

A Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions

**Prepared by Latham & Watkins LLP
for the Pro Bono Institute**

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FOREWORD

This Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions goes back to an initiative of the Pro Bono Institute and Latham & Watkins to make information about global *pro bono* legal services accessible. The first edition of the survey published in 2005 covered 11 jurisdictions, mostly in Europe. The 2012 edition covers over 70 jurisdictions in Europe, Asia and the Pacific region, the Americas, Africa and the Middle East. As the interest in global *pro bono* has grown, and this survey with it, the conversation about global and international *pro bono* has shifted. Whereas the focus just a few years ago was on issues of permissibility and compatibility with the local legal system, the focus today is decidedly practical: *pro bono* has gained in acceptance and the question is how, not whether, *pro bono* representations can be undertaken. The developments have been profound and exciting.

The survey is part of an ongoing effort, shared by many law firms, organizations and corporate legal departments, to promote and stimulate the growth of *pro bono* representation globally and in international settings. Its purpose is to serve as an introductory resource for law firms, private practitioners, in-house lawyers and NGOs seeking to engage or learn more about the culture and provision of *pro bono* in their own or other countries. The chapters describe, for each jurisdiction, what access-to-justice or publicly funded legal aid programs exist, what unmet needs for legal representation remain, what perceptions or culture shape the discussion of *pro bono*, and what professional-conduct laws and rules provide the framework for *pro bono* representation.

In 2012, lawyers from Latham & Watkins' 30 offices around the globe have updated all prior chapters and added chapters covering nearly 30 new jurisdictions. We consider the survey to be a work in progress and welcome your feedback and comments to help us improve future versions (please direct your requests to: Gianni.DeStefano@lw.com). While we have worked, to the extent possible, with local counsel and NGOs to provide information that is both current and accurate, we note that the situation in many of the jurisdictions is fluid, and that errors and omissions are unavoidable. The survey is therefore a work in progress in this sense as well and we invite your comments.

We owe a debt of gratitude to Esther Lardent and Tammy Taylor of the Pro Bono Institute, with whom we have collaborated on this project. The survey is the effort of a large team, involving not only many lawyers at Latham & Watkins, but also local law firms and practitioners, in-house lawyers and NGOs around the globe. We are grateful for their contributions and their time.

August 2012

Gianni De Stefano and Wendy Atrokhov



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NGOs: Canadian Bar Association (Canada) – Free Legal Advice Centres (UK) – MANS (Montenegro) – Mizan Law Group for Human Rights (Jordan) – the Peace Institute (Slovenia) – PILnet (China) – ProVene foundation (Uruguay) – Public Interest Alliance Centre (Ireland) – Public Interest Law Clearing House of Victoria (Australia) – Red Pro Bono (Mexico)

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Last, but not least, each individual, both in law firms and legal departments, active in *pro bono* representations to address the unmet legal needs of those with limited means.

PRO BONO PRACTICES AND OPPORTUNITIES IN FRANCE

France has a long-standing tradition of providing legal aid to indigent clients. French lawyers have historically viewed representing those without resources in criminal and civil proceedings as part of their role as the guardians of civil rights and liberties. For many centuries, the French *bâtonnier* (Chairman of the Bar) assumed the responsibility for organizing *pro bono* activities, with little or no state help or financial sponsorship. Under this practice, lawyers were designated by the Chairman of the Bar to serve those indigent clients who asked for legal assistance.

The American terminology of *pro bono* does not exist in the French jurisprudential lexicon. Instead, the French refer to *assistance juridique gratuite* (free legal assistance) or *assistance bénévole* (benevolent assistance), terms that do not mean precisely the same as their American counterpart. Whereas *pro bono* in the American sense implies free services, the French model of legal aid often provides payment of lawyers by the state, albeit a small amount compared to typical legal fees. Further, the French Bar organizes legal aid through its general rules and regulations pertaining to the practice of law, while *pro bono* practice in the United States generally consists of partnerships among a multitude of legal referral services. Lastly, as the French *pro bono* practice is highly centralized around the Paris Bar, it is appropriate to limit the scope of this inquiry to the Paris jurisdiction, noting that practices might differ in other jurisdictions.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN FRANCE

A. The Legal Profession

As of January 1, 2011, there were 53,744 lawyers identified in France, a 41% increase from the 38,140 lawyers identified a decade earlier.¹ With 22,133 lawyers, the Paris Bar comprises 41% of the total lawyer population. One in two lawyers is domiciled in Ile-de-France. Nationwide, there are 80 lawyers per 100,000 inhabitants (up from 60 lawyers per 100,000 inhabitants in 1999), with the highest rate in Paris (954).² The attorney workforce has been rising since the early 2000s at an average rate of 3.6% per year. The number of female attorneys has progressed at a faster pace of 4.5%, foreign lawyers at 5%, and 6% for lawyers from the European Union. Foreigners account for 3% of the total workforce of France.³ The percentage of French lawyers enrolled in a foreign bar (4.2%) has nearly tripled over the past ten years. Most of the lawyers provide legal services as a member of a professional commercial company with shares (*société d'exercice libérale*) or a *société civile professionnelle*. Some lawyers provide legal services as part of an association or AARPI (*Association d'Avocats à Responsabilité Professionnelle Individuelle*). Very few lawyers work as salaried employees.⁴

The French judicial system consists of several categories of courts, organized in two major orders, the judicial order and the administrative order, dealing with cases of different types, scale and significance. Administrative courts have general jurisdiction over all litigation in which one of the administrative organs of the French State is a party. All other litigation must be brought before one of the judicial courts (which in turn are divided into criminal and civil courts). The administrative court system and the judicial court system each has its own supreme court: the *Conseil d'Etat* for administrative courts and the *Cour de cassation* for judicial courts.

French lawyers are subject to strict rules of professional conduct primarily governed by the Law of December 31, 1971, the Decree of November 27, 1991, and the Decree of July 12, 2005, as well as by internal rules.⁵

B. Legal Aid

The contemporary legal aid system in France has two components: (1) *aide juridictionnelle*, which coordinates funding public legal representation to those who fall below a certain financial threshold and (2) *accès au droit*, which gives all indigents the necessary resources to have equal access to legal

¹ Observatoire du CONSEIL NATIONAL DES BARREAUX (CNB), *Avocats: évolutions et tendances de la profession, année 2011* available at http://cnb.avocat.fr/L-Observatoire-du-Conseil-national-des-barreaux-publie-1-edition-2011-de-son-cahier-statistique-Avocats-evolutions-et_a1177.html.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Paris Bar website available at <http://www.avocatparis.org/principaux-textes-sur-la-profession.html>.

information. Both systems grew out of a legislative initiative to systematize the legal assistance program in France, beginning with the law of January 3, 1972,⁶ and then the law of July 10, 1991.⁷

1. Aide Juridictionnelle

The first category of legal aid, the *aide juridictionnelle*, allows indigents to receive legal representation from a qualified attorney who is paid by the state.⁸ The program, run by the French Bar, has created an entire market of French lawyers whose practice focuses on cases referred through the *aide juridictionnelle* system. The work these lawyers receive tends to be individualized and often concerns smaller daily matters from clients who cannot afford any other form of representation. *Aide juridictionnelle* is generally available to several groups: French or European Union citizens, foreign citizens habitually and lawfully residing in France, and foreign citizens appearing in refugee cases. The aid is also available to foreigners in other special circumstances: minors, witnesses, and foreigners placed under formal examination, charged, accused, convicted or who have joined a civil action to a criminal prosecution. In exceptional circumstances, aid can also be granted to French associations with insufficient resources.⁹ The aid can be afforded to the plaintiff or the defendant in a proceeding in any of the three jurisdictions in France: civil, criminal, or administrative.¹⁰

The essential criterion for receiving *aide juridictionnelle* is financial need. The system distinguishes between total and partial aid, depending on one's financial situation.¹¹ In 2012, applicants with total resources (excluding family allowances and certain welfare benefits) under €929 per month qualify for total aid, whereas applicants with less than €1,393 per month qualify for partial aid.¹² In both cases, the limit is raised by €167 for the first two dependents of the household and by €106 for the third and subsequent dependents. If the resources of the applicant exceed the limits, the applicant may still be eligible to receive legal aid if his action is particularly worthy of interest given its subject-matter and the likely cost.¹³ The resources statement is not required if the applicant is entitled to benefits from the National Solidarity Fund or to the Occupational Integration Minimum Income,¹⁴ or if he is entitled to a war veteran's or victims pension, or if he is a victim or the right-holder of a victim of the most serious criminal offenses (e.g., murder, torture, barbarism, rape).¹⁵

Legal aid is given to claimants and defendants in contested and noncontested matters in all courts. Aid can be given for all or part of the proceedings and to assist with settlement proceedings before trial. Legal aid is given if the action is not manifestly inadmissible or devoid of substance. This condition does not apply to defendants, to persons liable civilly, to witnesses, to persons under examination, charged or accused, or to persons convicted.

In order to receive legal aid, each petitioner must fill out a request for *aide juridictionnelle*, along with proof of income. Once accepted, the petitioner may choose a lawyer. If the petitioner does not choose an attorney, the file is sent to the Bar Association, which designates a lawyer based on the specifics of the case.¹⁶

If total legal aid is granted, this will cover all the costs of the proceedings, including the fees paid directly to the lawyers or other practitioners (bailiff, notary, etc.). These fees are calculated on a fixed scale depending on the type of procedure. If partial aid is granted, this will cover from 15% to 85% of the costs, depending on the resources of the applicant. The

⁶ See Law of Jan. 3, 1972, No. 72-11.

⁷ See Law of Jul. 10, 1991, No. 91-647.

⁸ The Law of Jan. 3, 1972 has instituted the *aide juridictionnelle*, involving the state in the remuneration of the lawyers. As this system was still insufficient, the Law of Jul. 10, 1991, modified it.

⁹ See Law of Jul. 10, 1991, art. 3.

¹⁰ *Id.* at art. 10.

¹¹ *Id.* at art. 4.

¹² See *Circulaire relative au montant des plafonds de ressources, des correctifs pour charge familiales et des tranches de ressources pour l'admission à l'aide juridictionnelle* of 19 Jan. 2012, NOR: JUST1201824C.

¹³ See Law of Jul. 10, 1991, art. 6.

¹⁴ *Id.* at art. 4.

¹⁵ *Id.* at art. 9-2.

¹⁶ *Id.* at art. 25.

applicant will have to pay a supplementary fee, not on fixed scale but agreed between the applicant and the lawyer, reviewable by the Chairman of the Bar in the event of a dispute.

Under the system of *aide juridictionnelle*, lawyers who donate their time receive payment from the Bar according to a level set by the state.¹⁷ The amount paid for each matter is based on the Decree of December 19, 1991, which establishes a coefficient for each legal procedure and a base unit value which, multiplied together, determine the payment.¹⁸ This payment, however, is insignificant in comparison to what many lawyers in Paris typically receive.¹⁹ Unfortunately, a large percentage of lawyers rely on this type of aid as their primary source of income. It is therefore important to note that while the indigent do receive free legal services, the lawyers are not performing *pro bono* aid in the classic American sense insofar as they are not giving their services free of charge. Consequently, the use of the *aide juridictionnelle* mechanism by international law firms would conflict directly with the work of attorneys who make a living on this form of public aid, thereby jeopardizing their livelihood.

In 2010, 912,191 matters were referred to the *aide juridictionnelle* in France (+1.2% compared to 2009) and 811,024 for total aid.²⁰ This number is expected to rise to 948,000 in 2012.²¹ According to many practitioners, the *aide juridictionnelle* system is “breathless” and does not respond to the needs of a large fringe of the population, because the conditions for access to aid are too strict and the system suffers from a lack of financial and material means.²²

2. Accès au Droit

The second category of legal aid, the *accès au droit*, serves as the corollary to *aide juridictionnelle*. It provides clients in need with consultations and assistance to help them make informed legal decisions.²³ For several years now the French Bar has provided free anonymous and confidential consultations by volunteer lawyers, regardless of the client’s financial situation, intended to guarantee equal access to legal information.²⁴ General consultations under the *accès au droit* program are available, in particular, at the *Palais de Justice*, in each of the 20 *arrondissements* in Paris, in the *Maisons de la Justice et du Droit* (“**MJD**”) and in the *Points d’accès au droit* (“**PAD**”). Specific legal advice is available in tax law, entrepreneurial law, employment law, family law, immigration/naturalization law, criminal law, juvenile law, elderly law, and general victims’ rights.²⁵

The *accès au droit* form of legal work, unlike *aide juridictionnelle*, is unpaid and completely voluntary. One problem that has emerged in recent years for some French lawyers is the inability of those who donate their time to perform a conflict-of-interest check for each individual client. Despite this difficulty, the *accès au droit* program has been such a success that the Paris Bar has been forced to turn away many lawyers who have volunteered.

Within the framework of the *accès au droit*, an initiative of the Paris Bar is the *Barreau de Paris Solidarité*.²⁶ To provide legal services to the most destitute, the Paris Bar has developed partnerships with public interest aid groups. Starting in March 2003 with the association

¹⁷ *Id.* at art. 27.

¹⁸ See Decree of Dec. 19, 1991, No. 91-1266. For example, the unit value is €22.50 (VAT excluded) since 2007, and the coefficient for a divorce proceeding is 36 (2009/2010), so the lawyer would be paid €765.

¹⁹ See Alain Balsan, GUIDE PRATIQUE DE L’AIDE JURIDICTIONNELLE. The base unit value varies from €22.84 to €25.90 (depending on the Bars), and the coefficients vary from 4 to 36 for civil matters, 2 to 50 for criminal matters, and 3 to 20 for administrative matters.

²⁰ MINISTERE DE LA JUSTICE ET DES LIBERTES, Sous-direction de la Statistique et des Etudes, *Les chiffres clés de la Justice 2011* available at http://www.justice.gouv.fr/art_pix/1_chiffres_cles_2011_20111125.pdf. At our best knowledge, figures for 2011 are not available at the time we drafted this section.

²¹ Edmond Hervé, *Programme 101 accès au droit et à la justice*, available at <http://www.senat.fr/commission/fin/pjlf2012/np/np16/np164.html>.

²² *Rapport d’information* No.3319, filed by M. Philippe Gosselin and Ms George Pau-Langevin at the National Assembly on Apr. 6, 2011, available at http://dl.avocatparis.org/Conseil/rap_officiels/GosselinPauLangevinaccesdroit110406.pdf

²³ See Law of Jul. 10, 1991, art. 53.

²⁴ See Paris Bar website, available at <http://www.avocatparis.org/acces-au-droit-et-a-la-justice-2/consultations-gratuites.html>.

²⁵ *Id.*

²⁶ See Paris Bar website, available at <http://www.avocatparis.org/presentation-fonds-barreau-de-paris-solidarite.html>.

Droits d'Urgence,²⁷ the *Barreau de Paris Solidarité* provides an effective comprehensive service for those in extreme difficulty. Today, the scope of the activities undertaken by the *Barreau de Paris Solidarité* through its various partnerships is vast, including employment, housing, health, education, citizenship, asylum, entrepreneurial law, and microfinance. The program consists of several layers: permanent consulting centers in designated areas throughout the city, a bus that travels throughout the city in order to give legal advice to the indigent community (*Paris Bar Solidarity Bus*),²⁸ and partnerships with various humanitarian organizations (such as *Médecins du Monde*, *Restaurants du Coeur*, *l'Adie*, *PlaNet Finance*, and *Horizons*). Consultations are also available in *Maisons des Entreprises et de l'Emploi* ("MdEE"), and *Espaces Insertions*, both in partnership with the Paris City Hall. In 2010, 25,215 hours of free consultations were provided, and 3,119 hours through the *Barreau de Paris Solidarité*²⁹ and 2,088 hours through the *Paris Bar Solidarity Bus*. Since 2003, 22,793 persons have been provided with legal services in the *Paris Bar Solidarity Bus*.³⁰

On February 1, 2012, the Paris Bar officially launched the Solidarity Endowment Fund of the Paris Bar (*Fonds de dotation Barreau de Paris Solidarité*). The Fund's purpose is to centralize, strengthen and improve the structure of existing actions (such as the *Paris Bar Solidarity Bus*), to encourage members of the Paris Bar and NGOs to participate in financial, legal and logistical operations of humanitarian and social works, and to ensure the promotion of these works. The Fund is endowed with €1 million and the Paris Bar hopes that it will be endowed with €5 million by the end of 2013. The Fund focuses on the development of *accès au droit*, legal culture, human rights, and the environment in France and abroad. New projects can be submitted by lawyers and NGOs to a sponsoring committee that will select the best projects. Furthermore, the Paris Bar has also launched the *congé de solidarité libéral* (lawyer solidarity leave) in partnership with the association *Planète Urgence*. This will allow all Paris lawyers who wish to leave during their annual leaves to implement social, educational or legal projects for the poorest populations in France and abroad. Finally, in January 2012, the Paris Bar set up a Pro Bono Commission, which is primarily aimed at being a place of exchange of information and best practices on *pro bono*.³¹

II. PRO BONO IN FRANCE: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

There are some opportunities for new forms of *pro bono* work in a French environment otherwise run by centralized institutions. First, a firm could establish strong relationships with, and provide representation to, public interest organizations. This type of work has not yet been attempted on a large scale in France. It appears that most French organizations are not aware that large law firms based in Paris provide *pro bono* assistance.

Large law firms in Paris may also consider working on projects with international human rights groups to expand their *pro bono* repertoire in France. Law firms could, for example, seek to represent individual clients before international bodies. This form of representation could consist of representing individuals or nonstate actors before international institutions, representing underdeveloped countries in disputes between states, or involvement as *amicus curiae*. Organizations such as FIDH (International Foundation for Human Rights)³² may gather the volunteers and assign them to relevant projects.

International law firms may also expand their presence within the *accès au droit* framework. The *accès au droit* form of public legal aid is the area in which most law firms have provided U.S.-style *pro bono* aid to the community. Many attorneys at large firms have opted to donate some of their time on a weekly or monthly basis to one or more of the consulting services. Firms could systematize their

²⁷ See *Droits d'Urgence* website: <http://www.droitsdurgence.org>.

²⁸ See Paris Bar website, available at <http://www.avocatparis.org/acces-au-droit-et-a-la-justice-2/consultations-gratuites/125-particulier/acces-au-droit-et-a-la-justice/324.html>. The Paris Bar Solidarity Bus project received a special mention by the European Union in Oct. 2008 (see http://www.coe.int/t/dghl/cooperation/cepej/events/EDCJ/Cristal/Cristal2008projets4_en.asp).

²⁹ *Id.*

³⁰ See <http://www.avocatparis.org/actualite/929-le-barreau-de-paris-solidarite-toujours-plus-present-aupres-des-parisiensactu.html>.

³¹ See Paris Bar website, available at http://dl.avocatparis.org/Bulletins/2012/special_Bulletin_BPS.pdf.

³² See FIDH website, available at <http://www.fidh.org/>.

participation within specific *accès au droit* programs, such as by offering a rotation for young lawyers through an already established consultation agency. While advertising constraints (discussed below) would most likely impede firms from advertising this kind of *pro bono* work, the association in charge of the service could most likely advertise each individual law firm's involvement.

A group of firms in the Paris market could also potentially work together to deal with a deficiency in the current *pro bono* structure. One option would be to collaborate with the Paris Bar to develop a partnership to address a need not currently met by the centralized system. Another option is the development of partnerships with other large international law firms to create organizations that would deal with a specific *pro bono* problem. Justice for Cambodia, a partnership recently created to unite victims of the Cambodian regime with lawyers around the world, is one example of this form of partnership.³³

Finally, individual lawyers, either with a firm or individually, could more systematically take part in the *aide juridictionnelle* structure, work that is well regarded by the legal community even if it is paid by the state. Entering this area of *pro bono* work may not be desirable because, as stated above, it will conflict with the market of French lawyers who rely solely on the income they receive from the *aide juridictionnelle* system. However, one possibility is for international law firms in France to get involved in exceptional, high-profile cases that require a substantial amount of material work.

An informal group composed of representatives of the large U.S. and U.K. law firms based in Paris (Paris Pro Bono Roundtables) was set up in 2007 in order to discuss ways to better promote and facilitate *pro bono* work. The group, which meets every trimester, works in close consultation with the Paris Bar.

B. Barriers To *Pro Bono* Work And Other Considerations

One problem facing *pro bono* practice in France is a restriction on legal advertising. Attorneys in France are only permitted to advertise their services in order to give the public the necessary information pertaining to the legal practice of the lawyer or law firm. It is illegal to solicit legal work in any form, either by going to the residence or workplace of a potential client or by sending a personalized proposition of work without having been properly invited beforehand.³⁴ It is also illegal to advertise the names of past and current clients. This form of advertising is nevertheless permitted in promotional brochures if the client consents and the advertising is inaccessible from French territory. Moreover, listing the name of customers has been legal since 2007 within the framework of public and private tenders and public procurement.³⁵ Despite the advertising restrictions, in practice, more and more lawyers mention the names of their clients in the press and on their websites.

Because advertising in France is only permissible in order to convey strictly necessary information to the public, the advertisement of *pro bono* services would be seen as beyond the scope of what is legal. Although firms can advertise their specialties, e.g., securities, *pro bono* work does not fit neatly into that form of targeted solicitation. The only permissible form of publicity for *pro bono* work in Paris should be confined to advertising that is consented to by the client and inaccessible to the French market.

Another challenge is that there is no specific tax regime for *pro bono* hours or *aide juridictionnelle*. In France, a lawyer's fees are increased by the VAT (currently 19.6%). Although access to law and justice is a fundamental right, citizens who defend themselves or get legal advice pay the VAT at a full rate. Through the end of 2010, a reduced rate of 5.5% VAT was applicable to attorneys' fees when provided as part of *aide juridictionnelle*. However, the French legislator³⁶ increased the VAT rate to 19.6% for these services following a condemnation by the Court of Justice on June 17, 2010.³⁷

Finally, another issue in France is the inability for lawyers offering free consultations within the *accès au droit* framework to perform a conflict-of-interest check for each individual client and the absence,

³³ See Justice for Cambodia, available at <http://www.justicepourleCambodge.org/>.

³⁴ Règlement Intérieur du Barreau de Paris, art. 10.2.

³⁵ *Id.* at art. 2.2.

³⁶ See Law of 29 Dec. 2010, No. 2010-1658.

³⁷ C-492/08 Court of Justice, *Commission v French Republic*, [2010] I-5471.

contrary to the U.S., of a general exemption from the conflict-of-interest check rules if the participating lawyer is not aware of any conflict.³⁸

C. *Pro Bono* Resources

Information on legal aid and *pro bono* opportunities in France can be found on the following websites, mostly in French:

- Paris Bar: <http://www.avocatparis.org/>
- Conseil National des Barreaux: http://cnb.avocat.fr/Acces-au-droit-et-a-la-justice_a135.html
- Ministry of Justice: <http://www.vos-droits.justice.gouv.fr/aide-a-lacces-au-droit-11952/aide-juridictionnelle-20262.html>
- Paris City Hall:
www.paris.fr/pratique/aides-allocations-demarches/aide-juridique-gratuite/p6918;
www.v2asp.paris.fr/commun/pdf/acces_en.pdf (brochure in English)
- Fonds de dotation Barreau de Paris Solidarité: www.facebook.com/#!/Fonds.BPS
- NGO:
 - Droits d'urgence: www.droitsdurgence.org
 - Médecins du Monde: www.medecinsdumonde.org
 - Adie: www.adie.org
 - Restaurants du Coeur: www.restosducoeur.org
 - PlaNet Finance: www.planetfinancegroup.org
 - Planète Urgence: www.planete-urgence.org

III. CONCLUSION

The French legal aid system attempts to create an exhaustive system run by the Bar to assist the indigent community. The *aide juridictionnelle* system gives all clients in need an attorney, paid for by the Bar, to represent their interests in a courtroom. The *accès au droit* system seeks to ensure that the indigent community is sufficiently well-informed to make proper legal decisions by organizing consultations with unpaid volunteer lawyers. Currently, lawyers who wish to represent indigent clients and do meaningful *pro bono* work must offer their services as part of the social legal aid system, but numerous opportunities for expanding the scope of *pro bono* work in France exist. However, any proposed changes to the legal aid system should include direct consultation and cooperation with the Paris Bar.

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Pro Bono Practices and Opportunities in France

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³⁸ See <http://www.nycourts.gov/attorneys/probono/Rule6.5.pdf>