



## DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

### Corporate Pro Bono - Not an Oxymoron

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by Susan Hackett Senior Vice President and General Counsel  
American Corporate Counsel Association

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I recently had a conference call with a number of very prestigious general counsel. At some point in the conversation, talk turned to corporate pro bono. Much to my dismay, these lawyers discussed corporate pro bono as if it were an oxymoron: as if corporate legal departments and pro bono were like oil and water -- valuable as independent elements, but impossible to mix. They made it sound as if in-house practice had somehow genetically altered their ability to provide pro bono services. Those who still exhibited interest talked about how they had set a pro bono commitment retention standard for their outside counsel, but they made no mention of their own participation.

This article is written for all the in-house counsel who think that because they are in-house, pro bono practice and responsibilities no longer apply to them. Don't get me wrong: There are a lot of in-house counsel out there who are actively involved in pro bono, and that's great. But there are a heck of a lot more who aren't. I'm here to put the lie to the myth that in-house counsel and pro bono services just don't mix. I'd like to do so by responding to some of the top excuses for not volunteering.

**1. Who has the time?** No one. So let's get past it. You make time for what's important.

I admit that my attitude is cavalier since most of us really don't have an extra minute in our days, so let's talk about how to overcome some time hurdles. How do you currently find a balance between your day job, your home life, and your need for personal enrichment? Whether you are pleased with your current balance or not, the answer lies in setting aside times when you can concentrate on each, and then keeping your commitment to that schedule.

So seek out pro bono projects that offer you set time commitments and can be scheduled into your calendar; there are any number of projects that can be structured to meet your needs. Consider, for instance, going to the offices of a non-profit group you have volunteered to assist and acting as their general counsel one day every two months. Or maybe you might prefer a project that allows you to work on a weekday once a month from 7 to 9:00 p.m. at a walk-in clinic.

If that's not enough time for the group you're serving, don't back away. Team up with colleagues to staff out a schedule for your clinic duties or a specific matter. That way, if an emergency arises, other team members

can temporarily cover your "shift."

**2. That's not my expertise . . . that's malpractice!** Remember when you graduated from law school, got your first job, and didn't have a clue what you were doing? Did you quit your job or did you learn the skills?

Whatever their "day jobs," many lawyers who take on pro bono cases for the first time need to learn new skills. If you can perform pro bono work for clients that capitalizes on your existing expertise, then go to it! But don't let a fear of learning new skills stop you from this challenge when it's never stopped you before. And please remember that there are virtually unlimited resources out there to help you re-tool for this challenge: your local legal services clinics and bar associations offer classes or mentors to help you learn the relevant issues and law, particular client segments' needs, as well as counseling techniques. Many of these groups even have experienced staff lawyers and paralegals who work on cases with you to watch over and personally train you.

If you're looking to match your existing skills with pro bono clients you are particularly well-equipped to serve, please consider the incredible impact you could make working for nonprofit organizations that need the very skills you currently possess: general counseling, litigation management, incorporation, tax and financial preparation and planning, governance, intellectual property, employee management, commercial contracting, real estate/lease counseling, business ethics, and so on. Every nonprofit in your community -- from the local Boys and Girls Clubs to your city's homeless shelter to a neighborhood economic development consortium to the local arts center -- faces some or all of these issues at some time.

Your in-house work environment prepares you well with a number of skills that are fundamental to virtually every pro bono representation: dispute resolution, navigating clients through complex or frustrating legal issues, cutting through government filing requirements or red tape, developing strategies that help clients to effectively plan for their futures and make difficult decisions. Combine those skills with a good ear for listening and a talent for sifting through the chaff to find the real problem -- the strongest attribute of any good in-house counsel -- and you have a good foot up on the functional attributes you will need to succeed in almost any pro bono climate. Pro bono clients need help solving problems; as an in-house counsel, I'd bet you're already an expert on doing that.

**3. Pro bono works well in law firms, not in corporations.** I know, I know. The corporate culture is different from the law firm culture. Your corporation is not run by lawyers like a law firm is, and you're not your own boss. You're worried that if it gets out that you have time for a pro bono caseload, your CEO may begin to think that you don't have enough work to do or that the legal department might merit another look at budget-axing time. Maybe your management doesn't understand that your need to participate in pro bono is a priority. Or maybe the corporation you work in has designated charities for corporate participation (such as the United Way or the American Cancer Society, etc.), and pro bono isn't on the list.

By working within the corporate environment, you might try stepping out -- just a little -- onto a limb to try to persuade your management that pro bono can be a corporate prerogative (adding to the company's public image/goodwill and community outreach). Or perhaps you can find a way to weave your pro bono commitment into a corporate-approved charity project.

And if you exhaust those options, or if you work in a small law department, you can always just strike out on your own. You don't ask your boss if you can volunteer to be a Little League coach, join your neighborhood association, or practice your religion on your own time, do you? It's not as if you are moonlighting for money. You just won't get to use corporate resources in support of your participation, making it a little less convenient, and a little more confining for your choices. That's a shame, but not an excuse.

**4. The kind of work I am interested in/am doing isn't really pro bono, but it is for the public good.** Within the pro bono community, there is a continuing debate about this issue. What about corporate lawyers

who volunteer to work on the company's Special Olympics project or mentor a local elementary school student: should they get pro bono "credit" for their time? Many members of the active pro bono community believe that if corporate lawyers are encouraged to spend time on community service projects, they will not spend the time they should on *legal* pro bono projects.

I know my answer is not popular within the traditional pro bono community, but I am not very bothered by who gets credit for what or whether volunteer services by lawyers are specifically legal in nature. That's because I don't believe that broader community service lessens the time available or lowers the tradition of commitment our profession wishes to engender toward pro bono services in corporate law departments. Let me explain why.

We all agree that it's good for in-house lawyers to work with their corporate management to support the idea that it's just plain good business, in addition to a great personal satisfaction, to be involved in community service projects. Communities benefiting from such projects get a rare opportunity to see lawyers at work as fellow human beings, and not as some caricature from *L.A. Law*. And that's not bad for our profession's suffering reputation.

But there is a more important reason why I support such volunteerism: it gives us a chance to reach lawyers who are removed from participation in volunteer activities of any kind. And sadly, there's an increasing number of such lawyers at work today. These lawyers haven't responded to the standard pro bono "pitch," and short of court-ordered or bar-mandated pro bono (which wouldn't be a method I'd prefer), it's pretty difficult to force someone to do pro bono work.

A good example of a project that is a little less "legally" focused is a General Motors legal department initiative called "Project MIGHT." GM lawyers have adopted the fifth-grade class of the Highland Park public school system. Corporate counsel, paralegals, secretaries and other members of the department's staff go to schools on designated days to provide educational classes on everything from HAM radio operation to the Constitution to African-American history. They take students on field trips to local courtrooms, GM headquarters and the factory floors. Department members also act as mentors to students whose paths might otherwise not be influenced by successful role models.

If this kind of project is so appealing to a corporate lawyer who's never done pro bono work that it gets her to volunteer for the first time, I say do it, and stop worrying about whether it's "real" pro bono. I have great faith in the addiction to public service that volunteerism fosters. Once a volunteer gets in the door, and gets a taste of the personal satisfactions and benefits of working on a charitable project, she'll want to do more. So, to my mind, the trick is to get more people infected with the volunteer spirit; it's not to control the kinds of projects to which they devote their time. Once you have a lawyer addicted to volunteering for the benefit of others, it will be much easier to introduce her or him to the unique benefits that only can be provided through pro bono.

**5. I'm not enthralled with the idea of walking into Legal Services and starting at square one.** Ahhh, here it is . . . one of the deepest seated problems, even though nobody wants to say it. Face it: we all feel at least a little bit that way. So how do you get past it?

Maybe you can participate in pro bono activities under way at one of your local friendly law firms or through a program run by another law department in town. You already have friends and a level of respect there, the environment is comfortable and familiar to you, and someone else will deal with the burdens of administration. The Pro Bono Institute of the ABA runs a program called the Law Firm Pro Bono Project, an initiative of which is designed to help match big firms that have excellent pro bono programs under way with local in-house counsel who want to work with them.

Or maybe you would prefer to work on projects like those run by The Lawyers Alliance for New York, which

specializes in matching community service projects (that have a legal component) with corporate practitioners. Funded by a number of law firms and corporations in New York City, the Alliance has developed its outreach with the corporate lawyer in mind. They even provide continuing project partnership and assistance from a top-notch staff of full-time lawyers (many drawn from the best firms in the city) who are experienced in the work and assigned to work with you on every project.

Projects similar to the Lawyer's Alliance model are under study or operating in other cities, too. The Corporate Bar in Westchester-Fairfield county (Connecticut) has recently adopted an excellent program run by a former senior staff member of the Lawyers Alliance.

If you are looking for a group to join up with to introduce you to and support you in your emerging pro bono efforts, you will be best served by concentrating your attention on programs operating in your locality. Understanding this, the American Corporate Counsel Association (ACCA) is focusing its efforts on encouraging pro bono opportunities and commitment through our local chapter network. Several ACCA chapters, including those in New York City, the Washington, DC metropolitan area, the San Francisco Bay area, Chicago and Atlanta are all working to develop pro bono ties to their communities and would welcome new people. Any kind of peer support will likely ease your tensions about getting involved.

**6. I'm overwhelmed by the corollary issues: malpractice insurance, conflict of interest concerns, administrative/office support, and so on.** Once you get to the point of being ready to volunteer, you'll need to think about and resolve any concerns about the following.

*Malpractice:* Many legal services clinics and local bar pro bono programs offer malpractice insurance coverage for lawyers working on their projects. If you want to work outside of an organized program, all kinds of insurance options are designed for moonlighters that can be adopted to pro bono casework: ask your local legal services organization for more information. Such groups handle the question all the time, and may be able to suggest free coverage available through other avenues, as well. You may also want to consider using a very simple retention contract that outlines liability issues and gives you some protection, even though it will not shield you from all misfortune. If you don't find what you need at the local level, feel free to call ACCA or the ABA's Center for Pro Bono for sample forms and malpractice insurance options; we both carry a number of items that may be of interest to you.

*Conflict of Interest:* As long as you can choose the kind of cases you work on, there should be no problem. Yes, it would be stupid for you to volunteer to represent a local plaintiff who is suing for damages suffered because of an act that is potentially related to your company's activities. So choose something less related to your day job. For most lawyers, there's very little risk that helping an 86-year-old great-grandma keep her Social Security survivor benefits will present you with conflicts at work. I don't know of any in-house counsel who has been forced to take on a client -- court-appointed or otherwise -- that created a conflict of interest for the counsel's employer. (In other words: sure, there's a one in 10,000 chance that there could be a potential conflict problem tomorrow because of your pro bono work today, but that's not a good enough reason to avoid pro bono involvement.)

*Administrative Support:* Most of us do our own computer work, and many organized programs will provide any number of other services such as the time of staff attorneys and paralegals, filing services, providing an office for meetings, legal research facilities/complimentary LEXIS or Westlaw time, help with investigations or discovery, and so on. And there's always the option to get involved in a case already being run by others (like the local law firm or another corporate department) if the prospect of figuring out the logistics of the representation really daunts you. Maybe you should overcome your reticence to ask some of your support colleagues if they are interested in assisting you on the pro bono case you're working on: while you don't want to set up a situation in which they (as subordinates at work) feel they can't say "no," there are a lot of public-minded support people who might find some of the same professional satisfactions you will find working on pro bono cases. Ask around before the pro bono assignments are pressing and see what your staff members

think and how they might like to be involved.

**7. Is there something else I can do?** Nothing else you do can remove from you your responsibility as a legal professional to perform pro bono work. That said, whether you become active personally or just want to work your way into involvement by enabling others, you can perform any number of other services that are helpful and move you toward your goal of pro bono commitment.

First, you can call the National Association for Public Interest Law (NAPIL). As a member of their board of directors, I may be biased, but I would argue that they are one of the most productive and diverse organizations working to increase pro bono services in this country. NAPIL offer several avenues of activity for you to consider:

- involvement through their coalition with any of their 145 local law school campus groups that provide local legal services and summer associate pro bono fellowships by mobilizing and educating law school communities.
- help in funding (personally, through your corporation, or in conjunction with local law firms) a two-year fellowship for a recent law school graduate who has committed to perform unique and vital pro bono services under your sponsorship.
- by getting involved in the National Service Legal Corps (NSLC), the largest legal program in AmeriCorps, the national and community service initiative. The NSLC dispatches teams of lawyers, community educators, paralegals and social workers to local legal services sites across the country to address such issues as domestic violence, housing and homelessness in low-income communities.

Second, you can help to organize a local benefit to financially support pro bono services in your community and raise the visibility of the issues you wish to address.

Third, you can help to honor and hold up for public respect those lawyers in your community who are providing pro bono services. Sing their praises, show their leadership and create through them the role models that we should all seek to emulate.

Fourth, but never finally, you might also consider how you can affect pro bono services and funding through your local bar association, your state bar association, and your national bar associations, as well as through government programs. Corporate counsel are important people in the profession, and you have a lot of sway. But only squeaky wheels get the oil, and too often our associations are so focused on generating and addressing "hot issues" that old stand-bys-- such as pro bono -- do not get the attention they deserve. Stand up and change that.

Whatever your practice expertise or seniority, your in-house status should never be a bar to your participation in activities we are all responsible to provide as professionals. While your options for participation in pro bono activities as an in-house counsel may not be as well publicized or familiar as they were when you were in private practice, they are nonetheless available and varied enough to meet every person's interests and resources.

I hope that you will join with your fellow corporate counsel around the country to do your part to debunk the myth that corporate counsel don't live up to their professional obligations as full and equal members of the bar. And as you take up the cause, you might re-discover some of the profound satisfactions that this profession allows us and that many of us have lost -- somewhere along the way.

## **Getting Started - Where to Begin?**

If you are an in-house counsel interested in working on a pro bono matter, please call someone to find out more about the resources and options available to you, rather than sitting on your budding commitment. Contact the American Corporate Counsel Association (ACCA) (I'll be happy to take your call; it's part of my pro bono commitment to get you involved!), or call the experts at the ABA Center for Pro Bono. You might also contact your local or state bar association for information on local legal services providers and model programs at work in your community. You can also contact local law firms and corporate legal departments who have pro bono programs in place; take one of their lawyers to lunch and talk in detail with him or her about how you might get involved and how they have managed to overcome some of the dilemmas that concern you.

ABA Center for Pro Bono  
541 North Fairbanks Court  
Chicago, Illinois 60611-3314  
312/988-5773 or 5775  
contacts: Bonnie Allen or Greg McConnell  
email: [ballen@staff.abanet.org](mailto:ballen@staff.abanet.org) or [mconneg@staff.abanet.org](mailto:mconneg@staff.abanet.org)

American Corporate Counsel Association  
and The ACCA Foundation  
1025 Connecticut Avenue, NW, Suite 200  
Washington, DC 20036-5425  
202/293-4103, ext.318  
contacts: Susan Hackett  
email: [hackett@acca.com](mailto:hackett@acca.com)

Lawyers Alliance for New York  
99 Hudson Street  
New York, New York, 10013  
212/219-1800  
contact: Allen Bromberger

National Association for Public Interest Law (NAPIL)\*  
2120 L Street, NW, Suite 450  
Washington, DC 20037  
202/466-3686  
contact: David Stern  
email: [napil@napil.org](mailto:napil@napil.org)

National Legal Aid & Defender Association (NLADA)  
1625 K Street, NW, Suite 800  
Washington, DC 20006  
202/452-0620  
contact: Clint Lyons

The Pro Bono Institute

600 New Jersey Avenue, NW, Room 423  
Washington, DC 20001  
202/662-9699  
contact: Esther Lardent  
email: [e.lardent@mci2000.com](mailto:e.lardent@mci2000.com)

The Pro Bono Partnership  
The Corporate Bar (Westchester/Fairfield, Connecticut)  
914/328-0674 contact: Rick Hobish

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