



INTERNATIONAL ACTION NETWORK
FOR GENDER EQUITY & LAW

PRO BONO LEGAL SERVICES FOR HUMAN RIGHTS: ESSENTIAL WORK FOR THE PUBLIC GOOD

By Nancy J. Newman, Shruti Rana, and Mary Maloney Roberts
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The **International Action Network for Gender Equity & Law (IANGEL)** is an international network of lawyers, dedicated to harnessing the power of pro bono legal services and connecting it to the struggle for equality and justice locally, nationally, and around the world.

While the need for legal resources to address critical human rights issues is overwhelming, needlessly narrow definitions of what qualifies as “pro bono work” impair the legal profession’s efforts to address this need, while also hindering U.S. lawyers from gaining invaluable experience in the global legal marketplace. IANGEL presents its research on this issue, and a solution: to meet the needs of the legal profession and the world, to increase engagement in pro bono work, and to train and inspire the next generation of lawyers to meet the challenges of the global economy, law firm policies should unequivocally embrace and support pro bono work for human rights.

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To meet the challenges of the legal profession, and the world, pro bono policies should expressly include human rights work.

By Nancy J. Newman, Shruti Rana, and Mary Maloney Roberts¹

What's in your pro bono policy? Chances are, not enough. With October marking the eighth annual National Pro Bono Celebration sponsored by the American Bar Association (ABA) Standing Committee on Pro Bono and Public Service², law firms should review their existing pro bono policies to ensure that they meet the needs of the modern legal profession, and the world.

The needs of poor and vulnerable populations for pro bono legal services are global. Armed conflicts continue to create waves of refugees, and environmental disasters around the world require new levels of global cooperation and corporate social responsibility. Pro bono legal services are critically needed to protect and advance human rights within and beyond U.S. borders. At the same time, the legal profession is rapidly changing, as more law firms become global businesses and lawyers engage with the new global marketplace. Thus, pro bono work for human rights provides unique opportunities for lawyers to fulfill their duties to their clients, the public, and the legal profession.

Yet law firm policies often define pro bono work too narrowly, to include only legal services for clients of limited means, often limited to local populations. Such policies were often developed a generation ago, in a vastly different legal, political, and technological landscape. While these old models created transformational changes in their era, they are ill-equipped to respond to the challenges of today's world³, and their limits have created an urgent problem: the unmet need for legal services to promote and protect human rights. As we celebrate the importance of pro bono work nationally, now is the time to re-examine law firm pro bono policies to ensure that they embrace, support, and encourage work to advance human rights work. Such work epitomizes service *pro bono publico*—for the public good.

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Defining “Pro Bono” In The Legal Profession

The ABA, the Pro Bono Institute (PBI), and the Association of Pro Bono Counsel (APBCo) each define pro bono work somewhat differently. The ABA and PBI definitions emphasize “limited means” as a criterion for determining what counts as pro bono work, while APBCo takes a more expansive approach, in which legal work to advance human rights qualifies as pro bono without regard to the economic means of recipients.

ABA Definition

Rule 6.1 of the ABA Model Rules of Professional Conduct provides that lawyers should “aspire to render” at least 50 hours of pro bono service per year, a “substantial majority of which” should be rendered to either: “(1) **persons of limited means** or (2) charitable, religious, civic, community, governmental and educational organizations in matters that are **designed primarily to address the needs of persons of limited means.**”⁴ While most human rights work should qualify as pro bono work in light of the vast economic inequalities between the U.S. and the developing world,⁵ the ABA definitions seem to limit “pro bono” work to assisting the poor, and thus human rights work is not necessarily included in its own right. Part (b) of the same rule, however, embraces additional kinds of volunteer work:

- (1) delivery of legal services at no fee or substantially reduced fee to **individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights**, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, **where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;**
- (2) delivery of legal services at a substantially reduced fee to **persons of limited means;** or
- (3) participation in activities for improving the law, the legal system or the legal profession.⁶

While the ABA model rule initially focuses on pro bono services for “those unable to pay,” the Comment to part (b)(3) notes that service on bar association committees, boards of pro bono or legal services programs, and other activities described in that section comes within the pro bono rule.⁷ In other words, under the ABA’s definition, work can qualify as pro bono when it constitutes participation in activities to improve the law, legal system, or profession, with no “inability to pay” requirement.

Pro Bono Institute Definition

Established in 1996, PBI is a nonprofit organization dedicated to improving and enriching pro bono services by law firms, in-house legal departments, and public interest organizations in the U.S. and around the world. PBI's Law Firm Pro Bono Challenge, which embraces an aspirational standard for pro bono work by the world's largest law firms, "has become an industry standard, utilized not only by major law firms but by the legal media in reporting the pro bono contributions of large firms."⁸ In PBI's Pro Bono Challenge, "pro bono" means:

[A]ctivities of the firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice consisting of

- (i) the delivery of legal services to **persons of limited means** or to charitable, religious, civic, community, governmental, and educational organizations in matters which are designed primarily to address the needs of **persons of limited means**;
- (ii) the provision of legal assistance to individuals, groups, or organizations seeking **to secure or protect civil rights, civil liberties, or public rights**; and
- (iii) the provision of legal assistance to charitable, religious, civic, community, governmental, or educational organizations in matters in furtherance of their organizational purposes, **where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.**⁹

Paragraphs (i) and (iii) recognize the "enormous unmet need for legal services to the poor"¹⁰ by including an economic need requirement for service recipients. Paragraph (ii), however, reflects an understanding that such a requirement does not apply to legal services to advance civil rights, civil liberties, or public rights. While "human rights" is not explicitly mentioned in paragraph (ii), it is reasonably included as *ejusdem generis* ("of the same kind"). This is consistent with how "human rights" is defined in the Universal Declaration of Human Rights, that every person is entitled to basic rights and freedom, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹¹ In short, PBI's definition of pro bono embraces work to protect or advance human rights, without requiring analysis of a recipient's economic status or ability to pay for legal services.

Yet PBI has struggled with this issue. To assist law firms confronting nuanced definitional issues, PBI compiled guidance on what counts as pro bono work.¹² Unfortunately, in response to the question of whether conducting legal research on international human rights issues and preparing a report on human rights violations qualify as pro bono work, the guidance is equivocal, suggesting such work would *not* count unless it is on behalf of a "qualifying client group" or "poor person or an organization designed primarily to address the needs of persons of limited means."¹³ And while a plain reading of PBI's definition supports including international human rights work, American Lawyer Media, in its 2015 pro bono survey, felt it necessary to confirm that international pro bono work would count, but described it as an "exception" to the PBI pro bono rules.¹⁴ Clearly, confusion abounds. But it need not persist.

Association of Pro Bono Counsel Definition

Established in 2006, APBCo is a membership organization for those who manage law firm pro bono practices; its mission is to maximize access to justice through delivery of pro bono legal services.¹⁵ APBCo has directly addressed the question of eligibility of nonprofit entities, such as those that partner with IANGEL, by adopting three *alternative* criteria—mission, matter, means—for determining eligibility.¹⁶

Under APBCo’s approach, a nonprofit is eligible for pro bono legal services when its “mission is to serve the indigent or to protect or preserve civil rights, civil liberties, public rights, **or human rights, regardless of its budget or means to pay attorney fees.**”¹⁷ Alternatively, APBCo notes that even if an organization that does not meet the “mission” criterion, if the specific “matter” for which the pro bono services are needed involves a qualifying activity, i.e., “one that serves the indigent **or fosters human, civil or public rights**” then it “should qualify under the PBI definition regardless of the entity’s ability to pay attorney fees.”¹⁸ Finally, an organization that meets neither the “mission” nor “matter”

criterion may qualify under the “means” criterion, which considers the recipient’s economic status: an individual or entity is eligible for pro bono services if it “lacks sufficient means to afford competent legal counsel to handle the matter presented.”¹⁹ This alternative recognizes the origins of the pro bono definition and its needs-based model, while the “mission” and “matter” criteria allow pro bono legal services to protect rights, without regard to “means.”

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APBCo’s approach is a sound model for promoting deeper engagement of the legal community in pro bono work for human rights. While it complements and enhances the earlier and still prevalent needs-based service model, it includes human rights work in its own right. In this way, APBCo’s definition not only continues to promote access to pro bono legal services for the poor, it also broadens the scope of pro bono work in which lawyers may engage.

Definitions Matter

Needlessly narrow definitions of what constitutes pro bono work cause worthy projects to be denied pro bono assistance, or create unnecessary administrative barriers that prevent lawyers from providing aid where it is needed most. They limit both the types of pro bono work in which lawyers may engage and the opportunities for lawyers to gain invaluable experience from working on human rights issues. These unfortunate effects are evident. In 2015, pro bono programs were reportedly “treading water,”²⁰ struggling to engage enough lawyers to meet the challenges in the legal profession. Yet legal services remain acutely needed to address critical human rights issues around the world.

Certainly, pro bono work for clients of limited means is essential and must continue. But law firms that expressly include human rights work in their pro bono policies can also promote pro bono engagement on a range of issues with long-term social impact, while enhancing their own stature in the legal profession. Pro bono programs that provide legal services on human rights issues are often innovative, cutting-edge, and global—critical areas for law firms seeking to compete effectively and thrive in the modern legal marketplace. As Andrew Guzman, then associate dean for international and advanced degree programs at University of California Berkeley School of Law, observed: “The importance of international activities of all kinds, such as in diplomacy, on climate change issues and for business-related work, is growing in the U.S. and other countries.”²¹ Indeed, while law firm practice once may have meant working within the U.S. on domestic issues, it now often involves multiple countries and diverse legal systems.²²

International pro bono work, too, is on the rise.²³ In 2008, the International Bar Association (IBA), as the “global voice of the legal profession,” issued its pro bono declaration calling on lawyers, law firms, and bar association to provide pro bono service.²⁴ The IBA’s view of pro bono work is expansive and includes work for organizations that assist poor underprivileged, or marginalized persons or communities that otherwise could not exercise or assert their rights or obtain access to justice. It also includes activities supporting the administration of justice, and institution building, as well as assisting in legislation drafting and participating in trial observations and election monitoring. With so much need in these area, the legal profession must reduce administrative obstacles, and work to increase opportunities for engagement in international pro bono human rights work.

This is a natural evolution in the profession. In many U.S. law firms, immigration and asylum work has qualified as pro bono work, and the principles applicable to such matters are often derived almost entirely from applicable United Nations Conventions and the Universal Declaration of Human Rights. Lawyers also increasingly participate in pro bono projects involving global issues, including supporting “individuals, charities, development or aid organizations, other NGOs or governments” with post-conflict challenges in a time of rapid globalization.²⁵ This work can be done from the lawyer’s home country and can include “preparation of legal information/summaries of legislation, legal research, advising, negotiation, drafting” and other work not requiring physical presence or direct client representation.²⁶ IANGEL fosters this kind of pro bono engagement to address important women’s rights issues internationally.²⁷ And as human crises spill across international borders, forward-thinking pro bono counsel take action.²⁸ Thus, global human rights work plays a key role in addressing the world’s needs, while also providing a crucial foundation for lawyers and law firms that wish to successfully meet the needs of the rapidly changing and increasingly global legal marketplace.²⁹

Such work also is essential for law firms seeking to recruit and retain the best talent, as law students “are clamoring for international work experience.”³⁰ It also helps attract and retain clients, who increasingly require firms they hire to reflect best practices in diversity, innovation, and social responsibility; and to provide important training for success. If a firm’s pro bono policy does not include human rights work, that firm will miss key opportunities to train and inspire—and benefit from—the next generation of pro bono lawyers.

Check your policy.

As part of this year's Pro Bono Celebration, law firms should review their pro bono policies. If a proposal to do pro bono work in a human rights matter would be declined because the policy defines pro bono work too narrowly, the policy should be revised to reflect the more expansive APBCo definition. Alternatively, IANGEL suggests adding the following statement to dispel any uncertainty:

In recognition of the importance of lawyers and the rule of law in promoting equality, justice, and human rights, [insert firm name] supports and encourages the donation of legal services that advance equality, justice, and human rights, as an important and valued part of its pro bono program.

For many firms, such a policy statement is a natural affirmation of the importance of work they already do. For others, an updated pro bono policy will remove restrictions and promote engagement in critical pro bono work for human rights.

Conclusion

With opportunities for international pro bono work increasing, law firms should not be hindered by outdated policies that limit engagement in meaningful pro bono work. Pro bono policies should expressly include human rights work. This will expand the availability of resources for global human rights work and provide greater opportunities for lawyers to meet their professional obligations to serve the public,³¹ to practice with integrity,³² and to enhance the perception of law as a noble profession.³³

The need is great, and the time is now. IANGEL stands ready to help meet that need by connecting volunteer lawyers to projects that benefit humanity, the legal profession, and the world.

ENDNOTES

- 1 Ms. Newman is the founder and president of [IANGEL](#), and a partner at Hanson Bridgett LLP. Ms. Rana is an international and comparative law lawyer and scholar, and is a Professor at the Indiana University Bloomington School of Global & International Studies. Ms. Roberts is a retired attorney engaged in pro bono work, and former Chief Counsel and Director of Legal Services for California's Administrative Office of the Courts. The authors acknowledge and warmly thank volunteer legal interns Maayan Rooks, Maike Huneke, Toan Do, Juli King, and Hanson Bridgett paralegal Monette Villavicencio, for their research and assistance on this paper.
- 2 The eighth annual National Celebration of Pro Bono is October 23-29, 2016. See www.probono.net/celebrateprobono.
- 3 See THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank S. Bloch, ed., Oxford University Press, Inc. 2011)
- 4 MODEL RULES OF PROF'L CONDUCT R. 6.1(a) (2016), emphasis added.
- 5 See Isabel Ortiz & Matthew Cummins, *Global Inequality: Beyond the Bottom Billion*, UNICEF SOCIAL AND ECONOMIC POLICY WORKING PAPER NUMBER 2011-02 (April 2011), http://www.unicef.org/socialpolicy/files/Global_Inequality.pdf
- 6 MODEL RULES OF PROF'L CONDUCT R. 6.1(b)(1)-(3) (2016), emphasis added.
- 7 MODEL RULES OF PROF'L CONDUCT R. 6.1 cmt.8 (2016).
- 8 Law Firm Pro Bono Project, *Law Firm Pro Bono Challenge*, PRO BONO INSTITUTE 6 (2010). See <http://www.probonoinst.org/resources/what-counts/> (follow "Law Firm Pro Bono Challenge Statement of Principles and Commentary" hyperlink).
- 9 *Id.* at 6, emphasis added.
- 10 Law Firm Pro Bono Project, *What Counts? A Compilation of Queries and Answers*, PRO BONO INSTITUTE 18 (2008); see, <http://www.probonoinst.org/wp-content/uploads/what-counts-2008.pdf>.
- 11 See *The Universal Declaration of Human Rights*, adopted by United Nations General Assembly 217A (III) December 10, 1948; http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf
- 12 See <http://www.probonoinst.org/wp-content/uploads/what-counts-2008.pdf>. Compiled in 2008, PBI continues to use the guide to support its 2016 Pro Bono Challenge.
- 13 *Id.* at 7.
- 14 See Qualtrics Survey for ALM "What Counts as Pro Bono?" (last visited and printed July 21, 2015; no longer on-line)
- 15 See <http://www.apbco.org/about/membership>.
- 16 See *APBCO Statement on the Eligibility of Non-Profit Entities, For-Profit Entities, Social Enterprise Entities and Impact Finance Transactions for Pro Bono Legal Services* ©2015, <https://www.apbco.org/about/guidance> (follow "MMM2.0 – Mission | Matter | Means" hyperlink).
- 17 *Id.*, Section 1 A, emphasis added.
- 18 *Id.*, Section 1 B, emphasis added.
- 19 *Id.*, Section 1 C, emphasis added.
- 20 *Pro Bono Report 2015: Treading Water*, THE AMERICAN LAWYER (July 20, 2015), <http://www.americanlawyer.com/id=1202730400870/Pro-Bono-Report-2015-Treading-Water>.
- 21 See, Delece Smith-Barrow, *International Law Programs Prepare Students for a Global Career*, U.S. NEWS & WORLD REPORT—EDUCATION (May 14, 2014, 9:30 AM EDT), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2014/05/14/international-law-programs-prepare-students-for-a-global-career>.
- 22 *Id.*
- 23 See, John Corker, *Access to Justice—International Pro Bono Legal Assistance*, MEETING OF SENIOR OFFICIALS OF COMMONWEALTH LAW MINISTRIES (October 18-20, 2010) noting the rise in international pro bono work since the mid-2000's in the United States and the United Kingdom, <http://www.ibanet.org/Document/Default.aspx?DocumentUid=C4B06FD6-A807-44D4-A98A-C73B464589C6>
- 24 See IBA Pro Bono Declaration, https://www.internationalprobono.com/resources/item.218836-IBA_Pro_Bono_Declaration.
- 25 *Id.* at 4.
- 26 *Id.*
- 27 For example, pro bono US lawyers connected with international organizations through IANGEL have provided research and analysis of the laws in different countries concerning forced sterilization and child marriage, to aid efforts at legislative reforms on these human rights issues.
- 28 As refugees from the Mideast have streamed into Europe, law students in Sweden have reached out to provide them with free legal information. See www.juristjourenlund.se.
- 29 See John F. Sherman III, *The UN Guiding Principles: Practical Implications for Business Lawyers*, IN-HOUSE DEFENSE QUARTERLY, 50 (Winter 2013), <http://www.shiftproject.org/media/resources/docs/UNGPsimplicationsforlawyers.pdf>.
- 30 Jeffrey Blumberg, *Sitting by the Well: The Case for Intercultural Competency Training in International Experiential Learning*, 43 U. Balt. L. Rev. 395, 396-97 (2014).
- 31 See MODEL RULES OF PROF'L CONDUCT R. 6.1 (2016).
- 32 See MODEL RULES OF PROF'L CONDUCT R. 8 (2016).
- 33 See MODEL RULES OF PROF'L CONDUCT Preamble.



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