



# A Guide for Pro Bono Services of Lex Mundi Member Firms

**T**he mission of the Lex Mundi Pro Bono Committee (LMPBC) is to encourage and enhance the delivery of pro bono legal services by Lex Mundi member firms, both individually and together, by providing strategic guidance, advice and resources to firms in developing and implementing pro bono policies and programs of the highest quality, and to provide a liaison between member firms and the Lex Mundi Pro Bono Foundation. As a first step, the LMPBC has created this Guide for Lex Mundi member firms. The objective of the Guide is to provide firms with a suggested framework for developing pro bono work, programs and a “pro bono culture.” It provides guidance on how to define pro bono legal work, the reasons for doing it, and how to implement effective pro bono programs and practices. The Guide is a dynamic document with links to samples and examples that will be added to electronically on an ongoing basis.

## Defining Pro Bono

The definition of “pro bono,” both what is included and what is excluded, creates a framework for the approval of work and defines what the firm is committing to in supporting pro bono work.<sup>1</sup>

The LMPBC recognizes that there are significant cultural, political and legal differences among the countries where Lex Mundi member firms are located and that these differences must be taken into account in adopting a definition of pro bono work. Subject to these considerations, the LMPBC

recommends the following general definition as a starting point for Lex Mundi member firms:

Pro bono legal services are those provided for the public good without a fee principally to benefit poor, underprivileged or disenfranchised persons or communities and the organizations that assist them, and to individuals and organizations that seek to effect positive social and economic change in the lives of the poor, disadvantaged and disenfranchised. Pro bono legal services may include representation of persons, communities or organizations

<sup>1</sup> Please click on the link to access definitions of pro bono from Lex Mundi member firms. [CLICK HERE](#)



in matters of social justice who otherwise could not afford effective representation.

Pro bono services should complement, not replace or be a substitute for, government funded legal aid plans or other access to justice programs. Pro bono should, however, be viewed as an integral part of the legal services delivery system, but not as a separate system, filling inevitable gaps in access to justice and legal services. The LMPBC recommends that Lex Mundi member firms make clear in their policies that pro bono work does not include matters for which lawyers may receive fees, albeit reduced, from government legal aid programs. Legal aid schemes vary. In some countries there may be an obligation to provide legal aid without fee, which should be regarded as pro bono work. Similarly, unfair competition laws may impact on the scope of legitimate pro bono work in some states.

The recommended definition of pro bono work does not include non-legal volunteer activities; uncollectible fee-generating or contingency fee matters; legal services to friends or family who do not have a low income; CLE instruction; board of directors or bar association participation; or legislative or other lobbying efforts when those activities are not related to the purposes set forth above.

Many law firm pro bono policies define activities that are explicitly *not* pro bono. Describing these activities may be helpful in clarifying a firm's pro bono definition and removes room for argument in cases where there may be doubt. For example, many firms specifically exclude work done on behalf of staff, acquaintances, family members, or for existing or prospective clients for 'practice development' reasons.

A number of firms with pro bono programs also do other work that benefits the community – for example, charitable giving programs, sitting on community boards and non-legal volunteering with charities.<sup>2</sup> These sorts of activities are not only beneficial to the community but also give the firm's non-lawyers the chance to be involved in community work. Lex Mundi member firms should encourage all types of volunteer activities, but distinguish their pro bono programs from their other community service work in order to keep the focus of the firm's pro bono work on the actual provision of legal services which "fill a gap" and enhance access to justice.

## Why Lex Mundi Member Firms Should Provide Pro Bono Legal Services

Since access to justice and legal representation are essential to free, open and civil societies and in most countries the resources of governments and legal services organizations are insufficient to satisfy the needs of the poor, the underprivileged and the disenfranchised, as well as the organizations that serve them, these segments of society do not have meaningful access to justice or adequate legal representation. The absence of access to justice and legal representation undermines public confidence in governmental and judicial institutions, and the rule of law.

The legal profession has a privileged role and is uniquely positioned to promote fair and equitable legal systems and respect for human, economic and social rights in collaboration with the government, the judiciary and legal services organizations.

Consequently, members of the legal profession may have a responsibility to provide pro bono legal services to individuals and organizations that would otherwise be unable to obtain them due to lack of economic resources. Lawyers, as the gatekeepers of the justice system and the legal rules within which societies operate, must ensure that these systems and rules are not beyond reach. The phrase "*pro bono*", which is now taken to mean working without expectation of payment, is derived from the Latin "*pro bono publico*", or "for the public good".

There are also strong business reasons to do pro bono work. Recruitment and retention of new lawyers is enhanced. Law firms that are active in providing pro bono services are more attractive places to work for new lawyers who seek opportunities to do work with a community or social focus, in addition to their commercial work. The opportunity to do pro bono work and "give back" to the community enhances morale, provides excellent training, and allows lawyers to connect to clients and communities in important ways. Advocates may gain valuable courtroom experience at an earlier stage of their career. Commercial lawyers will obtain experience by assuming responsibility for matters that they might not otherwise take on in their mainstream practice. Pro bono work enables all lawyers to make important

<sup>2</sup> Please click on the link to access examples of charitable giving and other community programs from Lex Mundi member firms. [CLICK HERE](#)



contacts with community groups, social entrepreneurs and others and to take leading roles in enhancing their societies. Pro bono work also demonstrates good corporate citizenship by law firms which can enhance their profile and standing in their communities. Lex Mundi firms strive to be at the very forefront of the legal profession. To remain there, the LMPBC believes, that Lex Mundi member firms should ensure access to justice and strengthen the rule of law by providing pro bono legal services.

## Building a Pro Bono Culture

Law firm pro bono programs are more likely to succeed when developed with a structured approach. Creating structures to organize pro bono efforts allows pro bono work to be recognized as integral to the firm's operations.

A strong pro bono culture means that a firm has embraced pro bono work as a fundamental part of its practice. Building a pro bono culture requires the clear support of firm leadership. In order for a healthy pro bono culture to exist, the LMPBC believes that the leaders of Lex Mundi member firms should deliver (and regularly reinforce) two fundamental internal messages:

- The conduct of pro bono work is the shared professional responsibility of all lawyers at the firm; and
- Pro bono work must be seen by lawyers and partners at the firm as valued and recognized.

### A Shared Professional Responsibility

The message from senior management of Lex Mundi member firms should always be that pro bono work is undertaken by the firm in recognition of the inherent professional responsibility which lawyers share to assist in making the legal system accessible. The firm's leaders should take the opportunity to restate this whenever possible.

The pro bono program should aim to avoid the situation where pro bono work is undertaken by a small number of keen (and often junior) lawyers. A pro bono policy should be the starting point for an expectation that all lawyers be involved in pro bono work as part of their ordinary practice at the firm. A key responsibility of the pro bono program management is to ensure that pro bono opportunities are distributed evenly throughout the firm.

It is important that clear pro bono guidelines are developed to ensure that the pro bono program has integrity. The program will fail if it is seen by lawyers as being a vehicle simply to provide free legal work to friends, family or commercial clients, rather than as a genuine attempt to address access to justice issues.

It must also be clear that the pro bono program is not a marketing strategy for the firm. It is true that there are benefits to the firm in conducting a pro bono program, but the fundamental message should be about the conduct of Lex Mundi lawyers as professionals. Any benefits to the firm – and there are many – are a bonus, and should not be the motivation for conducting a pro bono practice.

### Pro Bono Work is Real Work

Pro bono work should look and feel like all other legal work performed at Lex Mundi member firms. Pro bono matters should be conducted in the same way as all other legal work of the firm – files should be opened, terms of engagement should be entered into with pro bono clients, and the work should be supervised properly by partners.

Equally important, the legal work on pro bono matters needs to be recognized as work of equal value to commercial client work, from both a financial and performance perspective. Lawyers who perform pro bono work should do so as part of their ordinary legal practice at the firm, rather than on their own in their spare time. Pro bono work provides lawyers an opportunity to engage in supervised work that they might not normally be able to pursue, offering an invaluable opportunity for on-the-job training not available through routine work assignments.

The universal nature of pro bono work within a firm can be reinforced by including pro bono work within the firm's ordinary performance assessments. The message that "pro bono counts" is perhaps made most clear when it is a specific criterion for promotion within the firm to senior associate or to partner.



## Establishing and Empowering a Pro Bono Committee

In the view of the LMPBC, establishing a pro bono committee is an essential first step in developing an organized pro bono program. The creation of a committee sends a strong signal that the Lex Mundi member firm is serious about pro bono work and about making the pro bono practice a success. It reinforces the notion that the pro bono practice is owned by the firm as opposed to the responsibility of a few individual lawyers.

A committee should ideally include people from different seniority levels across the firm, and represent a range of practice groups. It should include at least one or two select “heavy hitters” from within the partnership. Membership should not be too large, as the greater the number of people on the committee the more unwieldy it is likely to be.

The committee is best placed to provide broad input into the development of pro bono policy and strategy, rather than day to day management of the pro bono practice. The committee should be responsible for developing an acceptable definition of pro bono and for preparing policies and guidelines for adoption by firm management addressing how pro bono work should be done within a firm. The firm’s pro bono committee should leave individual decisions about specific pro bono matters to a pro bono coordinator or to individual committee members to administer.

The committee should not be responsible for selecting, assessing and allocating individual pro bono matters, except perhaps in matters which may cause controversy within the firm, and would benefit from a broader “seal of approval”. The time spent by members of the pro bono committee on committee activities should also, of course, be recognized as part of those lawyers’ contribution to the firm.<sup>3</sup>

The responsibilities of the committee should include:

- Defining pro bono for the purposes of the firm’s program (discussed above);
- Developing, monitoring and implementing a written pro bono policy, distributing it throughout the firm, and including it among internal electronic postings of firm policies;<sup>4</sup>
- Identifying how pro bono work will be counted and credited for the purposes of assessing performance, remuneration and advancement in the firm;
- Determining processes for overseeing and administering the program with clear lines of responsibility;<sup>5</sup>
- Determining procedures for intake, file management and supervision;
- Creating mechanisms to ensure communication within the firm regarding pro bono work;
- Making arrangements for periodic evaluation and modification of the pro bono program;<sup>6</sup> and
- Tracking approved pro bono matters to ensure that the firm’s policy is being applied correctly and to facilitate reporting to management on the extent and scope of pro bono work within the firm.

Establishing a successful pro bono program does not happen overnight. A new committee must move deliberately, but in stages, as it encourages the development of a pro bono culture. A firm-wide pro bono target or benchmark can be a useful way to reinforce a shared pro bono responsibility, provided that the benchmark is realistic. Otherwise, setting targets may be a way to set the program up for failure.

<sup>3</sup> Please click on the link to view descriptions of pro bono committees from Lex Mundi member firms. [CLICK HERE](#)

<sup>4</sup> Please click on the link to access pro bono policies and guidelines from Lex Mundi member firms. [CLICK HERE](#)

<sup>5</sup> Please click on the link to view methods for overseeing and administering pro bono programs from Lex Mundi member firms. [CLICK HERE](#)

<sup>6</sup> Please click on the link to view arrangements for evaluation and modification of pro bono programs from Lex Mundi member firms. [CLICK HERE](#)



## Recognition of Pro Bono Time as Equivalent to Billable Time

How to treat time spent on pro bono matters is the most significant expression of commitment to pro bono work. The LMPBC believes that time spent on approved pro bono matters should be regarded as equal in value to billable time because it demonstrates that the Lex Mundi member firm is truly committed to pro bono and recognizes its importance to the firm. It is also essential from a professional standpoint, because under most legal ethics regimes pro bono files and clients cannot be treated as “second-class” matters.<sup>7</sup>

Treating pro bono time as equivalent to billable time also brings an important discipline to a pro bono program which is critical to its success. It encourages lawyers to do pro bono work and fosters a strong pro bono culture. It means that pro bono hours will be recorded and can be monitored by the firm in the same way as revenue-generating hours. Because the work is treated as equivalent to billable time, it will also ensure that Lex Mundi member firms, through their pro bono committees, will carefully scrutinize requests to take on pro bono matters, making informed decisions on the extent of the work to be done, who will do it, and why. Criteria for approval of pro bono work should include consideration of the fact that such work is intended to be treated as billable time.

Some firms elect to “cap” the pro bono hours that will be credited toward minimum billable hours up to a certain number or percentage of hours. Others have no cap, but approve each file on its merits and may monitor time spent on matters regularly. Some firms make pro bono work mandatory and set minimum pro bono targets. The LMPBC urges Lex Mundi member firms to adopt flexible policies. Mandatory pro bono is generally not seen as desirable and, for some, is simply unworkable. While setting nominal targets can be a useful incentive or objective, “capping” the number of hours can have negative effects, as it may discourage lawyers from taking on complex pro bono matters for fear of having to spend “too much time”, or unreasonably limit training opportunities, or cause lawyers to not record time properly spent on a pro bono matter. On the other

hand, the amount of pro bono work Lex Mundi firms may be able to take on will vary widely based on size and capacity.

The LMPBC recommends that those in Lex Mundi member firms charged with approving and monitoring pro bono matters should keenly gauge the amount of pro bono work being performed (individually and overall by the firm) in order to allocate (and re-allocate if necessary) resources as efficiently as possible. Likewise, lawyers actually performing the pro bono work should communicate with committee members and management to ensure that no one becomes overwhelmed with pro bono commitments.

## Approval of Pro Bono Matters

It is important that Lex Mundi member firms, or their pro bono committees, have an efficient process for approval of requests to take on pro bono matters, and that the approval (or not) be based on appropriate objective criteria. Committees should adopt procedures that ensure that requests are dealt with in a timely way. With experience, approval of most matters can be quite straightforward and delegated to one or two individuals on the Pro Bono Committee, while more difficult or controversial matters may require consideration by firm management or the full committee. Requests should provide sufficient detail describing the nature of the matter, why it falls within the definition of pro bono and therefore should be done without fee, the expected scope of the work and time commitment involved, supervision and responsibility for doing the work, and address other criteria that firms may adopt in considering whether to approve specific pro bono matters.<sup>8</sup> Those criteria may include:

- The financial means of the client;
- The public policy issues involved;
- The significance and potential impact of the matter;
- Whether the matter provides business development opportunities;
- Whether the matter is a court appointment;
- Whether the matter is for a non-profit organization;
- Whether the matter makes special use of the firm’s resources;

<sup>7</sup> Please click on the link to view methods for crediting lawyers for pro bono hours worked from Lex Mundi member firms. [CLICK HERE](#)

<sup>8</sup> Please click on the link to view the procedures for intake and file management of pro bono programs from Lex Mundi member firms. [CLICK HERE](#)





- The ability of the client to obtain other counsel;
- The costs to the firm of undertaking the matter;
- The location of the matter;
- Whether the matter will provide helpful training for associates;
- Whether the firm has the knowledge and expertise to handle the matter;
- The strengths or merits of the case;
- Potential conflicts;
- The firm's ability to adequately staff the matter, e.g., number of lawyers to handle the issue and their level of expertise with the subject matter;
- Whether the firm has undertaken similar work in the past;
- Whether taking on the matter will have a negative impact on the firm's profile or recruitment of and retention of lawyers; and
- The amount of *pro bono* work already being performed by the firm and/or the lawyers who propose to take on the matter.

## Clarifying the Relationship with the Client

Clients for whom a Lex Mundi member firm is acting pro bono should be treated with the same degree of professionalism and responsibility as paying clients. However, because they are not being charged for the work, dealing with pro bono clients can take on important differences. Since the clients do not bear economic costs of the representation it is important for firms to reach an understanding with the client at the outset of the relationship with regard to the client's objectives and expectations. Clarifying precisely what work will be done and ensuring the reasonableness of the client's instructions can be critical to ensuring that the firm is not drawn into work it is uncomfortable with or is not in the client's, or the firm's, best interests.

Likewise, some pro bono assignments may require disbursements to retain experts, gather facts, or simply involve large amounts of internal costs to a firm. Whether the firm or the client will absorb these costs should be

determined and agreed upon at an early stage of the relationship.

The LMPBC therefore recommends that Lex Mundi member firms enter into an engagement or retainer agreement with pro bono clients to specifically address the scope of representation, cost issues, and their objectives and expectations prior to taking on a pro bono matter.<sup>9</sup>

## Supervision and Tracking of Approved Pro Bono Matters

Lex Mundi member firms should supervise and track their pro bono work. Because pro bono work is often performed by junior lawyers, and it is sometimes intended to be a training tool, the less experienced lawyers must be supervised by more experienced practitioners. The best law firm pro bono programs provide the same type and amount of supervision for their pro bono cases as they do for their revenue generators. While some firms charge their pro bono committee members with overseeing associates working on pro bono matters, the better practice is to require that supervising lawyers be identified for each matter just as if it were a chargeable matter. The amount of partner supervision may be left to the discretion of those working on the matter, but should parallel firm policies for billable matters.

Tracking time spent on matters is also critical to the success of a pro bono program. It ensures that cases are controlled and also provides a mechanism for reporting to management, and possibly others, internally and externally, about the nature of the firm's commitment to, and investment in, pro bono work. The LMPBC recommends that pro bono policies of Lex Mundi member firms should provide for tracking and reporting mechanisms.<sup>10</sup>

## Current Law Firm Pro Bono Models

Pro bono work can take many forms. While much pro bono assistance provided by lawyers involves legal advice and representation in the course of their normal practice, there are many other ways in which lawyers can undertake pro bono work to increase access to justice. Lex Mundi member firms may choose to adopt a combination of the following models:

<sup>9</sup> Please click on the link to view samples of pro bono work engagement letters from Lex Mundi member firms. [CLICK HERE](#)

<sup>10</sup> Please click on the link to view the procedures for tracking pro bono work from Lex Mundi member firms. [CLICK HERE](#)



- **Pro Bono Partnerships** – this could involve partnering with a community legal clinic or a charitable organization to provide legal services to the organization and/or the individuals the organization serves, or could mean partnering with a corporation (usually a client) to provide a combination of legal and non-legal services to particular community organizations or targeted disadvantaged groups. Firms may consider the corporate social responsibility initiatives of major clients to identify areas in which they might work with the client.
- **Signature Projects** – firm identifies a particular social issue, such as human trafficking, predatory lending or community revitalization, and applies broad based strategies and approaches to address the particular legal issues.
- **Pro Bono Menu** – firm offers a menu of pro bono opportunities available to their lawyers, including advice and representation for clients, community legal education and law reform activities undertaken within the firm.
- **Brief Advice Clinics** – lawyers sign up for a time slot on a clinic schedule; clinics can be held at a community legal clinic, a courthouse advice or self-help centre, universities and/or law schools, or charitable organization; participants are advised that a lawyer or lawyers are available at specific hours to answer legal questions and the lawyer assists in identifying legal issues, offering brief advice and/or referring to another program. The volunteer will ultimately choose whether to handle any cases that arise out of the clinic setting.
- **Secondments** – a very popular and effective way for firms to involve themselves in their local public interest communities. These programs allow law firm lawyers (generally associates or students) to spend a set period of time with a specified legal or public interest organization. When the lawyer or student's time ends, the firm may (or may not) send another individual to the organization. These programs can benefit the sponsoring firm by providing invaluable (frequently litigation) experience and honed advocacy skills.
- **Lex Mundi** – Joint projects can be initiated and completed among Lex Mundi firms.

## Talking Pro Bono: Communications Strategies

The LMPBC believes that a successful pro bono program entails appropriate communications to practitioners and other employees of the firm (internal communication) and to actual or prospective pro bono clients as well as fee-paying clients and the public (external communication).

### Internal Communications

Lex Mundi member firms should maintain a record (client name, matter description, unique reference number and category of public interest) of all pro bono matters. This will enable firms to measure the time/value contribution to an individual pro bono client or to any category of such clients, for example clients who operate in the health sphere, the arts, social entrepreneurs, or other categories. Firms may wish to advertise new requests for assistance internally, and should re-advertise from time to time large or long-term projects in order to facilitate access to such projects by interested lawyers.<sup>11</sup>

Regular or periodic internal workshops and seminars are useful forums in which to present the firm's pro bono policy and pro bono matters of interest.<sup>12</sup> In this way, lawyers are better informed and encouraged to become more familiar with the pro bono goals and contributions of the firm. Specific examples of how member firms can reinforce and promote the importance of pro bono work by acknowledging their pro bono successes include:

- Publishing a regular pro bono newsletter that is prepared in accordance with local laws and practices regarding advertising and promotion of legal services;
- Thank you e-mails sent by partners and management in relation to particular successes or contributions by individual lawyers or teams, in much the same way that successes are acknowledged in other commercial matters;
- Inviting pro bono clients to speak to the firm about their experiences;
- An e-mail prepared for managing partners to send to their lawyers, reminding those who have not yet conducted a pro bono matter that opportunities are available, and that such work is expected;

<sup>11</sup> Please click on the link to view methods of internal communication regarding pro bono work from Lex Mundi member firms. [CLICK HERE](#)

<sup>12</sup> Please click on the link to view information on workshops and seminars for pro bono work from Lex Mundi member firms. [CLICK HERE](#)



- Annual pro bono awards for significant performances; and
- Pro bono events to celebrate the work, with clients and those lawyers who have done the work.

Essentially, all of these ideas acknowledge the contribution and successes made by lawyers involved in pro bono work, and keep pro bono in a high profile position within the firm. Lex Mundi itself should similarly encourage and celebrate the pro bono work of its member firms.

### External Communications

Some, but by no means all, Lex Mundi member firms may wish to advertise their pro bono work externally, assuming such promotion is supported by and not contrary to local laws and/or rules regulating lawyers in their jurisdiction. Such advertisement can include the fact that a firm has adopted a pro bono policy, a summary of the salient features of the policy (particularly the firm's projected commitment in hours or monetary value) and the firm's association with Lex Mundi and the Lex Mundi Pro Bono Foundation.<sup>13</sup> Some firms publish special pro bono reports, telling clients and others such as bar associations, non-profits, government and the media, about their contributions through pro bono work. These can contain compelling stories of how the firm has made a real difference to individuals, groups, or communities.

Seminars or special sessions on social or legal issues that arise in pro bono work are effective ways to attract interest in a firm's pro bono work. Sponsorship of events and organizations can also bring positive attention to a firm's pro bono contributions. Articles in journals and newspapers and participation in conferences and law schools on issues such as professional responsibilities of lawyers can also be good opportunities for communicating a pro bono message.<sup>14</sup>

### Conclusion

Organized law firm pro bono projects provide Lex Mundi lawyers with an opportunity to give back to the community through their profession. The LMPBC will assist your law firm in developing a pro bono program that will meet the

needs of individual lawyers, the firm culture, and the local community. The LMPBC is committed to assisting Lex Mundi member firms with their pro bono efforts. For further information and resources on this topic [click here](#).

Lex Mundi would like to thank the following individuals for their work in the preparation of this Guide:

*Paul Schabas, Chair*

Blake, Cassels & Graydon LLP (Canada, Ontario)

*Kevin M. DiDio, Chair-Elect*

Butzel Long (USA, Michigan)

*Lori J. Braender*

Day Pitney LLP (USA, New Jersey)

*David Geral*

Bowman Gilfillan (South Africa)

*David Hillard*

Clayton Utz (Australia)

*Wendy S. Neal*

Snell & Wilmer, L.L.P. (USA, Arizona)

*Henry L. Parr, Jr.*

Wyche Burgess Freeman & Parham, P.A.  
(USA, South Carolina)

*Dr. Benedikt Spiegelfeld*

CHSH Cerha Hempel Spiegelfeld Hlawati (Austria)

*Murray C. "Tripp" Greason, III*

Womble Carlyle Sandridge & Rice, PLLC  
(USA, North Carolina)

*David Roll*

Lex Mundi Pro Bono Foundation (USA, Washington, D.C.)

Lex Mundi would like to acknowledge the many firms that have contributed valuable materials and resources for this Guide.

<sup>13</sup> Please click on the link to view projects involving Lex Mundi member firms and the Lex Mundi Pro Bono Foundation. [CLICK HERE](#)

<sup>14</sup> Please click on the link to view methods of external communication regarding pro bono work from Lex Mundi member firms. [CLICK HERE](#)