



Pro Bono Practices and Opportunities in Colombia¹

INTRODUCTION

The pro bono movement in Colombia has gained significant momentum over the last few years. Though, historically, the Colombian legal establishment has not shown significant commitment to providing pro bono services, this is now changing considerably. This change in attitude has developed mainly as a result of both the concerted efforts of a younger generation of attorneys as well as an increased emphasis on, and visibility of, pro bono work throughout Latin America. Today, many leading law firms in Colombia engage in systematic pro bono activities. This commitment has encouraged a nascent culture of pro bono work that is expected only to increase in the coming years. This section provides a brief overview of the Colombian legal system, reviews different avenues of free legal aid available to indigent persons and introduces a number of organizations currently providing pro bono services in Colombia.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The current Colombian Constitution was enacted in 1991 (the “**Constitution**”), replacing the Constitution of 1886. The Constitution establishes Colombia as a unitary republic with a national government composed of legislative, judicial and executive branches. It also establishes democracy as the main political system, encouraging the active participation of citizens in the public decision-making process and including how public institutions are controlled.

The Constitution is the highest form of law in Colombia and it includes a number of rights for indigent and underprivileged citizens to access the justice system. The 1991 Constitution institutionalized the action of guardianship (*Acción de Tutela*), an efficient mechanism for the rapid and effective protection of fundamental rights of citizens that are being seriously threatened by an act of the State or by an individual. This is the basis from which the pro bono culture has evolved with regard to lawyers and large law firms. As a result, actions before the Constitutional Court have become an important way to safeguard the legal, social and human rights of the Colombian population.

There are various direct and indirect methods for disputing the constitutionality of the laws including (i) by way of a public action brought to question the validity of certain acts (such as acts amending the Constitution and decree laws) or to contest an administrative act and (ii) a claim brought by an individual to protect that person’s fundamental constitutional rights.

The Courts

Levels, relevant types, and locations

Judicial power in Colombia is exercised by four roughly equal supreme judicial branches, each located in the main capital Bogotá. The Supreme Court of Justice is the highest court of civil, labor, land, commercial and criminal law. The Council of State is the highest court of administrative law. The Superior Judicial Council administers and disciplines the civilian judiciary and resolves jurisdictional conflicts arising between other courts. Finally, the Constitutional Court is the sole judicial body with jurisdiction over constitutional law, adjudicating actions that seek to uphold fundamental rights or attack laws and regulations that are alleged to be unconstitutional.

Below this structure there are two further levels of local judiciary. The lowest level is composed of individual judges sited in almost each city or town in the country. Appeals are made to the High Tribunal

¹ This chapter was drafted with the support of Gómez-Pinzón Zuleta Abogados.



(Housing Courts) located in the capital city of the applicable *Departamento*², comprising a collegium of specialized judges.

Appointment of judges

There is a mixed system regarding the election of judges in Colombia. The judges of the first and second instances (individual judges and High Tribunals of each *Departamento*) are appointed by a competitive nation-wide examination that is open to every attorney in Colombia. Judges are appointed from a list of the highest scorers in those examinations.

Each of the highest courts employ a slightly different system for the appointment of judges, but in each case the appointments are made by an institution other than the court itself. In the case of The Superior Judicial Council, the judges of the 'government administrative' court room are elected by a combination of the Council of State, the Supreme Court of Justice and the Constitutional Court. For the Disciplinary Judicial Panel, the Judges are elected by the National Congress based on Government shortlists.

Judges of the Constitutional Court are elected by the Senate based on Government shortlists. Judges of the Council of State and the Supreme Court of Justice are appointed by cooptation based on lists provided by the Superior Judicial Council.

In each case the term of office for a judge is eight years.

The Practice of Law

Education

To practice law in Colombia, an attorney must hold a law degree from a licensed Colombian university. There are no pro bono specific requirements in terms of minimum number of hours in order to obtain a law degree. However, law students are required to provide free legal services in a *consultorio jurídico* (*legal clinic*) during their last year of study. While law students in the *consultorios jurídicos* are supervised by licensed attorneys, law students are authorized to provide representation only in certain types of civil and criminal cases.

Licensure

To practice law in Colombia, an attorney must be registered with the *Consejo Superior de la Judicatura*.³ To obtain such registration, an attorney must hold a law degree from a licensed Colombian university.

Attorneys holding law degrees from foreign universities may be admitted to practice, if (i) their degree is evaluated and determined by the authorities to be the equivalent of a Colombian degree, and (ii) they pass the ECAES, the national qualification exam. While degrees granted in some jurisdictions, such as Spain and other Latin American countries, are regularly deemed to be equivalent, degrees granted in other jurisdictions, such as the United States, are unlikely to be so regarded.

Demographics

According to the National Register of Lawyers as of September 4, 2015⁴, there were 260,234 practicing lawyers in Columbia for an estimated population approaching 50 million.⁵ This equates to 520 Lawyers per 100,000 inhabitants.

² Colombia is divided in political-administrative units called "departamentos," which are administrative genres to divide the country in a decentralized way. Those "k" do not have the autonomy to legislate on their own, but they are ruled under the National Law enacted by Congress.

³ MARTINDALE-HUBBELL LAW DIGEST 2007, COL-11.

⁴ Registro Nacional de Abogados, Gaceta del Foro. Abogados Inscritos, available at http://gacetadelforo.ramajudicial.gov.co/gaceta_del_foro/gaceta_foro_resultado.aspx?opcion=1&txtfechalnicio=&txtfechaFin=&cboTrimestre=%277/1/2015%27%20AND%20%279/30/2015%27&cboTipoNoVigencia=&txtNombres=&txtApellidos=&cboTipo_identificacion=&txtNumero_identificacion=&txtNumero_tarjeta_profesional=&cboTipoSancion (last visited on September 4, 2015).

⁵ See <http://worldpopulationreview.com/countries/colombia-population/> (last visited on September 4, 2015).



Legal Regulation of Lawyers

The main Legal Regulation for Lawyers is set out in law Ley 1123 of 2007, also called “The Lawyer Statute”, which regulates the disciplinary norms for regarding the exercise of law by attorneys in Colombia.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

In Civil Proceedings

In Civil Proceedings, there is no right to free legal assistance. However, the *consultorios jurídicos* are entitled to provide free legal aid to those who cannot pay for a lawyer. Those centers are staffed by law students in their final year of study and may assist clients in connection with civil, family, or labor matters. Law schools also have *centros de conciliación* which engage in binding mediations, providing another route for indigent persons to resolve legal issues.

In Criminal Proceedings

In criminal proceedings, all defendants are entitled to the assistance of counsel. Indigent criminal defendants have the constitutional right to be represented by counsel free of charge. Such assistance is provided by the *Defensoría del Pueblo* the “**Public Defender’s Office**”) an entity created by the Constitution and charged with providing free services to indigent criminal defendants. The Public Defender’s Office is also empowered to provide legal assistance to those persons who are not indigent but are unable for some other reason to obtain competent legal representation.

All licensed and practicing attorneys may be required to provide free assistance to indigent criminal defendants if called upon to do so by the Public Defender’s Office. This occurs where no *defensor public* (public defender) is available to take the case.⁶ These *defensores de oficio* (public defenders), as they are also known, are obligated to serve as part of their professional obligation to protect the State of Law and human rights.⁷ Although *defensores de oficio* receive payment only in exceptional situations, they are subject to the same obligations as a *defensor público*. The failure of an attorney to respond to such a summons may result in the institution of disciplinary proceedings against him or her.⁸ Disciplinary sanctions include censure, fines, suspension and expulsion from the profession.⁹

State-Subsidized Legal Aid

Eligibility Criteria, i.e., eligibility limitations based on:

The State-subsidized legal aid in Colombia is part of a Public Policy that was enacted, in its current form, in 2005. The “*Sistema Nacional de Defensa Pública*” (National System of Public Defense) provides access to state-subsidized legal aid in any area of Law.

Although there are no eligibility requirements to speak of (e.g. based on the merits of the case or the immigration status of the applicant) priority is given to indigent persons who would otherwise lack the resources to pay for legal representation. Due to a lack of resources, however, State-subsidized legal aid struggles to meet the legal needs of indigent individuals. NGO’s are not able to access legal aid as the

⁶ Constitutional Court Decision C-075 of 1995 (“CONST. COLOMBIA”) (Law 941 of 2005 tried to eliminate the duty of *defensores de oficio*; there were simply not enough *defensores públicos* to meet the demand. Thus, the Constitutional duty to be a *defensor de oficio* when called prevails.)

⁷ Ley 1123 de 2007, lib. II, tit. I, cap. I § 21 (the national disciplinary code of attorneys).

⁸ Id.; Ley 941 de 2005, art. 8; Constitutional Court Decision C-075 of 1995.

⁹ Id. at lib. II, tit. II, cap. I art. 40.



main scheme is structured to assist indigent individuals only. Accordingly, there are insufficient state-subsidized lawyers to represent all legal issues affecting the poorest people in Columbia.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Mandated to do or report Pro Bono?

There are no rules or regulations that require lawyers admitted to practice in Colombia to do or to report pro bono work.

Law Firm Pro Bono Programs

A number of individual law firms in Columbia run their own pro bono programs. These are typically established either because the law firm in question is a signatory to the Pro Bono Declaration for the Americas or because the program forms part of that firm's corporate social responsibility policy. There is a Pro Bono Foundation (Clearinghouse) in Colombia that regulates the programs for the firms that are signatories to the Pro Bono Declaration.

University Legal Clinics and Law Students.

As noted above, the *consultorios jurídicos* (legal clinics) are run by all registered Colombian law schools. These programs were established over three decades ago and have been instrumental in instilling a sense of duty to the community in a younger generation of attorneys. Law students must provide free legal services in a *consultorio jurídico* during their last year of studies. While the *consultorios jurídicos* are supervised by a licensed attorney, law students are explicitly authorized to provide representation only in certain types of criminal cases.¹⁰

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

Historically, most pro bono services were performed by attorneys on a purely altruistic and sporadic basis, rather than as part of a structured program. This has changed in recent years, in part because a new generation of attorneys, active in providing direct services in the *consultorios jurídicos* during their legal education, has felt a need to contribute to society through the provision of free legal services.

This new generation has been able to overcome some initial institutional resistance to pro bono work on the part of the legal establishment. A second contributing factor is that the Latin American legal community as a whole has placed an increasing emphasis on pro bono services in recent years. This emphasis is evidenced by the recent development and implementation of the Pro Bono Declaration for the Americas. This Declaration was drafted by a committee of leading lawyers from Latin America and the United States. To date, more than 20 Colombian law firms, law schools and the legal departments of certain companies have signed on to the Declaration, thereby committing themselves to providing an average of at least 20 pro bono hours annually per practicing attorney.

Current State of Pro Bono including Barriers and Other Considerations

Laws and Regulations Impacting Pro Bono

There is a general regulation in Colombia that mandates that the losing party to a lawsuit must pay for the costs of the legal proceedings to the counterparty. There are otherwise no rules that directly govern or otherwise specifically impact the provider of pro bono services in Columbia. In particular, there is no mandated minimum legal fee schedule.

¹⁰ Ley 941 de 2005, art. 17; Constitutional Court Decision C-075 of 1995.



Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

There are two main barriers to pro bono work in Colombia, namely: (i) there is no clear criteria for determining whether particular services qualify as pro bono and (ii) large law firms are still in the process of recognizing the benefit and utility of providing pro bono services, and as such, there does not yet exist a strong infrastructure within law firms to support providing pro bono services. Other barriers that sometimes impede the provision of pro bono services in Colombia and other Latin American countries are language barriers, time constraints, excessive regulation and control, lack of financial resources, and lack of suitable opportunities.

Pro Bono Resources

Entities Engaged in Pro Bono

Fundación Pro Bono Colombia is a pro bono clearinghouse.¹¹ Officially launched in 2008, its members include over 20 law firms. The foundation runs legal seminars for the underprivileged and researches human rights issues. It also offers legal training in human rights issues, family law and administrative law for attorneys from law firms providing pro bono services.

The best way for lawyers interested in providing pro bono services in Colombia to get started is to contact *Fundación Pro Bono Colombia* in order to join that organization as an independent lawyer. Through that organization independent lawyers get access to the clearinghouse's database of available cases and can take whichever case best fits their skills.¹²

Fundación Pro Bono also helps people find the right lawyer for their pro bono case according to the lawyer's specialty and experience.

In addition to legal clinics, Colombian law schools are developing *grupos de derecho publico*, which undertake high-impact human rights litigation, mainly through constitutional actions. Universidad de Los Andes¹³ has a number of these groups including the *grupo de derecho publico* ("G-DIP"), run by Professor Daniel Bonilla, and PAIS (*Programa de Acción por la Igualdad y la Inclusión Social*), which focuses on disability rights. Universidad del Rosario also has a similar group (*Grupo de Acciones Públicas*)¹⁴ as does Universidad Sergio Arboleda.

Servicios Jurídicos No Remunerados is a partnership formed between Universidad de Los Andes and a number of Colombian law firms. It offers free legal services to nonprofit groups dedicated to humanitarian causes, in particular in the areas of health, education, environment, disability and children's law. Over 25 Colombian law firms donate their services to this project, permitting the organization to provide its clients with specialized support in nearly every area of substantive law. Initially, the program offered only services related to legal incorporation and the negotiation of contracts. However, attorneys linked to the program now also provide representation for public interest controversies.

Compartamos con Colombia is an alliance of professional services firms formed to support not-for-profit entities. It undertakes initiatives designed to contribute to Colombia's development. The alliance counts 17 law firms, investment banks and consulting firms among its ranks.¹⁵ *Compartamos con Colombia* provides subsidized institutional support to (i) nonprofit organizations, (ii) projects that seek to efficiently channel resources or projects that promote social entrepreneurship, and (iii) initiatives furthering self-sustaining social investment. The organization also develops strategies promoting corporate responsibility and family-based philanthropy. To date, *Compartamos con Colombia* has

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

¹² For those lawyers willing to get involved in the pro bono services in Colombia as well as being part of Fundación Probono, they must fill the questionnaire available in the following link: <http://probono.org.co/quienes-somos/apoyenos/sea-abogado-pro-bono/> (last visited on September 4, 2015).

¹³ See <http://www.uniandes.edu.co/> (last visited on September 4, 2015).

¹⁴ See <http://www.urosario.edu.co/guia-ur/escuelas-y-facultades/Facultad-de-Jurisprudencia/ur/GAP> (last visited on September 4, 2015).

¹⁵ See <http://www.compartamos.org> (last visited on September 4, 2015).



provided free or low-cost institutional support to over 60 nonprofit organizations operating in the areas of sustainable development, children's rights, education, health and microfinance, among others.¹⁶

The NGO *Comisión Colombiana de Juristas* is dedicated to the preservation of human rights in Colombia. Its activities include commenting on proposed legislation, compiling and distributing information and legal analysis to the population at large and providing direct representation in high-impact litigation aimed at preserving and safeguarding human rights.¹⁷ It represents clients in cases both before the Constitutional Court (and other Colombian bodies) and before the Inter-American Commission on Human Rights.

CONCLUSION

Recent years have seen great strides in the field of pro bono legal services in Colombia. The main pro bono clearinghouse has existed for five years now and many of the top law firms in the nation have committed themselves publicly to devoting a percentage of their time to providing pro bono services, and have established internal policies for doing so. Despite these advances, much work remains to be done. The Colombian legal codes contain numerous actions and remedies designed to safeguard the legal and social rights of its citizens. However, such safeguards are technical and complex, and their application often requires the specialized assistance of an attorney. Furthermore, as one leading practitioner notes, the country has significant unaddressed needs in the areas of population displacement, the environment, anti-corruption programs, and family law and children's rights, among others.¹⁸ Nonetheless, there is still much reason for optimism given the recent trajectory of pro bono services in Colombia.

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This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

¹⁶ See <http://www.compartamos.org/en/convocatoria> (last visited on September 4, 2015).

¹⁷ See <http://www.coljuristas.org> (last visited on September 4, 2015).

¹⁸ Paula Samper Salazar, Pro Bono en Colombia, available at <http://www.trust.org/trustlaw/country-profiles/pro-bono.dot?id=dc0c1e66-f4b1-4ca9-addf-edd49d4287a6> (last visited on September 4, 2015).