



Pro Bono Practices and Opportunities in Panama

INTRODUCTION

Pro bono is gaining ground in Panama, with the legal community increasingly recognizing the value of a pro bono culture and the significant impact pro bono work can have on democracy and justice. The Pro Bono Declaration for the Americas is the founding document that is helping to institutionalize altruistic and other pro bono activities of Panamanian lawyers.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

Constitutional power in Panama, although distributed among the executive, legislative and judicial branches of government, is concentrated in the executive branch. The 1978 and 1983 amendments to the Constitution decreased the powers of the executive and increased those of the legislature, but the executive branch of government remains the dominant power in the governmental system.

The executive branch is headed by the president and two vice presidents. Together with the 12 ministers of state, they make up the Cabinet Council. The Cabinet Council is given several important powers, including decreeing a state of emergency and suspending Constitutional guarantees, nominating members of the Supreme Court, and overseeing national finances, including the national debt.

The Legislative Assembly is a unicameral body with 67 members, each of whom has an alternate. Members and alternates are elected for five-year terms that run concurrently with those of the president and vice presidents. The legislature holds two four-month sessions each year and may also be called into special session by the president.

The Constitution also creates a Public Ministry, headed by the attorney general, who is assisted by the solicitor general, the district and municipal attorneys, and other officials designated by law. The functions of the Public Ministry include supervising the conduct of public officials, serving as legal advisers to other government officials, prosecuting violations of the Constitution and other laws, and arraigning before the Supreme Court officials over whom the Court "has jurisdiction."

The Courts

Levels, relevant types and locations

The judicial branch is headed by the Supreme Court of Justice, which is the highest judicial body in the Panama. Judges must be Panamanian by birth, be at least 35 years of age, hold a university degree in law, and have practiced or taught law for at least ten years. The number of members of the court is not fixed by the constitution. The judiciary is divided into three chambers; civil, penal, and administrative.

The Constitution defines the Supreme Court as the guardian of "the integrity of the Constitution." In consultation with the attorney general, it has the power to determine the constitutionality of all laws, decrees, agreements, and other governmental acts. The Supreme Court also has jurisdiction over cases involving actions or failure to act by public officials at all levels and is the final appellate court.

The nation is divided into three judicial districts: the first encompasses the provinces of Panamá, Colón, and Darién; the second, Veraguas, Los Santos, Herrera, and Coclé; the third, Bocas del Toro and Chiriquí. Directly under the Supreme Court are four superior tribunals, two for the first judicial district and one each for the second and third districts. Within each province there are two circuit courts, one for civil and one for criminal cases. The lowest regular courts are the municipal courts located in each of the nation's 65 municipal subdivisions.



Appointed vs. Elected Judges

Judges (and their alternates) are nominated by the Cabinet Council and subject to confirmation by the Legislative Assembly. They serve for a term of ten years. Article 200 of the Constitution provides for the replacement of two judges every two years. The Supreme Court also selects its own president every two years.

In the tribunals, the judges are nominated by the Supreme Court, while lower judges are appointed by the courts immediately above them.

The attorney general and the solicitor general are appointed in the same way as Supreme Court justices, but serve for no fixed term. Lower-ranking officials are appointed by those immediately above them.

The Practice of Law

Legal regulation of lawyers is established in Law No. 9, of April 18, 1984 (*Ley por la cual se regula ejercicio de la Abogacía*). Pursuant to article 3 of Law No. 9, modified by Law 8/1993, in order to become a lawyer, a student must obtain a law degree granted by the University of Panama, Santa María La Antigua University or by any other university established in Panama whose law degree is legally recognized. For a law degree obtained abroad to be recognized, it must be validated by the University of Panama, except in the case of an international agreement clearly exempting the student to fulfill this requirement. In addition to the educational requirements and being a Panamanian citizen, one must obtain a certification issued by the Supreme Court of Justice to be able to practice law in Panama.¹

Legal Regulation of Lawyers

The Panama Bar (*Colegio Nacional de Abogados de Panama*) is regulated by the Statute of the National Bar of Panama, which was approved by the plenary general assembly of national lawyers on February 19, 2000 (*Estatuto del Colegio Nacional de Abogados de Panamá Aprobado en Asamblea General Plenaria en el Marco del V Congreso Nacional de Abogados el 19 de Febrero de 2000*).² The Bar was created to oversee lawyers' professional conduct, help improve the administration of justice in all its branches and strive for a judiciary and public prosecutor that are independent, and morally and academically sound.

Since 2010, 5000 students have obtained a law degree from one of the universities in Panama. In 2014, over 600 students obtained the degree, which has caused some concern within the Panama Bar that law degrees have been awarded too liberally.³

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

Article 201 of Panama's constitution establishes that "*The administration of justice is free, expeditious and uninterrupted.[...]*"⁴ In addition to the stipulations of "free, prompt, and uninterrupted" administration of justice and the establishment of the Public Ministry, the Constitution also provides for the application of laws, treatment of citizens under the law, and handling of prisoners.

The Bill of Rights of Individuals before the Justice in the Public Prosecutor of the Republic of Panama (*Carta de Derechos de las Personas ante la Justicia en el Ministerio Público de la República de Panamá*) states in article 57 that "*All persons entitled to free legal aid are entitled to counsel. The Public Ministry*

¹ See <http://www.cnapanama.com/leyes.htm> (last visited on September 4, 2015).

² See <http://www.cnapanama.com/estatutos.htm> (last visited on September 4, 2015).

³ See http://www.prensa.com/angel_lopez_quia/Universidades-Panama-graduaron-nuevos-abogados_0_4033846753.html (last visited on September 4, 2015).

⁴ See http://www.unesco.org/culture/natlaws/media/pdf/panama/pan_constpol_04_spaorof (last visited on September 4, 2015).



under the Code of Criminal Procedure will request the Institute of Public Defender's Office to provide for the respective designation."

The Institute of Public Defender's Office is formed by qualified lawyers appointed by the Supreme Court to act in defense of any person who is entitled to free legal assistance in cases within the competence of ordinary justice, and is regulated in the First Book of the Judicial Code and by the Agreement 239 of November 19, 1993 handed down by the Supreme Court.⁵

The mission of the Institute of Public Defender's Office is to defend the rights, and constitutional and legal safeguards for persons of limited economic resources through timely service of the administration of justice, to ensure compliance with due process and strengthen the democratic rule of law. Access to justice is defined as "*access by all to the benefits of justice and the legal and judicial advice, adequately to the importance of each topic or subject, without expensive or affordable costs, by all natural or legal persons, without discrimination by sex, race or religion*".

PRO BONO ASSISTANCE

Pro bono Opportunities

The Pro bono Declaration for the Americas (the "**PBDA**"), spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched at a congress in January 2008 by a committee of leading practitioners in Latin America and the United States. The congress was attended by representatives from prestigious law firms, law schools, bar associations and NGOs. Signatories, including Panama, endorsed the principle that it is the duty of the legal profession to promote a fair and equitable legal system and respect for human and constitutional rights. The PBDA calls for each signatory to promote an average of at least 20 hours of annual pro bono work per practicing attorney.⁶

Morgan & Morgan, a law firm, is a pioneer in pro bono in Panama. In 2011, Morgan & Morgan signed the PBDA, thus becoming the first Panamanian entity involved with this initiative. Lawyers at Morgan & Morgan, along with its non-profit organization Fundalcom,⁷ have participated in several "Legal Orientation Open Houses" with the sole purpose of providing free legal advice in different fields.

Morgan & Morgan has undertaken several pro bono projects in Panama, including drafting a bill to organize national volunteering in the Republic of Panama, for which they received recognition from the "International Association for Volunteer Effort" (IAVE).

The Pro bono Network of the Americas, led by the Vance Center and the Foundation Pro bono Chile, organized, with support from law firms Morgan & Morgan and Galindo, Arias & Lopez, the first roundtable on pro bono work in Panama and the Americas on the March 11, 2015. Panama was represented by 11 lawyers from seven different law firms, all of who stressed the importance of having an institution that promotes the pro bono culture and institutionalization within local law firms.

Historic Development and Current State of Pro Bono

Panama does not have a clearinghouse organization to promote and coordinate the distribution of pro bono cases amongst local lawyers and law firms. The implementation of the PBDA, pursuant to which signatories committed to provide an average of at least 20 pro bono hours annually per practicing lawyer, has given a boost to pro bono activities in Panama.

There are still many challenges and key obstacles to overcome. The principal barriers to pro bono services in Panama is a lack of explicit legal regulations governing pro bono activities and a lack of public

⁵ See <http://www.organojudicial.gob.pa/> (last visited on September 4, 2015).

⁶ See <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/111811pbda.pdf> (last visited on September 4, 2015).

⁷ See <http://www.fundalcom.com/> (last visited on September 4, 2015).



awareness. Additionally, minimum fees for legal services are regulated by the Decree on Professional Fees for Legal Services,⁸ which requires those providing legal services to charge fees for their services, with an express prohibition against reducing or eliminating such fees. This has slowed the creation of new pro bono organizations and it may also be one of the reasons why only a select number of law firms are signatories to the PDBA and do not actively engage in pro bono.

Pro bono Resources

Pro bono efforts in Panama are led by Morgan & Morgan, the first Panamanian law firm to sign the PDBA in 2011. Through its several foundations Morgan & Morgan promotes the access to justice and pro bono. (<https://www.morimor.com/pro-bono/> (last visited on September 4, 2015))

Fundalcom is a foundation created by Morgan & Morgan in 2007. Its mission is to contribute to building a society with greater social justice, serving as an instrument for the most vulnerable groups in the country to have free and efficient access to justice on equal terms for cases of family law and domestic violence. Since 2007 Fundalcom has provided its services to more than 5000 people. (<http://www.fundalcom.com/> (last visited on September 4, 2015))

CONCLUSION

Pro bono services in Panama are slowly but steadily growing, although the pro bono movement is not yet fully developed, despite having a legal system that recognizes a right of free access to justice for all citizens. The pioneer in pro bono in Panama is Morgan & Morgan and is also its main promoter. Although there have lately been advances in Panama, including the organization of a round table to encourage greater development of a pro bono culture within local law firms, the need for an institution that promotes pro bono activities and serves as a clearinghouse for pro bono cases was stressed. This also includes developing a pro bono culture in firms, and greater clarity on how pro bono work should be rewarded within the interpretation of the current legislation.

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⁸ See <http://www.cnapanama.com/tarifa.htm> (last visited on September 4, 2015).