

Pro Bono Practices and Opportunities in Switzerland¹

I. Introduction

Switzerland is a confederation of 26 cantons and half-cantons, and has a three-tiered federal structure: the Confederation (or federal state), the cantons (or states), and the municipalities (or local authorities).² If “pro bono” legal services are taken to mean the independent, voluntary services of lawyers rendered on an unpaid basis, then the pro bono tradition in Switzerland generally remains limited relative to other jurisdictions, although it should be noted that a limited number of pro bono clearinghouses or other centralized organizations have emerged in recent years. The main reason pro bono legal services remains limited is the existence of the comprehensive and mandatory government legal aid scheme, which applies to the majority of lawyers working in Switzerland; lawyers may feel less inclined to take on pro bono activities if they are already required to undertake reduced-fee legal aid representation on a regular basis.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	<p>1. Describe the laws/rules that regulate the provision of legal services?</p>	<p>Given Switzerland’s federal structure, regulation of legal services occurs at both the federal and cantonal levels.</p> <p>At the federal level, the Federal Act on the Freedom of Movement of Lawyers 2002 (“FAFML”) is the main legislation governing the legal profession,³ which regulates amongst other things, the inter-cantonal freedom of movement, cantonal registers and the federal rules of professional conduct. As the federal bar association, the Swiss Bar Association (“SAV”) coordinates the regulation of continuous education and representation at a federal government level.</p> <p>The SAV is supplemented by 24 local bar associations at the cantonal level,⁴ and each cantonal bar association has powers to control the conduct of lawyers seeking to practice law within their territories, subject to the membership in the respective bar association.</p> <p>Lawyers in Switzerland are not required to join either the SAV⁵ or the relevant cantonal bar</p>

¹ This chapter was drafted with the support of Dr. Ernst Stachelin of Stachelin Olano Advokatur und Notariat, in Basel.

² ‘Operation and organization of Switzerland’, available at www.ch.ch/en/demokratie/federalism/ (last visited on May 1, 2019).

³ Federal Act on the Freedom of Movement for Lawyers 2002 (Switzerland), available at www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/National_Laws_on_the_Bars/EN_Switzerland-Federal-Act-on-the-Freedom-of-Movement-for-Lawyers.pdf. (last visited on May 1, 2019).

⁴ Art 6 of the Swiss Bar Association.

⁵ Federal Laws of the Swiss Bar Association 2000 (Switzerland), available at www.sav-fsa.ch/en/anwaltsrecht/gesetze-bund.html (last visited on May 1, 2019).

		association, although most lawyers typically do so, ⁶ and every member of a cantonal bar association also automatically becomes a member of the SAV.
	2. Describe any licensure requirements governing the provision of legal services.	The general licensure requirements to obtain a Swiss license in order to practice law are as follows: (1) completing recognized legal studies in the form of a Swiss university or equivalent university diploma; (2) undertaking an apprenticeship of 1-2 years (the length will differ depending on the canton); and (3) passing the bar examination. ⁷ There are no continuing legal education requirements in Switzerland.
(b)	Pro Bono Practice and Culture	
	1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.	Where “pro bono” legal services is taken to mean the independent, voluntary services of lawyers rendered on an unpaid basis, then there are no express rules regulating the provision of such services. The government legal aid scheme offers certain free legal representation in court, which is viewed by some to constitute “pro bono” work, so we have set out in this section the rules regulating the provision of such services. The Swiss Constitution expressly includes the right to free legal representation, ⁸ and as a member nation of the Council of Europe, Switzerland also falls under the Council of Europe’s general mandate to provide free legal services to indigents. ⁹ Such rights are not absolute; the right to free legal representation is only given where it is “ <i>necessary to safeguard the applicant’s rights</i> ”. ¹⁰

⁶ It is estimated that approximately 90-95% of lawyers in Switzerland are members of a bar association. With the exceptions of the Cantons of Ticino and Jura, the cantonal bar associations are private professional associations.

⁷ The Law Society ‘How to Practice in Switzerland’ (1 August 2017), available at <http://communities.lawsociety.org.uk/international/regions/europe/switzerland/how-to-practice-in-switzerland/5062543.fullarticle> (last visited on May 1, 2019).

⁸ Federal Constitution of the Swiss Confederation 1999 (Switzerland), available at www.admin.ch/opc/en/classified-compilation/19995395/index.html (last visited on May 1, 2019), art 29(3). Note also that the Federal Supreme Court held in 1937 that indigent Swiss citizens implicitly have the right to the assistance of counsel in legal proceedings and that cantonal governments were required to provide lawyers to all civil litigants unable to afford them (decision of the Federal Supreme Court, Oct. 8, 1937, BGE 63 I 209 (Switzerland)).

⁹ Lua Kamal Yuille, ‘No One’s Perfect (Not Even Close): Reevaluating Access to Justice in the United States and Western Europe’ (2003-2004) 42 Colum J Transnat’l L 863, 882 (discussing the 1979 European Court of Human Rights decision finding Ireland in breach of its obligations relating to the right to a fair trial).

¹⁰ Federal Constitution, (n 8), Art 8.

		<p>Successful legal aid applicants will be exempted from various cost obligations (court, procedural or advance costs) and/ or receive appropriate legal representation.¹¹</p> <p>All Swiss qualified lawyers registered under a cantonal attorneys' register (i.e. those with the right to represent parties in courts) are obliged to accept court-assigned defense and mandates of judiciary assistance in the canton in which they are registered, but note that this does not apply to foreign lawyers practicing in Switzerland.¹² Most Swiss qualified lawyers are usually on such register (there is no distinction between barristers and solicitors). Foreign lawyers registered in the cantonal attorneys' register are allowed to undertake legal assistance if they wish, but as they would need to use the official language relevant to the canton concerned, this may create difficulties in practice.</p> <p>Legal aid lawyers will receive reduced fees from the canton for such court-mandated representation if the legally aided recipient loses the court action in civil cases,¹³ and regardless of the outcome of the case in criminal cases.¹⁴ There is no regulatory scheme for such fees; based on the case law by the Swiss federal courts, the hourly fee is around CHF 200. The courts are free to review the hours declared and to reduce such hours if they deem appropriate.</p> <p>As is commonly the case throughout Europe, mandatory participation in a government legal aid scheme has generally reduced voluntary pro bono activism in Switzerland.¹⁵ Neither the SAV nor the cantonal bar association do have a recognized definition or guidelines for pro bono work, though</p>
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¹¹ Swiss Civil Procedure Code 2008 (Switzerland), available at <https://www.admin.ch/opc/en/classified-compilation/20061121/index.html> (last visited on May 1, 2019), Art 117, and Swiss Criminal Procedure Code 2007 (Switzerland), available at www.admin.ch/opc/en/classified-compilation/20052319/index.html (last visited on May 1, 2019), art 136.

¹² FAFML, (n 3), Art 25. See also Ernst Staehelin, 'Le projet de loi sur la profession d'avocat (Draft Bill on the Legal Profession)' (2012) Swiss Bar Association Publication <[www.sav-fsa.ch/en/documents/dynamiccontent/128_le-projet-de-loi-sur-la-profession-davocat-\(1\).pdf](http://www.sav-fsa.ch/en/documents/dynamiccontent/128_le-projet-de-loi-sur-la-profession-davocat-(1).pdf)> accessed 24 December 2018, p. 129 ("*des avocats étrangers qui exercent la profession d'avocat à titre permanent en Suisse . . . ne soient pas soumis à l'obligation d'accepter des défenses d'office ou des mandats de l'assistance judiciaire . . .*") ("*foreign lawyers working as attorneys on a permanent basis in Switzerland. . . are not obligated to accept legal aid postings*").

¹³ Civil Procedure Code (n 11) Art 117.

¹⁴ Swiss Criminal Procedure Code (n 11) Art 135.

¹⁵ Yuille (n 9) 908.

	law firms and corporations may maintain their own internal guidelines.
2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?	Lawyers in Switzerland are not required to work a minimum number of pro bono hours or government legal aid schemes (both outside and within the government legal aid scheme).
3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?	Aspiring lawyers are not required to complete a minimum number of hours of pro bono legal services (both outside and within the government legal aid scheme) in order to become licensed lawyers.
4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?	<p>As there is no prevalent culture of pro bono legal services in Switzerland outside of the established legal aid scheme (see response to II.(b)(1)), it is difficult to identify the areas of “major unmet legal needs” in Switzerland. In the context of legal aid, unmet needs may be identified in the context of legal aid for legal advice outside of court proceedings (as opposed to legal representation in court).</p> <p>Pro bono clearinghouses described in paragraph II.(d) may have a particular focus, for example the Geneva Bar Association’s Human Rights Pro Bono Platform only matches lawyers with opportunities from NGOs with a human rights focus.</p>
5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?	<p>The main providers of pro bono legal services in Switzerland are a limited number of private local and international law firms.</p> <p>Although the websites of the majority of local and international law firms surveyed in Switzerland do not advertise any local pro bono activities, there are some notable exceptions such as Pestalozzi, which is listed as a Swiss based member firm of LexMundi’s Pro Bono Foundation,¹⁶ CMS, which lists a number of NGOs which it has assisted on a pro bono basis,¹⁷ or Froriep, which was shortlisted as “Domestic Law Firm of the Year” by TrustLaw in part due to its regular ongoing pro bono</p>

¹⁶ Lex Mundi Pro Bono Foundation ‘Pestalozzi – Switzerland’ www.lexmundiprobono.org/assnfe/cv.asp?ID=9921 (last visited on May 1, 2019).

¹⁷ CMS ‘Corporate Social Responsibility’ <https://cms.law/en/CHE/About-Us/Corporate-Social-Responsibility> (last visited on May 1, 2019).

		<p>activities¹⁸ and which has recently published a free guide on legal structure options for social enterprises in conjunction with TrustLaw and Sigma Legal.¹⁹</p> <p>In some instances, lawyers in Switzerland also serve on the boards of non-profit organizations without receiving compensation.²⁰</p>
(c)	Obstacles to Provision of Pro Bono Legal Services	
	<p>1. Do lawyers require a license to provide pro bono legal services?</p>	<p>Generally no special license is required to provide pro bono legal services in Switzerland. However, lawyers in Switzerland will have access to different pro bono opportunities depending on their particular credentials, e.g. only members of the Geneva Bar Association can participate in the Geneva Bar Association’s Human Rights Pro Bono Platform.</p>
	<p>2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?</p>	<p>Foreign lawyers do not require any additional licenses to provide pro bono legal services in Switzerland. Note that although foreign lawyers will not have access to the same pro bono opportunities and/or other legal services compared to local Swiss qualified lawyers (for example, it would not be mandatory for them to participate in the government legal aid scheme, and they would not be eligible to join the Geneva Bar Association’s Human Rights Pro Bono Platform clearinghouse unless they are registered in that cantonal bar association), arguably they may have more time and inclination to participate in pro bono activities.</p>
	<p>3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?</p>	<p>Lawyers practicing in Switzerland (both Swiss qualified and foreign) and registered in the cantonal attorney’s register must have mandatory indemnity legal insurance cover “<i>in accordance with the type and extent of risks that are associated with their activity</i>” as a rule of professional conduct.²¹</p>

¹⁸ Froriep ‘FRORIEP shortlisted for the "Domestic Law Firm of the Year Award" at the Trust Law Awards on 26 September 2018 in New York’ (28 June 2018) www.froriep.com/en/news/froriep-shortlisted-for-the-domestic-law-firm-of-the-year-award-at-the-trust-law-content---1--455--588.html (last visited on May 1, 2019).

¹⁹ Froriep, Sigma Legal and Thomson Reuters Foundation ‘Philanthropy and Social Entrepreneurship: A Guide to Legal Structures for NGOs and Social Entrepreneurs in Switzerland’ (Thomson Reuters 2017) www.trust.org/publications/i/?id=f18a9dc0-6dc3-4b02-b019-2940cedd7369 (last visited on May 1, 2019).

²⁰ Vischer ‘Pro Bono’ www.vischer.com/en/about-us/pro-bono/ (last visited on May 1, 2019).

²¹ FAFML, art 12(f).

		This insurance covers pro bono as well as government legal aid work. There are no special provisions regarding insurance for pro bono and/or legal aid work.
	4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?	Generally the advertising of legal services or within the legal sector in Switzerland is only permitted if “it remains objective and as long as it corresponds to the public need for information”, ²² and there are no specific rules that prohibit advertising of pro bono successes or soliciting new pro bono clients. Advertising the names of individual pro bono and/or legal aid clients would also violate professional confidentiality obligations if clients have not provided prior approval or consent.
	5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?	No, because there are no “Continuing Legal Education” – requirements (see response to II.(a)(2)).
(d)	Sources of Pro Bono Opportunities and Key Contacts	
	1. Describe any governmental sources of pro bono and/or other legal services in Switzerland.	Aside from the government legal aid scheme (see response to II.(b)(1)), there are no other government sources of pro bono and/or other legal services in Switzerland.
	2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Switzerland.	The main non-governmental sources of pro bono and/or other pro bono resources in Switzerland are: <ul style="list-style-type: none"> • Geneva Bar Association’s Human Rights Pro Bono Platform: The Geneva Bar Association (a private cantonal bar association independent from the government) has a pro bono clearinghouse connecting human rights NGOs with suitable lawyers.²³ • TrustLaw: TrustLaw is Thomson Reuters Foundation’s global pro bono legal program, which connects law firms and corporate legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change.²⁴

²² FAFML (n 3), Art 12.

²³ See <https://www.odage.ch/pro-bono> (last visited on May 1, 2019).

²⁴ See <http://www.trust.org/trustlaw/> (last visited on May 1, 2019).

		<ul style="list-style-type: none"> • Swiss Refugee Council: Experts will directly answer asylum seekers’ queries for free or forward them to the appropriate authorities.²⁵ • L’Association Romande Contre Le Racisme: Based in Lausanne and provides legal aid services to victims of racism in Switzerland.²⁶ • International Bridges to Justice: An independent, non-profit NGO based in Geneva that strives to protect due process and achieve fair trials for accused persons throughout the world .²⁷ • Juris Conseil Junior: A non-profit association based in Geneva which enables minors and young adults—as well as their families and the professionals who work with them—to seek free legal advice from lawyers on a pro bono basis. Services are free and confidential.²⁸ • AsyLex: A non-profit association supporting asylum seekers by providing free legal advice and templates for asylum interviews.²⁹
	<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>Local or foreign lawyers can register with the following organizations or platforms in order to be made aware of pro bono opportunities:</p> <ul style="list-style-type: none"> • Geneva Bar Association’s Human Rights Pro Bono Platform: See response to II.(d)(2) for further details. Members of the Geneva Bar Association may apply to be matched with pro bono opportunities.³⁰ • TrustLaw: See response to II.(d)(2) for further details. Individuals, law firms or in-house legal teams can apply to become TrustLaw members in order to access pro bono opportunities.³¹

²⁵ See <http://www.fluechtlingshilfe.ch> (last visited on May 1, 2019).

²⁶ See <http://www.prevention.ch/associationracisme.html> (last visited on May 1, 2019).

²⁷ See <http://www.ibj.org/> (last visited on May 1, 2019).

²⁸ See <http://www.jcj.ch/www/index.php> (last visited on May 1, 2019).

²⁹ See <https://www.asylex.ch/?> (last visited on May 1, 2019).

³⁰ See <https://www.odage.ch/pro-bono/partenaires-avocats/inscription> (last visited on May 1, 2019).

³¹ See <http://surveys.trust.org/s3/TrustLaw-Application-Form-Beneficiaries> (last visited on May 1, 2019).

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