

A Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions

**Prepared by Latham & Watkins LLP
for the Pro Bono Institute**

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Contents

Foreword	1
Disclaimer	2
Thanks	3
<i>Pro Bono</i> Practices and Opportunities in Angola.....	1
<i>Pro Bono</i> Practices and Opportunities in Argentina.....	4
<i>Pro Bono</i> Practices and Opportunities in Australia.....	8
<i>Pro Bono</i> Practices and Opportunities in Austria.....	16
<i>Pro Bono</i> Practices and Opportunities in Belgium.....	19
<i>Pro Bono</i> Practices and Opportunities in Brazil.....	23
<i>Pro Bono</i> Practices and Opportunities in Bulgaria.....	27
<i>Pro Bono</i> Practices and Opportunities in Canada	31
<i>Pro Bono</i> Practices and Opportunities in Chile.....	37
<i>Pro Bono</i> Practices and Opportunities in China.....	42
<i>Pro Bono</i> Practices and Opportunities in Colombia.....	47
<i>Pro Bono</i> Practices and Opportunities in the Czech Republic	51
<i>Pro Bono</i> Practices and Opportunities in Denmark.....	57
<i>Pro Bono</i> Practices and Opportunities in Egypt.....	62
<i>Pro Bono</i> Practices and Opportunities in England & Wales	65
<i>Pro Bono</i> Practices and Opportunities in Finland	72
<i>Pro Bono</i> Practices and Opportunities in France.....	76
<i>Pro Bono</i> Practices and Opportunities in Germany.....	82
<i>Pro Bono</i> Practices and Opportunities in Ghana	87
<i>Pro Bono</i> Practices and Opportunities in Greece	92
<i>Pro Bono</i> Practices and Opportunities in Hong Kong.....	97
<i>Pro Bono</i> Practices and Opportunities in Hungary	103
<i>Pro Bono</i> Practices and Opportunities in India	107
<i>Pro Bono</i> Practices and Opportunities in Indonesia.....	115
<i>Pro Bono</i> Practices and Opportunities in The Republic Of Ireland	122

<i>Pro Bono</i> Practices and Opportunities in Northern Ireland.....	127
<i>Pro Bono</i> Practices and Opportunities in Israel.....	132
<i>Pro Bono</i> Practices and Opportunities in Italy	139
<i>Pro Bono</i> Practices and Opportunities in Japan	144
<i>Pro Bono</i> Practices and Opportunities in Jordan.....	149
<i>Pro Bono</i> Practices and Opportunities in Kenya	155
<i>Pro Bono</i> Practices and Opportunities in Latvia	159
<i>Pro Bono</i> Practices and Opportunities in Liechtenstein.....	162
<i>Pro Bono</i> Practices and Opportunities in Lithuania.....	164
<i>Pro Bono</i> Practices and Opportunities in Luxembourg.....	168
<i>Pro Bono</i> Practices and Opportunities in Malta	173
<i>Pro Bono</i> Practices and Opportunities in Mexico	178
<i>Pro Bono</i> Practices and Opportunities in Montenegro.....	183
<i>Pro Bono</i> Practices and Opportunities in Morocco	188
<i>Pro Bono</i> Practices and Opportunities in the Netherlands	193
<i>Pro Bono</i> Practices and Opportunities in New Zealand.....	197
<i>Pro Bono</i> Practices and Opportunities in Nigeria	202
<i>Pro Bono</i> Practices and Opportunities in Norway.....	210
<i>Pro Bono</i> Practices and Opportunities in Pakistan.....	217
<i>Pro Bono</i> Practices and Opportunities in Paraguay.....	223
<i>Pro Bono</i> Practices and Opportunities in Peru	226
<i>Pro Bono</i> Practices and Opportunities in the Philippines.....	229
<i>Pro Bono</i> Practices and Opportunities in Poland	236
<i>Pro Bono</i> Practices and Opportunities in Portugal.....	241
<i>Pro Bono</i> Practices and Opportunities in Romania	247
<i>Pro Bono</i> Practices and Opportunities in the Russian Federation	258
<i>Pro Bono</i> Practices and Opportunities in Saudi Arabia.....	264
<i>Pro Bono</i> Practices and Opportunities in Scotland	267
<i>Pro Bono</i> Practices and Opportunities in Serbia	272

<i>Pro Bono</i> Practices and Opportunities in Singapore	281
<i>Pro Bono</i> Practices and Opportunities in Slovakia	287
<i>Pro Bono</i> Practices and Opportunities in Slovenia	291
<i>Pro Bono</i> Practices and Opportunities in South Africa	296
<i>Pro Bono</i> Practices and Opportunities in Spain	300
<i>Pro Bono</i> Practices and Opportunities in Sweden.....	304
<i>Pro Bono</i> Practices and Opportunities in Switzerland	309
<i>Pro Bono</i> Practices and Opportunities in Taiwan, R.O.C.	315
<i>Pro Bono</i> Practices and Opportunities in Thailand	320
<i>Pro Bono</i> Practices and Opportunities in Turkey	325
<i>Pro Bono</i> Practices and Opportunities in Uganda	331
<i>Pro Bono</i> Practices and Opportunities in Ukraine.....	337
<i>Pro Bono</i> Practices and Opportunities in the United Arab Emirates.....	342
<i>Pro Bono</i> Practices and Opportunities in The United States of America	346
<i>Pro Bono</i> Practices and Opportunities in Uruguay	354
<i>Pro Bono</i> Practices and Opportunities in Venezuela.....	358
<i>Pro Bono</i> Practices and Opportunities in International Law	360
Legal Professional Privilege in the European Union.....	366

FOREWORD

This Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions goes back to an initiative of the Pro Bono Institute and Latham & Watkins to make information about global *pro bono* legal services accessible. The first edition of the survey published in 2005 covered 11 jurisdictions, mostly in Europe. The 2012 edition covers over 70 jurisdictions in Europe, Asia and the Pacific region, the Americas, Africa and the Middle East. As the interest in global *pro bono* has grown, and this survey with it, the conversation about global and international *pro bono* has shifted. Whereas the focus just a few years ago was on issues of permissibility and compatibility with the local legal system, the focus today is decidedly practical: *pro bono* has gained in acceptance and the question is how, not whether, *pro bono* representations can be undertaken. The developments have been profound and exciting.

The survey is part of an ongoing effort, shared by many law firms, organizations and corporate legal departments, to promote and stimulate the growth of *pro bono* representation globally and in international settings. Its purpose is to serve as an introductory resource for law firms, private practitioners, in-house lawyers and NGOs seeking to engage or learn more about the culture and provision of *pro bono* in their own or other countries. The chapters describe, for each jurisdiction, what access-to-justice or publicly funded legal aid programs exist, what unmet needs for legal representation remain, what perceptions or culture shape the discussion of *pro bono*, and what professional-conduct laws and rules provide the framework for *pro bono* representation.

In 2012, lawyers from Latham & Watkins' 30 offices around the globe have updated all prior chapters and added chapters covering nearly 30 new jurisdictions. We consider the survey to be a work in progress and welcome your feedback and comments to help us improve future versions (please direct your requests to: Gianni.DeStefano@lw.com). While we have worked, to the extent possible, with local counsel and NGOs to provide information that is both current and accurate, we note that the situation in many of the jurisdictions is fluid, and that errors and omissions are unavoidable. The survey is therefore a work in progress in this sense as well and we invite your comments.

We owe a debt of gratitude to Esther Lardent and Tammy Taylor of the Pro Bono Institute, with whom we have collaborated on this project. The survey is the effort of a large team, involving not only many lawyers at Latham & Watkins, but also local law firms and practitioners, in-house lawyers and NGOs around the globe. We are grateful for their contributions and their time.

August 2012

Gianni De Stefano and Wendy Atrokhov



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THANKS

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NGOs: Canadian Bar Association (Canada) – Free Legal Advice Centres (UK) – MANS (Montenegro) – Mizan Law Group for Human Rights (Jordan) – the Peace Institute (Slovenia) – PILnet (China) – ProVene foundation (Uruguay) – Public Interest Alliance Centre (Ireland) – Public Interest Law Clearing House of Victoria (Australia) – Red Pro Bono (Mexico)

Local counsels: AF Mpanga Advocates (Uganda) – ALMT Legal (India) – Altenburger (Switzerland) – Amna Akbar (Pakistan) – Vincent Berger (International) – Bech-Bruun (Denmark) – M. & M. Bomchil (Argentina) – Cariola Diez Perez-Cotapo (Chile) – Delphi (Sweden) – Dittmar & Indrenius (Finland) – Ehecopar (Peru) – Ferrere (Paraguay) – Gómez Pinzón Zuleta Abogados (Colombia) – Maria Khan (Pakistan) – Kinstellar (Czech Republic, Slovakia, Serbia) – Luthra & Luthra Law Offices (India) – Mannheimer Swartling (Sweden) – Marxer & Partner Rechtsanwältin (Liechtenstein) – McCarthy Tétrault LLP (Canada) – MMAKS Advocates (Uganda) – Morais Leitão, Galvão Teles, Soares da Silva (Portugal) – Picón Seguros y Servicios Financieros (Uruguay) – Naureen Shah (Pakistan) – Shalakany Law Office (Egypt) – Sharkawy & Sarhan (Egypt) – Sorainen (Latvia) – Stibbe (Belgium, Luxembourg, the Netherlands) – Szecskay Attorneys at Law (Hungary) – Tilleke & Gibbins (Thailand) – Zammit & Associates (Malta)

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Last, but not least, each individual, both in law firms and legal departments, active in *pro bono* representations to address the unmet legal needs of those with limited means.

PRO BONO PRACTICES AND OPPORTUNITIES IN SPAIN

In Spain, legal aid to indigent clients is a long-standing tradition and a constitutional right.¹ Traditionally, the system presumed that those less fortunate had a right to bring a claim in front of the court, and it was therefore the lawyer's right and duty to represent them without a fee. This was codified by the Spanish Constitution of 1978.

The American terminology of *pro bono* does not exist in the Spanish jurisprudential lexicon as currently defined by the Spanish Constitution of 1978. Instead, following the tradition of other European jurisdictions, the Spanish legal system refers to *asistencia jurídica gratuita* (free legal assistance). This legal term is not exactly equivalent to the American *pro bono* concept although it fulfills a similar social function. Whereas *pro bono* in the American sense implies free services provided by lawyers on a voluntary basis, the *asistencia jurídica gratuita* in Spain is a citizen's right granted by the Spanish Constitution and as such creates an obligation on the State. It is a public service and the State pays the legal fees, although these fees are significantly lower than typical legal fees.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SPAIN

Until recently, a person was only required to hold a law degree from a Law School (*Facultad de Derecho*) in order to become a legal practitioner. However, reforms of the legal profession now require that law graduates undertake a postgraduate course and have work experience in a law firm as well as pass a final exam in order to attain a professional qualification as a Spanish *abogado* (lawyer).²

In addition to lawyers, who provide legal advice and settle disputes through the alternative systems in place (the rules and organization of the profession of lawyers are stated in the *Estatuto General de la abogacía española*, RD 658/2001, June 22nd³), the Spanish legal system also includes:

- Court lawyers (*procuradores*), who represent the parties in court.
- Court clerks (*Secretarios Judiciales*), who are responsible for documentation and for expediting legal proceedings.
- Judges (*Jueces* and *Magistrados* - *magistrados* are judges sitting in higher courts), who rule on disputes.
- Notaries, (*notarios*) who provide documentation, attestation and advisory services. As the precedent legal professions they are incorporated into the *Colegio de Notarios* presided by *Consejo Superior del Notariado*. The profession is regulated by law (May 28, 1862) and by decree (June 2, 1994).
- Property and commercial registrars (*registrador*) who keep public registers recording important legal acts that may affect third parties check that documents entered in the register conform to legal requirements and advise persons wishing to make entries in the register.

According to the General Council of Spanish Advocacy (*Consejo General de la Abogacía Española*, hereinafter, the "CGAE") there are currently about 185,639 registered *abogados* in Spain.⁴

A. Legal Aid

The Spanish system of *asistencia jurídica gratuita* is determined by law, financed by the State, organized and managed by the Spanish Bar and under the supervision of the CGAE. A distinguishing feature of legal aid in Spain, when compared with other jurisdictions is that the CGAE organizes legal aid through its general rules and regulations pertaining to the practice of law. This contrasts, for example, with the *pro bono* practice in the United States that generally consists of partnerships among several legal referral services, various bar associations, and law firms, which is another way of bringing together indigent clients and lawyers.

Furthermore, the CGAE and the bar of each territory or province have gradually developed additional services that are financed by the bars themselves, in conjunction with specific aid from regional or local

¹ SPANISH CONST. art. 119.

² Ley 34/2006, de 30 de octubre sobre el acceso a las profesiones de Abogado y Procurador de los Tribunales, which was modified by the Real Decreto-Ley 5/2012 de 5 de marzo, de mediación en asuntos civiles y mercantiles. We must note that these reforms are currently being debated in Parliament, and amendments and changes to these requirements are still possible.

³ See <http://www.cgae.es/estatuto/220601.htm> and http://www.mju.es/est_abogacia.htm.

⁴ See http://cgae.es/porta1CGAE/printPorta1.do?urlPagina=S001011003/es_ES.html.

administrations. These additional services are known as *Servicios de Orientación Jurídica Especializados*.

1. The Constitutional Right to *Asistencia Jurídica Gratuita*

The right to *asistencia jurídica gratuita* is set out in Article 119 of the Spanish Constitution and is expanded upon by Law 1/1996, of 10 January, of *asistencia jurídica gratuita*.⁵ The right to *asistencia jurídica gratuita* consists of:

- Legal assessment in advance of proceedings with the aim of avoiding legal proceedings or assessing the viability of the claim;
- Assistance to the detained person or prisoner;
- Free legal assistance to plaintiffs and defendants by lawyers during proceedings (the so-called *turno de oficio*); and
- Other free services such as access to public registries and documents.⁶

Asistencia jurídica gratuita is generally available to several groups that can include Spanish or EU citizens as well as foreign citizens residing in Spain.⁷ The aid can be afforded to the plaintiff or the defendant in a proceeding in any of four areas of law: civil, criminal, administrative or labor.

The essential criterion for receiving *asistencia jurídica gratuita* is financial need.⁸ Any individual has the right to *asistencia jurídica gratuita* when he or she meets the threshold set out by law. *Asistencia jurídica gratuita* will be granted when the individual can show that the income of the family unit does not exceed double the statutory minimum wage annually established by the State. In 2012, the threshold was frozen and set at €641 per month. Exceptionally, the law also allows for *asistencia jurídica gratuita* to be granted to individuals who may not meet the financial threshold, but still may qualify given their low income and economic circumstances.⁹

The system of *asistencia jurídica gratuita* is organized and monitored by the Bar of each province. Each Bar has a Committee in charge of managing the system of *asistencia jurídica gratuita* within its territory (*Comisiones de Asistencia Jurídica Gratuita*).¹⁰ In order to receive aid, a petitioner must complete a request for free legal assistance before the Bar of the province where they reside or where the legal proceedings are due to take place, along with proof of income. The *Comisiones de Asistencia Jurídica Gratuita* will assess whether the criteria are met and if they will assign a lawyer. Applicants for *asistencia jurídica gratuita* may waive their right to a lawyer during the proceedings and appoint a lawyer of their choice without losing the other benefits of *asistencia jurídica gratuita*. However, this will only be permitted if the lawyer chosen by the applicant does not request payment for legal services offered.¹¹

Under the system of *asistencia jurídica gratuita*, lawyers who donate their time receive payment from the State according to a fee structure set by the State. This payment, however, is lower than those typically received by Spanish lawyers, in particular the fees of large firms.

In 2010, there were 1,700,000 cases of free legal assistance in Spain, which works out to about €160 per person assisted. By the end of December 2010 there were approximately 36,000 lawyers who were registered to provide free legal assistance. The costs of the services in 2008

⁵ Law 1/1996 of 10 Jan., of free legal assistance, implements Article 119 of the Spanish Constitution and develops further the system as initially set out in Articles 20(2) and 440(2) Law 6/1985. Law 1/1996 is developed by Royal Decree 2103/1996, of 20 Sep., as modified by Royal Decree 1455/2005, of 2 Dec.

⁶ See Article 6 of Law 1/1996.

⁷ In criminal and administrative proceedings, foreign citizens not residing in Spain will also have the right to free legal assistance if they fulfill the applicable financial criteria.

⁸ See Law 1/1996 art. 3.

⁹ See *Id.* at art. 5.

¹⁰ Created by Law 1/1996.

¹¹ See Law 1/1996 arts. 27, 28. However, the recently created *Observatorio de la Justicia Gratuita*, a monitoring center of free legal assistance, proposed in June 2007 to allow free legal assistance by the lawyer of the applicant's choice. This proposal has not yet been implemented; however, in 2008 a pilot project was conducted in order to test the proposal, but it is not provided in the rest of the territories.

totaled more than €256.6 million, a 4% decrease from 2009. Cataluña is the province that invests the most in free legal assistance with 24% of the total amount of aid administered in Spain, and the Madrid Bar is the highest investing legal bar in Spain accounting for 16% of the total amount of money invested in aid in Spain.

Sixty-four percent of the cases under the *turno de oficio* concerned criminal proceedings, 20% civil proceedings, 7% administrative proceedings, and 9% social and other proceedings.¹²

2. Servicios de Orientación Jurídica Especializados

In addition to the right to *asistencia jurídica gratuita* developed by Law 1/1996, the CGAE, the different Bars, and regional and local administrations have created several services that complement *asistencia jurídica gratuita*. These services benefit from mixed financing from the Bars and regional and local administrations.

Services that have been created include the *Servicio de Asistencia a las Víctimas del Delito* (assistance to the victims of crime); *Servicio de Asistencia a las Mujeres Maltratadas* (assistance to victims of gender-based violence); *Servicio de Extranjería* (assistance to immigration), *Servicios de Asistencia Jurídica a los mayores* (assistance to the elderly); and *Servicio de Orientación y Asistencia Jurídica Penitenciaria* (assistance in prison).¹³

The creation of these services and their gradual evolution and implementation has led several courts to consider them covered by the *turno de oficio* (free legal assistance to plaintiffs and defendants by lawyers during proceedings), which is part of the *asistencia jurídica gratuita*.

In addition, some of these services have been developed by law. In particular, the Regulation on Alien Persons of 2004¹⁴ has developed the services for assistance to immigration; and the Law for the Protection of Gender-Based Violence of 2004 has developed services for the assistance to victims of gender-based violence.¹⁵

II. PRO BONO IN SPAIN: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

There are some opportunities for new forms of *pro bono* work in the Spanish environment otherwise run by centralized institutions. First, a firm could establish strong relationships with and provide representation to public interest organizations. In fact, many law firms, including the largest Spanish law firms as well as international law firms with a presence in Spain, have ongoing *pro bono* projects. Some large law firms have created community service committees to offer legal know-how and resources to the community, as well as being actively involved in *pro bono* projects. Through these committees, law firms promote the development of humanitarian projects and participate in charitable and cultural activities.

Also, many opportunities exist in initiatives led and monitored by institutions such as the CGAE and the regional bars. In this respect, the CGAE created the *Observatorio de la Justicia Gratuita*, a monitoring center for free legal assistance.

The Center for Lawyer's Social Responsibility (*Centro de Responsabilidad Social de la Abogacía*)¹⁶ was created in 2008 within the *Colegio de Abogados de Madrid* (Madrid's Bar Association) with the objective of tending to the social responsibility of the Association and its members, promoting for the neediest communities better access to their right of defense and to the conditions under which this right is to be exercised and to further their knowledge regarding their rights, obligations and the legal system. The Center does so by the promotion of individual and corporate *pro bono* work, as well as by other programs of social action. It has an annual call for grants, with a budget of €200,000 for financing projects. These grants are for supporting initiatives that serve to fulfill the centers' mission.

Since the beginning of 2011, the Center has started mobilizing the willingness of the Bar's associates to provide *pro bono* work. It is an intermediary between the associates and the legal needs of the NGOs, (never to individuals or in competition or replacement of legal aid). Also, the Center organizes

¹² Vº INFORME DEL OBSERVATORIO DE LA JUSTICIA GRATUITA.

¹³ OBSERVATORIO DE LA JUSTICIA GRATUITA, 13.

¹⁴ Reglamento de Extranjería, RD 2393/2004, of 30 Dec.

¹⁵ Ley Orgánica 1/2004, of 28 Dec., de Medidas de Protección Integral contra la Violencia de Género.

¹⁶ See crsa.icam.es.

seminars addressed to groups of people at risk of exclusion that allows it to reach the individuals that cannot be reached via traditional *pro bono*. Volunteer lawyers participate in seminars coordinated by the Bar to address special legal interests that concern vulnerable groups such as the elderly or immigrants.

Other initiatives in this field include the creation of an internet portal managed by the CGAE to facilitate access to *asistencia jurídica gratuita*: <http://www.justiciagratis.es/pjg/home.do>. This portal allows requests for *asistencia jurídica gratuita* online and contains information on the applicable law in each Autonomous Region in Spain, a service for legal guidance and other legal information. All of these initiatives are done as part of the Spanish Legal Aid system as a whole, but not all are on a *pro bono* basis.

In addition, many of the regional Bars have created working groups in support of human rights, as well as a working group for social action and cooperation.

B. Barriers To *Pro Bono* Work And Other Considerations

Barriers to *pro bono* work and other considerations include:

- Onerous litigation
- Delays
- Difficulty of access to free legal aid to the most vulnerable citizens - better conditions to promote equal and free access to all
- Insufficiency of resources

C. *Pro Bono* Resources

- The foundation for Spanish lawyers that develops and promotes the protection of human rights in Spain: www.fundacionabogacia.org
- The General Council for Spanish Advocacy: <http://www.cgae.es>
- Lawyers in Spain: www.abogados.es
- Free Legal aid website: <http://www.justiciagratis.es/pjg/home.do>
- Legal news and notices: www.noticiasjuridicas.com

III. CONCLUSION

The Spanish legal aid system is overseen by the CGAE and the regional Bars with the aim of assisting the indigent community. The *asistencia jurídica gratuita* system gives all clients in need an attorney paid for by the State to represent their interests in court, as well as other complementary services, such as legal advice prior to any legal proceedings and free or reduced fee access to public registries and documents. The system seeks to ensure that the indigent community is sufficiently well-informed to make proper legal decisions and receives free legal assistance to represent their interests in court. In addition, the CGAE and the regional Bars, in conjunction with regional and local administrations, have developed additional services that benefit from mixed financing from the Bars and regional and local administrations.

Currently, lawyers who wish to represent indigent clients must offer their services as part of the social legal aid system in order to do meaningful *pro bono* work, but numerous opportunities for expanding the scope of *pro bono* practice in Spain do exist and some of the larger law firms already have *pro bono* practices that go beyond the institutionalized system of *asistencia jurídica gratuita*.

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Pro Bono Practices and Opportunities in Spain

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