



Pro Bono Practices and Opportunities in the United States of America

INTRODUCTION

The United States has a deep, longstanding, and evolved system and tradition of providing pro bono legal support to those in need, and there is widespread engagement in pro bono among non-profit organizations, private law firms, individual practitioners, and in-house counsel. Despite the breadth of participation among attorneys, the demand for critical low-cost legal services in the United States far exceeds the supply of services available. There is no shortage of opportunities – in terms of number, variety, or skill level required. This section provides a brief, high-level overview of the legal system in the United States and the legal culture regarding legal aid and pro bono work. In addition, this section contains some resources to use as a first step in locating and identifying appropriate pro bono opportunities in the United States and outlines some basic considerations to keep in mind when deciding whether and what kind of pro bono work to undertake.

OVERVIEW OF THE LEGAL SYSTEM¹

The Constitution and Governing Laws

The U.S. government is structured based on the doctrine of “separation of powers,” in which the sovereignty of the people is divided among three separate but co-equal branches: the Executive, the Legislative, and the Judiciary. Sovereignty is further divided between the federal government and the governments of the individual states. In addition, Native American governments retain a “quasi-sovereign” status in the U.S. federal system.

Accordingly, the federal, state, and tribal governments have separate legal systems with separate laws and regulations. As a general rule, however, the U.S. Constitution and federal laws made pursuant thereto are “the law of the land.”² However, where the U.S. Constitution or federal law is silent or does not apply to a particular matter, state, local, or tribal law will apply. Like the federal government, each state government and, where applicable, tribal government, will have its own governing constitution.

The Courts

The structure of the U.S. judiciary is complex. The United States has a “common law” legal system with two separate and distinct judiciary systems: federal and state. Although the two systems share many similarities, federal and state courts have procedurally and substantively different rules and laws. Attorneys practicing in the United States should pay special attention to the specific court in which they are appearing and the type of law (federal or state) being applied. Moreover, issues of jurisdiction and federalism are highly complex and often contested in the United States, and a foreign practitioner should be cognizant of the complexity in this area.

The federal judiciary is administered by the U.S. Supreme Court and is comprised of the U.S. Supreme Court, 13 U.S. Courts of Appeals and 94 U.S. District Courts. The U.S. District Courts are the federal trial courts. Decisions of the trial courts can be appealed to a U.S. Court of Appeals. A party can request the

¹ For more details regarding the structure of the U.S. legal system, see generally ADMIN. OFFICE OF THE U.S. COURTS, *Understanding the Federal Courts* (2010), available at <http://www.uscourts.gov/file/understanding-federal-courts.pdf> (last visited on September 4, 2015); *Comparing Federal & State Courts*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts> (last visited on September 4, 2015); and *Court Role and Structure*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/about-federal-courts/court-role-and-structure> (last visited on September 4, 2015).

² U.S. CONST., art. IV, cl. 2.



U.S. Supreme Court to review a Court of Appeals decision, but the Supreme Court is generally under no obligation to accept a case for review.

Federal courts are generally limited to hearing issues regarding federal law, but often consider and apply related state law. The rulings of the U.S. Supreme Court are binding on all courts on issues of federal law, which includes issues regarding the U.S. Constitution.

Most judges in the federal court system are appointed by the U.S. President and confirmed by the U.S. Senate. These judges are appointed for a “life term”; i.e., they may only be removed for failure to exhibit “good behaviour” while in office.³

The structure of state courts is established by the Constitution and laws of each state and therefore varies from state to state. Similar to the federal system, one court will be the “highest” court or “court of last resort” in the state (i.e., a state court analogue to the U.S. Supreme Court in the federal judiciary), and this court typically administers the state judiciary system. Generally, the first decision made by the judiciary in the state court system is made by a trial court.⁴ A decision of a state trial court can then be appealed to an intermediate appellate court. Generally, a party can request the state’s highest court to review an intermediate appellate court’s decision, but the state’s highest court is under no obligation to accept a case for review.

In navigating any state court system, practitioners should take care to familiarize themselves with the nomenclature for the courts in that particular state. The names of the trial courts, intermediate appellate courts, and even the “court of last resort” vary from state to state. For instance, in many states, the “court of last resort” is known as the Supreme Court; however, in other states, the “court of last resort” is known as the “Court of Appeals” or “Court of Appeal,” and the trial court is known as the “Supreme Court.”⁵

State courts may hear issues of state law and many issues of federal law. With respect to issues of state law – including issues regarding the state constitution – state courts are bound by the rulings of the state supreme court. Any courts or tribunals that serve specific cities, counties, and other types of local municipal governments are also generally considered to be state courts. Many states also have specialized courts that handle discrete legal matters including, for example, probate, juvenile and family courts.

State court judges are either appointed or elected, depending on the laws of the particular state.

The federal court system and each state court system have different procedural rules. In both systems, each particular court may have its own rules, and similarly, each individual judge may have his or her own rules. These “Local Rules” or “Chamber Rules” are often available online at the particular courthouse’s website and at the particular judge’s webpage. These rules typically include what each attorney must do in order to qualify to appear before a particular court and for practicing law in a particular location.⁶

Both the federal and state court systems are also intertwined to varying degrees with federal and state administrative and legislative court systems. These administrative and legislative courts often operate like judicial courts but the rules for administrative and legislative adjudications are different. For example, many immigration disputes are adjudicated administratively by federal administrative agencies.

³ U.S. CONST., art. III, § 1.

⁴ For example, in New York, the trial court is known as the “supreme court,” whereas in California, the trial court is known as the “superior court.”

⁵ Compare California (the trial court is known as the “Superior Court”; the appellate court is known as the “Court of Appeal”; and the highest court is the California Supreme Court), with New York (the trial court is known as the “Supreme Court”; the appellate court is known as the “Appellate Division”; and the highest court is the New York Court of Appeals).

⁶ See, e.g., Rules of Court, Superior Court of California, County of San Diego, http://www.sdcourt.ca.gov/portal/page?_pageid=55.1117634&_dad=portal&_schema=PORTAL (last visited on September 4, 2015).



The Practice of Law

Education

In the United States, legal education is driven primarily by state licensing requirements for the practice of law. All states recognize graduation from an American Bar Association (“ABA”)-approved law school as meeting the educational requirements to be eligible to sit for a state bar examination, the passage of which is typically required before an attorney may be admitted to the bar (i.e., licensed to practice) in a particular state. Most law schools require students to have a bachelor’s degree. Accordingly, most practicing attorneys in the United States will have at least a bachelor’s degree and at least the first professional degree in law offered by U.S. law schools: the Juris Doctor or “J.D.” Most U.S. law schools operate on a three-year curriculum, but some offer accelerated 2- or 2.5-year programs. Additional degrees, such as the L.L.M. (Master of Laws) and Ph.D. in Law, may also be available. As the first professional degree available in law, the J.D. is considered to be roughly equivalent to the L.L.B. in other countries. Many law schools require some form of pro bono service as a requirement for graduation, typically in the range of 20 to 70 hours.

After becoming licensed to practice law, most states require continuing legal education (CLE) as a condition to maintaining licensure. These CLE requirements vary from state to state. California, for example, requires 25 hours of CLE over tri-annual reporting periods in various subjects, including ethics, substance abuse or mental illness, and elimination of bias in the profession.⁷ New York requires 24 hours of CLE over bi-annual reporting periods, including four hours focused in ethics and professionalism.⁸ Some states have adopted rules that allow for pro bono work to substitute for CLE requirements.⁹

Licensure

Admittance to a state bar association is typically required before an attorney may “practice law” in the United States, and extends to foreign-qualified attorneys and attorneys employed by corporate legal departments. Because the licensing of attorneys occurs on a state-by-state level, the definition of the “practice of law” varies; however, in general the “practice of law” means the representation or counselling of another individual as a client.¹⁰ In other words, if an individual counsels, advises, or represents another person for the purpose of providing legal advice or legal representation, he or she is engaged in the “practice of law” and must be licensed by the state in which he or she is practicing. However, every individual in the United States is entitled to represent himself or herself, regardless of whether he or she is an attorney, though it is not often recommended and sometimes requires the court to affirm that the waiver of counsel is an affirmative, knowing, voluntary, and intelligent act.

In addition to general licensing requirements, attorneys may also be required to follow special procedures for admittance to or appearance before specific judicial or administrative tribunals, which is discussed in more detail in Sections II.D and IV.B.2, *infra*.

⁷ California MCLE Requirements, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/cle/mandatory_cle/mcle_states/states_a-k/california.html (last visited on September 4, 2015).

⁸ New York MCLE Requirements, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/cle/mandatory_cle/mcle_states/states_l-o/new_york.html (last visited on September 4, 2015).

⁹ Continuing Legal Education (CLE)/Pro Bono State Rules, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/legalservices/probono/clerules.html> (last visited on September 4, 2015).

¹⁰ For a summary of the various state definitions of what constitutes the “practice of law,” see AMERICAN BAR ASSOCIATION, STATE DEFINITIONS OF THE PRACTICE OF LAW, available at http://www.americanbar.org/content/dam/aba/migrated/cpr/model-def/model_def_statutes.authcheckdam.pdf (last visited on September 4, 2015).



Demographics¹¹

In 2014, there were approximately 1.28 million licensed attorneys in the United States, a country with a population of approximately 321 million, or approximately 250 people per licensed attorney. In terms of legal aid, however, there are approximately 6,415 people in need per legal aid attorney.

This shortage exists despite the fact that the number of attorneys as a percentage of the population in the United States has risen steadily over time, particularly during the last few decades. Regarding specific states, New York and California have, by far, the most licensed attorneys. The legal profession in Texas, which has the third largest population of attorneys, is only about half the size of either New York or California.

The demographic makeup of the U.S. legal profession continues to evolve. The U.S. legal profession continues to be dominated by male attorneys, but this is much less the case since 1980. The proportion of female attorneys more than tripled from 1980 to 2000 and now constitutes almost a third of the profession. Female law students have constituted almost half of the student population for the past five years.

Racial diversity in the U.S. legal profession remains relatively static. In 2010, most licensed attorneys were white (88%). African American attorneys constituted almost 5% of the profession and Hispanic and Asian American attorneys each comprised between 3% and 4%.

In 2005, most attorneys—almost three-quarters—worked in private practice, with less than 10% in government or private industry. Three percent work in the judiciary and 1% in education, legal aid or public defense, and private associations. Of the attorneys in private practice, almost half are solo practitioners. Approximately 34% worked in firms with 2–100 attorneys and 16% worked at large firms with over 100 attorneys.

U.S. law firms that have offices outside the United States often staff the office with a combination of U.S.-qualified and locally qualified attorneys. Although there appears to be a developing trend towards basing in-house attorneys abroad, U.S. companies often engage outside counsel in the areas outside the United States where they operate.

Regulation of Attorneys and the Provision of Legal Services

Attorneys and the provision of legal services are generally regulated by the individual states through rules and regulations promulgated by the state's courts, legislature, and/or bar association. These rules and regulations govern the standards for bar admission, ethics, conduct, continuing education requirements, and discipline for attorneys. An attorney admitted to practice law (i.e., admitted to the bar) in one state is not automatically authorized to practice in any other state. In addition, attorneys may also be required to apply for admission to practice law before specific federal and agency tribunals.

Although the requirements for admission vary from state to state, most require an applicant to have good moral character, be a resident or employed in the state, have graduated from an accredited law school, and pass a bar examination for that state.

The bar associations of each state should not be confused with the ABA. The ABA is a national organization that provides law school accreditation, continuing legal education, information about the law for practitioners and for the public, and initiatives to improve the legal system for the public. The ABA also publishes “model” rules for various issues, and many states use these model rules in formulating their own standards. But the ABA does not regulate the conduct of practicing attorneys; nor does it act as an

¹¹ The data in this section was drawn from AMERICAN BAR ASSOCIATION, LAWYER DEMOGRAPHICS (2014), available at http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2014.authcheckdam.pdf (last visited on September 4, 2015); and AMERICAN BAR ASSOCIATION, NATIONAL LAWYER POPULATION BY STATE (2014), available at http://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-current.authcheckdam.pdf (last visited on September 4, 2015).



umbrella organization for the individual bar associations of the states. For specific information regarding the regulation of attorneys and the provision of legal services, practitioners must consult the state-specific and court-specific rules.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

In the United States, defendants have a right to government-appointed counsel in criminal and quasi-criminal proceedings. When counsel represents an individual, the right to counsel extends to a right to effective assistance. These rights are based in the Sixth Amendment to the U.S. Constitution. States may impose broader rights to counsel through their respective state constitutions and laws.

Criminal defendants entitled to counsel are appointed a federal public defender in federal cases and a state public defender in state cases.¹² There is generally no right to counsel in civil matters.¹³

State-Subsidized Legal Aid

The demand for low-cost or free legal services in the United States is high. Though pro bono service is one crucial component of meeting this demand, the importance of state-subsidized legal aid cannot be underestimated.¹⁴

Free legal services in civil matters are primarily provided by non-profit legal aid organizations or by private practitioners in partnership with the government. Many of the non-profit legal aid organizations represent low-income individuals and/or screen clients and matters for referral to individual attorneys, law firms, or in-house legal departments. The eligibility criteria for these services varies among the different legal aid organizations, as it is often dependent on the particular service's source of funding and/or its particular mission or target population. Legal aid organizations largely depend on federal, state and/or private funding for their operations.¹⁵

The Legal Services Corporation (“LSC”), a federal government non-profit organization, is the largest funding source for civil legal aid in the United States. Approximately 95% of its funding is distributed to over 130 independent non-profit legal aid organizations with more than 900 offices across the United States. Organizations or programs that receive LSC funding must serve clients that are at or below 125% of the federal poverty level.

The administration of state legal aid funding varies by state. In California, for example, state funding for legal services projects is only provided upon application and approval by the State Bar of California.

¹² In Federal matters, indigent criminal defendants may also be appointed a private attorney selected from a special “Criminal Justice Act (CJA) Panel”. The CJA was enacted in 1964, prior to the establishment of the Federal Public Defender Service, to provide counsel to criminal defendants who could not otherwise afford representation. Today, 10,000 private practitioners are “panel attorneys” who accept assignments to represent indigent defendants in federal court. Panel attorneys are compensated an hourly rate of between \$128-\$181 per hour, with maximum aggregate cap amounts set for each case. See Defender Services, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/services-forms/defender-services> (last visited on September 4, 2015). Many states have panel attorneys who perform the same function in criminal proceedings in state court.

¹³ Some states provide for a right of counsel for low income individuals in certain categories of civil matters. See Issue History, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, <http://www.civilrighttocounsel.org/about/history> (last visited on September 4, 2015).

¹⁴ Pro bono service is the voluntary contribution of legal services by private attorneys; state-subsidized legal aid is the provision of free or low-cost legal services by the federal or state governments.

¹⁵ For a general breakdown of the funding sources for the U.S. civil legal aid system, see generally Alan W. Houseman, Civil Legal Aid in the United States: An Update for 2013, Center for Law and Social Policy (Nov. 2013), available at <http://www.clasp.org/resources-and-publications/publication-1/CIVIL-LEGAL-AID-IN-THE-UNITED-STATES-3.pdf> (last visited on September 4, 2015).



Eligibility for representation from a state funded legal aid project is limited to clients whose household income is at or below 200% of the federal poverty level.

Many private funding sources attach similar eligibility and other restrictions to their funding.

Generally, courts cannot force private attorneys to accept pro bono clients or matters. However, private practitioners who volunteer for placement programs with the court may be required to commit to a level of service they can provide to the courts, and they may be compensated for such assigned matters, if even at a reduced fee. In general, private attorneys will not be forced to take on a workload beyond their skill or capacity.

In addition to federal- and state-subsidized legal aid programs, many courts are working to make alternative dispute resolution mechanisms (such as mediation or arbitration) available to indigent persons at reduced or no cost (including representation by a licensed attorney).

LSC's 2009 Justice Gap Report estimates that at least half of those eligible for legal aid services are turned away due to insufficient resources, and less than one in five legal problems experienced by low income individuals are addressed with the assistance of a licensed attorney. Exacerbating this problem is the decline in federal, state, and private funding to legal aid organizations in recent years due to economic recession.

PRO BONO ASSISTANCE

Pro Bono Opportunities

As noted, the demand for free legal services in the United States for civil matters is high, and there is a critical shortfall of pro bono capacity to meet that demand. As there is no right to counsel in civil matters, those in need of free legal support depend upon private, non-profit legal aid organizations and private practitioners to provide legal support pro bono. There is generally no mandatory requirement imposed by state bars for attorneys to provide their services pro bono or to report pro bono service. However, the American Bar Association Model Rule 6.1 provides that "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono public legal services per year." Although the ABA Model Rules are not mandatory or binding, a number of state bars have adopted the model rule or variations thereof.

Historic Development and Current State of Pro Bono

Pro Bono Trends and Current State of Pro Bono

Despite the significant gap between supply and demand, a recent study by the ABA indicated that U.S. attorneys provide pro bono legal work at a rate almost three times the rate of volunteer work in the general population: 73% of attorneys do pro bono work whereas about 26% of the general population does volunteer work.¹⁶ On average, the number of hours devoted to pro bono work per year per attorney was 56.5 hours in 2011.¹⁷ Both the proportion of attorneys doing pro bono work and the average number of hours spent on pro bono work appears to be increasing.¹⁸ Most of this pro bono work was provided free

¹⁶ Press Release, Nearly Three-Fourths of America's Lawyers Do Pro Bono Work, According to a New ABA Study, American Bar Association (Feb. 18, 2009) [hereinafter Nearly Three-Fourths of America's Lawyers Do Pro Bono Work].

¹⁷ Press Release, New ABA Report Reveals Legal Pro Bono Service Trends, American Bar Association (Mar. 21, 2011), available at http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/new_aba_report_revea.html (last visited on September 4, 2015).

¹⁸ See Nearly Three-Fourths of America's Lawyers Do Pro Bono Work, *supra* note 16; ABA STANDING COMM. ON PRO BONO & PUBLIC SERVICE, SUPPORTING JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 5-6 (Mar. 2013) [hereinafter SUPPORTING JUSTICE III].



of charge rather than at a reduced rate.¹⁹ Pro bono work is widely available to all types of practitioners, whether as part of bar associations, public or private legal aid programs, or independent non-profit organizations. Further, pro bono work is not limited to licensed practitioners – law students may engage in pro bono work under certain conditions.²⁰

27% of pro bono opportunities are referred to attorneys through legal aid organizations.²¹ Other sources for pro bono work include referrals from other attorneys, family or friends, clients, co-workers, and the court.²²

Because virtually all civil legal aid is provided pro bono, the United States' decentralized system for pro bono referrals is the most evolved and robust in the world. As further described below, there are nearly unlimited resources for attorneys seeking to engage.

Pro Bono Barriers and Other Considerations

Given the legal profession's commitment to providing pro bono services, there are few regulatory barriers to engaging in pro bono work beyond the general state licensing requirements. The United States and the individual states generally follow the "American Rule" for the allocation of fees and costs of suit: each party is typically responsible for its own costs and fees.²³ And as with legal services in general, practitioners should take care to ensure that they are licensed to practice in the state where they seek to practice and are cognizant of the rules regarding the administration of fee agreements and duties regarding the attorney-client relationship.²⁴ Although pro bono work is typically free in the United States (i.e., there is no statutorily mandated minimum legal fee schedule) and many states do not require fee arrangements to be in writing,²⁵ for practical reasons a written agreement detailing waiver or reduction of fees for pro bono work may still be preferable. In addition, ethical and competency standards apply equally to pro bono practice as they do to non-pro bono (paid) work. If an attorney is properly licensed to practice in the United States, whether in solo practice, firm practice, or in-house practice, he or she will likely have little difficulty – in terms of regulatory obstacles – engaging in pro bono work.

Accordingly, barriers to pro bono work in the United States tend to be practical. A recent survey found five primary practical barriers:²⁶

- Lack of time;
- Family commitments;
- Competing billable hours; lack of skills; lack of information on opportunities;
- Lack of administrative support; lack of desire; lack of malpractice insurance;²⁷ and

¹⁹ SUPPORTING JUSTICE III. *supra* note 18, at 5–9.

²⁰ See Directory of Law School Public Interest and Pro Bono Programs, AMERICAN BAR ASSOCIATION, available at <http://apps.americanbar.org/legalservices/probono/lawschools/> (last visited on September 4, 2015).

²¹ SUPPORTING JUSTICE III. *supra* note 18, at 13.

²² *Id.*

²³ There are some exceptions, however, provided for by "fee-shifting" statutes, which authorize the prevailing party in a lawsuit to collect its fees or costs from the opposing party or parties.

²⁴ See MODEL RULES OF PROF'L CONDUCT (2013), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html (last visited on September 4, 2015).

²⁵ See, e.g., CAL. RULES OF PROF'L CONDUCT R. 4-200 Fees for Legal Services (2015), available at <http://rules.calbar.ca.gov/Rules/RulesofProfessionalConduct.aspx> (last visited on September 4, 2015).

²⁶ SUPPORTING JUSTICE III, *supra* note 18, at 26. In addition, the existence of clients who are not eligible for legal aid but unable to afford full-cost legal fees may be a further barrier, but in the United States there are legal insurance or prepaid legal plans available for individuals who wish to insure against the potential for legal fees. In addition, the cost of litigation is often included within other types of insurance policies.



- Employer discouragement.

As indicated above, the main barrier appears to be time constraint (lack of time, family commitments, and competing billable hours), with secondary barriers in administrative and informational constraints (lack of information, lack of administrative support) and financial constraints (competing billable hours, lack of malpractice insurance).²⁸ There are some motivational constraints (lack of desire, employer discouragement). In-house attorneys perceive a similar set of barriers, as well as concerns unique to in-house counsel, such as the location of the corporation in relation to courts, clients, or government agencies.

Another sometimes-difficult practical consideration – whether an attorney works in a firm, in solo practice, or in an in-house corporate legal department – involves adherence to ethical rules regarding client loyalty and confidentiality. Generally, attorneys owe both current and past clients duties of loyalty and confidentiality, among others.²⁹ Therefore, attorneys in the United States typically may not represent clients on opposing sides of the same matter. Furthermore, attorneys are restricted in undertaking representation of a new client if such representation is adverse to the former client's interests in a substantially related matter. Attorneys working in firms face an even more complicated situation because these conflicts often transfer from one attorney to another, and special procedures must be followed to avoid disqualification.

Foreign practitioners who seek to engage in pro bono work within the United States, in addition to complying with general state licensing rules, should pay special attention to adhering to the state bar association's rules regarding conflicts of interest. For attorneys in firm practice, this may be a painstaking process if there are not already established procedures for checking for potential conflicts of interests and, as required by state ethical rules, contacting clients to notify them of the potential conflict or to obtain permission to undertake the new representation despite the potential conflict. For attorneys practicing in-house, although dwindling public financial support for legal aid has led many corporations to push for more structured pro bono work for in-house counsel, conflicts checks for in-house counsel pro bono work are equally necessary even though the in-house attorney's client is immediately accessible. Some courts have made pro bono work more accessible in terms of potential conflicts by expressly holding that a conflict of interest is not necessarily created just because a counsel's firm may represent adverse parties in unrelated matters.

²⁷ Generally, there is no requirement for attorneys to obtain legal malpractice insurance; however, most attorneys carry some form of malpractice insurance, and a lack thereof must be disclosed to clients. See, e.g., Malpractice Insurance, AMERICAN BAR ASSOCIATION, available at http://www.americanbar.org/portals/solo_lawyers/going_solo/malpractice_insurance.html (last visited on September 4, 2015); W. Brian Ahern, Lawyers Must Now Disclose Lack of Malpractice Insurance, 29 L.A. COUNTY BAR ASS'N UPDATE Issue nine (Oct. 2009), available at <http://www.lacba.org/showpage.cfm?pageid=11125> (last visited on September 4, 2015). However, many legal service providers or referral organizations will offer low- or no-cost malpractice insurance for the volunteer attorney for the pro bono matter. See, e.g., California Courts, Frequently Asked Questions (FAQs) about Pro Bono, available at <http://www.courts.ca.gov/partners/documents/probono-faq.pdf> (last visited on September 4, 2015). For more information on resources regarding the issue of insurance coverage for pro bono work, see AMERICAN BAR ASSOCIATION, Pro Bono Work and Malpractice Coverage: A Guide for the Pro Bono Attorney (Apr. 2013), available at http://www.americanbar.org/content/dam/aba/administrative/lawyers_professional_liability/lpl_pro_bono_work_and_malpractice_coverage.authcheckdam.pdf (last visited on September 4, 2015) and Corporate Pro Bono, Professional Liability Insurance for In-House Pro Bono (Aug. 2014), available at <http://www.cpbo.org/wp-content/uploads/2014/08/Insurance-Paper-final.pdf> (last visited on September 4, 2015).

²⁸ Corporate Counsel Pro Bono, AMERICAN BAR ASSOCIATION, http://apps.americanbar.org/legalservices/probono/corporate_counsel.html#barriers (last visited on September 4, 2015). For a great resource that addresses the barriers, considerations, and approaches for in-house attorneys, see David P. Hackett et al., PRO BONO SERVICE BY IN-HOUSE COUNSEL: STRATEGIES AND PERSPECTIVES (2010).

²⁹ See, e.g., MODEL RULES OF PROF'L CONDUCT R. 1.6 (Confidentiality of Information), 1.7 (Conflict of Interest: Current Clients), 1.9 (Duties to Former Clients), and 1.10 (Imputation of Conflicts of Interest: General Rule), supra note 24.



All practitioners, and in particular those working in house, should also be cognizant of the decentralized nature of the federal and state licensing schemes and special licensing processes. As noted, in order to practice law in the United States, typically a practitioner must be licensed by the state bar association; with few exceptions, an attorney admitted to practice law (i.e., admitted to the bar) in one state is not automatically authorized to practice in any other state. However, many state bar associations have processes to grant special permission to a person who is not a member of the state bar but who is eligible to practice law in another state and who seeks to represent a specific client on a specific matter in the particular state; this process is commonly known as an application for *pro hac vice* status. The *pro hac vice* process will differ from state to state and among individual federal jurisdictions.³⁰ In addition, as noted, some states offer reciprocal admission if the practitioner is already licensed to practice in a qualifying state. The ABA is currently advocating for expansion of the adoption of local rules to allow in-house counsel to provide pro bono services in the jurisdiction in which they work even if they are only licensed in another jurisdiction. Attorneys seeking to practice pro bono under rules providing for this type of exception should consult their local jurisdiction's specific rules, as such rules vary from jurisdiction to jurisdiction.³¹

Special licensing and admission processes may also apply to representation of clients before administrative agencies. Agency-specific certifications to represent individuals in administrative proceedings are becoming increasingly common. This process is often known as "accreditation." For example, in immigration matters, the U.S. Department of Justice recently has begun to require accreditation of attorneys or other non-attorney representatives before it will permit a particular attorney or other non-attorney representative to represent an individual client before the agency. It is important to note that applications for accreditation may take some time before status is granted, and retaining accreditation status may also require continuing legal education in the field of law specific to the agency.

Finally, we note that the rules cited in this section involve the ABA's Model Rules, and it is important to keep in mind that each state bar has its own ethical and other rules regarding the practice of law.³²

Pro Bono Resources

There is an abundance of referral organizations throughout the United States at the national state and local level. Some useful starting points include the following:

- ABA Standing Committee on Pro Bono & Public Service, apps.americanbar.org/legalservices/probono (last visited on September 4, 2015). The ABA is the largest legal professional association in the United States, and its website has additional links to various national clearinghouse libraries and lists of pro bono programs at law schools and at the local level.³³
- Pro Bono Institute, Resources, www.probonoinst.org/resources (last visited on September 4, 2015). The Pro Bono Institute is a nonprofit organization based in Washington, D.C. and provides research, consultation, analysis and assessment, training, and other services to various legal

³⁰ Compare Pro Hac Vice, U.S. District Court for the Southern District of California, <https://www.casd.uscourts.gov/Attorneys/AttorneyAdmission/SitePages/ProHacVice.aspx> (last visited on September 4, 2015) (pro hac vice requirements), with Local Rule 46.1. Attorney Admission, U.S. Court of Appeals for the Second Circuit, available at http://www.ca2.uscourts.gov/clerk/case_filing/rules/title7/local_rule_46_1.html (last visited on September 4, 2015) (same).

³¹ See Corporate Pro Bono, Multijurisdictional Practice in the U.S.: In-House Counsel Pro Bono (Apr. 2015), available at <http://www.cpbo.org/wp-content/uploads/2015/04/MJP-Guide-2015-April.pdf> (last visited on September 4, 2015).

³² See ABA Model Rule 6.1 and Its Application, State-by-State, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/legalservices/probono/policies-rules.html> (last visited on September 4, 2015).

³³ Standing Committee on Pro Bono & Public Service, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/probono_public_service.html (last visited on September 4, 2015).



audiences in order to advance the provision of legal services to poor, disadvantaged and other individuals in need of legal assistance.³⁴

- Corporate Pro Bono, www.cpbo.org (last visited on September 4, 2015). CPBO is the global partnership project of the Pro Bono Institute and the Association of Corporate Counsel. It focuses specifically on opportunities for pro bono work for in-house counsel and legal departments.³⁵
- Legal Services Corporation, www.lsc.gov/local-programs/program-profiles (last visited on September 4, 2015). As noted, the Legal Services Corporation is the largest single funder of legal aid programs in the United States. Most of its funding is directed to approximately 130 programs, which are listed on this webpage.³⁶
- Various state bar associations. Practitioners should also check with the state bar association in their jurisdiction for additional opportunities. The ABA has compiled and made available links to the websites of the various state bar associations at the following web address: www.americanbar.org/portals/solo_home/state-and-local-bar-association-resources.html (last visited on September 4, 2015).
- Probono.net, an online resource providing information and links to referral organizations and pro bono opportunities as well as training materials for various pro bono practice areas. Their website is available at www.probono.net (last visited on September 4, 2015).

CONCLUSION

There is a strong, evolved system and tradition of pro bono within the U.S. legal community, where a majority of practitioners provide some level of pro bono support each year. Despite this, the gap between the demand for and supply of pro bono legal services has never been greater.

The requirement that any individual seeking to practice law in the United States be licensed by a state bar is the primary barrier for non-U.S. attorneys seeking to undertake pro bono legal services.

Foreign practitioners for whom licensing in the United States is impracticable or infeasible can still find opportunities related to pro bono work in the United States. Many organizations based in the United States – both public and private – do substantial work in other countries in fields such as human rights, public health, economic development, and so on, and many of these organizations require localized expertise and assistance in foreign and international laws. In addition, many U.S. organizations require the assistance of foreign attorneys in aid of individuals currently in the United States. Often, these matters involve U.S. immigration laws and protections, including legal aid for refugees, asylees, and their families.

The scope of pro bono opportunities in the United States is broad enough to accommodate many different circumstances, skill sets, time commitments and interests.

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Pro Bono Practices and Opportunities in the United States of America

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.

³⁴ About Us, PRO BONO INSTITUTE, <http://www.probonoinst.org/about-us/> (last visited on September 4, 2015).

³⁵ Our Mission, CORPORATE PRO BONO, <http://www.probonoinst.org/about-us/our-mission/> (last visited on September 4, 2015).

³⁶ Id.