

**Corporate Attorneys Can Directly and Indirectly Play a Key Role in
Bridging the Justice Gap**

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Primarily during the past decade, in-house attorneys¹ have joined the ranks of private attorneys who provide desperately needed pro bono services. Although some in-house legal departments have a longer history of providing pro bono services², many corporate legal departments started developing their in-house pro bono programs more recently with the encouragement and support of organizations such as Corporate Pro Bono (CPBO), a partnership formed in 2000 between the Pro Bono Institute and the Association of Corporate Counsel.

Even though in-house corporate pro bono is a newer development in comparison to the important pro bono work that has been done by many legal aid organizations and law firms for decades, corporate pro bono is now an important and growing source of pro bono services and funding to help address the justice gap. Many in-house legal departments have robust pro bono programs that are making a difference and corporate attorneys are providing greatly needed legal services to those who cannot afford them.³ Many in-house legal departments also provide financial support to civil legal services organizations to help meet the legal needs of the poor. Pro bono service and funding by in-house legal departments can be part of larger corporate social responsibility efforts and the corporate volunteer culture. The tie-in to corporate social responsibility goals can help enable corporate pro bono, as can internal benefits which result when in-house legal departments undertake corporate pro bono, such as employee engagement, team building and skill development.

In addition to the direct services, monetary support and internal benefits that corporate pro bono may provide, corporate pro bono is also important for helping indirectly to bridge the justice gap. As clients of law firms, corporate counsel can play a key influencing role in encouraging law firms to increase their investment in pro bono organizations and to provide more pro bono services.

¹ For purposes of this report, references to “in-house attorneys”, “corporate counsel”, “corporate attorneys” and similar references refer to lawyers in private practice who are employed by a single client that is a corporation and who provide advice to their corporate client regarding legal issues related to its business activities.

² Aetna Inc. was among the first in-house legal departments to adopt a formal pro bono program more than 30 years ago in 1981. See, e.g., <http://www.thepbeye.probonoinst.org/2012/13/cpbo-spotlight-on-aetna-inc>.

³ See, e.g., <http://www.cpbo.org/resources/best-practice-profiles/> and David P. Hackett, Editor, “Pro Bono Service by In-House Counsel”, Practising Law Institute, 2010, for examples of robust in-house corporate pro bono programs.

Yet, despite the importance of corporate pro bono in directly providing pro bono services and funding and indirectly encouraging law firms to provide more pro bono services and funding, there are obstacles inhibiting in-house counsel from providing pro bono services or from doing more pro bono work than they are currently doing. If corporate attorneys do not “walk the talk” by directly providing pro bono services, thus demonstrating that pro bono is valued and part of their in-house culture, they will in turn be less effective in indirectly encouraging law firms to provide more pro bono services or monetary support for pro bono. In light of the importance of direct and indirect corporate pro bono involvement, this paper will analyze both the obstacles and opportunities for greater pro bono participation by corporate attorneys.⁴ Many of the obstacles and opportunities are similar to those experienced by other private attorneys groups, but there are some unique considerations with respect to corporate attorneys.

1) **Time and Flexibility Constraints**

Obstacle: The life of in-house counsel is very demanding with more things to do in a day and more emails to respond to than often appear feasible. In addition to the time demands, flexibility is important for in-house counsel because of issues or priorities that may unexpectedly develop that require re-jiggering of priorities and reassignment of work due to new priorities. Thus, a de facto obstacle to corporate pro bono can be a plate that already feels too full to take on anything else that is not mission critical to the corporate client, no matter how much an in-house attorney would like to do pro bono. Similarly, in-house lawyers may be hesitant to take on pro bono projects out of a concern that they may not be able to meet pro bono commitments because of work developments outside of their control and they don’t want to fail on commitments. A related issue, especially in times of economic recession where resources are spare and unemployment rates are higher, is that in-house attorneys may not want to appear as if they have excess capacity or unutilized time and may worry that this could be the perception if they undertake pro bono work.

Opportunities to overcome this obstacle include:

In-house partnering with law firms and other organizations to do pro bono together to limit time commitments, maintain greater flexibility and have pro bono support when questions arise or work priorities interfere (which in turn encourages more pro bono by others);

Taking on in-house pro bono projects that are more clearly time limited and predictable in nature, including participating in pro bono clinic opportunities for finite periods of time, as well as using technology to interact remotely with pro bono clients where appropriate in order to avoid traveling time and increase efficiency;

⁴ Terrific work has been done by the Pro Bono Institute and Association of Corporate Counsel through CPBO to analyze obstacles to in-house counsel providing pro bono services. See, e.g., “Stepping Stones to More In-House Pro Bono” by Catherine Dunn, *Corporate Counsel Magazine*, February 21, 2012.

Having an in-house pro bono team so that colleagues can step in for an in-house lawyer if scheduling conflicts or workload issues develop; and

Supporting the need for the unbundling of pro bono legal tasks.

Note that engendering senior-level legal department support for pro bono can highlight the importance of pro bono service and help resolve in-house time shortage and flexibility issues. Senior-level in-house support can also help resolve workload issues and reinforce that pro bono should rank as a priority together with other priorities. This will help avoid any perception that a lawyer doing pro bono has excess capacity and should be given more work to do. Of course, senior-leader in-house department support for corporate pro bono will also help address many of the other obstacles listed below, so enlisting senior leaders of in-house departments in corporate pro bono efforts is important generally.

2) **Licensing Requirements and Multi-Jurisdictional Practice Considerations**

Obstacle: Many in-house attorneys work in states where they are not admitted to the bar and it is not possible to gain bar admission through reciprocity. Although many states may enable in-house counsel to become registered in-house counsel in those situations, it varies by state whether non-bar admitted but registered in-house counsel would be engaging in the unauthorized practice of law if they undertake pro bono services. For those states that do permit non-locally admitted in-house attorneys to provide pro bono services, these in-house attorneys are typically subject to various restrictions that can create complexity and can deter in-house counsel from undertaking pro bono.

Restrictions on pro bono work by non-bar admitted in-house attorneys vary by jurisdiction, but some of the more common restrictions include that they must work with an approved legal aid organization and be supervised by legal aid lawyers. Of course, already overworked legal aid lawyers may have to limit the number of cases by in-house attorneys that they are able to supervise. Other restrictions require active members of the bar to supervise the pro bono work of non-bar admitted in-house counsel. These types of restrictions can inhibit in-house attorneys who are not locally licensed from providing desperately needed pro bono legal services.⁵

Opportunities to overcome this obstacle include:

Creating task forces or other initiatives where in-house counsel partner with other members of the bar to advocate that state bar rules be amended to enable in-house

⁵ CPBO has analyzed and summarized in-house counsel multi-jurisdictional pro bono practice rules by jurisdiction. See, e.g., “Multijurisdictional Practice: In-House Counsel Pro Bono Summary of Multijurisdictional Practice Rules by Jurisdiction”, by Corporate Pro Bono, November 2011; “Multijurisdictional Practice: In-House Counsel Pro Bono,” by Corporate Pro Bono, April 2011; and “Lend a Hand Across America: Are States Pro Bono Rules Too Restrictive?”, by Shannon Green, Corporate Counsel Magazine, June 3, 2011.

counsel to provide limited pro bono services to clients of limited means or non-profits without supervision or with supervision requirements that do not hinder pro bono service. Corporate Pro Bono has formed a task force of in-house counsel impacted by these rules to address this obstacle. Partnering with bar leaders can make a difference, as has been shown in Virginia and Colorado. In those two states, in-house attorneys who are not bar-admitted but who are registered or certified in-house practitioners may now undertake pro bono without supervision.⁶ Of course, like all attorneys undertaking pro bono, they will be subject to the rules of professional conduct in these states and the need to provide competent representation.

In states where non-locally admitted in-house counsel can provide pro bono services under the supervision of legal aid attorneys or admitted, active lawyers in the state, there is an opportunity to make it easier or more seamless to pair supervising lawyers with in-house attorneys who wish to undertake pro bono. Presumably, law firm lawyers who work with in-house departments would readily fill the supervisory attorney requirements if made aware this was an issue.

There are also pro bono projects that can be undertaken that do not require local bar admission, such as pro bono work on veteran affairs, which are overseen by the federal government, or educational projects that may further awareness of legal rights and the need for access to justice.

3) **Limited Non-Litigation Opportunities**

Obstacle: Many in-house attorneys are not litigators, yet many of the pro bono service opportunities fall in the litigation area. Non-litigation in-house counsel may not undertake pro bono in the courtroom or pro bono requiring litigation skills because of concerns that they could provide inadequate representation to a client who desperately needs adequate representation. In-house lawyers do not want to perceive themselves as somehow messing up if they do pro bono in areas where they have less experience. In addition, many in-house attorneys are not only specialists in areas other than litigation, but many also are experienced lawyers not at the beginning of their careers. Mid-level or senior lawyers may be concerned about looking foolish if they venture outside of their comfort zone by doing pro bono in areas that are new to them.

Opportunities to overcome this obstacle include:

Providing extensive training and having mentors, role models and a support network available so that when in-house counsel venture into new pro bono areas they will be able to provide quality representation to their low-income or non-profit clients without feeling unprepared or that someone does not have their back. Partnering with legal aid organizations, law firms or others will help provide this kind of needed support network. There are also valuable pro bono training opportunities that in-house counsel can take advantage of at little to no cost, as described elsewhere in this report.

⁶ See “In-house Pro Bono: States Must Remove the Handcuffs,” by Esther F. Lardent, *The National Law Journal*, May 2, 2011.

Highlighting the work of in-house lawyers who are not litigators yet who tackle some litigation needs of pro bono clients will create role models. They can demonstrate that trained and supported pro bono volunteers can make a difference for pro bono clients in the courtroom and can provide competent representation even when the pro bono volunteers do not have extensive litigation experience.

Other opportunities include finding non-litigation pro bono opportunities to enable corporate counsel to utilize their in-house counseling and corporate skills, such as representing non-profit organizations, or advising pro bono clients who need counseling on credit or criminal record matters, housing issues or numerous other areas that may not involve litigation.

Continuously identifying new pro bono opportunities also allows in-house attorneys to be involved where their interests lie and increases the likelihood that they will remain engaged in providing pro bono.

4) **Conflicts**

Obstacle: In-house counsel may be concerned that there will be unintended consequences if they represent pro bono clients who have interests counter to those of their corporate client or if they represent pro bono clients who could be perceived as having potential or positional conflicts with their corporate client. In such event, in-house attorneys could be concerned that their day jobs could become at risk or that they will inadvertently be creating precedent or standards that could later be used against their corporate client.

Opportunities to overcome this obstacle include having in-house legal departments establish from the outset what areas of pro bono would represent potential conflicts or positional conflicts and then work together to avoid them.

There are so many areas of potential pro bono service that are desperately needed to address the justice gap that in-house pro bono programs will easily be able to engage in pro bono activities that will not present actual or perceived conflicts to their corporate client's interests.

In addition, ensuring that appropriate limited representation and waivers are entered into with pro bono clients will help minimize the risk of potential conflicts.

- #### 5) **Other Key Obstacles:**
- Lack of In-House Awareness of the Desperate Need for Pro Bono**
 - In-House Fear of Malpractice and Concern about Insurance Issues**
 - Lack of In-House Pro Bono Culture and Infrastructure**
 - Lack of In-House Pro Bono Metrics**

Opportunities to overcome these obstacles include having senior in-house department support for corporate pro bono and establishing in-house pro bono committees to address concerns or issues. In-house pro bono committees can find solutions to overcome obstacles and help drive best practices in pro bono.

In-house pro bono committees can enlist volunteers to help raise awareness about the justice gap and the importance and ability of in-house counsel to help increase access to justice.

In-house pro bono committees can work with a legal leadership team to establish pro bono policies that set forth whether in-house resources and administrative staff may be used for pro bono initiatives, whether managerial approval is necessary, and address other infrastructure needs.

In-house pro bono committees can also work with their companies' insurance experts to extend the company's D&O coverage and malpractice insurance coverage at little to no cost to include pro bono work undertaken by the company's pro bono program. In addition to enabling self-insurance, they can also help work with legal service providers, the National Legal Aid & Defender Association (NLADA) and others regarding insurance coverage for pro bono.

In-house pro bono committees can help facilitate the pairing of departmental CLE training with pro bono training needs.

In-house pro bono committees can help establish metrics for corporate pro bono work through benchmarking with other companies and working with organizations such as Corporate Pro Bono.

For accountability and results, in-house pro bono committees can recruit volunteers to be responsible for various aspects of a corporate pro bono program, including partnerships with legal service providers and law firms.

Finally, in-house counsel can help resolve issues and facilitate pro bono work internationally by non-U.S. based members of in-house legal departments. Many obstacles and opportunities also exist for providing in-house pro bono service globally.

Summary: As discussed above, there are numerous opportunities to overcome the not insurmountable obstacles to in-house corporate pro bono. By working together, we can increasingly achieve the very important direct and indirect benefits that will come through increased corporate pro bono, thus helping to bridge the justice gap.