



Tips for Navigating the Pro Bono Waters

(Session: “Giving Is Receiving: How to Enhance Your Skills by Taking on Pro Bono Cases”)

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Why Do Pro Bono Work?

One of the most rewarding things you can do is help someone. In fact, the drive to help others is probably one of the top reasons why you decided to become a lawyer. For those who do pro bono work, it is incredibly fulfilling. Pro bono work not only allows attorneys at all levels of experience a chance to refine their skills but also gives attorneys the chance to make powerful positive impact in their community.

Working with a pro bono client has its own share of nuances, interesting scenarios, and highs and lows that may create some rough waters for even the most experienced attorneys. The goal of this presentation is to give you the tools necessary to navigate the occasionally choppy waters of pro bono work with ease. To that end, this paper will roadmap the steps of a pro bono “journey” – Preparation, First Steps, and Working the Case – so you are ready to step into the world of pro bono work.

Preparation

Preparation is always the name of the game, so, before you even consider taking on a pro bono case, make sure you have set yourself up for success. In particular, consider three things: your interests in areas of law; your expertise in said areas of law; and your liability coverage.

Find your Areas of Legal Interest

Pro bono work can be a great opportunity to delve into a new area of interest, so take some time to think about the kinds of pro bono cases you want to take on. Maybe you have an interest in family law and children’s rights or perhaps you are a litigator looking to do more transactional work. Regardless of your interests, there is likely someone who needs legal help in that area. Take the time to figure out your interests and passions before getting started.

Acquaint Yourself with the Law

Once you’ve settled on an area of law, ask yourself how comfortable you feel practicing in that area. Chances are you will need to do some studying to familiarize yourself with that area – especially if it is an area in which you do not routinely practice. Reach out to colleagues for assistance or guidance, and don’t stop there either: look into whether there are any legal aid clinics, continuing legal education (CLE) courses, or general CLEs about the area of law that can be of assistance.

Make Sure You Are Covered

Something else you may want to ask colleagues and legal aid clinics about is malpractice insurance. According to a 2013 ABA report, 43% of corporate attorneys were discouraged from taking on pro bono cases because they lacked malpractice insurance. See Standing Comm. on Pro Bono and Pub. Serv., [SUPPORTING JUSTICE III A Report On The Pro](#)

[Bono Work Of America's Lawyers](#) 26 (ABA Mar. 2013). And this is not an unreasonable concern, as firms and attorneys have discovered. Ask if your firm or company covers you in case of a pro bono malpractice suit; if they do not, try to join a legal aid clinic that extends its liability insurance to volunteer attorneys. If neither provides malpractice liability coverage, invest in your own. See *Insurance for Pro Bono*, ABA, <https://www.americanbar.org/groups/center-pro-bono/resources/insurance-pro-bono/> (last accessed Jun. 4, 2021). The important thing is to make sure you are protected before you start working on your pro bono cases.

First Steps

Remember that your pro bono clients are, at the end of the day, still clients. This is helpful to keep in mind as you do pro bono work because, though pro bono work has its nuances, much of the foundational work you will need to do is the same as it would be with your billed clients, such as: (1) checking for conflicts of interest; (2) understanding the client's goals; and (3) clearly laying out the expectations and bounds of your representation.

Perform a Conflict Check

First, be sure to perform a conflict check – preferably before your prospective client meeting if you have access to the information ahead of time. Attorneys sometimes overlook this necessity in the pro bono context, but, regardless of their pro bono status, your client is still a client. So, whether you are picking up a pro bono case from a legal aid organization or on your own, you need to make sure to run an internal conflict check before formally agreeing to represent the client.

Understand Your Client's Goals

Assuming there are no client conflicts, the next step is to understand your client's goals. Introduce yourself to your client and get their perspective of case, the issues as seen by the client, and what result the client wants. Make sure you are clear on what your client is hoping to get out of the legal matter, which – importantly – may be different from what you think the best legal outcome. For example, consider a pro bono client who asks for your help in resolving a custody dispute. Due to certain facts in the case, you may feel there is a strong argument for seeking sole parental custody of the child; however, your client wants to reach an agreement to a certain time-sharing schedule with the child instead. Just because an option may make the most sense legally, it does not follow that it is the best route to achieve your client's goals.

Set Clear and Realistic Expectations

Additionally, make sure to set firm and realistic expectations for your pro bono representation, just as you would with your billed clients. In particular, explain to your pro bono client the scope of your representation. Clearly outline for them what issues you will be assisting them with and – even more importantly – what issues you will *not* be assisting the client with. For instance, a client may have a dispute in a landlord-tenant case that is related solely to living conditions. In this scenario, you specify that you are not representing

the client for personal injuries issues that may have arose from the living condition issues (e.g., health issues/medical bills from mold in the home). Establishing clear boundaries for the scope of your work will help both you and your client avoid unwelcome surprises and potential liability during the course of the representation.

Send an Engagement Letter

Finally, be sure to memorialize what you and your client discussed and promptly send them an engagement letter. Sending an engagement letter promptly after you agree to take the case will provide a clear outline for the client as to what exactly they can expect to be helped with, avoiding future confusion between yourself and your client and protecting you from potential liability. Though the standard language law firms use for their pro bono engagements may be a useful jumping off point, be sure to tailor each engagement letter to the specifics of your case. Your engagement letter should be well-tailored to the client and the needs of the case. Be sure in your letter to explicitly state the scope of your representation. Make sure to also clearly state in the letter who your client is, especially if there are multiple defendants or family members involved in the matter. Outline what the case is about, the limited scope of your assistance, and how far in the litigation your representation will cover (e.g., trial, appeals, etc.), as clients may have a variety of legal and non-legal problems that may not be covered by your representation. An engagement letter that clearly outlines what you will (and, by omission, will not) be doing protects both you and your client.

Working the Case

It is always useful to keep in mind that, to non-attorneys, legal language and procedures can be intimidatingly alien. Your pro bono clients will look to you not just as an attorney but as a cultural guide through the legalese landscape. To that end, make sure to make time for the case, to communicate clearly with your client, and to apprise them of potential court hearings they may need to attend.

Plan and Make Time

Pro bono cases take time. In fact, because most times your client is wholly unfamiliar with legal procedures, pro bono cases will typically take more time. Many attorneys are discouraged from taking on pro bono cases because they feel they do not have enough time to take on the case, or they feel overwhelmed when aspects of the case take longer than anticipated. Rather than be discouraged, take some time upfront to schedule time to work on your pro bono cases. Understand that calls with your client will likely take longer than usual and that working on the matter may not be a quick in-and-out process. Planning for this at the beginning of your case will better help you be better prepared and will keep you from feeling overwhelmed or frustrated.

Communicating Clearly with Your Client

Keep in mind too: communicating with a pro bono client can be very different from communicating with your usual clients. Regardless of the degree of your client's sophistication, take the time to explain the process simply and thoroughly. Although it may seem intuitive, be sure to have a serious conversation with your client about what you will need from them for you to assist with the case. Without using legal jargon, explain the importance of "proof" and the need to have all the facts or as much information as possible. Emphasize the importance of evidence (e.g., texts, emails, voice messages, etc.) and be sure the client understands not to throw out or delete anything. Also, be sure to explain *why* you may be asking for certain information. Again, what may seem natural to you as a lawyer may be surprising to your client. Your client needs to understand that you are only asking "hard" questions and collecting relevant materials because you want to provide the best representation possible.

Also, stress to your client their responsibility to keep you informed and updated. This includes informing you about any updates with their issue, providing you with whatever documentation you require, and keeping you updated as to the client's correct contact information.

Furthermore, explain to your client the importance of confidentiality and the attorney-client privilege. This is particularly important as your pro bono clients may not have any previous experience working with attorneys; they may be completely unfamiliar with the specifics and pitfalls of confidentiality guarantees and attorney-client privileges. Let your client know that what they share with you is confidential and will not be shared with anyone else unless they give permission to disclose. Also, let your client know that what you both discuss cannot be shared with *anyone* – even family members or close friends.

Coordinate Communication Logistics

Beyond *what* you communicate to your client, think also about *how* you will communicate with your client. Figure out the best mode of communication – be it by phone, email, or texting. Ask your client whether they have stable internet, access to computer or printer, or a smart phone. Understanding this will help you effectively communicate with the client.

Also consider when you will schedule communications with your client. Bear in mind your client's work schedule and other responsibilities, such as child care or financial restraints. Work with the client to decide what the best days and times to reach them are. Be as flexible as possible as those days and times or agreed methods of communication may need to change due to circumstances beyond your client's control. For example, if you are representing a client in a domestic violence case, your original communication plan may need to be changed to make sure the communication medium you choose is safe and not accessible by anyone else.

Prepare Your Client for Court

Lastly, be sure to share with your client the potential court proceedings they may be required to attend. For example, your client may need to join court hearings, requiring them to request time off of work. Also share with your client what to expect on these in-court occasions (*e.g.*, how long it may take, what to wear, how to address the court, who will speak when, etc.). Even with COVID-19 cases dwindling, many courts are still conducting virtual hearings, so be sure to explain the differences between virtual and in-person court procedures, outlining what the client can expect in each setting.

Conclusion

Pro bono work is a valuable resource for those in need as well as the attorneys that fill that need. For attorneys who are looking to expand their skill sets, to expand their professional networks, or to simply help underserved communities, pro bono work is a valuable and fulfilling opportunity to accomplish those goals.

With these tips in mind, you will be better prepared to successfully navigate the unpredictable waters of providing pro bono assistance. There is however, one more piece of advice left to share: *have fun!* Enjoy digging into a new area of law and sharpening your legal skills. Enjoy the new community connections you will develop as part of your pro bono work. Enjoy helping those who are most in need of *your* help, people whose lives you can meaningfully change for the better.

In short, get out there, start working on a case, and enjoy your pro bono work!