

**SUPPORTING JUSTICE:
A REPORT ON THE PRO BONO WORK
OF AMERICA'S LAWYERS**

**THE ABA STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
AUGUST 2005**



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Supporting Justice: A Report on the Pro Bono Work of America's Lawyers

August 2005

If the motto 'and justice for all' becomes 'and justice for those who can afford it', we threaten the very underpinnings of our social contract. - *Chief Justice Ronald George, California Supreme Court*

Equal justice under law is not just a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status. - *U.S. Supreme Court Justice Lewis Powell, Jr.*

Overview

This report is the result of a one-year study conducted by the American Bar Association (ABA) Standing Committee on Pro Bono and Public Service. The Committee's goal was to produce a national survey that captured the amount of pro bono work being done by lawyers in the United States and to obtain a clearer understanding of why attorneys do or do not volunteer their time to offer legal assistance to people of limited means. The survey, conducted at the end of 2004, consisted of telephone conversations with 1,100 lawyers throughout the country in private practice, corporate counsel, government and academic settings. The sample reflected the actual attorney population. ABA members and non-ABA members were included at representative levels.

This survey examines practicing attorneys' pro bono contributions over a one-year period from approximately November 2003 to November 2004, asking how much and what kind of volunteer legal services they provide, in what substantive areas they focus their efforts and why they do or do not engage in pro bono. Lawyers were selected randomly to create a representative sample of full-time practicing attorneys from all 50 states in the United States.

Key findings in the National Pro Bono Survey include:

- Two-thirds of respondents (66%) reported doing some level of free pro bono services to people of limited means and/or to organizations serving the poor.
- Attorneys surveyed, on average, reported providing approximately 39 hours of free pro bono service to persons of limited means or organizations serving the poor.

- Attorneys surveyed, on average, said they provided an additional 38 hours of free pro bono service to individuals or groups seeking to secure or protect civil rights, to community organizations and other non-profits and toward efforts to improve the legal system.
- 46% of the lawyers surveyed met the ABA’s aspirational goal of providing at least 50 hours of free pro bono services.
- There was a direct correlation between age and incidence of providing pro bono. Older attorneys were more likely to report doing pro bono than younger attorneys.
- The prime motivator for attorneys who have done pro bono is the combined sense of professional duty and personal satisfaction derived from the work (70%). The second largest factor was a recognition of the needs of the poor and responding to specific requests for assistance (43%).
- The main discouragement from doing – or doing more – pro bono, is a lack of time (69%). Other demotivators include employer-related issues (15%), such as billable hours expectations, and the lack of specific expertise or skills in the required practice area (15%).
- Providing pro bono work by substantially reducing legal fees is much less common than providing free legal services. Only 33% of the attorneys indicated doing any “substantially reduced fee” pro bono work.
- Overall, pro bono clients are most likely to be referred by a friend or family member (40%) or by some type of organized pro bono program (36%), and this finding varied significantly by practice location, setting and size and age of the attorney.

This study shows both the profound sense of responsibility that attorneys have for engaging in public service and the need that exists for increasing the amount of pro bono legal services that attorneys provide for the poor. This is the first survey of its kind and a useful tool for measuring pro bono activity and identifying strategies for expanding pro bono service around the country.

Introduction

Pro Bono Publico is fundamental to the practice of law and has been viewed as an ethical responsibility of lawyers – both informally and formally – since the beginning of the profession. While ample evidence demonstrates pro bono’s growth in the last 25 years, there has been little national quantitative data to help illuminate the extent of this growth and the nature of the pro bono work done by individual attorneys. This project was undertaken to develop a national, comprehensive profile of attorneys doing pro bono to enable the ABA to better support their efforts and to help others provide pro bono service. As the national representative of the legal profession, the ABA is uniquely qualified to undertake this study.

History and Overview of Pro Bono in the United States

Establishing a widely-accepted definition for what constitutes pro bono work has always been a challenge. State bar associations, private organizations, courts, law firms and many other organizations have considered what constitutes pro bono. Common to all definitions is the recognition that representation of low-income people in civil cases is an essential element. Some broader definitions include representation of charitable organizations, civil rights work, activities for improving the legal system, and legal services for religious, civic, community, governmental and educational organizations. The broad range of pro bono definitions that exist at the local level may reveal a need for greater definitional consistency, a need that could be addressed by the national perspective of this survey.

In the last 25 years pro bono policy has been debated as a useful strategy for defining and promoting pro bono. In 1983, the ABA House of Delegates adopted Model Rule 6.1 of the ABA Model Rules of Professional Conduct, which stated, in part, that a lawyer "*should render public interest legal service.*"¹ This rule sufficed as an aspirational statement for lawyers doing good things in their community but did not sufficiently set forth the importance of lawyers voluntarily providing free civil legal services for those most needy in their communities.

The rule was amended in 1993 to emphasize the representation of low-income people without charge while including other forms of volunteer legal service and, under some circumstances, reduced fee arrangements. Since the adoption of the modern Model Rule 6.1 in 1993, 17 states have adopted the rule word-for-word or with minor modifications,² focusing on attorneys' pro bono responsibility to serve the legal needs of the poor. Another 26 states have a version of the 1983 Model Rule 6.1, using a more generic definition of pro bono.³ In addition to, or instead of, Model Rule 6.1, state and local bar associations across the country have adopted policies or resolutions setting forth their pro bono commitment, with a few local bars making pro bono service a condition of membership.⁴

What Do We Know About Pro Bono Nationally?

Pro bono has been an inherent aspect of the legal profession's culture for a long time. The tradition of providing free legal services for those who cannot pay has rested at the core of maintaining a fair and equitable legal system. Over the past 25 years, pro bono work for civil legal matters has grown in scope and visibility. Law firms, law schools, corporate counsel offices and government law offices have worked toward integrating pro bono functions and policies into their environment.

Law schools have focused on instilling the importance of pro bono contributions as a part of students' perception of their legal career. Eighty-three (83) law schools have formal, coordinated voluntary pro bono programs. Fourteen (14) schools have pro bono graduation requirements and an additional thirteen (13) require some form of public service as a condition of graduation.⁵ To attain or maintain accreditation, law schools must offer students the opportunity to participate in pro bono activities.⁶

The growth of organized pro bono programs in bar associations, legal services organizations or as independent entities is another example of integrating pro bono into the legal profession. In 1980 there were approximately 83 organized pro bono programs dedicated towards referring civil matters for low-income clients to private attorneys. Now, 25 years later, there are over 900 such programs which serve increasingly diverse legal needs of clients and target an equally varied volunteer pool.⁷

Large law firms measure themselves against their peers by the strength of their pro bono programs. In 1989, with a grant from the Ford Foundation, the ABA Standing Committee on Pro Bono and Public Service formed the Law Firm Pro Bono Project and in 1993 challenged large firms around the country to contribute 3% or 5% of their total billable hours to the provision of pro bono legal services. Today, 138 law firms are signatories to that challenge, contributing hundreds of thousands of hours of pro bono legal services.⁸ Increasingly, many of these and other law firms are hiring full-time lawyers and staff to coordinate their pro bono work. Some medium and small law firms, government law offices, and corporate legal departments are also increasing their level of pro bono participation in an organized way.

Some states have adopted rules that encourage pro bono contributions. Four states – Florida, Maryland, Nevada and Mississippi -- have mandated the reporting of pro bono hours on an annual basis, with a range of sanctions for failure to report hours (but not for failure to perform pro bono work).⁹ Of the 40 states which mandate continuing legal education, five permit credit toward that obligation for pro bono service.¹⁰ Fourteen (14) states have adopted pro bono emeritus rules allowing retired lawyers to continue to practice law when providing pro bono legal services to the poor.¹¹

Notwithstanding this expansion of interest in and attention to pro bono activity, only a small portion of the civil legal needs of the poor are currently being met.¹² The Pro Bono Committee recognizes that more can and should be done to increase pro bono activity and promote a greater understanding of the legal needs that exist and the pro bono opportunities and resources available. Beginning to measure pro bono activity nationally is one step towards meeting these goals.

What Do We Already Know About How Much Pro Bono is Being Done?

There is growing interest in measuring how much pro bono work lawyers are performing. States are starting to measure the amount of pro bono being done through surveys and voluntary or mandatory reporting. Individual organizations are also collecting and reporting information.

Regarding large law firms, each year American Lawyer Magazine surveys what it identifies as the top 200 law firms about the amount of pro bono performed during the prior year and the number of lawyers in each firm who participate. In 2003, the 183 firms from whom they received data constituted an aggregate of 93,175 lawyers who provided 3,335,375 hours of pro bono legal services to individuals and organizations that could not afford to hire lawyers.¹³ To put it into perspective, those large law firms represent only 18% of practicing lawyers nationwide¹⁴, meaning the figures do not include all of the pro bono being done by solo practitioners and those in small and medium sized firms.

Maryland, which had its first year of mandatory reporting in 2002, reported that among full-time lawyers with business addresses in Maryland, 63.7% participated in some pro bono activity in 2003. For its 2001-2002 reporting year, attorneys in the Florida Bar reported providing 1,247,546 hours of pro bono assistance.¹⁵ Nevada completed its first year of mandatory pro bono reporting for calendar year 2003 and 51.2% of respondents indicating doing some pro bono service during the year. Mississippi adopted a required pro bono reporting rule in March 2005 but has not yet collected data.

In voluntary surveys, the New York State Bar Association found that 46% of lawyers in the state performed some pro bono work for the poor in 2002, averaging 41.3 hours per lawyer.¹⁶ The State Bar of Texas learned that 57.5% of attorneys performed “free legal services to the poor or free indirect legal services that substantially benefit[ed] the poor”, averaging 47 hours per lawyer, in 2002.¹⁷ A study

commissioned by the Missouri Bar Association in 2002 indicated that lawyers there provided an annual average of 42 hours of pro bono legal help to indigent clients.¹⁸

According to the U.S. Bureau of Labor Statistics the percentage of the United States population who did volunteer work from September 2003 - September 2004 was 28.8%. Volunteers spent a median of 52 hours on volunteer activities. These statistics encompass both lawyers and non-lawyers, and include all types of volunteer activities, but offer a comparative perspective for the analysis of pro bono work done by attorneys.

This survey is the first attempt to assess individual attorney pro bono activity on a national basis.

The ABA's Standing Committee on Pro Bono and Public Service Data Collection Project

The ABA Standing Committee on Pro Bono and Public Service is charged with the responsibility to review, evaluate and encourage pro bono activity by attorneys, law firms, bar associations, corporate law departments and other legal providers. As part of its mission, the Pro Bono Committee, and its project the Center for Pro Bono, support pro bono publico programs, provide resources and undertake initiatives that enhance the ability of lawyers to provide pro bono services.

The Pro Bono Committee commissioned this survey in 2004 to establish an accurate and credible baseline for tracking and measuring individual attorney pro bono activity on a national basis. One goal of the Committee in undertaking this survey was to develop a model methodology and set of tools for gathering pro bono data that could be used as a benchmark for consistent future national and state studies. The Committee intends to use the results of this survey to promote and encourage pro bono activity and to devise replicable materials for use on the state and local levels.

Objectives of the ABA's National Pro Bono Survey

In undertaking a national, statistical survey of individual attorney pro bono activity, the primary objectives of the ABA's Pro Bono Committee are:

1. To provide broad, quantifiable information on attorney pro bono activity, including:
 - the number of attorneys who participate in pro bono in the U.S.
 - the number of hours of pro bono attorneys do each year
 - the substantive practice areas in which attorneys volunteer their time
2. To develop an understanding of attorneys' motivations for providing or not providing pro bono service, including obstacles faced in doing pro bono
3. To develop an in-depth understanding of demographic issues affecting pro bono activity.

ABA Definition of Pro Bono Used for the Survey

The survey used the ABA's Model Rule 6.1 as the basic foundation for the questions about pro bono. Model Rule 6.1 states:

“A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

- (b) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.”

Research Methodology

The Pro Bono Committee commissioned Calo Research Services, Inc. of Cincinnati, Ohio to formulate and perform the survey. Calo interviewed 1,100 attorneys, producing survey results with statistical accuracy of +/- 3 percentage points, at a 95% confidence level. The national attorney sample was developed as a “representative sample” using a stratified sampling design with proportional allocations based on estimates of the U.S. attorney population provided in the American Bar Foundation's *2000 Lawyer Statistical Report* publication. The sample itself was randomly drawn from a combination of Martindale-Hubbell and American Bar Association databases, with screening used to limit the ABA membership level of the end sample to 43%, which is the approximate percentage of attorneys in the U.S. who are ABA members. Attorneys from every state in the nation participated in the study, with the distribution of lawyers by state reflecting attorney populations.

The attorney sample for this survey was distributed over four practice settings: Private Practice (81%), Corporate Counsel (9%), Government (8%) and Academic (1%). Since the purpose of the survey was to focus on practicing attorneys, judges and retired and inactive lawyers were intentionally excluded from

the sample. Legal aid/public defender lawyers were also excluded, since they are employed to deliver legal services to persons of limited means.

Respondent interviews averaged 16 minutes in length, and covered information about the respondent's type of legal practice and demographics such as age, gender, number of years in practice, annual income range and ABA membership.

In the telephone interviews, attorneys were asked to focus upon the past 12 month time period (Nov. 2003 – Nov. 2004) in answering the questions. They were instructed to identify only the activities that they had personally performed, not activities that might have been performed by a member of their staff.

Respondents were first asked whether they performed *any* pro bono work meeting the definition below:

In the past 12 months, without fee or expectation of fee, did you

- a. Provide free legal services to **people** of limited means
- b. Provide free legal services to **organizations** that address the needs of the poor
- c. Participate in activities for improving the legal system or the legal profession through groups such as bar associations or judicial committees
- d. Provide free legal services to people or organizations seeking to secure or protect civil rights, civil liberties or public rights
- e. Provide free legal services for a charitable, civic, religious, educational or other nonprofit organization

For internal purposes, the researchers characterized (a) and (b) as “Tier 1” pro bono to represent the work given the highest priority by the ABA’s Model Rule 6.1. Responses (c) – (e) were designated for internal analysis as “Tier 2” pro bono.

If respondents answered “yes” to any of these definitions, they were then asked to provide the number of hours spent on these activities over the past twelve-month period.

The respondents were then asked if they had performed *additional* Tier 2 pro bono at a substantially reduced fee, defined as “agreed upfront to do the work at a discount of more than 50%.” Discounted fee services also were classed as “Tier 2.”

Lastly, the survey inquired whether lawyers performed any other pro bono service that did not meet the ABA’s definition of pro bono but did meet their personal definition of pro bono service. This type of work was designated as “Tier 3.”

Additional survey questions addressed sources of pro bono referrals; factors motivating and discouraging individual’s pro bono activity; factors that could potentially encourage future pro bono service; substantive areas in which people did pro bono work; and monetary contributions made to support legal services or pro bono programs.¹⁹

Key Findings of the Survey

How Many Lawyers are Doing Pro Bono?

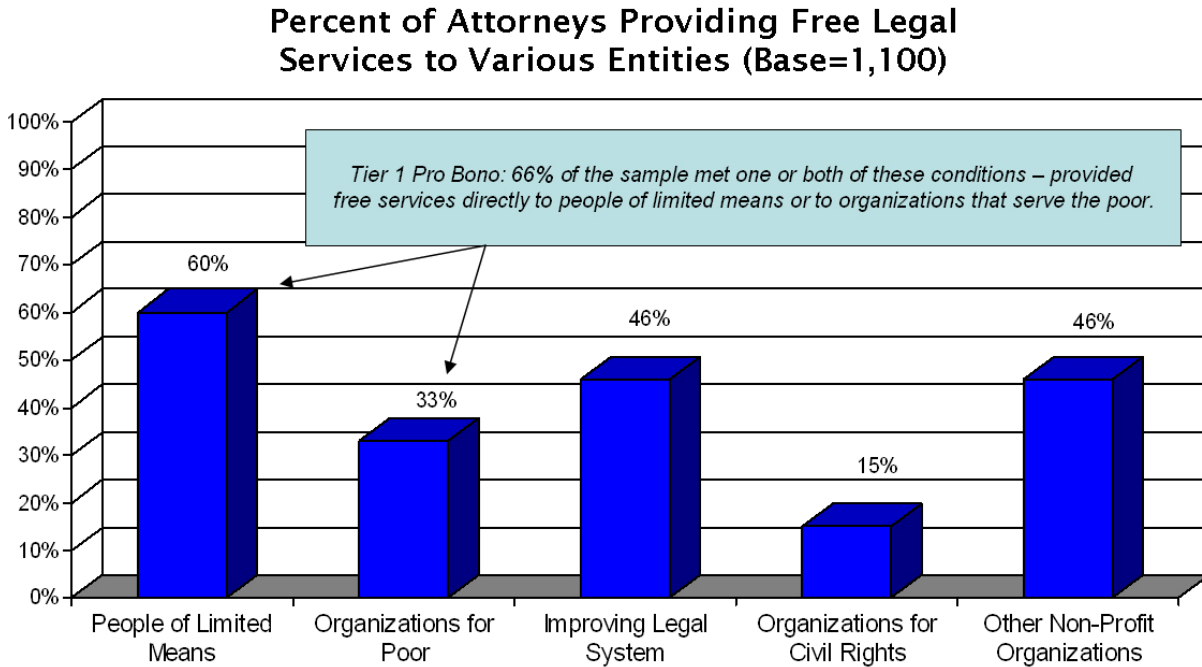
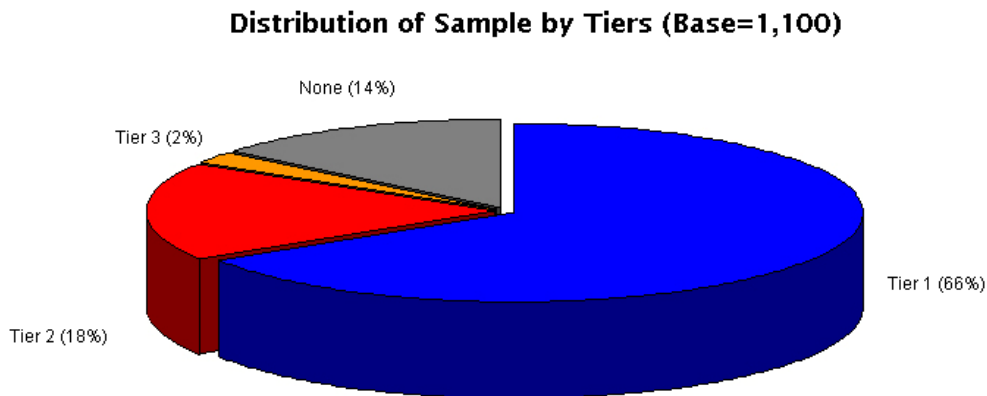


Fig. 1

During the twelve-month period in question, 60% of respondents provided free legal services to persons of limited means and 33% provided free legal services for organization that serve the poor (see Fig.1). Overall, 66% of the attorneys questioned said they did some amount of one or both of these two types of pro bono service and another 18% reported doing pro bono work meeting the rest of the ABA’s definition. Only 2% of respondents identified pro bono work that did not meet any portion of the ABA’s definition and 14% had not performed even one hour of pro bono work in the past year that met either the ABA’s or their own definition of pro bono (see Fig. 2).



Definitions:

Tier 1: Free service to people of limited means; organizations for poor. **Tier 2:** Free services to other entities; any reduced rate services.

Tier 3: Met attorney’s definition of pro bono, but not ABA’s.

Fig. 2

Only 33% of respondents indicated that they did any “substantially reduced fee” pro bono work during that period.

Private practice attorneys were significantly more likely than corporate and government attorneys to report providing free legal services to persons of limited means or to organizations that serve the poor. Seventy-three percent (73%) of private practice attorneys reported doing this type of pro bono work, while 35% of corporate counsel and 33% of government attorneys reported similar work (see Fig. 3).

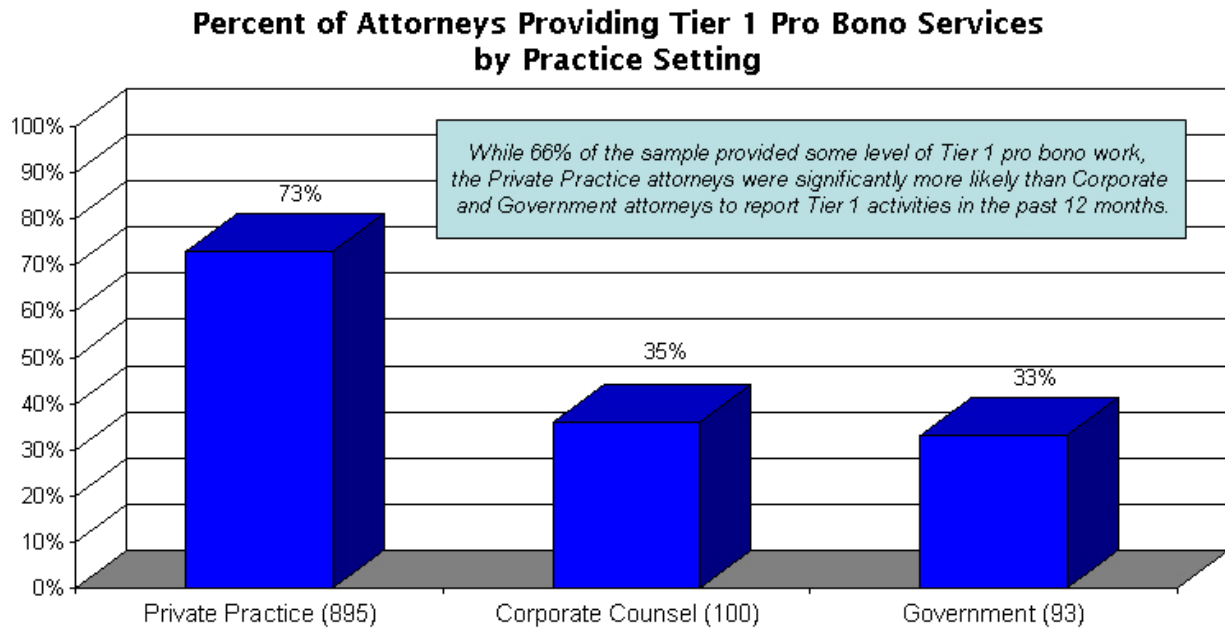


Fig. 3

How Much Pro Bono Work are Lawyers Doing?

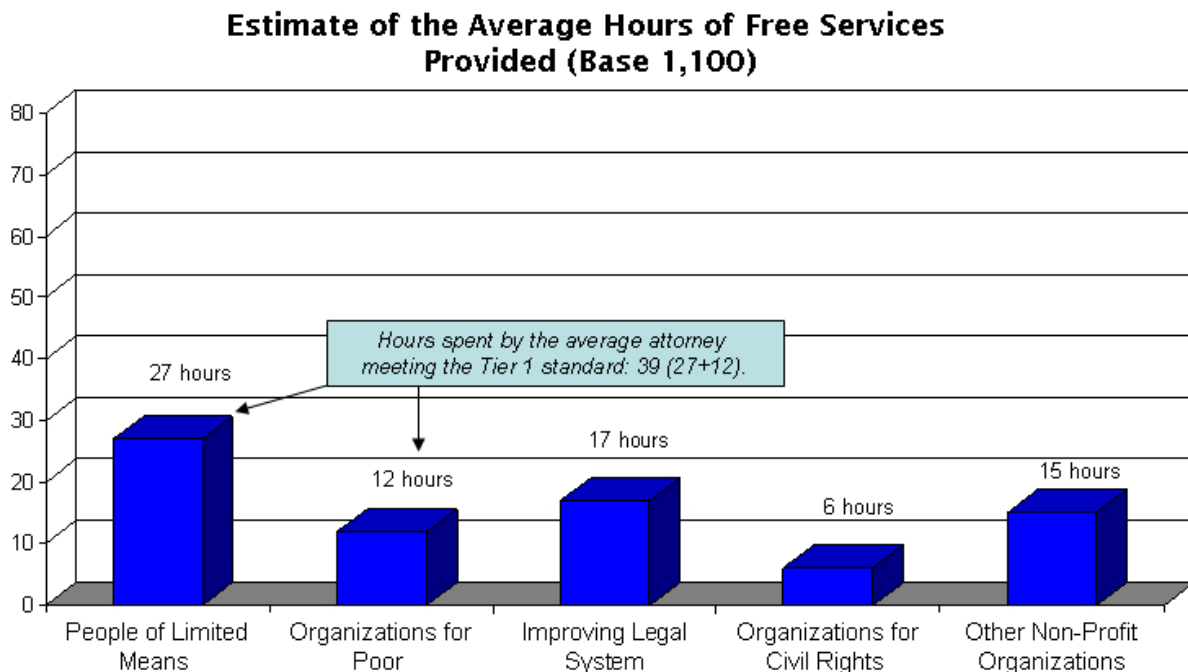


Fig. 4

Those attorneys who reported doing any pro bono meeting any of the definitions of pro bono were then asked how much work they did over the last twelve month period. Considering their responses, and including the data from those attorneys who stated that they provided no free pro bono work for a given entity, it was determined that the average attorney provided approximately 39 hours of free legal service to persons of limited means or organizations serving the poor and an additional 38 hours on pro bono work for other non-profits, civil rights and activities to improve the legal profession (see Fig.4). The average number of hours of free pro bono service meeting any of the ABA’s definitions of pro bono was approximately 77 hours. Forty-six percent (46%) of attorneys provided 50 or more hours of free pro bono service (see Fig. 5).

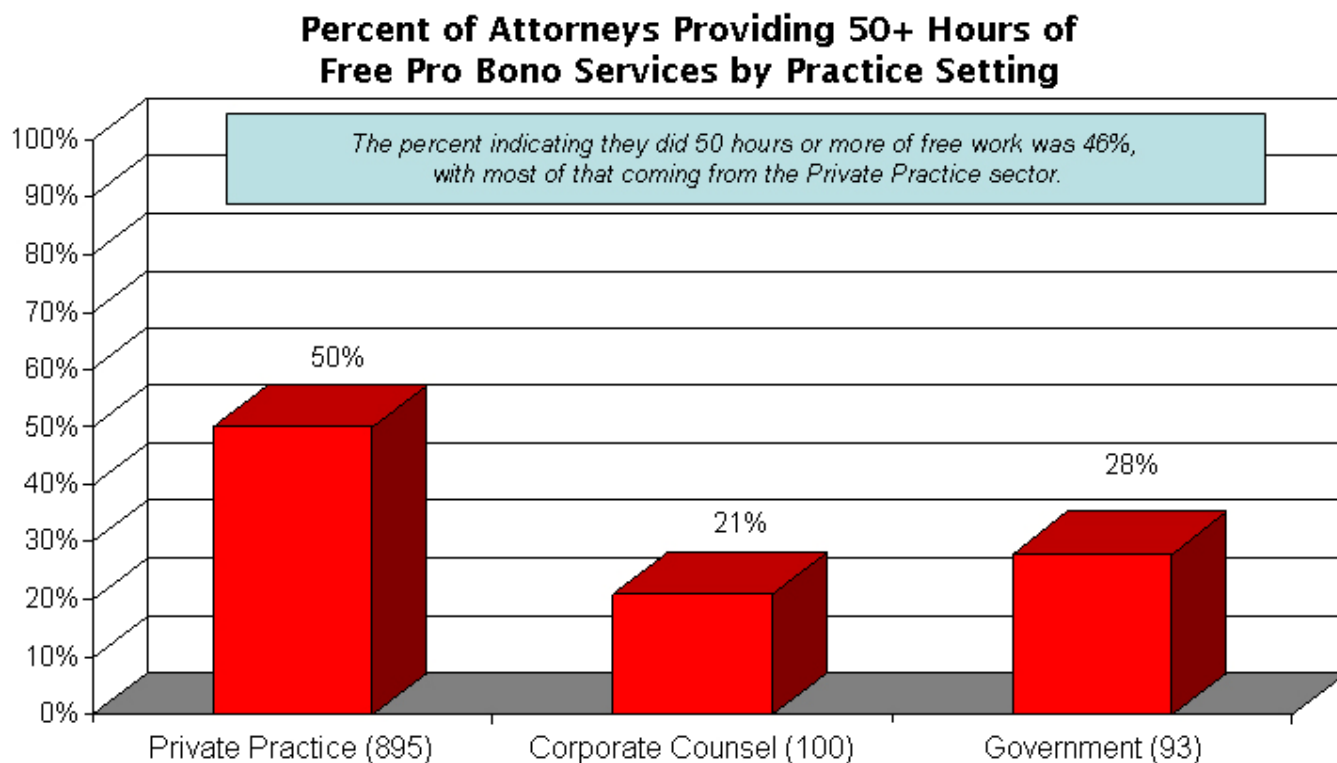


Fig. 5

From Where are Pro Bono Cases Being Referred?

Attorneys who reported having performed any form of pro bono service were then asked from what referral sources these matters derived. Seven options were offered for referral sources:

1. Referred by a legal services pro bono program
2. Referred by a bar association or an independent pro bono program
3. Referred by your employer
4. Referred by a religious affiliation
5. Referred by a family member or friend
6. By cold call from a potential client
7. Other _____

For this question, respondents were allowed to choose multiple answers, which resulted in final statistics that exceed 100%. Of the attorneys reporting having provided Tier 1 services (free legal services to persons of limited means or to organizations serving the poor) 43% indicated that their cases were

referred to them by a family member or friend, while 40% stated that their cases were referred through an organized pro bono program (either legal services, bar association or independent pro bono program) (see Fig. 6).

**Percent of Attorneys Indicating a Given Referral Source
(Among Those Doing Tier 1 Pro Bono Work : 731)**

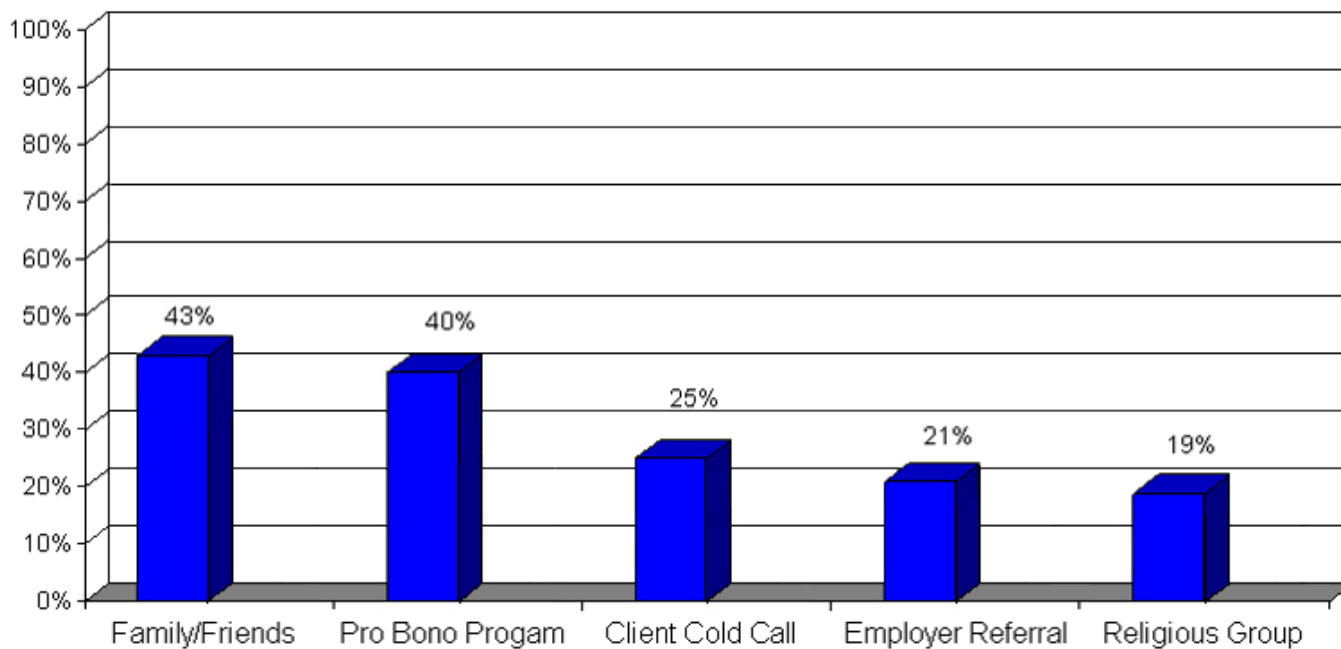


Fig. 6

These statistics varied greatly by the geographic location of the practice (urban, suburban or rural); the practice setting (private practice, corporate or government); the practice size; and the age of the attorney. Respondents in urban settings who had done Tier 1 pro bono reported receiving equal amounts of referrals from organized pro bono programs (41%) and through friends or family (41%). In contrast, in rural areas, 33% received referrals from organized programs and 44% from friends and family.

Private practitioners working in large law firms who had done Tier 1 pro bono were more likely to receive referrals through organized programs (46%) than from friends and family (34%). In contrast, those attorneys working in solo and small practices (1-9 attorneys) were less likely to receive pro bono referrals from organized programs (37%) than from friends and family (49%).

Private practice attorneys (41%) and corporate counsel (38%) were significantly more likely than government attorneys (19%) to name family and friends as referral sources.

Older attorneys (ages 61+, 50%) were significantly more likely than younger attorneys (ages 21-40, 35%) to report receiving referrals from friends or family.

In What Practice Areas is Pro Bono Work Being Performed?

The survey asked: “In what practice areas did you do pro bono work in the past 12 months?” Respondents were offered 13 specific choices and an “other” category. For this question, respondents were allowed to choose multiple answers, which resulted in final statistics that exceed 100%.

Among the attorneys who reported doing any Tier 1 pro bono, the percent reporting that work was conducted in a given practice area was as follows (see Fig. 7):

- family (34%)
- business/corporate (31%)
- consumer (26%)
- estates/probate (22%)
- elder (19%)
- housing/evictions (19%)
- criminal (18%)
- civil rights (16%)
- public benefits (12%)

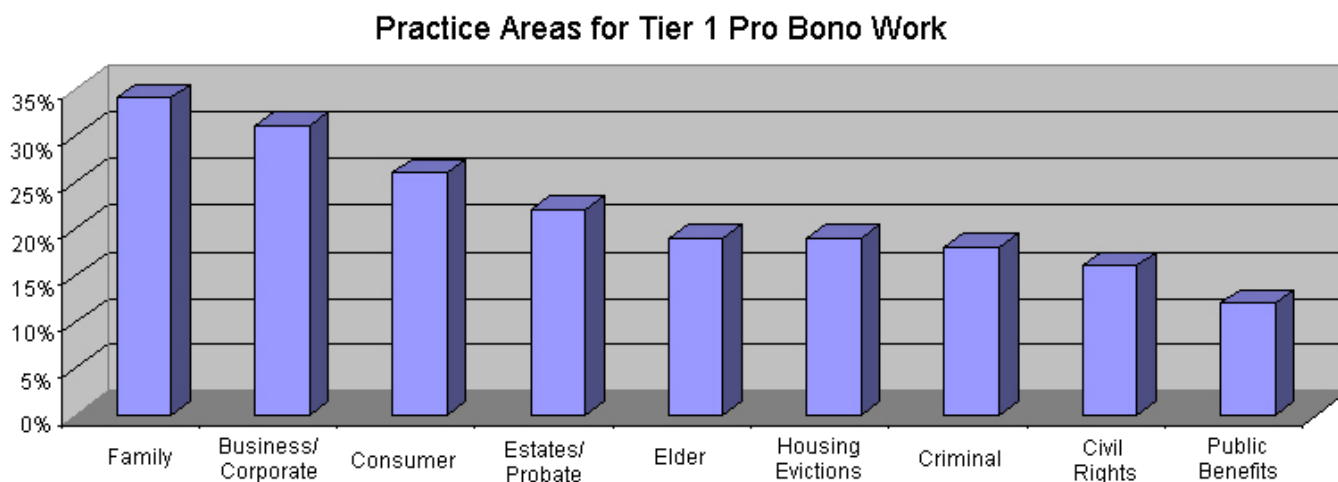


Fig. 7

Among the respondents who indicated doing any form of pro bono work, the percentage rankings were:

- business/corporate law (32%)
- family law (30%)
- consumer law (23%)
- estates/probate law (20%)
- criminal law (17%)
- elder law (16%)
- housing/evictions (16%)
- civil rights (15%)
- public benefits (11%)

Corporate counsel was significantly more likely than private practice or government attorneys to provide pro bono in business and corporate law matters. Corporate counsel took significantly fewer pro bono cases in other practice settings – such as family, criminal, elder law and civil rights law – than their counterparts in private practice and government settings.

Are There Gender and Age Differences in the Level of Pro Bono Activity?

Older attorneys were more likely to report doing pro bono work than younger attorneys. In the category of free legal services to persons of limited means, 56% of those aged 21 – 40 reported doing some pro bono work, as compared to 59% in the 41 – 60 age group and 79% in the 61+ age group (see Fig. 8).

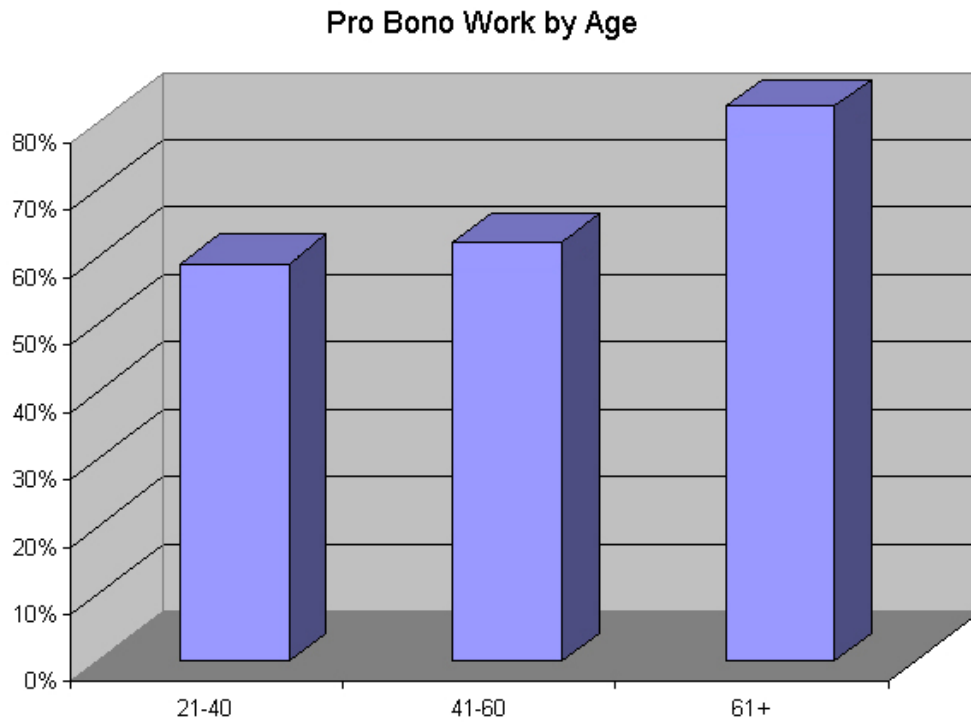


Fig. 8

In general, men were more likely to report doing various forms of pro bono than women.²⁰ Sixty-two percent (62%) of the male respondents indicated that they had done some free pro bono work for persons of limited means and 34% said they offered free pro bono service for organizations serving the poor. Fifty-three percent (53%) of the female respondents reported some free pro bono for persons of limited means and 30% indicated that they offered free pro bono work for organizations serving the poor.

How Much Money Do Lawyers Contribute to Pro Bono and Legal Service Programs?

The survey asked whether people had contributed any money to legal services or pro bono programs in the last 12 months (see Fig. 9). If so, they were asked to estimate the amount of their contributions as:

- less than \$50
- \$50 - \$99
- \$100 - \$249
- \$250 - \$499
- \$500 or more

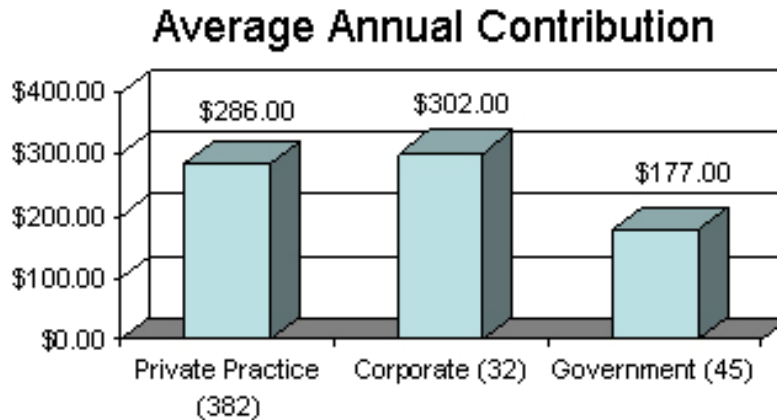


Fig. 9

Of the 1,100 attorneys interviewed, 43% reported contributing money to a legal services or pro bono program within the past 12 months. For those who reported contributing money, the average amount of money donated was \$276.

What Motivates Attorneys to do Pro Bono Work?

Lawyers who engaged in pro bono were asked to rank how influential a number of factors were in motivating them to perform their pro bono service in the past 12 months. The ranking was a 5 to 1 scale in which a 5 means “very influential” and 1 means “not at all influential.” The following factors were reviewed for their level of influence:

- A sense of professional responsibility
- The personal satisfaction derived from providing the service
- The opportunity to enhance your legal skills
- The ability to use the activity toward CLE requirements
- Employer policies (where relevant)
- Employer encouragement (where relevant)
- Encouragement from law firm clients (where relevant)
- Professional benefits such as contacts and referrals
- The opportunity to gain exposure in the community at-large
- A directive from a court
- Knowledge of the legal needs of poor people
- Faith-based commitment
- Awards or professional and judicial recognition

Respondents were asked to name the top two factors encouraging pro bono work. Since attorneys were permitted to choose multiple answers, the resulting statistics exceed 100%. The largest motivator in the twelve-month period covered was a combined sense of professional responsibility and the personal satisfaction derived from providing the service (70%). The second biggest motivator was the recognition and understanding of the needs of the poor (43%). In comparison, relatively few attorneys (15%) mentioned any form of professional benefits as a motivator (see Fig. 10).

Factors Volunteered by Attorneys as Motivating Pro Bono Work

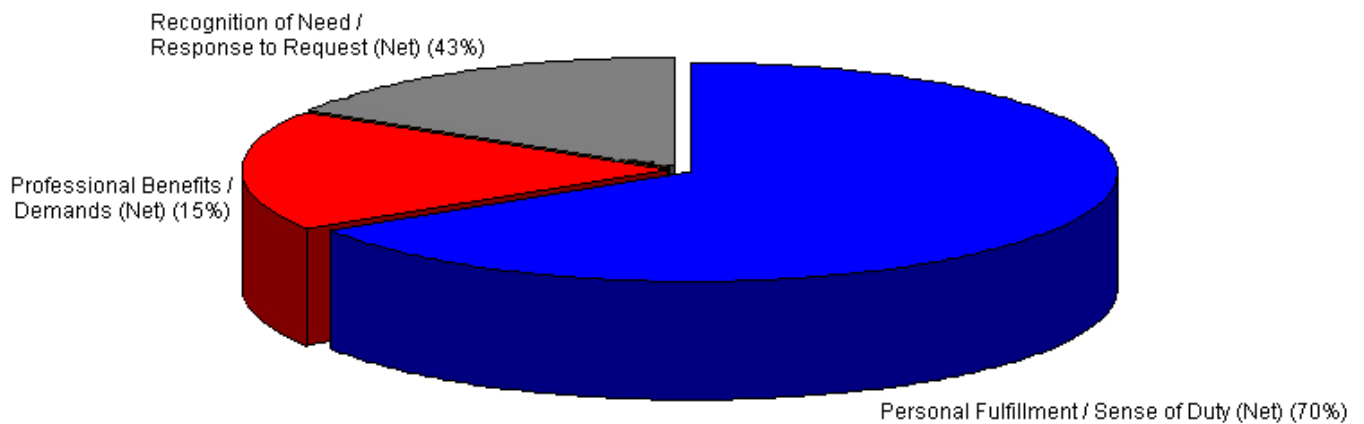


Fig. 10

What Discourages Lawyers from Doing Pro Bono Work?

All attorneys were asked to rank specific factors that discouraged them from performing pro bono in the past 12 months. The ranking was a 5 to 1 scale in which a 5 means “very influential” and 1 means “not at all influential.” The following factors were reviewed for their level of influence:

- A lack of time
- Competing billable hour expectations and policies (where relevant)
- A commitment to family obligations
- A lack of skills or experience in the practice areas needed by pro bono clients
- A lack of information about opportunities
- Discouragement from your employer (where relevant)
- A lack of administrative support or resources
- A lack of malpractice insurance
- A lack of desire

Respondents were asked to name the top two factors discouraging pro bono work. Again, since attorneys were permitted to choose multiple answers, the resulting statistics exceed 100%. The survey found that a perception of “a lack of time” was the primary demotivator (69%). Other factors discouraging pro bono activity were employer related issues, such as billable hours expectations and employer discouragement (15%); a lack of expertise or needed skills (15%), and cost concerns (12%) (see Fig. 11).

Factors Volunteered by Attorneys as Discouraging Pro Bono Work

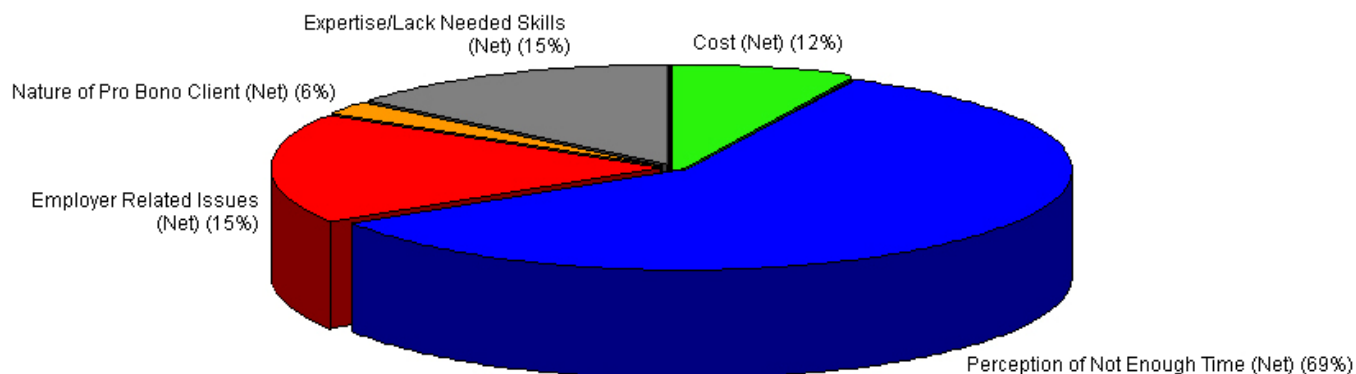


Fig. 11

What Incentives Could Encourage Greater Pro Bono Participation?

All attorneys were asked to rank a list of factors by how strongly they agree with the statement, “I think lawyers would be more inclined to do pro bono work if:”

- They had a wide range of volunteer opportunities available to them
- They had the ability to work on a discrete legal task, such as an initial consultation, rather than a full representation of the client
- They were offered free training and CLE credit for services performed
- They were encouraged by a judge to take a pro bono case
- Courts made scheduling preferences for pro bono volunteers
- Free manuals and forms related to the tasks being performed were made available
- A colleague asked them directly to take a pro bono case
- They were offered mentors and co-counsel
- There was reliable pre-screening of client eligibility
- Free malpractice insurance coverage related to the pro bono work was provided
- Free use of office space and administrative support for pro bono work was given
- Bar associations gave more recognition for pro bono volunteers
- Employers offered more recognition for pro bono providers

The respondents were given a 5 to 1 scale, with 5 meaning “strongly agree” and 1 meaning “do not agree at all.” The most frequently selected responses by lawyers who already do pro bono were free training and CLE credit for services provided (3.6 on a scale of 5); free malpractice insurance coverage related to the pro bono representation provided (3.5); allowing an attorney to take on a discrete legal task rather than an entire representation (3.5); direct requests from colleagues (3.4) and judges (3.3); offering a full range of pro bono opportunities (3.3); and providing mentors and co-counsel (3.3) (see Fig. 12).

Factors that Could Encourage Pro Bono Work (Average Ratings: 5-pt Agreement Scale)

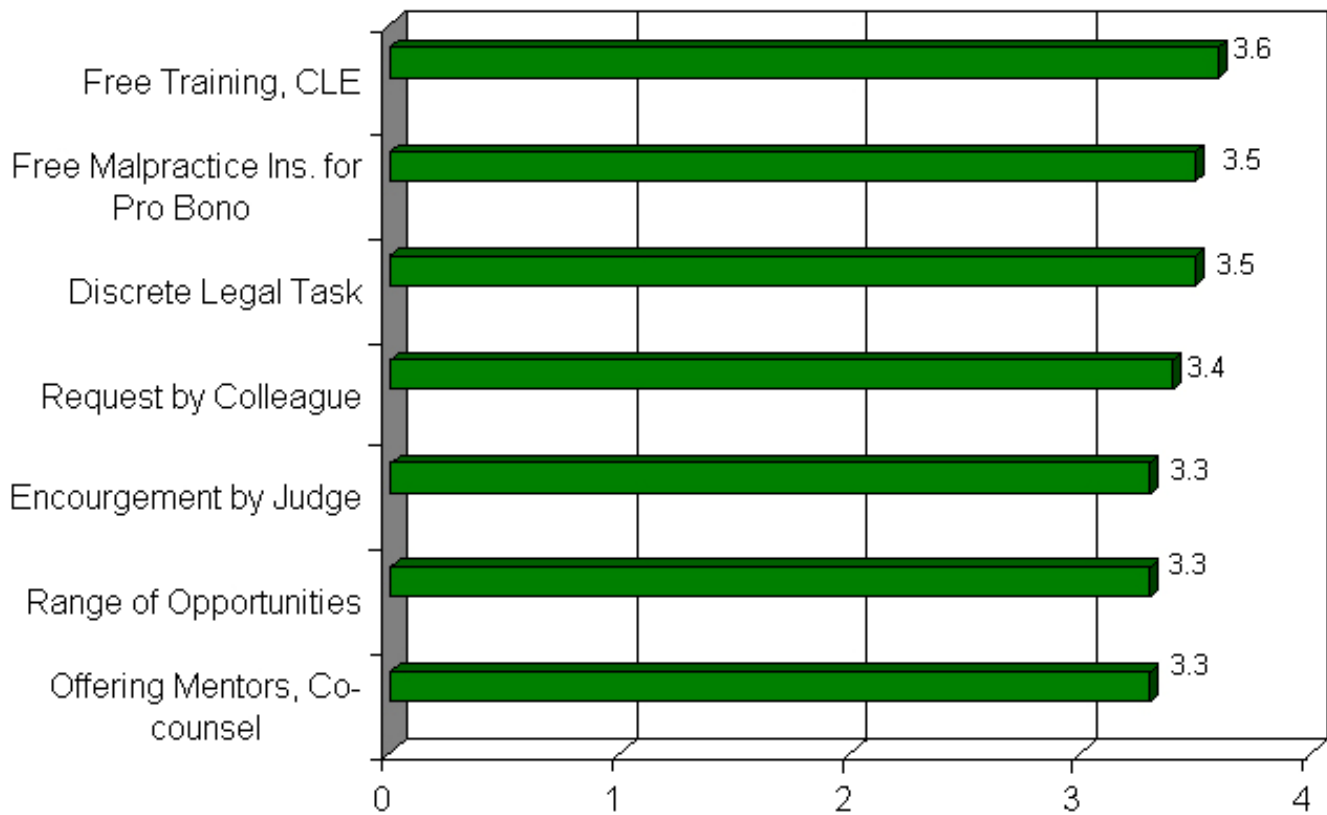


Fig. 12

Attorneys were then asked whether they “personally believe that pro bono work is something lawyers should be doing.” A clear majority of the respondents (93%) felt that pro bono work is something an attorney should do.

Imperatives and Recommendations For Policy and Programming

This study demonstrates that a large number of lawyers have a profound sense of responsibility to do pro bono and that they gain personal satisfaction from doing so. The great majority of lawyers provide pro bono service of some nature, contributing the equivalent of a week a year of pro bono service.

Although previous studies have looked at free legal work performed through pro bono programs, law firms or in smaller geographic areas, this survey is the first attempt to empirically quantify the state of pro bono contributions in the legal profession throughout the country. The Pro Bono Committee sought to develop an effective tool for analyzing the amount and type of attorney pro bono activity on a national level. This first survey strengthens understanding about pro bono practices across the country and provides a foundation for initiatives that may be undertaken to increase pro bono activity.

As part of this process, the Pro Bono Committee expects to analyze the strengths and weaknesses of this study as a “pilot” in order to put the ABA in a stronger position to assess the state of and improve

participation in pro bono legal services over time. With this new data the Committee is poised to create targeted, effective strategies for increasing pro bono opportunities and participation.

Some specific initiatives the Committee expects to pursue as a result of the insights gained from the survey include:

- Expansion of the survey to include retired and inactive lawyers, and focused surveys of specific demographic groups, such as late baby boomers, women, attorneys working part-time and others
- Development of data collection tools – such as survey instruments, protocols and best practices – that can be used on a state and local level to track attorney pro bono activity and better understand how to increase support for and diminish obstacles to participation
- Refinement of educational and public awareness materials for reducing the impact of demotivators and increasing the influence of motivators to encourage more pro bono activity by attorneys
- Development of a national online resource center for pro bono opportunities that will help inform attorneys about the full range of programs and resources available for those who want to volunteer
- Improvement of recruitment tools for pro bono programs, law firm and law school pro bono coordinators, including description of the best approaches to asking colleagues to volunteer, models for engaging the judiciary, and development of strong mentoring programs
- Advancement of CLE and pro bono training modules that would target specific demographic groups

This is not meant to be a comprehensive list. The Committee intends to solicit ideas and strategies for expanding pro bono participation from a wide range of communities.

Conclusion

This survey demonstrates that lawyers provide a substantial amount of free legal services to people of limited means and organizations that serve the poor. Most attorneys do pro bono service out of a sense of duty and the personal satisfaction that accompanies helping someone in need or because they support a specific organization or cause. A smaller, but still substantial, number of lawyers do pro bono because of their awareness of the large number of unmet legal needs of the poor. The primary disincentives cited by lawyers who do not do pro bono were lack of time, employer-related issues (such as billable hours expectations), and lack of expertise in the practice area needed by pro bono clients.

The survey shows that – consistent with a longstanding ‘value’ of the legal profession – lawyers currently contribute many thousands of hours of free legal help to the poor each year. Yet, the ABA Standing Committee on Pro Bono and Public Service seeks to increase even further the number of lawyers who offer pro bono services, increase the number of hours of pro bono service lawyers provide, and increase

the number of poor people who are served by pro bono. The Committee will continue to provide national support for efforts to energize and strengthen pro bono initiatives at the state and local level.

The American Bar Association recognizes and celebrates the contributions to the administration of justice of those who provide pro bono service to address the legal needs of the poor. At the same time, work in this arena is far from done. The organized bar has a responsibility to contribute to the public-private partnership that seeks to address the unmet legal needs of the poor. The ABA will continue to actively encourage and support every lawyer to become active pro bono partners in meeting this challenge.

¹ The full rule, as adopted by the ABA House of Delegates, stated: “A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities to improve the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means. “

² Alaska, Arizona, Colorado, Florida, Georgia, Hawaii, Kentucky, Louisiana, Massachusetts, Maryland, Minnesota, Mississippi, Montana, New Mexico, Nevada, Virginia and Utah.

³ Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Idaho, Indiana, Iowa, Kansas, Maine, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, West Virginia, Wisconsin, Wyoming

⁴ Saratoga County Bar Association, New York; Orange County Bar Association, Florida; El Paso Bar Association, Texas; McDonough County Bar Association, Illinois; Tallahassee Bar Association, Florida

⁵ For detailed information about law school pro bono and public service efforts, see the *ABA Directory of Law School Public Interest and Pro Bono Programs* at www.abanet.org/legalservices/probono/lawschools

⁶ ABA Standards for Approval of Law Schools and Interpretations 2004-05, Standard 302(b)(2)

⁷ 13 The ABA Center for Pro Bono’s *Directory of Pro Bono Programs* – which can be found at www.abanet.org/legalservices/probono/directory.html -- lists 914 direct delivery pro bono programs.

⁸ The Law Firm Pro Bono Project is now operated by the Pro Bono Institute. For more information about the Project, see www.probonoinst.org.

⁹ Florida Supreme Court Rules Regulating the Florida Bar, Rule 4-6.1; Maryland Rules of Procedure, Rule 16-903; Nevada Supreme Court Rule 191, Section 2; Mississippi Rules of Professional Conduct, Rule 6.1

¹⁰ Delaware, New York, Tennessee, Washington and Wyoming

¹¹ Arizona, California, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Montana, Oregon, South Carolina, Texas, Utah, Washington

¹² Illinois Legal Needs Study II, *The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans*, February 2005

¹³ Special thanks to American Lawyer Media for providing this data. The pro bono definition used focuses on representation of organizations or individuals not able to afford legal services.

¹⁴ The American Bar Foundation Lawyer Statistical Report identifies 506,829 lawyers in private practice in the U.S. in 2000.

¹⁵ *The Standing Committee on Pro Bono Legal Service’s Report to the Supreme Court of Florida, The Florida Bar, and The Florida Bar Foundation on the Voluntary Pro Bono Attorney Plan*, December 2003.

¹⁶ *The Future of Pro Bono In New York – Volume One: Report on the 2002 Pro Bono Activities of the New York State Bar*, New York State Unified Court System, January 2004.

¹⁷ *State Bar of Texas Pro Bono Legal Services Survey*, prepared by Opinion Analysts, Inc. for the State Bar of Texas, Spring 2003.

¹⁸ *Pro Bono Work Among Missouri Lawyers: Results of Interviews Conducted on a Representative Sample of Attorneys in August 2002*, conducted on behalf of The Missouri Bar by Greg Casey, University of Missouri-Columbia, March 2004.

¹⁹ Where a list of possible answers was offered to respondents, the survey automatically rotated the order in which these responses were presented.

²⁰ Within specific age segments, there was no significant difference between men and women in incidence of doing pro bono work. The higher overall incidence of men doing pro bono can be attributed to the fact that older attorneys – who tend to do more pro bono work – are predominantly male.