

SUPERVISION AND COMPETENCE IN PRO BONO IMMIGRATION REPRESENTATION

by *Suzan Kern**

It goes without saying that under the lawyer's ethical code, his or her efforts on behalf of pro bono clients must be subject to the same standards of attention, priority and professional performance as legal work the lawyer undertakes for paying clients.¹ However, since the nature of pro bono work may differ significantly from an attorney's or firm's other work, special attention often must be paid to the issues of supervision and competence, particularly in immigration pro bono representation.

Pro bono clients may not be as familiar with lawyers and legal processes as are clients who pay for legal services, and thus not in as good a position to monitor or scrutinize the quality and timeliness of an attorney's work. For their part, attorneys may provide brief pro bono legal services at community clinics or workshops where the issues are broader than their daily legal fare, or may take on pro bono cases that are completely outside their normal practice areas. In particular, immigration pro bono work—which attracts many non-immigration lawyers because of its high human interest factor—is not a practice area in which it is relatively easy or quick to acquire necessary skills and knowledge.

For these reasons, firms must find ways to develop specialist immigration legal skills among their pro bono attorneys and supporting legal professionals. Some firms have immigration practices whose attorneys are able and willing to serve as mentors to the firm's non-immigration pro bono lawyers. Firms where that is not the case can develop pro bono partnerships with legal service organizations that can assist them by screening, placing and mentoring pro bono cases.

However, even with good mentoring, most non-immigration lawyers will want and need at least a foundation level of expertise in that particular type of case before they begin their representation. They will also want and need to know that they have the firm's subjective and objective support in giving their pro bono clients the same level of attention and professionalism that is due to paying clients. A firm can provide this level of support and confidence to its pro bono attorneys in several ways:

- Organizing in-house trainings conducted by either in-house or outside immigration experts
- Paying for pro bono attorneys to attend outside trainings and workshops conducted by bar associations or legal service organizations with special immigration expertise
- Purchasing—and updating on an ongoing basis—specialist immigration resources, such as practice manuals, statute and regulation books, training videos, American Immigration Lawyers Association (AILA) membership, etc.
- Creating and developing databases, virtual workrooms, electronic libraries, etc., where immigration pro bono resources, including names and contact information for experts of various types, are compiled and kept available
- Requiring at least minimal training in the particular case type at the outset of representation

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¹ American Bar Association (ABA) Model Rule 1.1, *Client-Lawyer Relationship: Competence*: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

- Providing standardized intake forms and summaries that identify key legal issues so attorneys may judge whether they have the necessary competence
- Encouraging lawyers to co-counsel with more experienced colleagues, or even with equally experienced colleagues, who can cover for each other, if necessary
- Valuing and counting pro bono work hour for hour with billable work, and emphasizing the value of pro bono work to managing partners

Over the long run, these methods will develop both individual and collective pro bono expertise and professionalism that a firm's attorneys can rely on for current and future cases.

The issue of supervision is also crucial. The best law firm pro bono programs provide the same kind and amount of supervision for pro bono cases as they do for billable representations. In some firms, in-house pro bono committees, pro bono coordinators, or pro bono partners/counsel supervise. In other firms, each case is assigned a supervising partner or senior associate who has superior experience and expertise in that type of case. Smaller or mid-size firms may seek supervision from their partnering nonprofit organizations, whose attorneys can review petitions and applications prior to filing, spot potential legal issues, be accessible to answer questions, etc.

In all cases, pro bono representation should encompass periodic case reviews by knowledgeable supervisors or mentors. While most pro bono attorneys will welcome, and even seek out, such supervision, firms may still wish to build accountability into their pro bono programs in some or all of the following ways:

- Requiring monthly reports and closing memoranda
- Monitoring estimates of time per case
- Soliciting feedback from clients on how satisfied they are with the firm's pro bono legal services
- Maintaining databases on all pro bono matters, including type, referral source, names of attorneys and other legal professionals who are working on the matter, and supervising attorneys
- Docketing deadlines, court appearances, etc., just as firms do for other types of representation

While firms often develop these types of systems through trial and error and "on the fly" (if at all), thinking through the issues of supervision and accountability in advance can help a firm's pro bono lawyers avoid potentially serious pitfalls and errors in immigration pro bono work.

Pro bono immigration attorneys invariably say these cases are among the most meaningful and fulfilling of their career. They grow as lawyers through opportunities for court experience, brief-writing and advocacy they may not have had otherwise. They develop close personal relationships with clients and benefit greatly by knowing someone from another country and culture. And they make a huge positive impact on lives and families by winning legal status in the United States for their clients. It is in a firm's best interest to protect these tremendous legal and personal benefits by preparing and supervising its pro bono cases and attorneys well.