

**District of Columbia Bar Foundation
Summary of Listening Session with Pro Bono Counsel
February 25, 2009**

I. Introduction

In January 2009, the Bar Foundation convened a series of listening sessions with legal services providers to discuss the impact of the financial crisis on the client community and on their organizations. The Bar Foundation anticipates at least a 50% reduction in the IOLTA grant funds available for allocation in its June 2009 grant round and is aware that this reduction in funds, in conjunction with resource constriction that providers are experiencing from private donors, other foundations, and government sources, is likely to significantly diminish the resources available to organizations to meet dire client needs. Local law firms, which provide substantial and critical resources and support to the legal services community both through money donations and through pro bono work, asked the Bar Foundation to host an additional listening session with pro bono counsel.¹ The purpose of the session was to explore what changes firms are seeing in the needs of clients and providers and to brainstorm ways that law firms can support the legal services community and help to maximize service provision to clients during this crisis.

Representatives from eleven major law firms participated in the listening session (see Appendix A for a list of law firm participants as well as Bar Foundation and Access to Justice Commission participants) and were asked to respond to the following questions:

- a) What are you seeing and hearing about the impact that the economic crisis is having on the client community, including changes in needs or cases? What about the impact on provider organizations as they face reduced funding? Are there factors that are affecting your relationship with the provider community?
- b) What discussions or thoughts have you had about what law firm pro bono programs can do to help minimize the impact of the economic crisis on the client community (e.g., steps taken within your firm, in collaboration with other firms, in specific substantive areas, etc.)? What would you need from the community to help you? What are the factors that might affect the ability of your firm to respond?

This report summarizes the specific input and ideas generated during the listening session. Generally, there is considerable financial uncertainty in the law firm community due to the economic downturn and therefore firms are finding it more difficult to project how much financial support they will be able to provide to legal services organizations. While many firms would ideally like to maintain or even increase cash donations to providers, it is unclear how many will be able to do so in 2009. However, most firms are able to continue to commit pro bono resources at current or increased levels and would

¹ This report uses the term “pro bono counsel” to refer to the range of attorneys and non-attorneys, partners and counsel, who fill the critical role of managing pro bono work within their law firms.

like to understand the optimal avenues for providing this support. Most firms are also open to non-traditional requests for assistance. Participants brainstormed a number of innovative routes for enhancing pro bono support and are eager to continue this discussion with legal services providers to better understand which options would be of the greatest utility.

The Bar Foundation is extremely grateful to the listening session participants for their candid sharing of information and ideas. This report summarizes the information they provided only in aggregate form, and does not identify particular firms or speakers. The report is posted on the Bar Foundation's website at www.dcbarfoundation.org.

II. Summary of Responses

A. Changes in Client Needs

Attendees briefly discussed changes they are observing in client needs. They reported the following:

- One firm that staffs intake for a legal services organization has observed a significant increase in bankruptcy and consumer debt questions. The pro bono counsel also noted that the firm itself is getting more cold calls on these issues.
- One firm reported an increase in employment-related needs, specifically on termination issues. Participants queried whether specific outreach to the DC Employment Justice Center would be helpful. Firms might be able to generate volunteers to assist at clinic information sessions.
- One firm that works with Washington Area Lawyers for the Arts reported an increase in questions both from individuals and institutions seeking advice about possibly closing their businesses.
- One firm reported a marked decrease in calls from individuals seeking advice about starting non-profit organizations.

B. Increases in Pro Bono Support

Attendees brainstormed a broad range of ideas for increasing pro bono support to legal services organizations. Many attendees noted that their firms have, at the moment, pools of attorneys available to do pro bono work and that they are eager to direct them to providers that need assistance. However, attendees also acknowledged that the availability of legal services staff resources to support pro bono work is a significant factor in how much pro bono support a provider can utilize. They do not want to swamp providers with more pro bono assistance than can effectively be put to use. With those concerns in mind, they discussed the following ideas:

Enhance law firms' mentoring functions:

Attendees recognize that provider pro bono coordinators and staff spend a significant amount of time training and mentoring pro bono attorneys. A number of attendees suggested that law firms assume more responsibility for mentoring pro bono cases, both within their own firms and across firms. They suggested identifying subject area mentors across a range of firms and making those mentors responsible for supporting pro bono attorneys in those substantive areas. Attendees acknowledged that these firm mentors, and sometimes the pro bono attorneys themselves, would still need to reach out to provider staff on complicated questions but believe that this arrangement would at least remove the burden of the simpler substantive and procedural questions that many pro bono attorneys ask.² If this arrangement is successful, it could increase both the support for pro bono attorneys, and the number of pro bono attorneys.

Some attendees also noted that firms should ensure that loaned associates become law firm mentors when they return from their legal services rotations. Another attendee suggested that there may be firm attorneys who are experts in particular fields and who would like to fulfill their pro bono commitments through mentoring rather than by taking cases. This might tap into an underutilized pool of law firm attorneys who do not now regularly do pro bono work.

Set up mentoring call-in hours

One attendee mentioned that attorneys utilized a call-in mentoring resource for a Holocaust reparations project. Certain hours were designated for mentoring and during those times attorneys could join a conference call and get assistance from a substantive expert. Another attendee noted that her firm is considering this arrangement for cases from the Paralyzed Veterans of America project. The advantages of this approach are that it leverages limited mentoring resources by making them available to numerous attorneys at one time and that it is a good way to answer general questions. The disadvantages are that mentoring is generally more effective when the mentor knows the facts of the case, and that mentees are more likely to trust the information they receive when they have some familiarity with the mentor. Attendees agreed that this approach might work well for some types of cases but not all (e.g. cases with upcoming deadlines, complex facts, etc.) As with law firm mentoring, it could at least be used to reduce some of the pressure on provider pro bono coordinators and staff to answer baseline questions.

Use law firm experts to do trainings

Many attendees recognize that training is a substantial burden on legal services staff and suggested that law firm substantive experts assist in training efforts. There are some

² A few attendees noted that in the past some providers were reluctant to delegate the mentoring function outside of their organizations because of quality control concerns. Some attendees noted that there are several subject areas in which a number of firm attorneys have become subject area experts (e.g. family law) and that at least in those areas it should be possible to identify mentors who are very experienced in the subject area.

substantive areas where firms have substantial expertise, and may have more specialized experience than some providers (e.g. bankruptcy cases). Law firm experts could be used to train pro bono attorneys and also to train providers on substantive areas that are becoming more prominent during the financial downturn.³

Increase use of secondments

A number of attendees are interested in increasing loaned associate arrangements. These arrangements would provide more capacity in the legal services community and also enhance the firm's capacity for in-house mentoring when the loaned associate returns to the firm. It would also help firms to put underutilized attorneys to work. Although space considerations have sometimes prevented some organizations from taking on loaned associates, this is likely less of a consideration now that most organizations have hiring freezes and are not filling vacant positions.

One firm noted that it has just commenced its first secondment arrangement and is sending attorneys to public interest organizations for a six-month period. The firm noted that the arrangement is very successful so far. The firm is able to put underutilized attorneys to work in organizations that very much need the extra capacity, the attorneys are getting terrific experience and have maintained their full salary and benefits, and more clients are being served. The firm noted that this is currently viewed as a one-time event, and that no long-term commitment has been made to provide loaned associates in the future.⁴

Attendees also discussed another model being used by a law firm in New York. That firm is permitting associates to spend one year working for a legal services provider but at reduced pay. The arrangement helps the attorney to build skills and to increase the attorney's chance of keeping his or her job at the firm.

A number of attendees noted that the window for these arrangements will not remain open indefinitely. At some point firms will rightsize and shed excess capacity. Once that occurs it will be more challenging to enter into secondment arrangements.

Use senior firm attorneys to support pro bono work

Attendees noted that a large number of senior attorneys are preparing to retire and brainstormed ways to utilize their expertise. One idea is for firms to keep these attorneys in a full or reduced capacity to assist with pro bono cases, provide mentoring, and to expand the firm's pro bono capacity overall.

³ It was noted that Nonprofit 911 might be willing to integrate some subject-area seminars into the trainings it is now providing.

⁴ The firm noted that it hand-picked the attorneys based on the organizations. It also noted that there was some negotiation as to the time frame (six months); from the providers' perspective, the time commitment has to be long enough to justify the training and support that staff invests getting the loaned associate up to speed.

Identify types of cases that can be handled in their entirety by law firms

One firm suggested identifying types of cases that are “firm-ready” and can be handled with little support from the legal services provider. One example is social security cases. The pro bono counsel noted that social security cases that are going to an ALJ hearing are easy to place and that the whole case from intake to hearing could likely be handled by the firm with little legal services support. Another example is affirmative cases that can be filed at the tenant rental office. These cases can probably also be handled in their entirety by the firm with little outside assistance. One pro bono counsel noted that these cases might appeal to non-litigators, thereby tapping into a larger pro bono pool. Attendees are interested in whether providers think it would be helpful to ramp up the number of these filings. If it is, the law firm can probably develop training and other materials to support pro bono volunteers. Attendees were generally interested in learning about other types of cases that could be shifted -- from intake forward – to firms and therefore lessen the burden on legal service providers.

Consolidate dissemination of case lists

Attendees were split on the optimal way to disseminate case lists. Some attendees noted that there is considerable redundant effort in sending case lists individually to a large group of pro bono coordinators. Some also find it frustrating to receive so many different lists. They queried whether probono.net could be used to create one web page where case lists could be posted. One advantage of this approach is that it reduces the burden both on provider and firm pro bono coordinators. It is also an easier way to advertise cases to firms that do not have pro bono coordinators, as well as to solo practitioners.⁵

Other attendees countered that they prefer the case list approach. The emails remind them to identify and place cases. They also countered that the individual appeals help to build relationships between the providers and the firms. They were also concerned that it would be very difficult to keep such a site up-to-date as cases are placed at different firms. One attendee noted that the DC Bar Pro Bono Program tried this approach once before and it was not used by providers.

Increase non-traditional pro bono work

A number of attendees noted that many firms have junior associates and transactional attorneys who are underutilized. They urged providers to think creatively about what a good attorney could do to help staff – for example, legal research, writing memoranda, exploring best practices in other jurisdictions, etc.

⁵ Attendees also discussed an approach used by the Lawyers Alliance for New York where firms are divided into a four-group rotation for receipt of case lists. This helps to ensure that a broad range of firms have the opportunity to accept cases off the list. Since firms are required when they take a case off the list to indicate the name of the attorney taking the case, premature deletions from the list are minimized.

Barriers to using more pro bono

Attendees briefly noted a number of barriers to increasing pro bono support. As is noted above, firms want to ensure that they are not increasing the burden on providers by flooding them with pro bono volunteers. There are also some concerns from the law firm perspective. First, firms are concerned about taking on a lot of pro bono work and then being responsible for that work when the attorneys that took the cases leave or are laid off. Some attendees also noted resistance from practice group heads who are concerned that when paid work comes in, too many of their attorneys will be busy with pro bono cases. To this end, pro bono counsel are very interested in short-term projects (commitments of two months or less). They are also looking for non-litigation projects that transactional attorneys can do. A few attendees voiced concern that some providers have dropped insurance coverage for volunteers. This hinders attorneys from keeping pro bono cases when they leave the firm and also shrinks the pool of potential volunteers.⁶ If organizations are being forced to choose between funding staff and maintaining malpractice insurance for volunteers, maybe it would be prudent to get the coverage funded centrally.

Strategies for identifying more volunteers

Attendees briefly discussed strategies for generating more volunteers. Some attendees recommended appealing to second-tier firms, small firms and solo practitioners, many of which have attorneys who want to do pro bono work but aren't currently linked into the community. Other attendees recommended the use of law school students and recommended that providers coordinate with law school public interest advisors to explore whether students can work for class credit. One attendee also suggested appealing to inactive members of the DC Bar.

Attendees would like more information on whether providers need non-legal volunteers. Many firms could generate volunteers to do filing and other administrative tasks if that would be useful.

C. Cash Donations

Many attendees acknowledge that organizations have a more urgent need for cash donations than for increased pro bono support. They understand from the organizations they work with that Directors are worried about having enough revenue to maintain staff positions and that cutting staff means cutting services. Pro bono support is important and useful but it will not save – or substitute for -- staff jobs.

⁶ One attendee noted that coverage may be available through the NLADA. Some attendees voiced concern that information available on the DC Bar Pro Bono Program website about which providers have malpractice insurance for volunteers is not current.

Most attendees agreed that they simply do not know whether their firms are going to be able to maintain or increase cash donations.⁷ Many attendees noted that fundraising appeals from providers have increased. They also noted that they are already receiving spring fundraising appeals. Most attendees understand that providers need to have commitments now in order to plan for the year but they reported that they are hampered by uncertainty within their firms about the impact of the financial downturn. Some pro bono counsel have already been told to reduce charitable giving by a certain percentage and are struggling with appeals that are asking firms to increase giving. Some attendees noted that they simply cannot pick one provider to receive increased funding while decreasing funding for other providers with which the firm has relationships. One attendee counseled that, from her perspective, it is not useful for organizations to call multiple times or to call multiple people within the firm; the attendee noted that if she is not responding to the appeal it is because she is waiting for internal processes to finish. One provider noted that firms are struggling with the concern about giving money to organizations that are not going to survive the economic downturn; firms are not sure how to get accurate information about different organizations' financial stability.

Attendees made a few suggestions for increasing revenue generation. First, a number of attendees suggested that firms could help to increase giving by individual attorneys (as opposed to institutional giving). This includes helping providers to educate attorneys about the crisis in the community.⁸ Some attendees suggested a monthly "jeans day" whose proceeds would go to the legal services community. Jeans days are very successful at some firms: one firm reported that at a recent jeans day, \$5000 was raised from individuals and then the firm matched the amount. If the 25 largest firms each raised \$1000 on a jeans day, it would net \$25,000 in one day for legal services. Since both attorneys and non-attorney staff participate in jeans days, this also provides a mechanism for non-attorney staff to contribute.

Some attendees also noted that they are starting to return fundraiser tickets to organizations so they can donate them (i.e. the firm pays for the tickets but doesn't actually send anyone to the dinner). Some queried whether organizations should cancel their dinners this year. There was comment that fundraising dinners seem like a waste of money in the current economic climate and that firms would prefer that donations be used to provide services rather than to fund the expenses of events.⁹ Attendees acknowledged that organizations may have already made obligations that require them to hold events this year.

⁷ One attendee voiced concern about the unnecessary expense generated by redundant service provision among legal services organizations. She noted that this redundancy is more troubling now given the growing resource constriction. Firms want to ensure that the money they provide – particularly now when they are being asked to provide more money in the face of shrinking firm revenue – is used optimally. Bar Foundation representatives noted that there is general support in the legal services community for scanning the network to reduce redundancies and to achieve city-wide efficiencies.

⁸ The Bar Foundation noted that it is asking Board and Advisory Committee members to send an email to all attorneys in their firms asking them to make individual donations either directly to providers or to the Bar Foundation for distribution. The email includes a link to a donation site that lists the providers and the Foundation.

⁹ One attendee suggested providers consider a "Phantom Ball" like the one in Houston.

D. Other Support

In the course of discussion, attendees brainstormed other types of support that firms can provide. They understand that organizations are in crisis mode and are most concerned about cash donations but wanted to generate ideas about other resources that might help.

- One firm reported that PLI will permit them to designate a certain number of providers to receive free CLE services.
- A number of firms suggested that they approach Lexis and Westlaw as a group and negotiate better rates for the providers.
- Some firms are in the process of negotiating contracts with their service providers (e.g. translators, deposition reporters, etc.) that include pro bono credits; they should explore donating these credits to providers.
- Some firms have very well-connected press departments; they suggest helping providers to place press stories about the impact of the economic crisis and to tell stories that would generate support.
- Many firms welcome requests for printing, copying and other services that they can provide; some attendees suggested that they create a web page where providers can list their needs and firms can identify support they can provide (this could be paired with consolidated case listings to create one-stop-shopping for firm support).
- One firm noted that the ABA regularly seeks corporate sponsorship for events, and suggested exploring items these organizations might be willing to underwrite (for example, volunteer malpractice insurance) in exchange for a highly visible advertisement.
- Some attendees suggested that firms or the Bar Foundation help providers to negotiate more joint purchasing agreements; one attendee noted that the DC Primary Care Association has been successful on this front.
- More generally, some attendees suggested that firms do a general assessment of the type of non-traditional support they can provide and circulate the list of possibilities to providers.

Some attendees were surprised to learn that some providers are not sufficiently linked into the firm community to feel comfortable asking for assistance with copying, hosting meetings, etc. One attendee suggested increased social interaction opportunities so that pro bono counsel and providers become more connected and suggested a gathering as part of the October ABA event.

III. Conclusion

The Bar Foundation is grateful to attendees for participating in this important and very productive discussion. It is extremely valuable to hear from different parts of the network and to obtain multiple perspectives on how the community can work together to maximize service provision to clients. The listening session closed with a commitment among attendees to continue the conversation within the firm community and to reach out to providers with these ideas to see what initiatives would be most useful.

Appendix A: Listening Session Attendees

Law Firm Participants:

Pat Brannan, Hogan & Hartson
Karen Grizez, Fried Frank
Chris Herrling, Wilmer Hale
Susie Hoffman, Crowell & Moring
Barbara Kagan, Steptoe & Johnson
Marcia Maack, Mayer Brown
Anne Proctor, Covington & Burling
Roberta Ritvo, DLA Piper
Rachel Strong, Howrey LLP
Marsha Tucker, Arnold & Porter*
Suzie Turner, Dechert LLP

Access to Justice Commission Representatives:

Sunil Mansukhani, Executive Director, DC Access to Justice Commission

Bar Foundation Representatives:

Katia Garrett, Executive Director, DC Bar Foundation
Steve Pollak, Board President, DC Bar Foundation
Claudia Withers, Director of Programs, DC Bar Foundation

* Marsha Tucker also participated in her capacity as DC Bar Foundation Grants & Technical Assistance Committee Member