

## **PITCHING PRO BONO: GETTING TO FIRST BASE WITH THE “BIG FIRM”<sup>1</sup>**

**By Karen A. Lash**

### **INTRODUCTION**

The best predictor of whether a lawyer will say “yes” to your pro bono pitch is whether or not you ask. But obviously there’s more to it. Who do you ask? Which matters do you pitch? What do you include in the ask? What kind of training and support should your program provide? Success in placing pro bono matters and enrolling more lawyers in your work depends on these answers. While each pitch should be tailored to the lawyers and matters at hand, some general principles always apply.

I’ve been pitching pro bono in one form or another for twenty years, but working with the Mississippi Center for Justice to help alleviate the staggering legal problems left in the wake of Hurricane Katrina has been like a laboratory for learning about pro bono. MCJ has partnered with volunteers from across the country, serving-up pro bono opportunities ranging from long-distance projects done on desktops a thousand miles away to projects requiring on-the-ground involvement. Sometimes the cases require hundreds or even thousands of hours, and others fewer than ten. Some projects have been half-baked and others fully formed.

When asked to speak to the Equal Justice Works fellows last fall on lessons learned about pro bono pitching, I asked for input from those on the receiving end. I invited about a dozen “Big Firm” pro bono counsel, directors and coordinators to share their quick and dirty “top tips and pet peeves”. Thanks to their illuminating responses and generosity in sharing their experience, this article mines both sides of the pro bono ask, suggesting effective methods for getting to “yes,” particularly with big firms.

These recommendations are intended for both novice and seasoned pro bono providers, offering ideas for developing and nurturing good relations with pro bono firms. If you pitch for a living, you have your own effective practices. If you’re starting out in this game, you will want to know more about other parts of the pro bono continuum, like

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<sup>1</sup> My most heartfelt thanks to the many colleagues and mentors I’ve had in the social justice community generally, and the pro bono community specifically. I learned a great deal from each person quoted, my Mississippi Center for Justice colleague in all things pro bono Crystal Utley; MCJ’s Founder and President Martha Bergmark; Lawyers’ Committee for Civil Rights Under Law’s Pro Bono Counsel Nancy Anderson whose unparalleled skill and success routinely produces blockbuster hits; MCJ staff attorneys with whom I get to tease out the pro bono possibilities including Reilly Morse, John Jopling, Beth Orlansky; Steven Scudder, Counsel for the ABA Standing Committee on Pro Bono and Public Service; Tiela Chalmers, Executive Director of Volunteer Legal Services, San Francisco; Elissa Barrett, Bet Tzedek’s Pro Bono Director; and each person who provided invaluable editorial feedback on this article: my partner and University of Maryland law professor Martha Ertman, my (much older) brother David Lash whose experience as pitcher and pitched to (as former Executive Director of Bet Tzedek and now Pro Bono Managing Counsel at O’Melveny & Myers) is invaluable; Cristin Zeisler, Manatt, Phelps & Phillips, Director of Pro Bono Activities.

establishing program priorities, delivery design and technology, the intake mechanics, getting volunteers to report on their progress (I hope someone writes that article), and the importance of crafting myriad ways to say “thank-you.” I don’t cover these or many other parts of the delivery continuum here, and instead highly recommend resources like the ABA *Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means*<sup>2</sup> and the ABA’s Pro Bono Center website.<sup>3</sup> What I do focus on are the “Big Firms”, although they represent only a fraction of the pro bono rich universe, because they offer unique resources and have particularized interests. Happy pitching!

## **1. Res ipsa**

You are pro bono counsel at Big, Bigger & Biggest, the largest firm in the country. Which case would you consider if both were pitched to you?

### **Case # 8890768**

*Client seeks assistance with a Conservatorship over her sister whose husband is deceased. Client’s sister is paranoid schizophrenic, and she has lived with client for the past five years. Client states her sister is incapable of handling her own affairs.*

OR

### **WOMAN CARING FOR MENTALLY ILL SISTER NEEDS HELP SECURING CONSERVATORSHIP**

*Ms. Martha has taken care of her younger sister Ms. Jane ever since Ms. Jane’s husband died of cancer. Ms. Jane was diagnosed with paranoid schizophrenia just before moving in with her sister five years ago. Her illness makes her easily confused when she leaves home, and she has spent many days scared and on the streets before the police or her sister found her. Ms. Jane requires constant supervision. Because Ms. Martha is also the primary caretaker for their aging mother and her own two teenage children, obtaining a Conservatorship would give this family some sense of stability and access to benefits necessary to help care for Ms. Jane, keep the family together and safe in their home.*

*Timeframe: ideally completed by December 15; Training available, model petitions and step-by-step manual available; staff attorney Cait Clarke available for questions at: 202-222-2222; opportunity for court appearance; uncontested conservatorships average 15 hours; conflicts information available upon request.*

Many of the Big Firm pro bono counsel’s top tips elaborate on why the second pitch -- and yes, they are the same case -- is far more likely to help you get what you

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<sup>2</sup> <http://www.abanet.org/legalservices/probono/standards.html>

<sup>3</sup> <http://www.abanet.org/legalservices/probono/home.html>

want and what your client or organization needs. The rest of this article sets out an annotated to-do list of effective practices, drawn in large part from Big Firm pro bono counsel's own words, to incorporate into your own pitching strategies. I conclude with a smorgasbord of potential pro bono asks as a reminder of the many ways to partner with Big Firm allies, beyond the traditional direct service and impact litigation fare.

## **2. Pro bono isn't "free"**

Before deciding how to make your pitch, you must first properly staff your end of the deal. Pro bono doesn't seamlessly and effortlessly happen. Hardly. It's an enormous amount of work to do this right and ensure that clients are well-served. Whether you're expanding, reviewing or creating your pro bono program from scratch, it's imperative that it be *properly staffed*. Otherwise the best pitch in the world will ultimately fail for lack of essential support, likely taking the relationship with the pro bono attorneys, if not the entire Big Firm resource center, down with it.

There's no magic formula for determining how to provide appropriate staffing. Each nonprofit will incur *significant* expenses in establishing an effective pro bono program. Each must cultivate its own unique relationships with pro bono volunteers, analyze legal needs determining which match well with pro bono assistance, set up intake clinics, do more intensive intake, develop trainings, update manuals, track cases, provide malpractice insurance, maintain expertise and co-counsel or be available to work with, mentor or answer volunteer questions. Law's core value is protecting justice, and furthering that goal through quality pro bono programs is expensive.

Consequently, decisions to create or expand existing pro bono programs should not be made without serious attention as to whether sufficient resources, human and otherwise, exist. It's important to note that some firms help fund the pro bono delivery process by making donations primarily-- sometimes exclusively -- to those organizations that deliver their pro bono matters. Indeed, pro bono programs often become a critical part of a nonprofit's overall fundraising strategy, in the hopes that the firms will not only underwrite their share of the matters they receive, but enough to help ensure the overall health of your nonprofit. Bottom line: the rest of the discussion assumes you have dedicated enough resources to provide high quality legal services to clients by leveraging the cost of working with Big Firm volunteers.

### **Before-you-start to-do list:**

- Make sure a staff member is charged with coordinating all aspects of the pro bono delivery process, from cultivating Big Firm relationships, to saying "thank you" when cases conclude
- Implement systems for screening matters appropriate for pro bono representation
- Acquire software programs for placing and tracking placed matters, including all form correspondence
- Get malpractice insurance for volunteers
- Ensure that staff are committed to devoting a portion of their time to support volunteers including developing trainings and materials, mentoring, co-counseling

- Implement public recognition strategies for your volunteers
- Incorporate fundraising staff into the process

### **3. Everyone loves a winner: Screen for “winnable” cases**

*We expect good analysis of the issues so nothing particularly out-of-the-ordinary will surprisingly arise. Obviously no one can ever anticipate everything that might present challenges, but you better anticipate/identify potentially dispositive issues, big legal hurdles, and difficult facts. Thorough and expert intake is crucial. David Lash, O'Melveny & Myers*

*Tell me all the problems with the case that you know from the get-go. It might make it easier for you to sell that one case if you don't disclose but I will never want to take another case from you. Kathi Pugh, Morrison & Foerster*

*Worst thing in the world is to give the volunteer a bad experience. Refer cases that have substantive merit, that are likely to be winnable or to achieve some sort of feel-good result, including an interesting or challenging legal issue, even a losing one. You want your volunteers to come back! David Lash, O'Melveny & Myers*

There's little question that success increases the chances a volunteer will take another case. William Mitchell law professor Deborah Schmedemann's recent study concludes that volunteers are most likely to return if their previous case was “straightforward” (rather than “difficult”) and the attorney was able to say she “won” (rather than “lost”) her previous pro bono case.<sup>4</sup> However, Kathi's advice is key: disclose any weaknesses or unknowns, including when you think chances for success are low.

The principle applies a little differently for impact cases or signature projects, which may be less straightforward. Here, thoroughly develop your pitch (see *11. Going for High Impact*) by identifying potential problems, ensuring client and organization preparedness, and evaluating the chances of “winning.” This may include gently reminding the pro bono counsel of Atticus Finch's insights that “just because you're beat before you start, is no reason not to try” -- social justice progress can be incremental. Fortunately, many firms will relish tackling a righteous -- albeit likely losing -- impact matter, if you can situate it as part of a compelling larger or longer-term strategy.

Some legal services attorneys, and the cultures within which they work, will resist giving away many of the “good” cases to volunteers. But a pro bono program successfully executed will ensure that those “good” cases are handled, freeing up valuable staff resources for other purposes and expanding the organization's capacity and valuable relationships.

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<sup>4</sup> Deborah Schmedemann, Pro Bono Publico as a Conscience Good, <http://ssrn.com/abstract=1121042>, page 21, chart 4.

Bottom line: treat your volunteers as if they are your clients. Do what you can to ensure a positive experience working with you, your organization, and most important, the real client.

**Screening to-do list:**

- Make sure the matter is sufficiently ripe
- Ensure a good chance of “winning” or explain the significance of taking on the matter anyway
- Provide information to manage expectations, candidly disclosing what the case involves, including any weaknesses or unknowns
- Make sure staff will let the good ones get away

**4. Screen for “likable” clients**

*At a minimum, a quality screening means...full disclosures are made regarding known “interesting factors” about the client’s personality or history (i.e. psychological issues, history of repeated referrals). Cristin Zeisler, Manatt, Phelps & Phillips (“Manatt”)*

*Make sure that clients are well-screened (financially, psychologically, etc.) and projects are well-thought-out before proposing them. Elly Spiegel, Kaye Scholer*

*No clients so difficult that they will overwhelm the volunteer lawyer’s experience. David Lash, O’Melveny & Myers*

In some ways, doing intake for staff attorneys differs from intake for pro bono attorneys. We can’t do justice to law if we continually screen out challenging or unsympathetic clients. But pro bono counsel have their own interests. Heed their advice if you want volunteers to come back for more. A proper balance must be struck between handling in-house any clients who raise these red flags, while also managing volunteers’ expectations about the realities of living in poverty, and people whose life experience may reasonably cause them to be initially distrustful, and who don’t have access to email and blackberries to respond quickly, may be juggling several jobs, or need help reading documents and may not say so directly.

In addition to the initial screening, you may use follow-up strategies. One program coached me on their procedure to make sure the client is responsive and responsible by screening for “SID” -- “See If Dependable.” They established procedures that include having the client send documents within two weeks of the initial intake, or keep a follow-up telephone appointment before saying “yes” to trying to place the case.

Volunteers will absolutely expect that you have verified that the client is income-eligible, satisfying your program’s income guidelines or providing a compelling reason for placing the case if she is not.

**More screening to-do list:**

- Verify the client is income-eligible
- Verify the client is cooperative and responsive

**5. Explain the staffing, expertise and \$ expected to handle each particular matter**

*It's always a good idea to specifically describe the level of expertise likely to be needed to handle the given circumstances. Examples: (A) The case is a very straightforward adoption – indicate that “case is appropriate for anyone new to the area of adoptions law”; (B) The case involves a complicated IEP with many back-end issues – indicate that “experience with special education law is required”; (C) the case involves filing a class action law suit in an obscure area of law against a fierce and well-represented adverse party – indicate that “active involvement of a highly experienced partner is required to lead a team of at least 3 associates.”* Cristin Zeisler, Manatt

*Be as specific as you can regarding what you need: time commitment, type and level of expertise, size of team, budget, etc.* Elly Spiegel, Kaye Scholer

*Learn how to co-counsel with big firms. Tell us upfront the role you wish to play & what you expect from your co-counsel. I always recommend having a "sit down" at the very beginning and hashing out a co-counseling agreement. It's kind of like a pre-nup - it's much easier to talk about these things at the beginning of the relationship than to fight it out when the relationship is breaking up.* Kathi Pugh, Morrison & Foerster

*If a firm is not willing to make an up-front pledge to donate any potential fees to your organization upon successful conclusion of the case (minus hard cost recoupments), you may want to find yourself another partner.* Cristin Zeisler, Manatt

*If pitching a project (as opposed to a single case), it's important to provide a thorough presentation of the scope, the training needed (and who will provide it and when), the expertise level needed, whether there will be out-of-pockets that the firm will be expected to bear, what type of mentoring will be made available, what the time frame will be.* Debbie Segal, Kilpatrick Stockton

*Note relevant deadlines and/or when you expect work product.* Susie Hoffman, Crowell & Moring

*SOOO important to include any known deadlines in a pitch. This is especially true if the deadline is less than a week or 2 out, but even if it's just to say that the relevant statute will run in 8 months, that is \*tremendously\* helpful info.* Cristin Zeisler, Manatt

Some needs -- like deadlines -- are straightforward. Others require a delicate balancing act. When you genuinely need years of experience in an area of law, clearly say so -- but don't preclude the firm from offering assistance if they can come close. An

unsupervised first-year associate with no appellate or employment law experience should probably not take on your precedent-setting Fifth Circuit Title VII appeal. If you need appellate and retaliation law expertise, say so. And if there's a thick and complex record that must be sifted through, note that an associate would be beneficial to the team.

Your goal is to avoid the situation where a firm's pro bono counsel circulates your matter and enrolls an enthusiastic volunteer, only to have you say "sorry, we need more and better." Similarly, guard against the scenario where pro bono counsel delegate a technical project to a paralegal or brand-new attorney who stand little chance of giving you a usable product. If a reasonable team for your matter involves active involvement from a partner familiar with the work required, say so.

Also delicate is the topic of fees. Try to find out how the firm has handled both the paying of case-related costs, and who gets any award of attorneys fees, in prior pro bono matters. Ideally, you would have a baseline policy and communicate it -- and, of course, negotiate as needed, depending on the firm's policy, the circumstances of the particular case and the interests and needs of both the firm and the nonprofit. Not everyone agrees with Cristin's opinion about donating fees.

But the most important part of your ask, is to precisely describe the legal assistance needed from the pro bono law firm. Investigation and analysis? Advice and counsel to your organization or to a client? Full representation? Client education and training? Research only? Litigation co-counseling? Whatever it is, state it clearly.

**Articulating expectations to-do list:**

- State deadlines and/or timeframe for work product
- Estimate the number of hours expected to handle the pro bono matter
- If the help requires specialized expertise, say so
- Specify the number of lawyers and experience level needed (or preferred)
- Clearly state what the "ask" is -- precisely what kind of legal help is needed
- Clarify who gets any attorneys fees
- Clarify responsibility for other financial considerations such as who will pay costs of discovery, filing fees, depositions, expert witnesses, travel and other significant expenses
- Clarify co-counsel role especially with large matters, and have a draft co-counsel agreement ready when you make your initial pitch

**6. Everyone loves a good story**

*Offer compelling facts/story. A large part of what pro bono coordinators do is "sell" the project to our attorneys. Doing pro bono work often entails putting in those extra hours on nights and weekends, so we need to make a compelling case to our attorneys that there is a worthwhile client or cause that will motivate them. For example, telling us that you have a "client who needs representation in an eviction proceeding" does not get the juices flowing. Try "our client faces homelessness if evicted, and is battling to stay in his*

*home. The landlord, who has a reputation as one of the city's worst slumlords, has not addressed housing code violations in the apartment, such as rat infestation, an inoperable stove, etc... " Susie Hoffman, Crowell & Moring*

*Major goal is have the pro bono lawyers have a good experience, professionally and personally, be sure they feel they are doing something that touches a life or involves a cause for which they feel passion, be sure they come back for more and be sure they tell their friends/colleagues who, in turn, will become volunteers. David Lash, O'Melveny & Myers*

*An ideal set-up: 3 sentences of the core facts, followed by "what's in it for me" info for the potential volunteer (not all attorneys see value in "merely" rendering service to those in need), followed by contact info for whomever has the longer version of the story with conflicts and financial info. Emphasize how a case/project will benefit the volunteer.*

*Some examples, (1) "Great opportunity to appear in court" (2) "Great opportunity to conduct negotiations and develop client contact skills" (3) "Perfect for busy partners" – This beautiful phrase actually attracts a wide range of attorneys (including associates who fancy themselves partners) (4) "Learn new skills while earning CLE credit [and – add only if true and appropriate – working with an expert mentor]" – This is a fantastic phrase to use when pitching areas of law that are typically unfamiliar (and therefore rather terrifying) to "Big Law" attorneys, such as immigration and family law. Cristin Zeisler, Manatt*

A growing body of psychological, sociological, and legal literature reveals the wide range of reasons that attorneys perform pro bono.<sup>5</sup> Professor Schmedemann<sup>6</sup> offers an excellent overview of the leading studies on the topic by social psychologists and sociologists, as well as those focusing on the legal profession by Deborah Rhode<sup>7</sup>, the American Bar Association,<sup>8</sup> and Robert Granfield,<sup>9</sup> and findings from her own comprehensive study of lawyers, law students and undergraduates. Although motivations vary, themes emerge and are captured beautifully by David, Susie and Cristin's advice. The best case descriptions speak to core values of fairness and justice, help lawyers realize that they're making a real difference in a real person's life, while at the same time enhancing their professional expertise. This point should have been made in *Section 1, Res Ipsa*.

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<sup>5</sup> Electronic copy available at: <http://ssrn.com/abstract=1121042>

<sup>6</sup> Electronic copy available at: <http://ssrn.com/abstract=1121042>

<sup>7</sup> Deborah L. Rhode, *Pro Bono in Principle and in Practice: Public Service and the Professions*, Stanford Law and Politics, 2005

<sup>8</sup> American Bar Association Standing Committee on Pro Bono & Public Service, *Supporting Justice: A Report on the Pro bono Work of America's Lawyers* (2005), available at [www.abaprobono.org](http://www.abaprobono.org)

<sup>9</sup> Robert Granfield, *Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Programs*, 54 *Buffalo Law Review* 1355 (2007)

Cristin Zeisler wisely recognizes that most people, including prospective pro bono attorneys, wonder “what’s in it for me” when asked to do something. Whenever possible, you want to weave the answer into your storyline. In addition to new skills or experience, this can also include rich opportunities for business development that sometimes accompany pro bono work. For example, MCJ has brought together Big Firm attorneys with in-house counsel for companies like Bank of America and Citi for particular projects, offering valuable opportunities to make connections with new clients and foster relationships with existing ones. Sometimes that overlap in turn increases pro bono support, as when a handful of attorneys persuaded their firm leadership to pay their way to staff Katrina clinics in Biloxi by pointing out that they would be working alongside a big client’s in-house corporate counsel.

**Storytelling to-do list:**

- Tell a compelling story that shows how the volunteer can prevent or correct a wrong
- Imbed fairness and justice values alongside a few telling details and an emotional hook
- Identify “what’s in it for me” storylines for the volunteer such as skills and/or business development opportunities

**7. Conflict avoidance**

*Make sure to include a clear listing of the potential client(s) and adverse parties. Susie Hoffman, Crowell & Moring*

*Incomplete conflict info is death. Self-evident. If I don't get that I don't ever go back. David Lash, O'Melveny & Myers*

*Pet Peeve: Incomplete Conflict information and misspelled conflict information. This is a problem for 2 reasons. First, if incomplete, and we wind up being adverse to a firm client, it's not pretty internally when it's discovered. Secondly, it means we have to give the case back, which is not fair to the client or to the organization. Debbie Segal, Kilpatrick Stockton*

*Leave the employee-rights cases and anything involving a large national or regional bank as an adverse party off of the big-blast list. Virtually no large law firm can touch these cases. I can't wade through 45 cases that I have no chance of placing in order to try to uncover the 1 or 2 gems that might be buried in there. Save those for a much smaller universe of firms/attorneys whom you have cultivated to take on such projects specifically. Cristin Zeisler, Manatt*

*Conflicts notwithstanding, think in terms of connecting groups with traditionally opposing viewpoints around pro bono work. Not only might this leverage important resources for the project at hand, but can also develop better communication and understanding among these groups more generally. For instance, I recently counseled a friend that oversees the in-house pro bono efforts for a large pharmaceutical company to consider*

*directing her team's pro bono resources to developing law and policy in sub-Saharan Africa as it relates to healthcare access and availability of pharmaceuticals. Seth Levy, Davis Wright Tremaine*

Some conflicts issues couldn't be more straightforward: identify all knowable parties and spell their names correctly. This includes corporate entities, their DBAs, and sometimes the individuals in leadership and on the board of directors.

But conflict avoidance has additional nuances. Firms face conflict of interest problems that differ from the kinds of conflict questions nonprofit Executive Directors and legal services attorneys face. Accordingly, when you have a lot of foreclosures or employment law cases, which commonly pose conflicts for many firms, do not send them in your generic email blast to all of your pro bono partners. However, you would be well served to call the pro bono counsel at the handful of plausible firms -- after researching their client and pro bono history and concluding that the firm is at least a "maybe." Even if the firm still conflicts out, they may have recommendations for where to head next. Big Firm pro bono counsel meet annually and participate in national or regional listservs and conference calls, so they often know who is doing -- or could do -- what. For example, when the insurance problems began pouring in post-Katrina, we feared all the Big Firms would conflict out. But Amos Hartston at Latham & Watkins told us they do plaintiff-side insurance work, and urged us to also reach out to Covington & Burling, and Gilbert Randolph. That one call hit the mother lode: all three firms provided critical help with insurance matters.

Nonprofits, however, have their own ethical concerns here. Remember you could unwittingly be calling the firm that despite initial research turns out to be opposing counsel. Withhold lists of actual parties, local and opposing counsel and other key players until after a firm is interested and ready to do a conflicts check. Otherwise you may reveal confidential information about your client, or litigation strategy.

**Conflicts to-do list:**

- Carefully list all parties, correctly spelling all names and identifying corporate entities
- List names of all known local counsel and opposing counsel
- Be thoughtful and savvy about the firm's issue conflicts, but not overly shy -- sometimes a phone call will get a surprise result
- Don't send cases in an email blast if most recipient firms will conflict out

**8. It's not what you know but who you know: deciding whom to call or email**

*Seek out board members from law firms/corp law departments and ask who to contact at their offices so that you are pitching to the right person; Use pro bono coordinators (that's what we're here for!) - they can help you customize your pitch... Elly Spiegel, Kaye Scholer*

A growing number of Big Firms have an attorney (or committee) coordinating pro bono activities. *American Lawyer* recently attributed the doubling of pro bono hours over the last X years in part to the increase in fulltime pro bono professionals at the largest firms.<sup>10</sup> But whether the firm has a full- or part-time person or committee structure, their role is to serve as the firm matchmaker, determining attorneys' interests and ensuring the attorneys and clients have as good an experience as possible, and finding matches for the firm's and individual attorneys' interests, resources, expertise, retention and training needs.

Although you'll want to find that pro bono portal, sometimes other channels work just as well if not better. Do not hesitate to contact friends, acquaintances or even cold-call an attorney you know has a particular expertise you need, even if the firm has a pro bono coordinator. Most Big Firms invite their attorneys to propose pro bono matters, or automatically accept matters that meet certain criteria. An attorney excited about taking on a pro bono matter (with no conflicts) is likely to get a "yes" from the otherwise pro-bono-supportive decisionmakers, so fully exploit your relationships to get your cases placed.

**Who you know to-do list:**

- Reach out to Big Firm pro bono counsel or pro bono committee members
- Cultivate contacts with friends, classmates, and other attorney acquaintances who might consider pro bono matters

**9. Playing the Field: Which firms get pitched which matters?**

*Since most firms want "impact" cases, it is terrible for an organization to be seen as handing the best cases to firms/lawyers other than the firms/lawyers who have "earned" the right, who have demonstrated their bona fides. Best to give the Supreme Court brief on a slum housing issue to the firm that has done the UD's rather than a firm that just comes in and wants your best case. David Lash, O'Melveny & Myers*

*Don't expect me to do your individual client cases that you are trying to get off your desk and then go to another firm with your juicy impact cases. Kathi Pugh, Morrison & Foerster*

*It nearly goes without saying: firms LOVE impact work. If there is some huge, oppressive issue looming out there that makes you sick to your stomach both because it is a terrible injustice and because it seems utterly overwhelming for you to even contemplate taking on - that is EXACTLY the kind of issue I want to hear about. Cristin Zeisler, Manatt*

*It is helpful to let us know if you are shopping the case around elsewhere. It is difficult when we spend hours lining up attorneys to work on the case (getting them all psyched*

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<sup>10</sup> FIND CITE

*for "the compelling cause") and then let them down. I know that firms sometimes let you down by considering the case for a long time and then not coming through. Hopefully, there is a middle ground -- like a time-limited option. For example, "If I don't hear from you by Tuesday, I am going to have to start looking at other firms because the client is nervous about finding representation." Susie Hoffman, Crowell & Moring*

*If you are courting several firms for a particularly juicy project, be up-front about who else is in the game and about what you need/want from us if you are going to stay involved with the case as co-counsel. Cristin Zeisler, Manatt*

Every organization has to decide whether to pitch "first-come-first-served" in response to an email blast to all pro bono contacts, or aimed at a short list of firms based on needed expertise or overall loyalty, or one-at-a-time seriatim (and time-consuming) outreach. That loyalty could take many forms such as doing high-volume bread-and-butter cases before a high-profile impact matter comes along, past history as a highly responsive and respectful pro bono firm, cash donations or some combination of the above. Your approach may well depend on whether you're pitching lots of small direct service cases or the more coveted impact cases.

Many factors can influence which pitching process makes sense, including: how many relationships with Big Firms you have in your stable; expertise needed; prior bad (e.g., returned cases, no partner supervision, high maintenance) or good experience with the firm; respect shown for legal services attorneys and staff; financial contributions to your organization; and longevity. Whichever route you choose, and however you balance those factors, make sure you implement the process fairly and, most important, keep your clients' needs paramount.

When you opt for an email blast to place a high volume of small matters, firm pro bono counsel know that the email is going to multiple firms at once. If you do this for large or more specialized matters, you should state from the outset whether you are contacting more than one firm. Explain that the specialized nature of the case, or anticipated conflict issues, or necessity for prompt action, require you to ask other firms simultaneously.

The trickiness of the options become more vivid when you have an impact case or proposed signature project you expect will be highly desirable. For example, to place a strong FEMA class action case at the moment when the nation is frustrated with FEMA, you might go through your roster of firms that have taken individual FEMA appeals, and look for those firms with class action experience. From that list of four firms with both qualities, say, three have made financial contributions. I would send the pitch to those three. If none of the four firms have made contributions but a fifth firm with class action experience, no prior experience taking individual matters from you has made a big cash donation and asked for a big "juicy" case involving FEMA, I'd go first to the original four.

More often, national news is not a consideration. In this hypo you have a good solid legal issue that needs representation by dedicated lawyers, but doesn't inspire a bidding war. Casting a broad net can save a lot of time -- phone time explaining the case, time to check for conflicts and explore interest, only to be told "sorry" and start over again, perhaps 4 or 5 times before getting to "yes." On the other hand, when time is not of the essence, this may be a good relationship building opportunity. Each phone call is like a touch, letting the pro bono counsel know you are interested in partnering with the firm, hearing a little more about why they are saying "no" and learning what is a more likely match in the future.

If you pitch to multiple firms at once, and one firm expresses interest, be cautious about telling the second firm to contact you that the matter has already been taken. Sometimes a fast-acting pro bono counsel will say "yes" and may have already identified a partner and an associate excited to take the case (exactly what you asked for), only to find out many days later that they have a conflict and can't take the case. Let firm #2 know that firm #1 is still waiting to clear conflicts and promise to let them know the status as soon as you do.

**Playing-the-field to-do list:**

- Fairly and properly balance the need for a particular expertise with the firms that have been handling your individual direct service matters and/or making financial donations -- keep client needs top priority as you deal fairly with your pro bono firms
- Offer your exciting impact cases to the firms who have shown their dedication and earned their bona fides
- Disclose when you are shopping the matter to other firms simultaneously or giving the particular firm a first crack
- If you give a firm the right of first refusal, also give a precise deadline by when you must hear before going to another firm
- When placing the matter is not time sensitive, the seriatim phone call approach could help cultivate relationships even when you get a "no"
- Make sure the first "yes" is solid before telling the other interested firms that it's taken

**10. With big matters, start with a phone call -- usually.**

*The most helpful way to approach large law firms with a big pro bono pitch is with a telephone call followed by a short email summarizing the project, including the nature of the proposed client and a short description of the proposed project.... Longer descriptions, especially descriptions that include confidential information of the potential client, should not be sent. Law firms should not be reviewing confidential information of proposed clients, and longer emails (unless they describe the underlying issues being addressed in a useful way) may not be effective. Amos Hartston, Latham & Watkins*

*I like to hear from the person by phone first (or in person if it's a big deal). It should be followed up by a concise blurb about the nature of the matter, including any deadlines.*

*That should be in a forwardable form - something I could cut and paste into an email and send out. If I have to correct grammar, edit out unimportant stuff, shorten it or do anything else to it, it won't go out as quickly. Debbie Segal, Kilpatrick Stockton*

*For those times when you are direct-pitching a case/matter exclusively to my firm, it's usually best to call me first so we can talk through the facts, issues and timing, and follow up with a detailed memo -- and then by all means, throw in the whole kitchen sink. This definitely should be done when you are seeking to engage us for a large matter for which we have particular expertise (i.e., health care policy research or new markets tax credit affordable housing projects). Cristin Zeisler, Manatt*

*Don't call me to discuss a new pro bono project. Send me an e-mail. If you call me, then I have to draft the e-mail and it might never happen. If you send me an e-mail, I can shoot it around to the attorneys ASAP. Draft your e-mail in a form that lends itself to be sent out so that I don't have to change all the pronouns, etc. and verbiage. Kathi Pugh, Morrison & Foerster*

If you have not opted for big blast and first-come-first-served (see 9. *Playing the Field*), for big projects, most pro bono counsel apparently prefer an initial phone call followed by an email, though there are exceptions. Keep a record of how various pro bono counsel prefer to communicate, keeping in mind the premium on developing and maintaining good relationships to place pro bono matters over time. Avoid wasting their time by scanning the firms' website to determine whether this is the type of pro bono work that the firm might take on. As noted above, research on volunteering shows that invitations from an acquaintance or friend are the most effective. Cultivating on-going, and friendly, contacts with attorneys will help you make that initial pitch.

**Initial contact to-do list:**

- Find out how pro bono counsel prefer to be contacted
- Study firm websites to see what kind of pro bono they do, and the substantive expertise they have for possible matches to your pro bono needs
- For small matters send short summaries of compelling case stories (see 6. *Everyone loves a good story*) via email and follow-up with phone calls as needed
- For large matters call to discuss and follow-up immediately with a detailed memo (see 11. *Going for high impact*)

**11. Going for high impact: Pitching “signature” projects and big cases**

*Start small. Even a signature project is best started with test cases. Steven Schulman, Akin Gump Strauss Hauer & Feld*

*Use concrete examples. Tell us how other law firms have handled similar cases - and then tell us how our project will be different. Steven Schulman, Akin Gump Strauss Hauer & Feld*

*Can your group co-counsel? This can be reassuring to law firms/in-house attorneys. Have a sample co-counsel agreement ready for them to look at. Elly Spiegel, Kaye Scholer*

*Large law firms have tremendous resources. We want to use them in a meaningful way to benefit large swaths of society. Although we may know that homelessness is a huge problem, what we probably don't know is that "if agency X just eliminates or changes policy Y, then X-100 people would be able to ... " Your in-the-trenches perspective about root causes or perpetrators is exactly what we need to hear so we can understand how and why to mobilize our forces. Cristin Zeisler, Manatt*

Like impact cases, many firms are in hot pursuit of “signature” projects. These projects typically involve a large number of lawyers and often non-lawyer staff addressing an unmet need and making a lasting improvement in the community. Signature projects give the firm ownership of the issue, which they can then trumpet to recruits, clients, and in their marketing materials. Other firms also rely on a firm’s signature expertise. For example, a Big Firm may well be willing to take on something new when they hear you say “‘Big Firm Down the Street’ developed the manual and sample forms after handling more than 25 of these cases themselves. Two of their attorneys can be available to answer questions.”

Bragging rights are important. As reported in *Metropolitan Corporate Counsel*, Miriam Buhl, pro bono counsel at Weil Gotschal, described her firm’s program with Legal Aid: “An exciting project started by the New York office is a housing court project in conjunction with the Legal Aid Society. ...For the Legal Aid Society, having a firm help represent tenants has been a big help. We hope to build a larger team and *a model that Legal Aid can use for other firms as well.*<sup>11</sup> Firms’ relationships with other firms, existing and potential clients, community organizations, the bench and bar, and law students, are all served by this kind of signature work. Nonprofits building relationships with pro bono attorneys do well to remember that firms have their own relationships to cultivate.

A good example of signature work is the manual O’Melveny & Myers attorneys created on contractor fraud cases in the wake of Katrina. The firm took on more than 50 of MCJ’s contractor fraud cases, when con men and roofers masquerading as general contractors, swooped down in the wake of coastal Mississippians finally collecting insurance proceeds and homeowner assistance grants to begin repairing their devastated homes. O’Melveny & Myers told MCJ what pro bono attorneys could reasonably accomplish in these cases, how much could be done remotely, and what required local counsel. Their work further benefitted everyone involved when they drafted a manual to help other attorneys manage the hundreds of contractor fraud cases pending in the wake of Katrina, and allowed us to share that manual, reflecting O’Melveny & Myers’ newly acquired expertise, with volunteers at other firms.

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<sup>11</sup> <http://www.metrocorpcounsel.com/current.php?artType=view&artMonth=August&artYear=2008&EntryNo=8643>  
(emphasis added).

Similarly, when it became clear to the lawyers at the Lawyers' Committee for Civil Rights Under Law and to MCJ attorneys that many families had cloudy title to their ancestral homes, preventing them from obtaining grants, DLA Piper stepped up to the plate. By sending talented lawyers to Mississippi, DLA overcame what seemed like insurmountable obstacles to pro bono help relating to the arcane and uniquely local process of clearing title to real property. The on-the-ground team figured it out, wrote the manual, handled the first 50 cases and even conducted the outreach to families with this legal need. As with the O'Melveny & Myers contractor fraud manual, the Lawyers' Committee and MCJ will be able to use the DLA manual with other volunteer attorneys.

Signature projects do not always create something as concrete as a manual. When the Mississippi Health Advocacy Program told MCJ that more than 60,000 children had been dropped from the Medicaid rolls in the prior 18 months, apparently due to onerous new requirements, MCJ contacted Manatt, Phelps & Phillips. Their signature health practice group, called Manatt Health Solutions, provided the essential expertise so that Manatt could provide ground zero help -- we were thrilled, since many firms are often reluctant to sign on during the early investigative stages, even before knowing whether and how they would proceed. MCJ and MHAP gathered the on-the-ground data, while Manatt health lawyers and policy analysts used their expertise in survey design, policy and administration, and substantive knowledge of health law and Medicaid regulations, to pinpoint the problems and craft a series of strategies that included legislative fixes, informal advocacy, public education, and ultimately litigation. Everyone benefitted, from children in Mississippi whose health care needs received attention, to Manatt whose health care practice further solidified its already impressive expertise.

A few final tips on getting ready for the signature project or impact case pitch. Prepare an internal memo that addresses questions firms are likely to ask. As my mentor Nancy Anderson of the Lawyers' Committee for Civil Rights Under Law says, in order to be "ready for placement," the matter must be well thought out and fully understood in advance, and the pitching organization must be ready to move forward immediately. Key staff must be available and ready to work with pro bono attorneys, and to be in regular contact with the volunteers (at least initially). Use the detailed memo to draft a short description for pitching. If a firm expresses interest, send them the longer memo with a conflict list.

Once there's a clear "yes," and a volunteer team in place, immediately draft the co-counsel agreement and client engagement letter (though inquire first since many firms will want to draft their own). Schedule a first all-hands meeting, in person, if possible -- mutual trust and clarifying responsibilities is paramount for big matters and best accomplished face-to-face. Execute these documents at the outset of that first meeting. Ideally you would piggy-back a first meeting with the client(s) at the same time. Volunteers become even more engaged and buy-in deeper when the client is not a faceless person hundreds of miles away but someone they meet and hear from firsthand about how this legal problem affects real lives.

**Signature project/impact case to-do list:**

- Creatively identify and frame a project a firm can “own”
- Clarify how your program will support the volunteers
- Prepare an internal memo thoroughly analyzing the project or case before pitching, anticipating and answering all basic questions
- Clearly articulate the “ask,” making sure that all affected legal staff concur in the strategy, since signature projects and impact cases can absorb a lot of staff time
- Have a co-counsel agreement ready to go
- Meet in person at the outset, whenever possible
- Arrange for the volunteers to meet with the clients in person, as soon as possible

## **12. After the pitch: Training and support**

*The best organizations stay involved, provide substantive expertise and back-up, and someone who is readily available to work with a young lawyer. Sometimes training sessions can be valuable. David Lash, O'Melveny & Myers*

*Regardless of the size, scope or nature of a pro bono project, having expert resources at/through the referring agency can be a huge help (e.g., staff attorneys with particular expertise, sample briefs, etc.). Seth Levy, Davis Wright Tremaine*

*Provide training, mentors & exemplar materials if you expect us to do individual cases outside of our expertise such as family law, asylum, guardianships, etc. Kathi Pugh, Morrison & Foerster*

*Offer training - but don't over-train. Three hours is the maximum for an initial training. Even if law firm attorneys can attend a longer training (and really, they can't), they won't absorb it all the first time. It's ok if they aren't experts right off the bat.... Call to follow up. Don't wait for problems to come to you - call attorneys to offer advice. But don't nag. Steven Schulman, Akin Gump Strauss Hauer & Feld*

*If possible, offer to train and mentor - attorneys you are pitching to are undoubtedly smart and experienced in their fields, but may have never encountered, e.g., an indigent teenager with immigration problems.... Have materials easily available online and in hard copy. Elly Spiegel, Kaye Scholer*

The trainings and support services you offer will depend on the needs of volunteers, program priorities, scope of services, and the size and resources of your organization. The ABA Standards for Pro Bono Programs section 3.5-3 offers excellent advice. The bottom line: you'll usually need to provide trainings and/or sample materials, *and* have someone available on an on-going basis whether it's a small direct service case or the more time-intensive partnering or co-counseling for impact litigation or signature projects.

In addition to the substantive training, incorporate some cultural and sensitivity training. Not all volunteers will need it -- but some will have little experience working with clients who may come from different socio-economic and ethnic backgrounds. You -- and the volunteers themselves -- will want to ensure responses are positive and appropriate. (See 4. *Screening for “Likable” Clients*)

Bottom line: recognize that the volunteers are eager to serve clients effectively. Our role is to make sure they can by providing relevant and quality training and back-up.

**Training to-do list:**

- Be sure a staff attorney is ready with training materials and/or a willingness to schedule a live training, and be “on call” to the volunteer when the volunteer has questions
- Incorporate into trainings awareness of working with people from different socio-economic, racial, ethnic or cultural backgrounds, and whose first language isn’t English
- Provide sample documents and be sure they’re easily accessible, preferably online or emailable
- Have someone check in regularly to confirm progress and find out if more training or support is needed
- Facilitate a good relationship between the pro bono attorney and client
- Implement and use thank-you procedures when the matter concludes

**13. Bakers Dozen: A Smorgasbord of Pro Bono Asks**

*Consider how firms can provide resources other than attorney time and financial support. For instance, paralegal assistance on large litigation matters or volunteer time from staff in a letter-writing campaign can be creative ways to tap different resources and engender an even more robust relationship with a firm.... Use pro bono attorneys for mentorship and internal training. Staff attorneys at public interest organizations may need CLE credit, might want to develop a relationship with a seasoned attorney in a particular area of law with whom to discuss case strategy on occasion, etc. Think creatively about how we can be part of your team. Seth Levy, Davis Wright Tremaine*

Working in Mississippi after Hurricane Katrina proved the old adage, “necessity is the mother of invention.” When opening a brand new office and addressing an avalanche of legal issues staff attorneys have not previously handled, you think creatively about the ways Big Firms can help.

Below is a list of familiar asks, alongside a few possibly new ways Big Firms might help advance your organization’s work.

**Lawyer asks: from desktop pro bono to the great beyond**<sup>12</sup>

- Direct representation of clients with small matters

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<sup>12</sup>Many items on this list can be done in collaboration with or exclusively by non-lawyer staff.

**DRAFT: NOT FOR CITATION WITHOUT AUTHOR PERMISSION**  
**Forthcoming in *DePaul Journal for Social Justice***

- Brief service and advice at a legal clinic
- Bi-lingual lawyers to represent mono-lingual client communities
- Impact litigation at various stages of development, including investigation before any documents are drafted and filed, representation after a lawsuit has been filed, and on appeal
- Investigation of matters in which the firm has expertise to determine whether to move forward with a lawsuit or other strategy to address a major problem -- and then help implement the findings
- Tackle new area of law and draft manual and sample documents
- Develop, review and update form pleadings
- Recruit a seasoned volunteer to be available as a resource to a new volunteer
- Have seasoned volunteer conduct training for new volunteers
- Have pro bono attorney lead a community training
- “Coach” a public interest attorney on substantive area outside her expertise when questions of law or strategy arise
- Propose and draft legislative fixes for bad law
- Lobby
- Secure declarations to support a pleading or legislative advocacy
- Offer free CLE
- Incorporate a 501(c) (3) nonprofit and fill an ongoing general-counsel-like role
- Provide advice on tax, employment law, intellectual property, land-use, leases and other legal questions often needed by nonprofits
- Research and draft memos for possible litigation
- Write policy papers
- Fundraise
- Write articles for the organization’s newsletters, external papers and magazines, and op-eds
- Serve as co-counsel

**Non-lawyer Staff Pro Bono asks**<sup>13</sup>

- Provide media contacts and strategic communications advice
- Have marketing departments convert data into attractive charts for reports and public presentations
- Do community outreach
- Have bi-lingual volunteers do intake and translate “Know your rights” and other materials
- Have IT staff prepare a multi-media presentation for trainings or community meetings
- Have marketing staff prepare press releases or brochures
- Donate equipment, furniture, computers, technology support
- Review documents on big cases
- Provide meeting space
- Have paralegals and summer associates help with intake, pursue attorney progress reports, conduct follow-up needed by attorney volunteers or follow-up

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<sup>13</sup> Many items on this list can be done in collaboration with or exclusively by lawyers.

before placement, and help review files for “good” illustrative cases for newsletters and other venues to describe your organization’s work

- Print materials and informational brochures

## **CONCLUSION**

*Be patient with these folks - they are used to getting their way, but when managed carefully, they can be a powerful asset to you. Elly Spiegel, Kaye Scholer*

After all this, you may wonder if the overall benefit of a pro bono program is worth the investment of time and resources. Sometimes the target for a “good” pro bono matter seems so narrow it will be tempting to ask “why bother?” Especially when building a strong pro bono program represents a significant change for an organization’s cultural and historical paradigm, and when it occasionally takes more time and effort than simply doing the work in-house. Sometimes, the nature of an organization’s work simply doesn’t lend itself the pro bono model. There will certainly be nonprofits that reasonably and smartly decide a pro bono program is not a good fit.

But when a pro bono program is successfully implemented, the dividends paid can be manyfold. Client services are multiplied, dockets significantly expanded, new resources brought to the table, a wider swath of the profession gets enrolled in your organization’s work and there is heightened knowledgeable about the need to close the justice gap in the United States. Additionally, financial contributions can -- and should -- follow pro bono work.

We live in the richest country in the history of the world. Most industrialized democracies provide free legal services to ensure that the justice system works. The United States does not. Pro bono is not the solution to providing full representation for this nation’s civil indigent and underrepresented causes, I firmly believe that should be the government’s responsibility. The practical reality of our justice system is that it simply doesn’t work without representation on both sides. However, until this nation is ready to fulfill the promise of “equal justice under law,” lawyers have to do more, and do better. Private attorneys can and should expand their programs providing pro bono services and/or financial contributions to legal services programs, and nonprofits should expand their own pro bono programs to make it easier for private attorneys to say “yes” when justice, in the form of a pro bono pitch, is tossed in the “big lawyer’s” direction.