.

Small firms should foster close partnerships with outside public interest organizations. Legal aid or other nonprofit organizations provide the primary intake systems that vet clients and perform initial evaluations on each case. Such organizations do sometimes provide limited personnel, as long as the attorney respects the fact that most public interest entities are shorthanded and their budgets are stretched to breaking.

Philadelphia Volunteers for the Indigent (VIP) and the Legal Clinic for the Disabled, for example, do much more than just supply a caselist. They maintain regular contacts with the cooperating attorneys and will participate in strategy development. More importantly, such organizations often have quick access to relevant legal authority to shortcut research time and can arrange cost discounts with cooperating suppliers.

For staffing, a wealth of young legal minds stands ready to assist through other types of public interest entities. Not long ago, law schools began adding real-world legal experience beyond the traditional summer internship into their curriculum. A shining example, Villanova School of Law's "Lawyering Together" program, currently assigns teams of two students to a supervising attorney to handle a pro bono matter. The students remain assigned until the matter concludes (or they graduate).

Although a tad rough, law students are capable, eager to help, curious about legal theory and willing to dedicate vast amounts of time in the pursuit of practical education and experience. Increased focus on public interest practice lends steam to such programs. The result: a legal team that needs pointed supervision but will repeatedly surprise the attorney with sophisticated ideas and dedication to the case.

### LACK OF INFRASTRUCTURE

In other words, don't expect any pro bono hours logged at smaller firms to be given the same credit as billable hours.

The goal response should be, "As long as you get your billable hours in, you can take any pro bono you want." This may not sound like a sacrifice to an attorney dedicated to public service, but it's a reality indicative of the lack of administrative infrastructure designed to facilitate pro bono work. Ultimately, although it means a little more gut-wrenching solo flying for the attorney, it can be a benefit.

Quite simply, lack of bureaucracy is a plus. At my firm, pro bono services remain independent and open to any attorney or paralegal willing to make the commitment, resulting in a firm that maintains solid dedication to the community and a meaningful public interest presence. Time and energy is spent on the legal matter — not on forms, status updates and approvals.

Patience is required. The small firm attorney should expect to be the sole face and primary mind on behalf of the firm for the matter. Consequently, the attorney might need to build up significant goodwill and trust in his or her legal capabilities before getting approved for complex pro bono work. Once done, however, the attorney will find that taking pro bono cases will be left largely up to his or her own conscience. Such freedom is satisfying and translates to commitment to the client.

On the other hand, new small firm attorneys can start small on their own. No need to wait for the fates to align the perfect case with the perfect amount of free time. There also may never be a pro bono opportunity that fits perfectly within the attorney's legal comfort zone. The legal community abounds, however, with diverse-yet-limited pro bono opportunities. These opportunities have the twin benefits of being terminable (and less costly) and exposing the attorney to new legal areas without exposing the firm to the risks of escalating costs or unexpected time demands.

For instance, in Philadelphia, the election watchdog Committee of Seventy every year seeks legal professionals of all types to serve as election monitors and problem solvers on Election Day. The commitment is exactly one day with guaranteed lessons in diplomacy and dispute resolution. Many other nonprofits need varied one-time services such as corporate structure advice or Freedom of Information Act requests.

No expectation of a Scroogesque awakening here. Let us leave obvious metaphor for a moment. Legal matters are legal matters. Clients have problems. Those problems are varied, and exciting and creative solutions will be necessary. The smaller firm attorney can positively impact a complex pro bono matter with as great success as any other attorney.

In addition to the positives mentioned above, the smaller firm attorney can keep a matter simple when it should be simple, avoid unnecessary time expansions, avoid unnecessary costs (e.g. rarely if ever will 20 depositions warrant) and be comfortable with primary responsibility. The smaller firm attorney may also be more versed in varied areas of the law and be able to bring more varied weapons to bear — having of necessity represented clients through a vast array of jurisdictions and proceedings. Rest assured, the clients and the firm will reap the rewards. •