



Pro Bono Practices and Opportunities in Chile¹

INTRODUCTION

Chile was among the first Latin American countries to lead the pro bono movement through pro bono foundations, NGOs, and private law firms. Its support and promotion of pro bono has also led to the expansion of pro bono culture beyond its borders within Latin America.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The Chilean legal system belongs to the Civil Law tradition. Its current constitution was adopted in 1980 and was amended in 1989 and 2005. In addition, the legal system is also regulated by general regulations such as the Civil Code and the Commerce Code.

In the Chilean justice system, the most important laws and codes are the Civil Procedure Code, the Criminal Procedure Code, the Criminal Code, and the Organic Code of Courts, among other laws and regulations which are not codified.

The Courts

The judiciary includes one Supreme Court, one Constitutional Court, 17 Courts of Appeal, Oral Criminal Tribunals and Guarantee Judges, Military Tribunals, 224 Civil Courts, over 300 Local Police Courts and many other Tribunals and courts specialized in family law, labor law, customs, tax law, electoral affairs, etc.

The Practice of Law

Education

In order to obtain a law degree in Chile, with some specific exceptions, it is mandatory to study under the formal legal education system. There are approximately 27 Universities that have a law faculty in Chile.

Licensure

The Supreme Court grants licenses to practice law in Chile, and such a license bestows upon an individual the title of lawyer or “*Abogado*.”

To obtain a license to practice law in Chile it is necessary to have a law degree from a Chilean university and subsequently to successfully complete a postgraduate-professional-practice period of six months in a Legal Assistance Corporation (*Corporación de Asistencia Judicial* or “**CAJ**”)², which is a branch of government overseen by the Ministry of Justice.³

The mandatory professional practice period with a CAJ is focused on providing services to low-income individuals. Recent law school graduates work in the areas of labor, family, and civil law under the supervision of practicing attorneys. This will often serve as a young attorney’s second exposure to direct

¹ This chapter was drafted with the support of Mr. Sergio Díez and Mrs. María Francisca Salas of the law firm, Cariola Díez Perez-Cotapos & Cia. Ltda in collaboration with Mrs. Carolina Contreras from the Chilean Pro Bono Foundation.

² Ley No. 17.995 establishes the Corporación de Asistencia Judicial de la Región Metropolitana de Santiago in Santiago, the Corporación de Asistencia Judicial de la Región de Valparaíso in Valparaíso, and the Corporación de Asistencia Judicial de la Región del Bío-Bío in Concepción.

³ Ley Orgánica Constitucional 7421, arts. 523, 526.



legal services, as many law schools incorporate clinical work as either a mandatory component of a law degree or a voluntary activity open to all students. See also Section III(A)(1) for further on CAJs.

Only Chilean-qualified attorneys may represent clients in court. Attorneys qualified in other jurisdictions, however, may, and often do, practice law in Chile, generally focus on the transactional matters rather than litigation. Prior to practicing law in Chile, non-Chilean attorneys must comply with applicable registration requirements.⁴

Lawyers are not required to perform pro bono work as part of their education.

Demographics

During year 2014, a total number of 3.384 lawyers took oath before the Supreme Court (16% more than the previous year).

Legal Regulation of Lawyers.

The legal profession in Chile is subject to limited regulatory oversight. Neither membership with a local bar association nor postgraduate education is required. Furthermore, disqualification from the practice of law is very rare, and malpractice insurance is not common among Chilean lawyers.

Notwithstanding the foregoing, lawyers affiliated with the Chilean Bar Association must observe the rules and principles established in the Bar's Professional Ethics Code.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Civil Proceedings

Article 19 of the Chilean Constitution⁵ guarantees the right to a legal defense and also the right to an attorney; it states that the law will provide the means to secure resources to those defendants who cannot hire an attorney by themselves.

In order to implement this basic constitutional principle, Law Number 17,995, passed in 1981 by the Ministry of Justice, created the CAJs, which provide public, decentralized, and non-profit public services and are responsible for providing free guidance and legal assistance to anyone in need with no financial means to get assistance on their own. The activities of the CAJs is, however, limited to the areas of civil, labor, family and old criminal system matters as well as providing legal assistance to the victims of crime.

There are four CAJs: CAJ Tarapacá, CAJ Valparaíso, CAJ Metropolitana and CAJ Bío Bío. Each CAJ focuses its work in a different region of the country. A Social Work and Legal Assistance for the Family Foundation (*Fundación de Asistencia Social y Legal de la Familia*) also collaborates with the CAJs in providing the services referred to above.

Notwithstanding that most of the CAJ legal services are provided by post graduate law students, their work is always guided and supervised by a staff of internal qualified lawyers who directly work for the CAJ.

Criminal Proceedings

Under the current criminal system, the National Prosecution Agency (*Ministerio Público*) is responsible for prosecuting crimes, and the Office of Public Defence (*Defensoría Penal Pública*), a government agency overseen by the Ministry of Justice, is responsible for defending individuals against criminal charges. Criminal cases are decided by an independent tribunal (*Juzgado de Juicio Oral*) in a hearing, and factual

⁴ Revalidation and recognition of non-Chilean attorneys available at: <http://www.uchile.cl/portal/presentacion/relaciones-internacionales/revalidacion-de-titulos-extranjeros/9884/informativo-sobre-tramites-de-revalidacion> (last visited on September 4, 2015).

⁵ Constitución Política De La República De Chile (Const. Chile) art. 19 (3).



findings can be appealed only in exceptional circumstances. An independent judge (*Juez de Garantía*) is responsible for overseeing and protecting the fundamental rights of the accused. Both the Juzgados de Juicio Oral and the Juez de Garantía are subject to Supreme Court oversight.

As discussed above, the Chilean Constitution guarantees all defendants the right to attorney representation.⁶ While the Office of Public Defense is responsible for representing all criminal defendants, regardless of financial means, it may require a non-indigent defendant to contribute up to the entire cost of the representation. In practice, over 90% of the defendants are impoverished, and therefore, they are represented free of charge.⁷ The Office of Public Defense is viewed favorably by the public and is seen as providing a high-quality defense to defendants who otherwise could not afford such services.

Although Chile's criminal procedure is of a high standard, prison conditions are generally poor; prisons are often overcrowded, antiquated, and subject inmates to substandard living conditions.⁸ Although policies are being implemented to improve inmate conditions, prison conditions is an area where there is substantial opportunity for pro bono work.

State-Subsidized Legal Aid

State-subsidized legal aid is provided to those with lower income. Eligibility is determined based on the per capita income of the defendant's family. Even if the defendant exceeds the maximum per capita income requirement, he may be given legal assistance depending on the circumstances of the case.

Mandatory Assignments to Legal Aid Matters

Legal Aid

The following mandatory legal aid services exist in Chile:

Legal Practice or Training

In order to obtain a law degree in Chile, and consequently to be able to perform as a lawyer in the country (and in addition to the previously referred requirements for these purposes), once a law student finishes law school, he has to provide free legal services representing the State of Chile for approximately six months in various areas of law.

Moreover, these services are usually provided through the CAJs.

“Turno” or Legal Shift

There is also a system referred to as *turno*. In accordance with *turno*, once the law degree is obtained, the lawyer may receive a court order to provide free legal services for a month.

Pro Bono

Even though it is not mandatory for lawyers to provide pro bono services, it is indeed common practice.

The Chilean Pro Bono Foundation (*Fundación Pro Bono*) coordinates pro bono services. It has improved pro bono work by making it more professional and visible in the legal community. In Chile, attorneys are not financially compensated in connection with State funded legal aid or pro bono services.

Unmet Needs and Access Analysis

In general terms, partitions (or “*particiones*”) represent a legal unmet need. The government, though its CAJs, does not provide guidance and assistance in connection with these types of matters.

⁶ See supra footnote 5./ A clarification was made in connection with note 2 and 5. Please clarify.

⁷ Sofia Libedinsky, *The Reform Of The Criminal Justice System In Chile: From An Inquisitorial To An Adversarial Oral System – The Public Defender Office Role And Goals* (presented at the Second European Forum on Access to Justice on Feb. 24–26, 2005).

⁸ US Dep't OF State, *Human Rights Report, Chile* (2010).



Moreover, even though the Pro Bono Foundation provides assistance in connection with partitions, it does so only when specific criteria are met: the community members must be reachable, the disputed property must have a maximum fiscal value, and the disputed property must be located in the city of Santiago.

Consequently, individuals in these types of cases that cannot meet the aforementioned criteria are sometimes deprived of legal assistance.

Alternative Dispute Resolution (“ADR”)

Mediation, Arbitration, Etc.

Free mediation may be possible to individuals that the government determines are without sufficient financial means. However, arbitration in Chile is not free and legal aid is not available for this type of ADR, thus depriving low-income earners access to arbitration as a form of dispute resolution.

Ombudsman

In 1985, the Chilean Chapter of the Ombudsman or “*defensor del pueblo*” was created. The Chapter is dedicated to studying, promoting, and developing the Ombudsman office in Chile. Despite its existence, the institution has little authority, and in Chile, its role has not been as developed as in other countries.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Attorneys

Mandated to do Pro Bono?

Pro bono work is voluntary for private attorneys. Nonetheless, it is a common practice among medium to large law firms.

Mandated to Report Pro Bono?

Lawyers, law firms, in-house legal departments, and any one affiliated to the Chilean Pro Bono Foundation, is requested to annually report to the Foundation all pro bono hours worked. There is however no formal sanction if such report is not sent.

Law Firm Pro Bono Programs

As mentioned above, even though pro bono is not mandatory in Chile, it is very common among medium to large law firms (including, as an example, Cariola Diez Perez-Cotapos one of Chile’s leading law firms with over 95 attorneys).

Usually, law firms provide pro bono assistance by, among other activities, letting their associates and partners review specific pro bono cases, giving talks about legal topics specifically requested by pro bono clients, and preparing legal documentation.

Legal Department Pro Bono Programs

It is very common for in-house legal departments to provide pro bono services although the details of that provision will, of course, depend on the internal policies of each specific company. The Chilean Pro Bono Foundation will refer potential pro bono clients to affiliated legal departments.

Non-Governmental Organizations

NGOs in Chile provide direct legal services to victimized or indigent groups. Rather than referring cases to private attorneys, these NGOs bring cases on behalf of these pro bono clients directly. For example, Corporación de Promoción y Defensa de los Derechos del Pueblo (CODEPU) is an NGO focusing its efforts on the defense of human rights.⁹ CODEPU offers social, legal, and psychiatric assistance to

⁹ See <http://www.codepu.cl/> (last visited on September 4, 2015).



individuals and groups that are victims of human rights violations, assisting close to 1,000 victims per year. CODEPU also disseminates information relating to human rights and conducts trainings for social organizations and schools.

Bar Association Pro Bono Programs

There is a cordial, collaborative relationship between the Chilean Pro Bono Foundation and the Chilean Bar Association.

The Chilean Bar Association welcomes and supports pro bono work. The Bar has incorporated in the latest version of its Ethics Code an explanation of the importance of pro bono work to the legal profession. Also, the Bar typically refers some pro bono cases to the Chilean Pro Bono Foundation and vice-versa.

Notwithstanding the abovementioned relationship, the Chilean Bar Association does not interfere with the Foundation's decisions or guidelines and, consequently, the two institutions remain independent.

University Legal Clinics and Law Students

It has become common practice for law schools to require its students to successfully complete at least one semester of work in their legal free clinics to obtain a law degree.

There are different programs involving universities. One of the most recent is called *desafío pro bono* (the pro bono challenge), where students are invited to propose ideas involving pro bono work. The best ideas are chosen, and the students whose idea or project is chosen win the opportunity to be assisted by a specific law firm affiliated to the Foundation in order to develop their idea.

Also, the Chilean Pro Bono Foundation has partnerships with law schools of many universities (such as Universidad Católica de Chile, Universidad de Chile, Universidad Diego Portales and Universidad Adolfo Ibáñez).

HISTORIC DEVELOPMENT AND CURRENT STATE OF PRO BONO.

Historic Development of Pro Bono

Independent pro bono work has been provided for many years and the nonprofit Chilean Pro Bono Foundation (*Fundación Pro Bono*) was founded in 2000, with a mission to help and organize the practice of pro bono work for lawyers and law firms, professionalize it and make it more visible. It was based on the American pro bono model and was later adapted to accommodate the specific needs and circumstances of Chile, based on extensive feedback from leading Chilean law firms.

The Chilean Pro Bono Foundation cites the following as being among the most important obstacles that have arisen in connection with pro bono.

Type of Advice

The Pro Bono Foundation started providing assessments only for non-controversial matters, principally corporate matters. However, as the Foundation evolved, cases of domestic violence were also taken, and more recently, criminal matters.

Clients Confidence Regarding Pro Bono Service

Initially, it was a challenge to convince pro bono clients that pro bono services constitute quality legal assistance particularly as there is a widespread belief in Chile that free goods and services are not always taken seriously and have a low quality.

Over the years, however, that belief has diminished. One of the causes may be that, when a lawyer decides to get involved in pro bono work, be it through the Foundation or individually, the service is provided voluntarily, often in an area of their particular expertise, and consequently that lawyer makes a genuine effort to provide quality assistance.



Financial Means and Program Development

The development of pro bono programs depends primarily on available financial means/funding which are usually difficult to obtain.

In the case of the Pro Bono Foundation, part of the solution has been to ask members for an annual fee. The Foundation has also been able to obtain some partnerships or alliances with public notaries and experts in order to obtain reduced fees or no charge in respect of pro bono services.

Current State of Pro Bono including Barriers and Other Considerations.

There are no significant barriers to providing pro bono legal assistance in Chile. However, as noted above, representation in courts is limited solely to lawyers, whose license to practice is granted by the Supreme Court.

There are no mandatory or minimum fees imposed on legal services. The fee structure of lawyers is not regulated, except for the (nonobligatory) guidance provided by the local bar in the Code of Ethics. Furthermore, articles 44 and 45 of the Code of Ethics (2011)¹⁰ of the Chilean bar association regulate the provisioning of pro bono services. It states that the duty of care of lawyers providing pro bono services is the same as that owed to any other client.

Additionally, it states that the provision of pro bono services cannot be used for any purpose other than providing access to justice and effective legal representation in respect of the rule of law. The Code of Ethics provides that attorneys have an obligation to provide legal defense services to citizens with limited resources.

Laws and Regulations Impacting Pro Bono

“Loser Pays” Statute (as applicable)

A “Loser Pays” statute applies in Chile.

Nonetheless, there is a benefit called poverty privilege (*privilegio de pobreza*) stated in the Chilean Civil Procedure Code and the Organic Code of Courts that may be granted by the Judicial Assistance Corporations and/or judges during or before trial, to those with no financial means. Once granted, the beneficiary is exempted from paying some costs or fees associated the procedure, such as court or judicial receiver (*receptor judicial*) costs, some registration costs before the Real Estate Registrar and other court costs (payable by the losing party). This privilege may be requested by a person either assessed by Judicial Assistance Corporations (legal aid) or Pro Bono.

There are no specific rules regarding pro bono activity.

Although Article 13 of the Ethics Code establishes a general prohibition on promotion or solicitation of legal services in certain circumstances, the same Article provides that the promotion or solicitation of legal services in a pro bono context is allowed.

Practice Restrictions on Foreign-Qualified Lawyers.

There are no restrictions for foreign lawyers that have validated its law degree in accordance with Chilean law. Moreover, a validated foreign lawyer may be able to appear in court, provide legal assessments and serve in situations where a lawyer is required.

Moreover, in connection with the aforementioned validation, Chile is part of some international treaties which are currently in force (with Colombia, Ecuador, España, Perú and Uruguay, among others), in order to facilitate the validation procedure for lawyers of such jurisdictions.

¹⁰ See <http://www.colegioabogados.cl> (last visited on September 4, 2015).



Regulations Imposing Practice Limitations on In-House Counsel.

There are no specific regulations which impose practice limitations on in-house counsels. Nonetheless, limitations may be established by each company, as applicable.

Availability of Professional Indemnity Legal Insurance Covering pro bono activities by Attorneys

Not applicable.

Availability of Legal Insurance for Clients (protection for moderate income individuals not eligible for legal aid but unable to afford full-cost legal fees)

Not applicable.

Pro Bono Resources.

Fundación Pro Bono is Chile's leading clearinghouse for pro bono work and focuses on finding and distributing pro bono opportunities to private attorneys, with the goal of improving access to free justice in Chile.¹¹ It does not provide direct services to clients. Rather, it serves solely as a clearinghouse, referring matters to private firms and individual attorneys and developing new pro bono programs serving nonprofit entities, NGOs and private citizens.

As of early 2008, *Fundación Pro Bono* received approximately 30 requests for pro bono services per week, which it screens and refers to practitioners on a regular basis. Boasting a network of 28 affiliated firms and over 1,000 individual affiliated attorneys, *Fundación Pro Bono* aims to refer over 20,000 hours of pro bono services on an annual basis. According to its 2013 annual report, affiliated attorneys reported a total of 22,396 hours of pro bono services that year.

Fundación Pro Bono divides its efforts into a number of programs: family law, government transparency and access to information, arbitration, transactional and tax services to NGOs and micro entrepreneurs, and legal assistance to victims of violent crimes. *Fundación Pro Bono* has entered into a collaboration agreement with the national government pursuant to which private attorneys provide free legal assistance to victims of crime.

In 2013, for example, members represented individuals in 100 criminal cases.¹² Its primary goal is developing the overall pro bono practice and placing pro bono matters with private attorneys. Overall, *Fundación Pro Bono* (through its affiliated lawyers) has served 2,670 individuals in over 312 family and civil cases and has provided assistance to 56 micro entrepreneurs and 208 social organizations.

Fundación Pro Bono has been regarded as a model throughout the Latin American legal community and has been recognized for its efforts by the United Nations.

CONCLUSION

The Chilean bar is a Latin American leader in providing pro bono legal services. In fact, in accordance with the 2013 Annual Report of the Chilean Pro Bono Foundation, in 2013 22,396 hours were dedicated by more than 1,120 attorneys to pro bono work in Chile, which means that many attorneys already perform more than the 20 hours per year.¹³ The practice of pro bono is likely to continue to increase and become further institutionalized in the coming years.

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¹¹ See <http://www.probono.cl> (last visited on September 4, 2015).

¹² Fundación Pro bono Annual Report, 2013, available at <http://www.probono.cl/wp-content/uploads/2014/10/memoria-pro-bono-2014.pdf> (last visited on September 4, 2015).

¹³ Id.



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