PRO BONO SCORECARD 2007: Drawing the Line

A move toward a common definition of pro bono work

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A year ago, we found ourselves concerned about the definition of pro bono work. We had discovered a few examples of overreach and a few examples of confusion in the marketplace. This was more than a matter of technicalities. As readers of this magazine know, we rank firms on their pro bono hours; the rankings are based on self-reporting. To be fair to all concerned, we needed a common understanding of what counts and what does not. We would, after a decent interval, declare one, we said.

Easier promised, it turns out, than drafted.

For the past year, we’ve met with interested pro bono parties from around the nation. They offered us considerable help and advice in understanding the issues and dilemmas buried within their community. And to a person, they asked that we adopt one of the existing definitions and modify it on the margins, as needed, in order to avoid giving law firm statisticians overreaching and a few examples of confusion in the marketplace. This was more than a matter of technicalities. As

The term “pro bono” refers to activities of the firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice and consisting of (i) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations in matters which are designed primarily to address the needs of persons of limited means; (ii) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; and (iii) the provision of legal assistance to charitable, religious, civic, community, governmental, or educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.

The PBI definition comes with a body of commentary, some of which can be found at probonoinst.org. We ask firms that report their pro bono numbers to The American Lawyer to follow the PBI rules with the following exceptions:

We do not include pro bono hours by summer associates or paralegals.

We understand that in a limited number of cases, firms will seek court-awarded legal fees. We ask that at the beginning of cases where such fee applications may be possible, firms commit to donate their fees to legal service organizations, to their own charitable foundations, or into an earmarked firm account to cover pro bono expenses. If a firm does not make that commitment, we ask that hours on these cases not be reported to us as pro bono work. This is in line with pro bono principles announced by the Association of the Bar of the City of New York.

We ask that firms interpret strictly the rules governing pro bono activities for well-endowed nonprofit organizations, such as human rights, animal rights and cultural institutions. Work that furthers programs that address the needs of poor people or protects civil or public rights qualifies as pro bono for these purposes. Work that organizations could otherwise pay for that does not address those goals does not qualify. The work may be worth doing -- we have high regard for symphonies, art museums and humane shelters -- but it doesn't count as pro bono. Please don't include it in the number you report to us.

We underline PBI's decision not to count hours spent on board service for nonprofits or general bar activities unrelated to performing legal services for poor persons or fulfilling civil or public rights.

We have tried to keep this simple and have kept our exceptions to a minimum. Undoubtedly there will be further modifications in the coming years as PBI and The American Lawyer gain wisdom. There are several definitional issues that PBI is confronting, and we await the results of its work, reserving the right to disagree. For one thing, at some point we expect that the PBI drafters will do better than the phrase "persons of limited means." On its face, who doesn't meet that test? We'd prefer something more objective, such as "income pegged to 200 percent of federal poverty guidelines."

Because we want to promote understanding -- and compliance -- next year we will ask the leaders of the Am Law 200 firms to sign off on the pro bono numbers that their firms report. And, as always, we will encourage them to do a bit more pro bono work. The need is great, and the benefits -- to the clients, the firms and the profession -- are enormous.