

II. Summary of Listening Sessions (continued)

E. Listening Session with Law Firms and Legal Services Organizations on Pro Bono Issues

Participants in this session covered a broad range of topics related to the best use of pro bono resources. Throughout the discussion they identified a number of principles to consider when crafting a role for pro bono assistance in the funded projects. These principles include:

Legal services organization should take the lead in figuring out how to best use pro bono resources: Law firm participants agreed that they would be happy to react to proposals or to talk through potential partnerships. But they believe that the legal services organizations are the experts and should have the lead role in determining the best strategy for leveraging pro bono resources to enhance the impact of the public funding.

Relationship-building is key: Participants agreed that partnerships between legal services providers and law firms should be structured in a way that builds a relationship, rather than just channeling cases to law firms. When firms feel invested in a particular organization, they are more likely to take cases, and provide financial support and resources. These relationships develop in a variety of ways. For example, when law firm attorneys identify with a legal services organization or a particular case, they may become effective advocates within the firm to support that organization financially and take cases. Relationships – as opposed to simple financial support -- also keep firms institutionally tied to legal services organizations and/or projects. Legal services organizations can also foster relationships through mentoring and by having their pro bono coordinators spend time at firms pitching cases and describing the organization's work and needs.

One legal services participant noted that relationships assist legal services providers with quality control, allowing them to turn to “true and tested” firms.

Legal services attorneys and pro bono attorney are not interchangeable: A number of participants stressed that legal services attorneys and pro bono attorneys are not interchangeable, particularly where successful representation depends on relationships with individuals at government agencies or other entities. It is important to think carefully about how to best use pro bono resources and not to assume that pro bono attorneys can be plugged in simply to take overflow from legal services organizations.

Fund non-attorney professionals: A number of participants agreed that the Bar Foundation should not limit the new grants to fund only the hiring of attorneys. As discussed below, social workers and other non-attorney professionals provide important support for pro bono attorneys.

Thinking Point: How can pro bono resources best be used to enhance the impact of the public funding?

Participants strongly agreed that law firm pro bono resources should be marshaled to enhance the impact of the public funding. Participants had the following ideas for how best to use pro bono resources:

Use pro bono attorneys for systemic cases: As in other listening sessions, participants agreed that it is very effective for law firms to handle systemic cases. A number of participants suggested that law firms act as “think tanks” to help providers identify potential cases. Participants suggested that, as a general matter, legal services organizations are often too swamped to formulate systemic approaches to recurring issues. Some participants noted that distance and lack of expertise are sometimes strengths when trying to identify systemic problems. One participant noted that formalizing the think tank idea, which would involve close collaboration with legal services organizations, is particularly attractive because it would more actively involve legal services lawyers in the process of identifying systemic cases, and would thus help to build the capacity of the community as a whole to identify systemic issues. A number of participants mentioned that partnerships between law firms and legal services organizations on systemic cases have traditionally been very successful and have helped create important relationships between providers and law firms.

One participant noted that providers and firms need to be aware that some systemic cases, if successful, will generate individual cases. Part of the strategy developed for a systemic approach should address this issue. Kinship guardianship cases were offered as an example: work in this area started as a systemic case handled by a law firm and, once successful, generated – and continues to generate – many individual cases for clients seeking benefits under the program. The law firm initially involved in the systemic case now takes those individual cases as well. One law firm participant noted that this type of hybrid example appeals to firms because institutionally the firm is interested in the law reform work while the associates are interested in the individual cases. Another law firm participant noted that this model is preferable because the law firm is invested in the case and is willing – and prepared – to absorb the volume of cases.

A number of law firm participants noted that sometimes the process is most successful in reverse: a pro bono attorney takes a series of individual matters, identifies the systemic case, and then pitches it to the firm.

Use pro bono attorneys for “duty days” on the DC Law Students in Court model: Some participants suggested that pro bono attorneys have “duty days” at landlord-tenant court. Pro bono ‘duty attorneys’ would do initial triage, help clients through the first court hearing, and then refer the clients to legal services organizations for intake and potential representation (the DC Law Students in Court model). This strategy would increase the number of clients reached, take some of the pressure off legal services organizations, and permit pro bono attorneys to get “on the ground” experience

without taking on full case representation. Law firm participants thought this model would appeal to pro bono attorneys who are often looking for immediate court experience and who like the time-limited commitment.

Use pro bono attorneys for intake: Some participants suggested that pro bono attorneys be used to conduct intake, both at the downtown offices of area organizations and at neighborhood sites. A number of law firms are currently involved in intake efforts, and the results have generally been good. This model alleviates the burden on providers to dedicate resources to intake and permits pro bono attorneys to “get their feet wet” with a non-litigation activity. It also exposes pro bono attorneys to different legal services organizations and poverty law issues and enables them to explore substantive areas in which they might become more involved.

One participant with extensive experience in this area noted that her organization has started to de-centralize intake and needs more volunteers to conduct intake at neighborhood sites. She is concerned about whether pro bono attorneys will actually go to neighborhood locations, which may be difficult and time-consuming to reach. Participants agreed that the easiest pro bono intake programs from the law firms’ perspective are those that are conducted by telephone and routed directly to the pro bono intake attorney’s desk. Law firm participants reported that when they staff phone hotlines (such as the Archdiocesan Legal Network hotline and the DC Bar’s Children’s SSI Project hotline), pro bono attorneys can participate from their offices. As a result, attorneys can be substituted at the last minute when scheduling problems arise or participants fail to show up.. Law firm participants agreed that the further they ask pro bono attorneys to travel, the more likely no-shows become. Some participants pointed out that although staffing hotlines will help alleviate pressure on legal services providers and potentially increase the number of clients served, it does increase representation in underserved neighborhoods.

Use pro bono attorneys to staff advice and referral sites: Law firm participants noted that pro bono attorneys are very effective in advice and referral settings and that institutionally it is easy for pro bono coordinators to recruit attorneys to participate in these discrete projects. They noted in particular that the Family Court Self-Help Center and the DC Bar Advice and Referral Clinic are very popular among pro bono attorneys and that these limited interactions often lead attorneys to take cases for clients.

Thinking Point: How can legal services organizations best provide the mentoring that is required when cases are referred to pro bono counsel?

Participants had a lengthy discussion about the challenges of mentoring pro bono cases. Legal services participants explained that a major obstacle to referring cases to pro bono counsel is that legal services attorneys are “at capacity” in terms of mentoring. At current staffing levels, some providers stated they could not refer many more cases to pro

bono counsel because staff attorneys do not have enough time to mentor those cases. Participants had several suggestions to address this problem:

Dedicate some of the public funding to case mentoring: A number of participants advocated that new positions created by the funding be explicitly dedicated, at least in part, to mentoring pro bono cases. This would increase the number of pro bono cases that could be referred. Some participants favored a “Lawyers’ Committee model” where the in-house attorney had substantive expertise but referred cases to law firms and then spent significant time advising and mentoring those firms.

Some participants noted that this strategy may not be consistent with the goal of increasing the number of clients served. Strictly speaking, any time devoted to mentoring is time taken away from actual client representation. Others argued that the mentoring will allow more clients to be served because the attorney could mentor a number of cases simultaneously in the same amount of time that it would take him/her to represent one client. Ultimately, it would increase the number of clients served, but many would be served by pro bono counsel rather than by the funded attorney.

Fund a “collective mentor” for a group of providers: Some participants were in favor of funding an attorney who would serve as a mentor for pro bono matters from multiple organizations. Thus, instead of replicating mentoring resources within each organization, there would be one mentor for a specific practice area that mentored pro bono cases referred by all of the participating organizations. This would reduce the duplication of mentoring resources among organizations. Participants agreed that in order to be successful in this position, this mentor would have to be a very experienced attorney who is extremely familiar with the participating organizations and the law firms. It would be important to consider carefully where to house such a mentor so that the person is integrated into the legal services community and has easy access to legal services attorneys for information and support.

Some participants expressed doubts about this approach because they did not think it was prudent to de-couple mentoring and practice. Those participants expressed the view that an effective mentor would have to be someone currently “in the trenches,” familiar with the judges sitting on different calendars, and knowledgeable regarding the most up-to-date changes in practice. They believe that it is difficult for any attorney to mentor if he or she is not engaged in daily practice.

Thinking Point: What are the least effective uses of pro bono assistance?

Participants identified a number of circumstances where pro bono assistance is least effective:

Emergency cases: Law firm representatives agreed that it is hard to find an available attorney on short notice for emergency cases, and pro bono attorneys are often reluctant to take on such cases where they feel they have inadequate time to prepare.

Cases that are “relationship-based:” Law firm representatives noted that some types of cases – for example, special education cases – are very “relationship-based” – that is, successful representation benefits from relationships the lawyer has built up with various public administrators or officials. Cases of this nature may be handled better by the legal services attorneys and organizations that have these relationships. It takes law firms a long time to build these relationships because, except in the case of “signature projects,” they do not handle a sufficient volume of cases.

Cases that require capacity in languages other than English: Some law firm representatives noted that they generally do not have the language capacity in-house to represent non-English speaking or non-English proficient clients.

Thinking Point: What are the challenges in using pro bono attorneys to provide services? What changes would ameliorate these obstacles?

Both law firm and legal services participants identified a number of challenges in using pro bono attorneys. They stressed that pro bono work is a critical piece of the legal services picture in DC and that for the most part these relationships and initiatives work extremely well but some tweaking is required:

Improve communication between providers and law firms: Participants identified a number of areas where communication could be improved. Providers would like law firms to be more direct about the types of cases they are willing to take. One participant noted that he has often made pitches to law firms about cases within a particular substantive area only to learn after-the-fact that, as a policy matter, the firm does not take such cases. The participant understands that firms appropriately have guidelines about what types of cases they will take but would like to have more explicit communication from the firms about any limitations up front. Other participants suggested that it would be helpful to have a mechanism to disseminate information about firm guidelines to providers.

Improve mentoring within law firms: One legal services participant stated that it would be helpful if there were better mentoring of pro bono attorneys within law firms. The participant noted that pro bono attorneys are sometimes reluctant to ask elementary questions of their law firm mentors and end up asking the legal services organization mentors instead. In the aggregate, this imposes a considerable burden on legal services mentors who are often overseeing numerous cases and handling their own case loads as well.

Make more training materials available to pro bono attorneys: Law firm participants agreed that it would be helpful if training materials were more readily available. In particular it would help if the DC Bar trainings were available on videotape (NB: the Bar is in the process of recording trainings and plans to make them available via probono.net). One legal services participant noted that she has CD ROMs of all DC Bar trainings that she disseminates to pro bono volunteers. Other participants stated that pro bono attorneys would benefit from training – or access to training materials – on

cultural competence and how to work with clients in poverty. It would also be helpful to have an index of all of the training materials available in the community. Many organizations have excellent training materials but there is currently no compilation that would direct pro bono attorneys to the appropriate organizations to obtain the materials.

A number of law firm participants advocated centralized training for pro bono attorneys. They noted that they currently choose which legal services organizations to work with based on the training and mentoring offered. If there were centralized training, law firms would be able to work with a broader spectrum of organizations.

Adjust expectations about pro bono attorneys traveling to underserved neighborhoods: A number of participants noted that pro bono attorneys are often reluctant to travel to underserved neighborhoods. A number of factors contribute to this reluctance, including travel time, lack of familiarity with neighborhoods, and safety issues. A number of participants explained that going into neighborhoods involves too much “transaction time” for pro bono attorneys. There was some question about whether pro bono attorneys should be a significant vehicle for achieving greater attorney presence in underserved neighborhoods. There was no consensus on this issue.

Provide access to social workers and other non-lawyer professionals: A number of law firm participants stated that it would be helpful for pro bono attorneys to have access to social work resources. Many pro bono attorneys fear “messy cases” that have a lot of non-legal issues. They would be more willing to take these cases if they had social work assistance. Other participants stated that it would be helpful for pro bono attorneys working with tenant associations to have access to some type of facilitator. Law firm attorneys do not generally have experience working with these types of organizations and often struggle at the meetings to be effective.

Identify appropriate pro bono opportunities for legal assistants: Law firms report that they have many legal assistants who would like to be involved in pro bono efforts but have trouble finding appropriate projects for them. It would be helpful to have a compilation of pro bono opportunities that legal assistants can participate in.

Improve “marketing” of pro bono opportunities: A number of law firm participants urged pro bono coordinators at legal services organizations to take the time to “market” projects well. They explained that they have to market the pro bono cases within the firm and that if the materials they receive do not make the case or project sound attractive, they end up having to redraft the description, often with limited information. This delays placement of cases and sometimes results in good cases slipping through the cracks. One participant suggested that it would also be helpful for legal services organizations to compile a list of potential systemic cases and pitch them to a group of law firms at once. This would reduce the burden on legal services organizations to make a series of presentations to individual law firms, and may result in faster case placement. One participant noted that marketing cases is an important opportunity for relationship-building and that the time pro bono coordinators spend

marketing and pitching cases has more global benefits than simply getting the individual case placed.

Thinking Point: Should the RFP require proposals to contain a pro bono component?

Although participants agreed that pro bono efforts should be leveraged to augment the impact of the public funding, they did not favor a pro bono “requirement” in the RFP. They expressed the following concerns:

- A number of legal services organizations noted that they cannot always secure pro bono assistance “on demand.” Although area law firms take a significant number of pro bono referrals, for both individual and systemic cases, legal service providers cannot guarantee the availability of such assistance and would be nervous about committing to do so in a grant proposal.
- Similarly, law firm pro bono coordinators reported that within their firms they cannot guarantee that a pro bono attorney can be identified “on demand.” Their ability to place a case depends on timing issues and other unpredictable factors.
- A number of legal services organizations noted that pro bono cases require mentoring and that they are currently “at capacity” in terms of their ability to mentor additional cases.
- One legal services participant suggested that it was problematic to require a pro bono component since the vision for the public funding is to increase the staff resources of legal services organizations; requiring organizations to use the funding to support pro bono attorneys would seem to dilute that vision.
- A couple of law firm participants were reluctant to comment on what legal service organization proposals should contain; they noted that since the organizations would have the responsibility for implementing the proposals, they should be “in the driver’s seat” for determining what elements to include.