

Transactional Opportunities for Pro Bono Attorneys in CED

By Edward W. De Barbieri & Anneliese Gryta

I. Introduction

While litigation attorneys interested in doing pro bono work tend to have a variety of matters to choose from, transactional attorneys typically have less opportunity to do pro bono work in an area of their expertise. Nevertheless, there are many ways transactional attorneys can use their skills to represent clients on a volunteer basis. In fact, opportunities for transactional pro bono matters in community economic development are growing.

This article highlights ways firms and corporate general counsel officers are partnering with legal service providers to involve transactional attorneys in pro bono CED projects. It also introduces some particular substantive matters where creative solutions are being crafted for complex issues. These issues include creating and retaining jobs through worker cooperative business forms, and small business development.

Strategies for involving transactional attorneys in pro bono work

Firm lawyers have worked on a broad range of CED projects over many years. Organizations like Brooklyn Legal Services Corporation A (an affiliate of Legal Services NYC), Insight Center for Community Economic Development in California, and Lawyers Alliance for New York and other long-standing nonprofit CED practices have provided opportunities for firm lawyers to volunteer service on many matters, including the following: childcare, health centers, charter school, all sorts of diverse social service programs, community benefits agreements, as well as corporate, regulatory, licensing and financing issues.

Externship and individual firm fellowship programs are two ways firms are committing attorneys to pro bono work. In an externship program, associates with several years of experience spend two to four months working as staff attorneys for non-profit legal services providers. If needed, these externs are trained in substantive issue areas and begin to represent clients, generally following a conflicts check with their firm. Often these externs are able to continue representations following the end of their externship, provided the matter is still ongoing.

While many firms place externs, some firms have created specific fellowships allowing associates to work full-time with legal services organizations. These fellowships provide dedicated resources to more senior associates to spend time working at legal services providers that have expressed a need and capacity to take on full-time firm fellows. Firms choosing to create internal fellowship programs can complement their externship programs by having experienced attorneys contribute time to legal services providers greatly in need of expertise in a variety of CED areas.

Another opportunity to involve transactional attorneys is through forming partnerships with post-graduate public interest law fellowships. Post-graduate public interest law fellowships, typically funded by law firms, corporations, bar foundations, or other interested individuals, tend to focus on a particular issue or community. These fellowship projects have the potential to generate

transactional pro bono opportunities for firm sponsors, corporate counsel, or other interested CED attorneys. Equal Justice Works, Skadden, and other similar fellowships present the opportunity for firms to fund innovative transactional projects that will eventually lead to increased pro bono opportunities in transactional work.

Given the current economic crisis, deferred associates are an additional source of talent and expertise that can contribute to CED projects. Even though deferred associates may not have experience working with community groups, they often have a unique awareness and understanding that can be crucial in representing clients engaged in activities to support low-income, immigrant and other vulnerable populations. In many cases where language barriers are an issue, attorneys can often offer language skills to the legal services they provide.

Although there are efforts to expand the types of CED matters available to transactional attorneys, it is clear that many successful strategies already exist for involving transactional lawyers in pro bono matters. The most common of these transactional matters include incorporating nonprofit corporations, seeking federal income tax exemption, advising on lease, or other real estate matters, and general compliance issues. Below are a few examples of successful pro bono opportunities for transactional attorneys.

II. Successful pro bono partnerships for transactional attorneys

Worker Cooperatives: an Alternative Democratic Business Form

With the decline in the economy and increase in unemployment, job creation and retention strategies are vital for all workers, especially in low-wage and immigrant communities. These populations are the most vulnerable because they tend to have nontraditional employment. Workers in service industries in particular are at risk of becoming victims of abuse by unscrupulous employers.

In these instances, vulnerable workers consider alternative business structures to allow for increased autonomy and asset-building. Models for worker ownership include more well-known and readily accepted strategies, such as Employee Stock Ownership Plans (ESOPs), which provide tax favored treatment when an owner decides sell a business to its employees. There are also worker cooperative (“Co-op”) structures that may be formed under state Co-op corporation or limited liability company laws.

Recently, CED attorneys have turned to creative worker ownership strategies for the very low-wage, and immigrant populations most at risk in the economy. Examples of these types of cooperative ownership structures have been developed in the Bay Area of Northern California in the housecleaning industry, as well as in areas of high poverty or new immigrant arrivals in New York’s South Bronx, or Sunset Park, Brooklyn.

Because of the charitable activities involved in the creation of these Co-ops, there tends to be an exempt entity providing support in the form of professional development staff, including community organizers and/or attorneys. Transactional attorneys play a critical role in

incorporating these not-for-profit entities, applying for federal tax exemption, and advising entities on which business activities qualify for exemption.

Co-ops typically are not able to avail of federal income tax exemption under section 501(c)(3) of the Internal Revenue Code since they have a business purpose and benefit a defined group of people. Co-ops do, however, have other tax advantages. First, Subchapter T of the Internal Revenue Code allows Co-ops to treat as exempt income from so-called “patronage” activity, or trading done with a user or producer of the goods or services sold by the Co-op. The theory behind this exemption is that income generated from sales with Co-op members is internal since co-op members are also owners, and therefore not a taxable event.

Second, there may be other federal income tax exemptions under section 501(c) of the Internal Revenue Code depending on the exact type of Co-op and how it operates. In addition, Co-ops that form as LLCs are able to take advantage of “pass through” taxation, while maintaining democratic decision-making structures and equal ownership that are key principles of Co-op development.

Transactional pro bono attorneys can contribute to worker Co-op development by representing organizations on a variety of start-up matters, including advising on selecting a corporate entity structure, educating clients about various cooperative corporation laws (or LLC options), which vary by state, drafting organizational and governance documents, and advising on other small business issues like capitalization, insurance, applicable licenses, and others.

Transactional Attorneys Incorporate Women’s Housecleaning Cooperative in Brooklyn

In 2009, a worker cooperative was formed with the assistance of transactional pro bono attorneys in Brooklyn. Attorneys and law students from a law firm, not-for-profit legal service provider, and a law school CED clinic formed a legal team to represent a women’s housecleaning Co-op. This team included staff attorneys from the Community Development Project of the Urban Justice Center, attorneys from a large New York firm, and clinical faculty and law students from a law school CED clinic. The partnership of legal professionals combined their efforts to represent around 25, mostly Latina, women members in creating a cooperative to share in marketing and administrative work.

Si Se Puede! Women’s Cooperative, We Can Do It! Inc. was incorporated in New York State in Spring 2009. Based in Sunset Park, Brooklyn, the members of Si Se Puede! are each entitled to one membership certificate and to one vote on governance decisions. Since the organization is non-stock, governance is based on membership, not capital contribution.

The members of Si Se Puede! share a phone line that customers can call to obtain cleaning services. As new clients call the customer line, the co-op passes along the customer’s name to the next co-op member on a list. Each co-op member is responsible for contributing a specific number of service hours to the co-op in exchange for being a member.

Si Se Puede! relied heavily on the administrative and organizational support of a nonprofit social service provider called the Center for Family Life. The Center was key in facilitating the

creation of the cooperative, staffing the co-op phone line, and in engaging professional resources, including pro bono counsel.

Pro bono transactional attorneys played key roles in supporting the organizing work of the Center by providing educational materials, often in English and Spanish, and presentations to co-op members. These educational materials and presentations included substantive issues such as New York State Co-op corporations laws, governance and operations issues, and compliance with federal, state and local laws. Attorneys were also crucial in drafting incorporation documents, bylaws and other cooperative documents that Si Se Puede! uses in its operations.

As described above, Si Se Puede! is a primarily a marketing Co-op, not a worker Co-op in the sense that the Co-op is providing a good or service. However, worker Co-ops provide much greater roles for lawyers in helping worker-owners structure governance and finances. This is especially true if investors or other incubating or support organizations are involved. Examples of these types of worker co-ops exist in many parts of the country and are worth exploring further for attorneys interested in taking on co-ops as part of their CED work.

Leveraging Corporate Counsel pro bono on CED projects

Legal services providers are increasingly creating pro bono partnerships with corporate legal departments in order to meet the needs of low income entrepreneurs and non-profit clients that cannot afford legal assistance. Legal services providers are realizing that corporate counsel is uniquely positioned to provide targeted assistance to each of these groups. At the same time, corporations are realizing the benefits of giving back to the community through pro bono projects.

There are many reasons why these projects are a win-win. Many civil legal aid providers wish to provide assistance to the low income entrepreneurs in their client population but cannot due to high volumes of casework in traditional assistance areas. On the other hand, corporate counsel may be reluctant to take on traditional pro bono matters like divorce or custody cases, due to a lack of expertise in the subject matter. And it's no secret that these types of cases can blow up into quite substantial time commitments. Also, while many big firms provide malpractice coverage for pro bono cases, some corporate legal departments do not, so it can be essential to partner with a legal services provider who does.

Legal aid programs are often willing to work with a corporate legal department to create a signature transactional pro bono project. Legal Aid of Western Ohio (LAWO), based in Toledo and Dayton, provides a good example of one such corporate pro bono partnership. The corporate legal department of Marathon Oil approached LAWO with a desire for pro bono work in its area of expertise. LAWO responded by creating a Small Business Development Clinic in downtown Toledo. Less than an hour from Detroit, Toledo has been hit hard by the recession and many out of work Toledoans are responding to the crisis by starting their own businesses or venturing into self-employment.

In order to connect to small business clients, LAWO called on Assets Toledo, an organization providing training to urban entrepreneurs. LAWO screened graduates of this program for legal problems and income eligibility before pairing them with Marathon attorneys in a brief-advice clinical setting. It is worth noting that in some states, initial brief-advice meetings obviate the need to clear conflicts. However, before engaging in brief-advice work, attorneys should consult their state's ethics rules on pro bono representations.

Marathon attorneys were accorded a great degree of flexibility over the types of cases they saw, and were allowed to select their own clients from a pool of applicants seeking pro bono assistance. LAWO provided attorney participants with extensive information about clients in advance of the clinic in case they wished to do any additional preparation. Attorneys were also given the choice to take on matters for extended service. LAWO's screening measures ensured that attorneys met with businesses that not only could not afford legal services, but were established enough that they would benefit from concrete advice.

The attorneys reported a high level of satisfaction with the program, as it allowed them to use their everyday expertise in contract, employment and corporate law to achieve immediate impact in the community. Clients are left empowered and enriched. One attorney participant was amazed that he would be able to help a small business stay afloat with a ten minute call to a landlord. Business pro bono matters can often be discrete, defined tasks that are relatively simple for the corporate attorney used to working on large-scale transactions.

The benefits of corporate pro bono collaborations run in many directions. For example, corporate legal departments may benefit from opportunities for free CLE. Future clinics at LAWO will involve a CLE component. Philadelphia VIP holds a yearly Corporate Pro Bono Day, which allows corporate pro bono attorneys to conduct "Legal Check-Ups" on small businesses after a morning CLE session. Some states, such as New York, even allow attorneys to earn CLE credits for completing pro bono hours.

Plus, the leadership of a corporate legal department can have lasting benefit in the community. As a result of Marathon Oil's participation, other Toledo firms decided to get involved in the Small Business Development Clinic.

Corporate counsel are also finding pro bono projects designed around non-profit assistance. Programs across the country work with corporate counsel on non-profit CED matters. Community Legal Resources in Detroit exists solely to screen and place non-profits with corporate counsel for year-long attorney-client relationships. LAWO also places non-profit clients with corporate pro bono counsel. Texas C-Bar is another organization with a well-established non-profit pro bono program. These pairings ensure that important social service providers, educational programs and arts organizations continue to strengthen the community.

Through projects like these, a small investment of time on the part of corporate counsel can have a large-scale impact on the community.

IV. Conclusion

Law firms and corporate counsel offices have several opportunities to involve transactional attorneys in meaningful pro bono work. The examples given above provide very brief summaries of some innovative projects worthy of volunteer attorney time and expertise. As innovative CED projects continue to address meaningful issues facing families and communities, transactional attorneys have the opportunity to get involved and create positive change.

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