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PRO BONO OPPORTUNITIES FOR GOVERNMENT LAWYERS

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"The opinions expressed herein are solely those of the author"

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PRO BONO OPPORTUNITIES FOR GOVERNMENT LAWYERS

It is the daily; it is the small; it is the cumulative injuries of little people that we are here to protect...If we are able to keep our democracy, there must be one commandment: Thou shalt not ration justice."

-Learned Hand, Address at the 75th anniversary celebration of the Legal Aid Society of New York

***"In a society governed by the rule of law, access to legal advice and representation is at least as important as access to an education and to health care."* Court of Appeal Chief Justice Lance Finch, British Columbia, Canada.**

I. INTRODUCTION

Most poor and most recently due to the Great Recession, many working class people who need lawyers are just simply not represented.

Four out of 5 U.S. adults struggle with joblessness, near-poverty or reliance on welfare for at least parts of their lives, a sign of deteriorating economic security and an elusive American dream.

Survey data exclusive to The Associated Press (July 28, 2013) "points to an increasingly globalized U.S. economy, the widening gap between rich and poor, and the loss of good-paying manufacturing jobs as reasons for the trend. "

"It's time that America comes to understand that many of the nation's biggest disparities, from education and life expectancy to poverty, are increasingly due to economic class position," said William Julius Wilson, a Harvard professor who specializes in race and poverty.

Esther F. Lardent, President of the Pro Bono Institute and a world recognized expert in the area of pro bono programs states:

Not only has the number of Americans living in poverty increased dramatically during the past year, the frequency of legal problems, emerging legal issues, and the complexity of the legal needs of the poor and disadvantaged have grown exponentially as well.

Public interest, legal aid, and pro bono programs---chronically underfunded, understaffed, and underresourced to begin with ---are facing a grim economic reality. Federal funding for programs remains relatively flat and, in 2009 dollars, lower than funding available 15 years ago. At the same time, all of the primary sources of support for these programs--- foundation grants, state and local government support, and charitable giving from the legal community---have sharply declined.

In fact studies of unmet legal needs "consistently find that only between 15-20% of the critical needs of low income persons presently are being met. 19 Hofstra L.Rev. 1141, 1144 Recognizing the growing severity of the unmet legal needs of the poor and disadvantaged in the communities there is growing recognition that government attorneys have an opportunity to address these unmet needs.

One may ask, how can I help? I am a government lawyer or I am a solo practitioner. How can I even consider a pro bono option with my work?

In beginning, one may pose the question: Why should a federal agency, a state governmental unit, a county unit or a municipal unit have a commitment to pro bono set forth in a written policy? First, it encourages the government attorneys to do pro bono work and is a simple way in which to underscore the importance of pro bono service. Second, it reflects support from the management level and gives pro bono services credibility, all of which assist in developing a pro bono culture within the office. Third, it highlights the office's public service mission and boosts the public image of government attorneys.

An ancient Chinese proverb goes, "A journey of a thousand miles begins with a single step." Although doing pro bono work may not be quite so arduous, getting started can be the most difficult part of the experience, especially for government attorneys.

First, there are the misconceptions and myths to set straight. Some of us have probably had discussions with fellow government attorneys discussing the fact that they would like to get involved in pro bono but believe their agency would never approve the work, so they never approach their general counsel about it. A perception exists that old-school government management would not allow this, however, many do not try to test or challenge the myth.

The first thing to do is find out if the agency has a written policy governing pro bono. If the agency does not have an official policy in place, it does **not** mean pro bono is out of the question. The agency's ethics officers should be able to apply whatever procedures they have regarding outside activities to pro bono. Also, if the agency can seek direction from the Texas State Bar for more information.

Another common misconception among government attorneys is that they lack the skills or knowledge to provide pro bono legal services. The prospect of representing an indigent client in the courtroom or providing advice at a clinic can be daunting to a government attorney who, say, specializes in the contracts at a state agency.

This type of thinking is common of government attorneys because they do not have the benefits that come with the built-in culture of pro bono at law firms, where there are mentors and training opportunities. Many of those resources don't exist in the government because it still is a patchwork process, with some state agencies allowing pro bono and others not even in the game. The Texas State Bar can assist in the development of pro bono programs as well as the Texas RioGrande Legal Aid in helping to create interagency groups which will create and publicize training opportunities in an effort to break down the perception that you have to be an expert in poverty law to help someone with their divorce or custody battle. There are also some opportunities where you don't need any training at all, like volunteer legal services clinics.

II. GENERAL PRINCIPLES GOVERNING PRO BONO OPPORTUNITIES FOR GOVERNMENT ATTORNEYS

A. AMERICAN BAR ASSOCIATION

The American Bar Association ("ABA") adopted the Code of Professional Responsibility in 1969, which addresses for the first time the responsibility of the lawyer to engage in pro bono work, in Ethical Consideration 2-25. It states among other things:

"Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged."

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