Pro Bono Practices and Opportunities in Switzerland

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). 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

1. Describe the laws/rules that regulate the provision of legal services?

<table>
<thead>
<tr>
<th>Professional Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Describe the laws/rules that regulate the provision of legal services?</td>
</tr>
</tbody>
</table>

---

1 This chapter was drafted with the support of Dr. Ernst Staehelin of Staehelin Olano Advokatur und Notariat, in Basel.
4 Art 6 of the Swiss Bar Association.
association, although most lawyers typically do so,\(^6\) and every member of a cantonal bar association also automatically becomes a member of the SAV.

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Describe any licensure requirements governing the provision of legal services.</td>
<td>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.</td>
</tr>
</tbody>
</table>

(b) **Pro Bono Practice and Culture**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>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 “necessary to safeguard the applicant’s rights”.(^10)</td>
</tr>
</tbody>
</table>

---

\(^6\) 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.


\(^8\) 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)).


\(^10\) Federal Constitution, (n 8), Art 8.
Successful legal aid applicants will be exempted from various cost obligations (court, procedural or advance costs) and/or receive appropriate legal representation.\textsuperscript{11}

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.\textsuperscript{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.

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,\textsuperscript{13} and regardless of the outcome of the case in criminal cases.\textsuperscript{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.

As is commonly the case throughout Europe, mandatory participation in a government legal aid scheme has generally reduced voluntary pro bono activism in Switzerland.\textsuperscript{15} Neither the SAV nor the cantonal bar association do have a recognized definition or guidelines for pro bono work, though


\textsuperscript{13} Civil Procedure Code (n 11) Art 117.

\textsuperscript{14} Swiss Criminal Procedure Code (n 11) Art 135.

\textsuperscript{15} Yuille (n 9) 908.
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</td>
<td>Law firms and corporations may maintain their own internal guidelines. 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).</td>
</tr>
<tr>
<td>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</td>
<td>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.</td>
</tr>
<tr>
<td>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?</td>
<td>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). 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.</td>
</tr>
<tr>
<td>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?</td>
<td>The main providers of pro bono legal services in Switzerland are a limited number of private local and international law firms. 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, CMS, which lists a number of NGOs which it has assisted on a pro bono basis, or Froriep, which was shortlisted as “Domestic Law Firm of the Year” by TrustLaw in part due to its regular ongoing pro bono activities.</td>
</tr>
</tbody>
</table>
activities and which has recently published a free guide on legal structure options for social enterprises in conjunction with TrustLaw and Sigma Legal. In some instances, lawyers in Switzerland also serve on the boards of non-profit organizations without receiving compensation.

<table>
<thead>
<tr>
<th>(c) Obstacles to Provision of Pro Bono Legal Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Do lawyers require a license to provide pro bono legal services?</td>
</tr>
<tr>
<td>2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?</td>
</tr>
<tr>
<td>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?</td>
</tr>
</tbody>
</table>


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”, 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:

- **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.

- **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.

---

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).
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?

<table>
<thead>
<tr>
<th>Local or foreign lawyers can register with the following organizations or platforms in order to be made aware of pro bono opportunities:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Geneva Bar Association’s Human Rights Pro Bono Platform</strong>: See response to II.(d)(2) for further details. Members of the Geneva Bar Association may apply to be matched with pro bono opportunities.29</td>
</tr>
<tr>
<td><strong>TrustLaw</strong>: 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</td>
</tr>
</tbody>
</table>

---

29 See [https://www.asylex.ch/](https://www.asylex.ch/) (last visited on May 1, 2019).
30 See [https://www.odage.ch/pro-bono/partenaires-avocats/inscription](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](http://surveys.trust.org/s3/TrustLaw-Application-Form-Beneficiaries) (last visited on May 1, 2019).
May 2019
Pro Bono Practices and Opportunities in Switzerland

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.