



Pro Bono Practices and Opportunities in Guatemala¹

INTRODUCTION

Many Guatemalan lawyers have long provided free legal work to people in need, but a pro bono practice as such has only started integrating into the legal culture in recent years. Violence, corruption and the culture of impunity has limited the development of pro bono, in a country where a significant part of the population resorts to informal dispute resolution. However, despite these obstacles, there seems to be an encouraging development of pro bono practice among law firms and the civil society.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

The current Guatemalan Constitution (*Constitución Política de la República de Guatemala*) was issued on May 30, 1985 and entered into effect on January 14, 1986. It is the supreme law of the country. The Constitution organises the State into three branches: legislative, judicial and executive.

The Guatemalan political system is divided into three branches, the executive power headed by the President of the Republic Otto Pérez Molina, the legislative power shared by the government and the Congress of the Republic, and the judicial power. Guatemala consists of 22 departments, each run by a governor appointed by the President, and 330 municipalities, each run by a mayor or elected councils.

The judicial branch is run by the Judicial Body (*Organismo Judicial*) and is regulated by the Law of the Judicial Body (*Ley del Organismo Judicial*).² There are two main branches: the Administrative branch and the Judicial branch. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the supreme body of the Judicial Body (*Organismo Judicial*).

The Courts

Levels, relevant types and locations

The Judicial Body is the State independent entity in charge of the judiciary. Administrative matters (disputes involving individuals and State entities) are managed by the presidency of the Judicial Body and by specialized units of first-level tribunals and courts of appeal. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the supreme body for administrative matters. The Constitutional Court (*Corte de Constitucionalidad*) rules on the constitutionality of the law.

First tier courts are the Peace Courts (*Juzgados de Paz*) and the next courts in the hierarchy are the First Instance Courts (*Juzgados de Primera Instancia*). The former have jurisdiction over matters of lesser materiality, while the latter, depending on their assigned authority, rule on criminal matters, family issues, children matters, labor matters, civil and commercial matters and criminal matters. The Appeal Courts (*Cortes de Apelaciones*) are the second tier courts. They are organised into seven chambers: criminal, civil and commercial, regional, family, labor, children, conflicts of judicial competence and administrative disputes. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the final appellate court and has supreme jurisdiction. It includes a civil and commercial chamber, a criminal chamber, and a protection and preliminary trial (*amparo y antejuicio*) chamber.

The aforementioned Peace Courts play an important role in Guatemala. They are competent to hear disputes of lesser seriousness that are only punishable by a fine. Each capital city of a Department (*cabecera Departamental*) and tribunal of Guatemala must have a Peace Court. In principle, each municipality should also have a Peace Court but the Supreme Court may extend a Peace Judge's

¹ This chapter was written with the contribution of José Augusto Toledo, associate at Arias & Muñoz (Guatemala).

² Decree 2-89.



jurisdiction to several municipalities considering their proximity and number of inhabitants. In total, there are 370 peace judges in Guatemala organised around three type of matters: (i) itinerant peace courts in charge of civil cases less than US\$6,500; (ii) criminal and duty peace tribunals (*tribunals de turno*), which operate 24 hours a day during the whole year; and (iii) community and mixed peace tribunals, which are in charge of local-customs related issues, general principles of the law disputes and equity issues. Community and mixed peace tribunals are the result of great progress in coordinating the customs-based law of indigenous people³ and are composed of three persons recognized as “honourable” in the community where the tribunal is located, each of them being able to communicate both in Spanish and in the local language. The scope of these tribunals is limited to conciliation, approving agreements between the parties, receiving first statements of accused and, applying opportunity criteria.

Furthermore, the Execution Criminal Courts (*Juzgados de Ejecución Penal*) in Guatemala City are in charge of supervising the enforcement of rulings. Ruling Tribunals (*Tribunales de Sentencia*) deal with oral procedures and hear the rulings.

Appointed vs. Elected Judges

Judges of the Supreme Court of Justice and of the Appeal Courts are elected by the Parliament from a list presented by the Nomination Commission, which consists of university deans, representatives of the judiciary and representatives of bar associations. The last election took place in 2014 amidst criticism of serious irregularities⁴ that allegedly jeopardised the independence of the judiciary.

The Practice of Law

Education

Attorneys need to obtain a specialised university degree (*Licenciatura en Ciencias Jurídicas y sociales y los títulos de Abogado y Notario*). It is then necessary to pass an admission exam (*Examen Técnico Profesional*) and register with the single bar association of the country (*Colegio de Abogados y Notarios de Guatemala*).⁵

Licensure

As far as foreign attorneys are concerned, their title can be recognized in Guatemala by the University of San Carlos (*Universidad de San Carlos de Guatemala*) according to Article 87 of the Guatemalan Constitution. Foreign attorneys can get their title recognized in Guatemala in two different ways. They can either choose to take the Admission Exam (*Examen de incorporación*) or complete a year of social services (corresponding to 1,600 hours of service) in a public services institution. Contrary to Guatemala nationals who are granted both the titles of attorney and notary once they have passed the admission exam, foreign attorneys can only practice as an attorney in Guatemala. Only those professionals who have been duly admitted to the bar can practice law.

Attorneys are regulated by a specific law (*Ley de Colegiación Profesional Obligatoria*)⁶ and they need to abide by the bar rules. In addition, attorneys are subject to the Code of Ethics of Lawyers and Notaries,⁷ and their fees are regulated by Decree 111-96.

³ In this respect, see Art 66 of the Constitution that recognizes and promotes the organisation, cultures and customs of the various communities of Guatemala, and Art 58 of the Constitution that recognizes the right to cultural identity.

⁴ It is presumed that they have aligned themselves with certain groups of power, which exert undue influence on the elections.

⁵ See <http://www.cang.org.gt/> (last visited on September 4, 2015).

⁶ Decreto 72-2001 del Congreso de la República de Guatemala.



There are no pro bono requirements for attorneys.

Demographics

According to the College of Lawyers and Notaries (*Colegio de Abogados y Notarios*), there are about 21,797 attorneys registered in Guatemala, 17,788 of whom are actively practicing law.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

The right to legal assistance is laid down in Article 12 of the Constitution. Article 89 of the Civil and Commercial Code (*Código Procesal Civil y Mercantil*) guarantees indigent people the right to legal assistance. Article 90 states that people eligible for legal assistance benefit from the free assistance of an attorney and are exempted from any cost incurred in the proceeding.

State-Subsidized Legal Assistance

The Institute of Public Criminal Defence (*Instituto de Defensa Pública Penal*) (**IDPP**) is a public independent body that provides state-subsidized legal aid in criminal proceedings, with a special focus on cases involving gender and family violence and violations of human rights. It is financed by the state budget and is regulated by the Law of the Public Criminal Defence Service.⁸

The IDPP was created in 2005 in response to the serious shortfalls from which the judicial system suffers in Guatemala that perpetuate a culture of impunity. These shortfalls are described, for instance, in the current Government's Agenda for Change (*Agencia del Cambio 2012-2016*): "*The institutions of the Security and Judicial System do not have the capacity to undertake all the necessary functions to enforce law and reduce impunity. An insufficient budget to cover the totality of tasks related to investigation, law enforcement, and enforcement of rulings has increased the levels of impunity resulting in an increase of illegal activities in light of the close-to-zero possibility of being punished*".⁹

The IDPP provides public legal aid through public defenders (*defensores públicos*). There are two types of public defenders: *defensores de planta*, who are civil servants working exclusively for the IDPP, and private attorneys (*defensores de oficio*). In June 2012, there were 151 *defensores de planta* and 275 private attorneys providing public legal aid.¹⁰

Both *Defensores de planta* and private attorneys must belong to the bar association. *Defensores de planta* must have experience in criminal proceedings and receive a monthly salary. The IDPP compensates private attorneys for the services provided on the basis of a pre-established compensation grid, and sanctions by the bar association can be imposed on private attorneys who abandon a case that has been allocated to them in their capacity as a public defender. University law students may assist in public defence.

⁷ See the « Código de ética del colegio de abogados y notarios de Guatemala » available at <http://www.foroderechoguatemala.org/wp-content/uploads/2011/07/varia022.pdf> (last visited on September 4, 2015).

⁸ Ley del Servicio Público de Defensa Penal Decreto 129-97 available at (http://www.aidef.org/wtksite/cms/conteudo/50/Ley_del_Servicio_Publico_de_Defensa_Penal.pdf).

⁹ IDPP's Strategic Plan for 2015 – 2019 available at (http://descargas.idpp.gob.gt/Data_descargas/leydeacceso/PEI2015.pdf) (last visited on September 4, 2015); Agenda for the Change 2012 – 2016 available at (<http://www.vdocshop.com/doc/insayd/agenda-para-el-cambio-2012-2016/2011052301/3.html#8>) (last visited on September 4, 2015).

¹⁰ AIDEF, La defensa pública autónoma en Guatemala available at (<http://www.aidef.org/wtksite/cms/conteudo/360/GUATEMALA.pdf>) (last visited on September 4, 2015).



There is a legal obligation for all public defenders (*defensores de planta* and *defensores de oficio*) to accept cases allocated to them by the IDPP, with limited exceptions such as physical or psychological disability affecting their ability to provide such legal assistance, or being over 65 years old.¹¹ Usually a private attorney involved in a public defence will have volunteered to be allocated. Where no such attorneys are available, the IDPP can allocate a case to any private attorney.

Public legal defence is guaranteed by law in all criminal proceedings across Guatemala¹² to persons earning less than three times the minimum wage. Nevertheless, the Guatemalan judicial order recognizes the fundamental right to public criminal defence for everyone, as soon as assistance is requested. Defendants can contest the public defender that has been assigned to them in cases of conflict of interest, serious negligence in the provision of legal services and manifest inadequacy for the role.

The IDPP has a presence in the 22 departments of the country and in 14 towns, registering a total of 36 defence coordination units (*Coordinaciones de Defensoría*) across the country. Between 2012 and 2014, the IDPP provided public defence in 226,051 cases, with an increase of approximately 13% each year.¹³ Although the IDPP has since its creation met the objectives it had set for each working period, it is aware that its budget, size, structure and coverage in terms of matters and territory are still insufficient to meet all the needs for public legal defence in the country, which are increasing, as expressed in its Strategic Plan for 2015-2019.¹⁴ In light of this, its mission is to continue working on the development of the public defence system to expand and improve its impact and coverage.¹⁵

Alternative Dispute Resolution

Mediation by the Unidad de Resolución Alternativa de Conflictos

As in many other Latin American countries, Guatemala has seen the rise of mediation as an institutionalised means of resolving disputes in light of the serious shortfalls of the judicial system described in section II above. Since 1998, the Alternative Conflict Resolution Unit (*Unidad de Resolución Alternativa de Conflictos*) (RAC) is in charge of planning, promoting, coordinating, implementing, monitoring and evaluating the free resolution of disputes by means of mediation.¹⁶ The RAC belongs to

¹¹ See Art. 32 of the Ley del Servicio Público de Defensa Penal, available at http://www.aidef.org/wtksite/cms/conteudo/50/Ley_del_Servicio_Publico_de_Defensa_Penal.pdf (last visited on September 4, 2015).

¹² AIDEF, Buenas Prácticas y Experiencias sobre la Defensa Pública, page 154 available at (http://www.aidef.org/wtksite/cms/conteudo/435/PRESENTACION_FINAL_PARA_ENTREGAR_A_LA_OEA.pdf) (last visited on September 4, 2015).

¹³ IDPP, Memoria de Labores 2014, page 6 available at (http://descargas.idpp.gob.gt/Data_descargas/Memoria/memorialaboresidpp2014Parte1.pdf) (last visited on September 4, 2015).

¹⁴ See IDPP's Strategic Plan for 2015-2019, pages 12 -19 available at (http://descargas.idpp.gob.gt/Data_descargas/leydeacceso/PEI2015.pdf) (last visited on September 4, 2015). For instance, for the period 2015-2019, the budget finally allocated to the IDPP is only 50% of the budget initially requested (page 16).

¹⁵ See IDPP's Strategic Plan for 2015-2019, pages 30 and sq. See also detailed list of objectives of the Access to Justice strategic planning in pages 53-54.

¹⁶ The RAC was created by the Acuerdo 21/998 of the Presidency of the Judicial Body (Presidencia del Organismo Judicial) of September 2, 1998. It was partially financed by the Swedish Government and the United Nations Development Program (UNDP). The RAC is further regulated by Regulation 22/998 of September 24, 1998.



the Judicial Body (*Organismo Judicial*) and offers free mediation through the 79 mediation centres across the national territory, that are mostly housed in Peace Courts and First Instance Courts.¹⁷

The RAC centres provide mediation before or in the course of judicial proceedings, where the case is referred by a judge in agreement with the parties or where the parties request it directly. RAC centres mediate in less serious cases, mostly regarding civil disputes, but also in labor, family, commercial and agricultural cases. Although some cases relate to potential crimes (e.g. calumny (defamation), threat, aggression, fraud, etc.), in general, the mediation centres do not deal with criminal cases as these need to be heard by a judge.¹⁸ The impact and use of mediation centres has increased dramatically since its creation. In 2010, 86,265 cases in total were registered at the RAC centres, compared to 8,144 in 2005, representing an increase of 40%. In 2010, 8,098 cases were resolved with an agreement compared to 3,254 in 2005. The RAC centres are perceived as more effective than ordinary justice.¹⁹

The Ombudsman

The Ombudsman (*Procurador de los Derechos Humanos*) is established by the Constitution and elected by a vote of two thirds of the Parliament. The Ombudsman must be independent and can investigate cases of potential abuse by the State as well as any other case involving potential violations of human rights, free of charge. In addition, he/she can issue public denunciations and initiate actions before the competent authority.²⁰

PRO BONO ASSISTANCE

Pro bono Opportunities

While the Latin American legal community as a whole increasingly has placed emphasis on pro bono services in recent years, as shown for instance, by the implementation of the Pro bono Declaration for the Americas,²¹ pro bono practice is still very limited in Guatemala. Most initiatives are led by national or international NGOs and institutes, particularly those that promote human rights.

Private Attorneys

Attorneys have no pro bono obligations in Guatemala. There is a long tradition of providing legal services free of charge in light of the serious problems that the country faces, mainly corruption and gender-based violence and the lack of resources of the majority of the population to permit them traditional access to the legal system. Such provision of free legal services has depended historically on the good will of individual attorneys.

¹⁷ According to statistics for December 2014 of the Judiciary (Organismo Judicial) available at http://www.oj.gob.gt/index.php?option=com_phocadownload&view=category&id=134:estadisticas-rac-diciembre-2014&Itemid=525# (last visited on September 4, 2015).

¹⁸ Asociación de Investigación y Estudios Sociales, *Los Centros de Mediación de la Unidad de Resolución Alternativa de Conflictos del Organismo Judicial, Estado de Situación enero 2005 – marzo 2011, October 2013*, page 30.

¹⁹ *Ibid.* page 93.

²⁰ See Art 13 of Decree N° 54-86 available at http://www.pdh.org.gt/accesinfo/images/downloads/2012/decreto_54-86_ley_del_procurador.pdf (last visited on September 4, 2015).

²¹ The Pro bono Declaration of the Americas is an initiative by the Cyrus R. Vance Center for International Justice Initiatives of the New York City Bar, an association of international lawyers for the promotion of pro bono in Latin America. Signatory law firms and other legal organizations commit to undertake annually an average of at least 20 hours of pro bono work for each attorney working there.



Law Firm Pro bono Programs

Although some law firms engage in pro bono initiatives, these are still limited. Law firms that provide pro bono assistance usually do so in association with NGOs and institutes in areas such as enforced disappearance (dating back to the civil war that took place between 1960 and 1996), family and gender-based violence, protection of children and teenagers, immigration, access to education, and support to local communities. However, there has been a rise in the interest in pro bono with more law firms integrating pro bono into their day-to-day activities. Law firms are getting more involved in local communities, support groups and initiatives of local and international NGOs. A number of law firms have already signed the Pro bono Declaration of the Americas.

Legal Department Pro bono Programs

Based on public information, most companies in Guatemala do not appear have pro bono programs.

Non-Governmental Organizations (NGOs) (i.e., charities, nonprofits, community-based organizations, etc.)

When involved in pro bono programs, NGO initiatives can take two forms; either a partnership with law firms, as mentioned above, or within the framework of their own activity. Among their varied activities, some NGOs choose to focus on the legal field by improving access to justice. Lawyers Without Borders Canada has been particularly involved in establishing a Guatemalan law firm specialising in Human Rights.²² There have been an increasing number of grass-roots initiatives aimed at fighting the corrupt legal system and its culture of impunity to receive local justice for those in need. For example, a Guatemalan citizen developed an advocacy project at the Villa Nueva Justice Centre to fight against domestic violence. Helped by the Women's Legal Right Initiative, she has been training community leaders to provide women in need with certified paralegals specialised in gender-based violence.²³

Bar Association Pro bono Programs

The *Colegio de Abogados y Notarios de Guatemala* does not appear actively to promote pro bono work. However, the bar associations of Central American countries, including Guatemala, recently met to discuss how to increase pro bono initiatives and they signed the Pro bono Declaration of the Americas.²⁴ This signals an increased emphasis on pro bono in the Guatemalan legal community and hopefully will translate into greater instances of pro bono initiatives lead by law firms. Recently, the *Colegio* ratified the Inter-institutional Cooperation Covenant aiming at promoting the commitment of attorneys to defend labor rights.²⁵

University Legal Clinics and Law Students

Universities have created *Bufetes Populares* which provide legal assistance free of charge to indigents. They often do so in association with a local or international NGO to support specific projects. These are not regulated by the bar association and do not require any qualification other than being a student at the university. Four universities in Guatemala made participation to *Bufetes Populares* compulsory: the University of San Carlos, the University of Rafael Landívar, the Rural University and the University of Mariano Gálvez.

²² See the Lawyers without borders Canada website available at <http://www.asfcanada.ca/fr/asf-en-action/programmes/14/guatemala> (last visited on September 4, 2015).

²³ See the USAID's article on the topic, available at http://www.usaid.gov/sites/default/files/success/files/fp_gtm_vilma.pdf (last visited on September 4, 2015).

²⁴ See <http://www.vancecenter.org/vancecenter/index.php/library/enotes/343> (last visited on September 4, 2015); and <http://latinlawyer.com/features/article/47540/latin-lawyer-vance-center-2014-pro-bono-survey/> (last visited on September 4, 2015).

²⁵ See <http://www.mintrabajo.gob.gt/index.php/nota-principal/244-mintrab-y-cang-fortalecen-la-legalidad-laboral.html> (last visited on September 4, 2015).



The World Bank Judicial Reform Project

The World Bank Judicial Reform Project existed from 1999 to 2006 and brought substantial improvements in the Guatemalan legal system. 177 Peace Tribunals were created, and two itinerant courts were put in place that provide free mediation and information services to people in remote areas. In addition, the Judicial Reform Project allowed the implementation of anti-corruption training and the promotion of female judges, which represented 3% of all judges in Guatemala at the beginning of the project and increased to 17% by 2006.²⁶

Historic Development and Current State of Pro bono

The pro bono movement in Guatemala is still developing, but has shown strong signs of growth, partly as a result of the increased visibility of pro bono work throughout Latin America in recent years, encouraging the creation of local initiatives

CURRENT STATE OF PRO BONO INCLUDING BARRIERS AND OTHER CONSIDERATIONS

Laws and Regulations Impacting Pro bono

Statutorily Mandated Minimum Legal Fee Schedule (as applicable)

Attorneys' fees are strictly regulated by Decree 111-96. Article one refers to a specific legal threshold below which attorneys cannot set their fee rate. Article 6 establishes the percentage that an attorney can claim on a general basis, subject to variation in accordance with certain exceptions defined in the following articles of the Decree. The basic percentage is 15% of the total amount involved in the dispute for first-level litigation up to GTQ 100,000, and a percentage of 5% is then applied to the amount above this. In the case of disputes involving amounts below GTQ 100,000, the attorney cannot receive less than GTQ. 200 in fees. If the amount involved cannot be determined in advance, Article 7 sets a range of fees amount, from GTQ 500 to GTQ 15,000, according to the importance of the case.²⁷

Article 2 of Decree 111-96²⁸ regulating attorneys' fees in Guatemala considers the two parties involved in a legal dispute as co-debtors. In this respect, the losing party can be required to pay the other party's attorney's fees. The winning party has the right to pursue remedies against him once the dispute has been subject to final decision.

Rules Directly Governing Pro bono Practice

Article 10 of the Lawyers' Code of Ethics²⁹ prohibits attorneys from soliciting clients, either directly or indirectly, and from offering their services or giving their opinion on a dispute without having been solicited beforehand by the client. As far as advertisement is concerned, Article 11 only allows attorneys to advertise their name, address and fields of practice. Attorneys are also forbidden to give legal advice

²⁶ See the World Bank report available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/01/20/000333037_20150120213527/Rendered/PDF/9243702006Apr20e0PUBLIC0Box0385367B.pdf (last visited on September 4, 2015).

²⁷ Ibid.

²⁸ See Decree 111-96 available at https://www.rgp.org.gt/docs/legislacion_registral/Arancel%20de%20abogados.pdf (last visited on September 4, 2015).

²⁹ See the « Código de ética del colegio de abogados y notarios de Guatemala » available at <http://www.foroderechoguatemala.org/wp-content/uploads/2011/07/varia022.pdf> (last visited on September 4, 2015).



through television, newspaper, radio or social networks. As a consequence, people are unaware of pro bono services offered by law firms.

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

Access to justice in Guatemala is heavily limited by corruption and the inefficiency of the legal system causing people to prefer informal dispute resolution. Guatemala was ranked 115 out of 175 countries in 2014 with regards to the level of corruption,³⁰ and was reported by the Inter-American Commission on Human Rights (IACHR) to have an impunity rate of 98%, according to publicly available statistics.³¹ There is therefore a lack of public trust in the justice system, particularly with respect to women and children's rights. The literature on the topic frequently highlights the lack of training regarding gender-related abuses, and the consequent extremely low rate of prosecution. The statistics are alarming with 705 women having been reported killed in 2011.³²

Pro bono Resources

- The *Bufete Popular Universidad San Carlos de Guatemala* provides legal assistance to indigents (<http://bufetepopular.usac.edu.gt/contactenos.html>) (last visited on September 4, 2015))
- *Bufete Popular Universidad Rafael Landívar* provides legal assistance to indigents (http://www.url.edu.gt/PortalURL/Principal_01.aspx?s=76) (last visited on September 4, 2015))
- The *Instituto de Estudios Comparados en Ciencias Penales* is an academic institute that undertakes legal research and provides legal assistance in areas such as justice, criminal policy, democratic security and human rights(<http://www.iccg.org.gt>) (last visited on September 4, 2015))
- The *Colegio de Abogados y Notarios de Guatemala* is the country's bar association and although it does not seem to act as a clearinghouse for pro bono matters, it may be more implicated in the future following its signature in 2015 of the Pro bono Declaration of the Americas.
- The Judicial Body (*Organismo Judicial de la Republica de Guatemala*) is the State entity in charge of the judiciary power (<http://www.oj.gob.gt/>)

CONCLUSION

The integration of pro bono practice in the Guatemalan legal culture is gaining momentum, partly as a result of the increased practice and attention of pro bono work throughout Latin America in recent years. An increasing number of NGOs and law firms are getting involved in pro bono programs by focusing on access to justice, and have signed the Pro bono Declaration for the Americas, committing to 20 hours of free legal services per year and per attorney.³³ However, Guatemala still suffers from the inefficiency of its legal system and wide spread corruption in its institutions, impeding further development of pro bono practice. In addition, Guatemala is still one of the most violent countries in the world with a rate of 48 homicides per 100,000 inhabitants. There is therefore an urgent need for better access to a more reliable justice system, as well as pro bono initiatives from the civil and the international community.

September 2015

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³⁰ See the Transparency International organization's statistics available at <http://www.transparency.org/country#GTM> (last visited on September 4, 2015).

³¹ See the Press Release of March 27, 2012 available at http://www.oas.org/en/iachr/media_center/PReleases/2012/033.asp (last visited on September 4, 2015).

³² Ibid.

³³ See the Latin Lawyer and Vance Center Pro bono Survey 2014.



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.