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*Frequently Asked Questions:  
A Supplement to the*

**PBDA IMPLEMENTATION HANDBOOK:  
A GUIDE TO ESTABLISHING A PRO BONO  
PROGRAM AT YOUR LAW FIRM**

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## Cyrus R. Vance Center for International Justice

The **Cyrus R. Vance Center for International Justice**, [www.vancecenter.org](http://www.vancecenter.org), mobilizes the global legal profession to engage in activities that expand access to justice for the poor and marginalized and promote respect for their basic human rights, especially in Latin America and sub-Saharan Africa. We accomplish our mission by working with a network of private-sector lawyers, public-interest lawyers, non-governmental organizations, law schools, bar associations and justice advocates.

The Vance Center is part of the New York City Bar Association, and members of the City Bar are involved in planning and carrying out all of the Vance Center's activities. Founded in 2003, the Center honors the memory of Cyrus R. Vance, past president of the City Bar and former United States Secretary of State.

## New York City Bar Association

The New York City Bar Association (the "City Bar") ([www.nycbar.org](http://www.nycbar.org)) since its foundation in 1870 has been dedicated to maintaining high ethical standards among attorneys, promoting legal reform and providing services to the legal profession and the general public. The City Bar promotes political, legal, social and innovative programs aimed at disadvantaged groups.

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## **SECTION I INTRODUCTION**

### **1.1 Context**

In 2005, the Cyrus R. Vance Center for International Justice (the “Vance Center”) organized the “Strategic Summit for the Americas: A Profession in Support of Democracy” (the “Summit”) that brought together attorneys from Argentina, Brazil, Chile, Colombia, Spain, the United States, Mexico, and Peru with the goal of evaluating the progress made throughout the Americas with regard to access to justice and the promotion of social responsibility in attorneys. The Summit participants acknowledged the importance of pro bono and public interest work in addressing the unmet legal needs of the poor and unrepresented groups. Consequently, they agreed to develop a declaration of principles and an action plan to support and facilitate the expansion of pro bono throughout the Americas.

In 2006 and 2007, the Vance Center coordinated the drafting of the “Pro Bono Declaration for the Americas” (the “PBDA”). The PBDA was drafted by a group of distinguished attorneys in Latin America and the United States; it was presented to and discussed with the legal community throughout the Americas over a six-month period. The final text of the PBDA took effect January 1, 2008. Over 500 institutions and individuals have signed the PBDA as of the date of publication of this Guide, the majority of these signatories being law firms. [See Annex A for the full text of the PBDA. A complete list of signatories can be found at <http://www.vancecenter.org>.]

The PBDA recognizes that governments and legal aid organizations lack sufficient resources to meet the legal needs of the poor and unrepresented groups. As a result, many people in the Americas do not have meaningful access to justice. The PBDA also recognizes the privileged role enjoyed by the legal profession in the area of justice and its concurrent responsibility to provide pro bono legal services to those who need it. With this in mind, signatories committed to provide a minimum of 20 hours of pro bono work per lawyer per year. Signatories have a three-year period from the date of signing to fully implement the terms of the PBDA.

### **1.2 Purpose of the Supplement**

In 2009, the Vance Center prepared its *PBDA Implementation Handbook: A Guide to Establishing a Pro Bono Program at Your Law Firm* (the “Guide”). As its title suggests, the Guide is an implementation handbook – a useful tool that serves as a “how to” for law firms as they engage in the process of formal institutionalization of pro bono. The Vance Center continues to distribute the Guide, recognizing that establishing internal pro bono programs is an essential step in not only creating and promoting a pro bono culture, but also in meeting signatories’ goals under the PBDA.

As a result of the Guide, many law firms have not only assigned pro bono coordinators and/or created internal pro bono committees, but have also developed their own pro bono manuals setting forth policies and procedures. In some countries, the Guide has been used as a training tool by local pro bono referral organizations to assist law firms in structuring their programs.

The Guide continues to prove helpful in ensuring that signatory law firms formally implement pro bono work in their law firms and achieve their annual pro bono commitment, permitting a more efficient and effective undertaking of pro bono work.

Through its conversations with PBDA signatories that have begun to utilize the Guide, the Vance Center has received valuable feedback and discovered the need for this supplement to the Guide. The purpose of the Supplement is to provide further detail about certain aspects of pro bono implementation, in particular, issues regarding the costs associated with pro bono programs, staffing considerations for pro bono work, pro bono resources for pro bono managers, and the definition of pro bono.

## SECTION II ADMINISTRATION OF PRO BONO PROGRAM

### 2.1 **Financial Considerations for Establishing a Pro Bono Program**

#### 2.1.1 *What is the best way to structure a budget for a firm's pro bono program?*

Firms should be aware that there are costs and expenses associated with all pro bono programs. These include both internal and external costs. Internal costs are such routine course of business expenses as photocopying, phone calls, postage, transportation, and messenger services. External costs include non-routine, out-of-pocket expenses, such as filing fees and fees for experts and investigators. Firms may have different policies on how to allocate such costs as between the law firm and the pro bono client, which will be discussed later. Regardless of what that policy is, establishing a pro bono budget for costs and expenses is a crucial aspect of the institutionalization of pro bono and the development of a sustainable internal pro bono program at any law firm. Firms that adopt pro bono budgets make possible a smoother transition into a fully integrated pro bono practice. A clear policy regarding a pro bono budget sends a message about the firm's pro bono commitment, important for the development of a firm-wide pro bono culture. Additionally, a pro bono budget allows associates to understand the firm's expectations regarding pro bono and permits a more complete evaluation of the firm's pro bono program, which allows for yearly expansion and continued sustainability.

As is the case with most administrative and managerial matters, budgeting for pro bono is handled somewhat differently at every firm, tailored to meet the needs and goals of the individual firm. As emphasized in the Guide, all aspects regarding the development of an internal pro bono program at a law firm – including a budget – should be modeled in a way that not only fits the firm's "corporate culture" but also enables the most efficient use of resources and a fully integrated pro bono practice.

Law firms need not "reinvent the wheel" when it comes to establishing a pro bono practice, instead relying on well-established firm policies and procedures for the pro bono realm. In other words, to ensure that pro bono is an integral part of the law firm, law firms should strive to make the administrative aspects of pro bono as integrated as possible within an already existing infrastructure. Using established mechanisms enables law firms to more efficiently and effectively handle pro bono matters, streamlining the ease of process, making it more user friendly for its attorneys and ensuring high quality legal services to all firm clients.

While there are many different ways to structure a pro bono budget, a few of the most commonly utilized options are described below.

#### (a) *Option 1: Separate Pro Bono and Charitable Contribution Budgets*

To avoid confusion or simply because it more closely fits the law firm's business model and institutional structure, some law firms prefer keeping pro bono and charitable contributions separate for all purposes, including budget management. Because allocations for pro bono work

and charitable contributions at these firms are discrete, the firm's annual charitable contributions will neither increase nor decrease the amount that can be spent on pro bono and vice versa. Similar to what is described above, law firms who opt for this choice should distinguish between financial contributions and the provision of free legal services.

(b) *Option 2: Expand the Charitable Contribution Budget*

One possible option for establishing a pro bono budget is for the firm to expand its annual charitable contribution budget and include its pro bono practice under this larger umbrella. Many law firms have historically allocated an annual budget for charitable contributions to social or civic organizations. Once these law firms consider incorporating pro bono into the firms' practice areas, they will often choose to combine the budgets for charitable contributions with that of pro bono work. Thus, any costs associated with the delivery of free legal services will essentially come from the same source as the firms' charitable contributions. This means that – unless the firm also increases its overall budget once it incorporates pro bono work – the implementation of a formal pro bono program could mean a decrease in the firm's annual charitable contributions.

Firms that maintain a budget for charitable contributions will often assign a committee to handle all requests for charitable disbursements (the "Charitable Contributions Committee"). The Charitable Contributions Committee develops the procedures whereby firm partners can request disbursements for financial contributions to their preferred charities. The Charitable Contributions Committee can be expanded to make the same determinations with respect to pro bono work. If feasible, the firm may also designate a new committee to handle the pro bono budget (the "Pro Bono Budget Committee"), using the same or similar procedures as those used by the Charitable Contributions Committee. In some cases, the Pro Bono Committee carries out budgetary functions, and a separate Pro Bono Budget Committee is not established.

In practice, the Committee structure could work as follows: a partner wishing to fund a new pro bono project or case can approach either the expanded Charitable Contributions Committee or the Pro Bono Budget Committee as he/she would when requesting a charitable disbursement and the committee would make a determination with respect to granting, denying or adjusting the amount requested for the pro bono project or case. If the pro bono project or case later incurs unexpected costs, the same committee will determine whether the firm will cover the additional costs, whether the client will be responsible for these expenses or how else the firm may handle these unanticipated expenses. Clients' responsibility for expenses associated with their pro bono representation will be discussed in Section C.

Even when law firms choose to combine their budgets for charitable contributions and pro bono work, it is important to note that when it comes to *defining* the concept of pro bono and what qualifies as appropriate pro bono work, there is and should be a clear distinction between financial contributions and the provision of free legal services, a distinction discussed further below under Section B. In short, pro bono work is not charity but rather a professional obligation; charitable contributions are not considered pro bono work, regardless of the budgetary structure.

(c) *Other Budget Considerations: Distinguishing between Routine and Non-Routine Expenses*

Firms must consider the internal expenses of maintaining a pro bono program. Because these costs are expected and necessary to providing high quality legal services, many law firms do not require prior approval for these expenses. It would be an administrative burden to obtain approval for each of these kinds of expenses. Because these costs tend to be predictable, law firms tend to refer to them as “routine” costs and allocate a fixed annual amount to such routine expenses. As described above, a committee will often determine what this amount will be every year and which pro bono projects or cases will benefit from a disbursement under this budget.

External costs, on the other hand, are costs that are not routine and therefore require advance committee or partner approval. These are generally higher ticket items, such as the provision of filing fees, expert witnesses, or investigators, which - while necessary to the provision of legal services - extend beyond routine costs.

Firms can vary with respect to their understanding of routine and non-routine costs. The important thing to consider is that the firm’s attorneys understand the importance of using good judgment when it comes to expenditures associated with pro bono cases and that firm policy is made explicit in the firm manual on pro bono policies and procedures. It should be very apparent when an attorney must seek prior approval and when he/she does not need to do so. Again, the law firm should determine what kinds of costs fall into this annual routine expense budget based on the needs and characteristics of the firm and set clear guidelines so that attorneys understand what costs are considered routine and which require additional approval.

Regardless of a firm’s ultimate choice in budgeting for pro bono work, the law firm’s pro bono manual of policies and procedures should clearly outline the firm’s pro bono budget. To further highlight the importance of being mindful of costs associated with pro bono work, attorneys who have recently been assigned to a new pro bono matter or project should also receive a detailed memo regarding the pro bono budget. It should also be made clear that attorneys should make every effort to keep costs associated with providing free legal services at a minimum, including asking for fee waivers when appropriate or available, as may be the case with indigent clients. If fee waivers are denied or not available, the attorney should otherwise determine if other ways exist to waive or lower the costs associated with the pro bono matter.

2.1.2 *Is it ever appropriate to charge a fee to a pro bono client?*

It is never appropriate for a law firm to charge a fee to its pro bono clients. If a law firm charges its client any kind of fee for its legal services, the work cannot be considered pro bono work. A law firm and pro bono client can agree, however, that a client will be responsible for paying some or all of the *expenses* associated with the client’s pro bono representation. These expenses may include court fees, charges associated with obtaining official documentation, registration fees and other such costs.

2.1.3 *Allocation of Expenses*

A firm's policy on the allocation of expenses largely depends on the firm's pro bono budget, the amount of the fees associated with the specific pro bono project or case (*i.e.*, some pro bono cases will have many more costs associated with it than others), and the client's own financial circumstances. Options include charging the pro bono client no costs, charging for external costs only, not charging for internal and/or external costs up to a certain amount, charging for both internal and external costs in the full amount, or making the decision on the payment of expenses on a case-by-case basis, depending upon the financial resources of the client and whether the client is an individual or an NGO. For example, some firms will pay all reasonable and ordinary expenses associated with the pro bono representation of an indigent client, but will require NGOs to pay for such fees as those associated with registering the NGO. Either way, the firm's policy on the allocation of costs should be included in the firm's pro bono manual of policies and procedures.

This policy also should be clearly communicated to the client, and the pro bono client should always have a clear understanding of those expenses for which he/she/it will be responsible. In an effort to avoid confusion and establish a healthy relationship with the pro bono client, the pro bono attorney and client should determine and discuss this before the pro bono attorney undertakes the representation. Just like a paying client, the pro bono client should read, understand and sign a written agreement or form outlining who will ultimately be responsible for the expenses associated with the representation. This "expenses agreement" should be incorporated into the client engagement letter (For an example of a client engagement letter, please see Annex 2 of the Guide, *Format of Pro Bono Commitment Letter*). In addition, the firm should consult with the pro bono client before incurring any material expenses for which they client will be responsible.

Sometimes, it is not possible to account for all expenses prior to accepting the client's representation. After agreeing to take on the client, an attorney may begin to investigate the client's particular situation only to find that there are unforeseen or unexpected circumstances that may lead to unanticipated costs. Because of the surprising nature of these expenses, it is unlikely that the attorney and client previously agreed on the responsible party for them. If unanticipated costs arise suddenly after the attorney-client relationship has been established, they should be addressed immediately and in a similar formal (documented) way to avoid confusion and/or ethical breaches.

#### *2.1.4 What are the tax implications (benefits and liabilities) associated with pro bono work?*

There may be local or federal tax implications for performing pro bono work. Because tax law is country and often region-specific, the implications of doing pro bono work from a tax perspective will vary depending on which country, region and perhaps even city the law firm is located in. Some jurisdictions may even have tax benefits for performing pro bono work.

Furthermore, each country will have different compliance requirements for the legal profession in terms of its tax consequences. While all of these immeasurable differences cannot be detailed in this Supplement, it is important for a law firm to research any tax implications associated with pro bono work as the law firm develops its pro bono program. Understanding these tax benefits

and liabilities will allow the firm to establish a more appropriate and favorable pro bono structure, one that works to meet their needs and helps the firm achieve its goals.

## **2.2 Staffing Considerations for Pro Bono Work**

### *2.2.1 Should summer associates and/or student interns be involved in pro bono projects or cases?*

Law firms commonly hire law students as year-long interns or summer associates. These students work with the firm for a given period of time prior to their graduation from law schools and are often asked to join the firm as full-time associates upon graduation. As is the case with young law firm associates, student interns are generally enthusiastic about participating in pro bono work because it gives them opportunities to learn new practice areas and exposes them to the different ways the law can be utilized to help individuals, reform legislation and ultimately change society for the better. Students are also eager to participate in pro bono because it gives them greater responsibility than the law firm's traditional client (*i.e.*, remunerated) matters.

By allowing students to be involved in pro bono work at an early stage in their careers, a law firm can train and prepare these future lawyers for a lifelong pro bono career. Additionally, instilling pro bono ideals in students helps solidify a local pro bono culture and could strengthen relationships between the law firm and universities (law schools) who may then establish signature projects together and collaborate on projects or cases that benefit the public interest. These signature projects could enable a sustained relationship between the law firm and the law schools, multiplying a project's overall impact by allowing students to capitalize on the firm's resources on a continual basis. While the students themselves may change, the established partnership between the entities allows for successful continuity of the project.

Pro bono opportunities for student interns also benefits the firm in that the law firm will be able to better assess the students' time management skills and professional abilities. Because pro bono gives students greater responsibility, it is an excellent opportunity for the law firm to evaluate the student interns' performance. It should be noted, however, that student interns' pro bono work – as is the case with commercial work – should always be supervised by a more senior attorney as well as the partner overseeing the matter. Moreover, student interns should not replace full-time attorney participation in pro bono work, nor should student intern pro bono hours be counted towards the PBDA hours goal. In other words, all attorneys should be involved in pro bono work and the firm should encourage it not only as a professional obligation, but also a valuable opportunity to advance and progress in one's career; a way of strengthening relationships with clients; and an integral part of the firm's culture.

## **2.3 Pro Bono Resources for Pro Bono Managers**

### *2.3.1 Once the law firm has established a pro bono committee and/or created the position of pro bono coordinator, what resources are available to those administrating and managing the firm's pro bono program?*

*Local Clearinghouses*

Once established, local clearinghouses are important sources of pro bono work for its member law firms. Basically, a clearinghouse's function is to develop pro bono projects that it can then offer to law firms or individual attorneys. The clearinghouse then oversees and manages the firm's relationship with the pro bono client, providing support to the pro bono attorneys as they strive toward a successful resolution of the project or case. Clearinghouses can also be useful sources of information and technical assistance as law firms develop their pro bono cultures. It should be noted that, to sustain this resource, law firms will need to set aside budget lines for contributions to organizations they source projects from.

#### *Advisory Boards*

It is a good idea that local clearinghouses establish some kind of advisory board in addition to its Board of Directors. This advisory board could consist of younger attorneys who not only can assist the clearinghouse in its programming but can also serve as points of contact at each of the participating law firms, giving the clearinghouses additional information about how to improve their function in the pro bono chain. Please see the Vance Center's publication, "Pro Bono Junior Board" for more information regarding establishing an advisory board of this kind (available at <http://www.vancecenter.org>).

#### *Other Pro Bono Coordinators*

If no local clearinghouse, bar association referral program or advisory board has been established, pro bono coordinators from different law firms may choose to meet on a regular basis to discuss the pro bono implementation processes at their respective firms. By sharing experiences and strategies, this network can more strongly promote the pro bono initiative to the legal profession and together devise solutions to shared challenges.

#### *The Association of Pro Bono Counsel*

The Association of Pro Bono Counsel ("APBCo") is another resource for law firm pro bono coordinators. Although it is based in the United States, membership is not limited to pro bono coordinators from the U.S. [For additional information about APBCo visit <http://www.probonocounsel.org/>].

#### *Law Firm*

There is no greater resource for a pro bono coordinator or committee than a law firm's own people. No one knows better the challenges and successes of undertaking pro bono work than the attorneys and administrative staff who work to ensure that pro bono work is not only undertaken, but performed efficiently and with the highest quality. Pro bono coordinators should develop periodic workshops, roundtables or discussion groups through which attorneys participating in pro bono can voice their opinions and offer suggestions about ways in which to improve the pro bono program. Not only does this help the pro bono coordinators or committees do their job more effectively, but it also fosters the development of a firm pro bono culture and gives positive recognition to those participating in pro bono work.

#### *The Vance Center*

Finally, the Vance Center continues to be an important resource for law firms as they attempt to meet their pro bono goals under the PBDA and establish a permanent pro bono culture in their societies. The Vance Center has several publications, which aim not only at highlighting the pro

bono work that law firms undertake in conjunction with local NGOs and universities, but also provide technical assistance by giving law firms examples of the kinds of projects they can spearhead in their own communities. [\*Proyectando el Trabajo Pro Bono\*](#) is a Vance Center publication that highlights particular projects that law firms undertake in conjunction with universities or local or international NGOs.

## SECTION III PRO BONO OPPORTUNITIES

### 3.1 EXPANDING UPON THE DEFINITION OF PRO BONO WORK

#### 3.1.1 *What is the difference between corporate social responsibility and pro bono legal services?*

It is important to keep the definition of “pro bono” in mind. Without a full and deep understanding of what pro bono actually entails, a law firm will not be able to institutionalize the kind of pro bono program that will enable it to meet its pro bono goals in a meaningful way.

To begin, pro bono is a professional obligation, one that stems from the nature of the attorney’s role in society and the privileged position attorneys occupy in terms of access to justice. Pro bono work is not charity. Therefore, it is crucial to keep pro bono work completely separate from volunteering and other forms of charity in establishing the firm’s pro bono structure. The only circumstance in which charity and pro bono work may coexist is for budgeting (as discussed in previous sections).

Business trends and globalization have spurred an ever-increasing interest in “corporate social responsibility.” Corporate social responsibility is a form of corporate self-regulation by which businesses embrace responsibility for the impact of their activities on stakeholders and other members of the public sphere. Clients and consumers are increasingly placing demands on corporations and professionals to maintain responsible practices that benefit not only the consumers but also employees, the environment and society as a whole. Because corporate clients often seek a law firm that is “socially responsible,” the concepts of corporate social responsibility in a legal environment and pro bono can create confusion.

There should remain a clear distinction between charitable contributions, volunteerism, socially responsible business practices and pro bono legal services. Charitable contributions are the easiest to distinguish out of the group, in that they consist of direct financial contributions to charitable organizations, nonprofits, civic organizations, churches or other entities. While some of these financial donations may *contribute* to or assist these organizations in the provision of services to poor or marginalized individuals, groups or communities, the donations themselves do not qualify as pro bono work. Furthermore, an attorney or law firm does not meet its pro bono commitment by simply making financial contributions to these organizations, regardless of the organization’s beneficiaries and ultimate purpose.

Community service, or volunteerism, is also distinguishable from pro bono legal services. Community service includes collecting items for persons in need or providing *social* (and not legal) services to these same people. These include, but are not limited to, food drives - collecting food for the poor; blood drives; clothing drives - collecting clothing for people who cannot afford to purchase their own; painting a school; cleaning debris from a park, etc.

Community service is valuable not only for the betterment of the community, but can also serve to solidify relationships with clients. Volunteer service allows for open collaboration between

lawyers and other members of the community, without the level of formalization and specialization necessary for pro bono work. Consequently, community service not only improves society, but can fortify existing relationships, and build new ones, with clients and the community. It can also be an extremely rewarding team-building exercise. Therefore, while it cannot be considered pro bono work, volunteer community service remains a valuable experience for lawyers and firms.

Environmental efforts on behalf of a law firm – for example, paper, cell phone or plastic recycling programs – are also not pro bono work.

### *3.1.2 Can participation in educational programs be considered pro bono work?*

It depends. Law firms disagree as to whether this kind of work should be counted toward an attorney's pro bono hours. In determining whether a particular pro bono project should be considered pro bono, it is helpful for a law firm to keep in mind both the *purpose* of the project and the *necessity of legal skills* for completing the project. The greater the need for legal skills in order to successfully accomplish the project's goals, the more likely it will be that the project should be considered pro bono.

A useful example can be found in juxtaposing high school student mentoring and education programs to train lawyers to handle certain cases that fall within the definition of pro bono, or are in the public interest. The former – mentoring or tutoring students – should not be considered pro bono work because it does not involve the delivery of legal services. When legal skills or knowledge are not required, the project should be considered volunteerism.

### *3.1.3 Can service as a member of an NGO's Board of Directors be considered pro bono work?*

While board service is not generally considered pro bono work, it is an important aspect of generating a pro bono culture and cementing the clearinghouse's vital role in the pro bono chain. Therefore, during the first five years of the PBDA implementation period, or the first five years a pro bono referral organizations is in existence, service on such a board of an organization that provides services to the poor or promotes pro bono should be considered pro bono work.

## **3.2 Appropriate Pro Bono Clients**

### *3.2.1 What is an effective way of determining whether a particular NGO is an appropriate pro bono client?*

As evident in the PBDA's definition of pro bono, pro bono representation goes beyond the representation of poor or otherwise marginalized individuals. NGOs are also appropriate pro bono clients especially for non-litigators who are accustomed to transactional work. Just as not all individuals are appropriate pro bono clients, not all NGOs should be eligible for pro bono legal services. The following section from the Association of Pro Bono Counsel's *Statement on the Eligibility of Non-Profit Entities for Pro Bono Legal Services* (the "Statement") provides a useful methodology for how a law firm can undertake the task of determining which NGOs

should be considered pro bono clients and which should pay for legal services. While this formula is extremely useful, it should be noted, as APBCo itself notes, that “every situation is unique [and] there should always be room for the application of professional judgment in determining whether a representation qualifies [for pro bono legal services].”

The Mission, Matter, Means Test is a tool that some law firms utilize to determine whether a particular NGO qualifies for free legal services:

A) Mission: A non-profit organization qualifies [for pro bono legal services] when its mission is to serve the indigent or protect or preserve civil rights, civil liberties, public rights, as well as human rights, *regardless of its budget or means to pay attorney fees* [emphasis added]. While the term “public rights” is not defined, APBCo members agree that “public rights” may include environmental matters, public health care issues, peace building initiatives and activities related to government regulations that affect the public at large.

*Once a particular organization satisfies the Mission test, no further review is necessary.* The provision of free legal services to an organization that has a qualifying mission benefits those served by the non-profit organization’s work. Therefore, in the case where the organization’s mission qualifies, the budget of the organization itself is irrelevant. Law firms should, however, consider that very large and well-funded non-profit organizations that meet the Mission test should be disqualified from receiving pro bono legal services. First, some firms represent large, well-funded charitable institutions with constant legal needs on a fee-generating basis. These firms often, for client relations reasons, choose not to offer pro bono services to organizations with similar funding to that of the firm’s fee paying clients.

B) Matter: A non-profit organization with an overall mission that does not fit the criteria above nonetheless may be eligible [for pro bono legal services] if the specific matter proposed itself presents a qualifying mission. In cases where non-qualifying organization proposes to engage in a qualifying activity, i.e., one that serves the indigent or fosters human, civil or public rights, the matter should qualify [for pro bono legal services] regardless of the entity’s ability to pay attorney fees. If the specific matter satisfies the Mission test, no further review is necessary.

C) Means: Where neither [Mission or Matter] above is satisfied, some law firms will still allow an organization to qualify [for pro bono legal services] if the organization does not have the means to pay for legal services. In these circumstances, the question is whether the organization has sufficient means to afford competent legal counsel to handle the matter presented. This is not always a simple determination. In evaluating whether a non-profit organization has sufficient means to afford legal counsel, many factors may be examined, including:

*Referral by a legal services organization:* In many communities, there are sophisticated legal services organizations that screen and refer non-profit organizations to law firms for pro bono legal services. Law firms rely heavily on such referrals, and absent any clear indication that pro bono representation of a non-profit

organization would be inappropriate, such a referral should be a sufficient indication that an organization qualifies for pro bono services.

*Financial criteria:* If not pre-screened by a trusted legal services organization, a firm may want to examine statements reflecting the organization's financial condition. In particular, firms may wish to consider non-profit organizations' revenues as compared to their overall budgets, executive compensation, and debt-to-asset ratios. If the organization has budgeted for legal fees to cover the proposed matter, this may be an indication that the entity has the means to pay for legal fees.

*Past payment of legal fees or other professional fees:* An organization's past payment of legal fees and other professional fees may also be considered. Payment of legal fees in the past should not automatically disqualify an organization from pro bono representation. On the other hand, the ability to pay for fees in the past may well be a good indication of a current ability to pay, although this is not always the case. The payment of other professional fees may also be considered.

*Nature and extent of legal services required:* Firms may also consider the nature of the specific matter when determining whether an organization can afford legal services. Some matters require specialized legal expertise the cost of which may be prohibitive. Some matters might not be undertaken but for the availability of pro bono assistance. Some matters might be crucial to the continued viability of the organization. On the other hand, certain matters, like some plaintiff-side litigation, can routinely be handled by contingent-fee lawyers.

*Constituency served:* If a non-profit organization is exclusively or primarily serving a constituency of persons of relatively substantial means, the organization may be able to afford legal fees even though the organization itself may not have funds immediately available to pay legal counsel. For instance, a non-profit homeowners' association fueled by members' dues, not in a low-income area, would likely fail to qualify for pro bono assistance if it has the ability to obtain funding through its membership.

It should be noted, however, that some law firms will not allow an organization to qualify for pro bono unless that organization meets the [Mission or Matter test], irrespective of the organization's ability to pay for legal services.

## ANNEX A

### Pro Bono Declaration for the Americas

WHEREAS, access to justice and legal representation are essential to democratic societies;

WHEREAS, the resources of government and of legal services organizations are insufficient to satisfy the critical legal needs of poor and underprivileged persons and communities, often leaving these needs unmet;

WHEREAS, consequently, not all members of society have meaningful access to justice or effective legal representation, and this is especially the case for poor and underprivileged persons and communities;

WHEREAS, the absence of access to justice and legal representation undermines public confidence in governmental and judicial institutions and democracy;

WHEREAS, the legal profession has a privileged role and is uniquely positioned in matters of justice and therefore has the duty, means and opportunity to promote a fair and equitable legal system and respect for human and constitutional rights in collaboration with the State, the judiciary and legal services organizations;

WHEREAS, traditions exist across the Americas and new efforts are underway in several countries, including collaborations among bar associations, private and public interest law firms, law schools, foundations, governmental actors and non-governmental organizations, to address these pressing and unmet legal needs;

WHEREAS, a concerted movement across the Americas to promote access to justice through pro bono work would strengthen commitments to democracy and public service in the legal profession;

WE, the undersigned, solemnly declare our commitment to pro bono by stating as follows:

Members of the legal profession have a responsibility to provide pro bono legal services. This responsibility stems from the profession's role and purpose in society, and from its implicit commitment to a fair and equitable legal system.

Pro bono is derived from the Latin phrase *pro bono publico*, which refers to actions carried out "for the public good."

For purposes of this Declaration, pro bono legal services are those provided without a fee, or expectation of a fee, principally to benefit poor or underprivileged persons or communities or the organizations that assist them. They may include representation of persons, communities or organizations in

matters of public interest who otherwise could not obtain effective representation. In addition, pro bono legal services can also benefit civic, cultural and educational institutions serving the public interest who otherwise could not obtain effective representation.

Pro bono legal services should be provided with the same quality of representation as services provided to paying clients, and in a manner upholding the applicable ethical norms and standards.

Effective delivery of pro bono legal services requires cooperation among the different actors in the legal profession – including bar associations, private and public interest law firms, law schools, foundations, governmental actors and non-governmental organizations.

WE, the undersigned, each in a manner consistent with our respective roles in the legal profession, commit to:

Act to improve effective legal representation for poor or underprivileged persons and communities;

Enhance widespread and effective access to justice and to legal services for persons and communities who lack such access;

Provide, on a pro bono basis, more than 20 hours or three days of legal services per individual lawyer per annum, or in the case of law firms, institutions or other groups of lawyers, an average of more than 20 hours per lawyer per annum. This commitment should be met within three years of endorsing this Declaration;

Strengthen the profession's commitment to the provision and expansion of pro bono legal services by emphasizing its importance and practice in legal education;

Support the establishment, development and operations of non-governmental organizations dedicated to the delivery of legal services in the public interest; and

Advocate and promote within the profession for the recognition and promotion of pro bono legal services as part of lawyers' ethical standards and obligations.

This Declaration is not intended to alter or supersede any existing legislation, resolution or ethical code in any jurisdiction, firm or institution that is more conducive to the provision of pro bono legal services.

This Declaration will be effective from January 1, 2008.