Setting Up and Running a Pro Bono Program in a Government Office: The NLRB's Experience

By

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Clearance Granted
In response to President Clinton’s 1996 Executive Order (E.O. 12988) urging all federal agencies to develop programs to encourage and facilitate pro bono legal and volunteer service by government employees, most federal agencies are now considering how to best structure their programs. The National Labor Relations Board ("NLRB", "the Board" or "the agency") established its program two years ago. As an independent federal agency with about 2,000 personnel, the Board employs several hundred lawyers in over 30 regional offices and at its headquarters offices. The following article describes the Board’s program and offers suggestions that hopefully will be useful to others in setting up similar programs for their agencies.

Policy Statement

Most agencies that have established pro bono programs have started by drafting, and then debating and revising, a detailed policy statement outlining their program. In drafting the NLRB’s pro bono policy statement, the Board relied extensively on the Pro Bono and Volunteer Program Policy Statement of the U.S. Department of Justice. The Board originally did not include a few central features of Justice’s statement (those sections addressing the use of employee time and office equipment), but experience taught the agency that issues concerning use of employee time and government resources must be addressed in the statement. The Board quickly modified its policy statement to expressly address those concerns. 

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At a minimum, a formal policy statement should pull together all applicable statutes and regulations governing the kinds of cases government lawyers may handle and the authorization they need from their agency before taking on a pro bono case. It also should set forth the agency’s screening procedure for potential conflicts of interest, should clearly state the agency’s leave practices for lawyers handling pro bono matters during business hours, and should set forth a de minimis use rule for agency equipment and supplies. Failure to adopt de minimis use of office equipment and materials rules and flexible work hour arrangements can expose agency employees to unwarranted and time-consuming internal investigations by agency officials for alleged misuse of resources raised by contentious opposing counsel. One of the agency’s volunteer lawyers found this out the hard way when opposing counsel in the custody case she was handling contacted the Board’s inspector general and accused her of misusing government resources. While the volunteer lawyer had scrupulously avoided any misconduct (and was quickly cleared of the charges), the case highlights the need for agencies to adopt and publicize policy guidelines for volunteer government lawyers.

Electronic Bulletin Board

For a pro bono legal program to be successful, volunteer government lawyers must be made aware of the agency’s program and informed about volunteer opportunities. By far the most efficient and effective method for communicating with NLRB employees about pro bono legal and volunteer opportunities is through the agency’s Pro Bono Legal and Volunteer Program electronic bulletin board, which can be accessed through the agency’s e-mail system. Instead of sending urgent (and often annoying) announcements and reminders directly to all employees on the Board’s e-mail system, the agency’s less intrusive electronic bulletin board system is used. The agency’s pro bono bulletin board is one of a dozen electronic bulletin boards maintained by the agency to keep employees apprised of recent agency decisions, new policy directives, and important public information announcements.

Included in NLRB’s electronic bulletin board are the following types of entries:

- the program’s controlling documents (policy statement, applicable federal personnel statutes and regulations, agency directives, and ethics requirements);
- a directory of pro bono providers published by the D.C. Bar’s Public Service Activities Corporation (“PSAC”), (including descriptive information, contacts and useful telephone numbers);
- form files containing sample pleadings for landlord/tenant and family law cases, retainer agreements, and in forma pauperis pleadings;
- current case listings from several clinics identifying and describing representational needs and opportunities; and
- descriptive materials on training programs sponsored by pro bono providers to train volunteer attorneys to handle specific types of cases or to teach others to handle these cases.

This bulletin board can be pulled up on every employee’s computer screen, can be viewed with complete anonymity (and without commitment), and is easily updated and maintained by agency program officials. Pro bono providers are often willing to send their list of cases electronically (by disk or e-mail) for easy posting on the bulletin board. Because it can be easily updated, urgent requests for volunteer legal assistance are posted electronically and made available to all agency lawyers shortly after they are received.

In order to promote the use of the bulletin board as a ready reference, the bulletin board is mentioned in all pro bono articles pub-
lished in the Board’s monthly newsletter to all employees, and is promoted in materials distributed concerning agency-sponsored events.

When an NLRB volunteer lawyer finds a case that interests him or her, he or she can contact the referring program directly, or work through the agency’s Program Manager to learn more about the case and to determine whether it is still available. If the volunteer lawyer wants to take on the case, the lawyer simply writes a brief, two or three sentence memo to the lawyer’s immediate supervisor asking for permission to handle the case. As part of the approval process, a conflicts check will be run by the Board’s designated official responsible for checking for potential conflicts of interest. Once agency approval has been given, the volunteer may then handle the case.

**Clinic Night Program**

Agencies interested in promoting their pro bono programs will find a wealth of information and assistance available from the American Bar Association’s Center for Pro Bono and state and local bar associations. For example, in Washington, D.C., the Bar’s Public Service Activities Corporation runs a weekly Clinic Night program which has referred most of the cases handled by volunteer Board lawyers.

 Twice a year, a half dozen to a dozen NLRB lawyers meet with clients, pre-screened by the D.C. Bar Clinic Night program (for government conflicts—i.e., public benefit, federal employment, and criminal cases), who need help with consumer, contract, family, landlord/tenant, and other issues. Most clients referred through this clinic have come from other clinics that were not able to place the client with a volunteer lawyer. Through this clinic alone, more than 20 NLRB lawyers have already resolved several contract disputes, ensured full visitation for their clients in child custody matters, and resolved numerous public and private landlord/tenant disputes resulting in reduced rent balances and habitable housing for their individual clients. The D.C. Bar’s Clinic Night program serves as an exceptional organizational tool and a rallying point to promote the Board’s pro bono program.

In addition to sponsoring training sessions on matters most frequently handled by volunteer lawyers, the D.C. Bar provides experienced volunteer mentors who meet with and work with NLRB volunteer lawyers. The D.C. Bar also provides volunteer process servers, court reporters, excellent forms (both hard copy and digital) and detailed instructional materials. Most importantly, the D.C. Bar provides the necessary malpractice insurance for the agency’s volunteer lawyers.

**Promoting the Program**

Another way that the NLRB promotes the participation of its lawyers handling pro bono cases is through a brown bag lunch program. Representatives from well-established (and insured) local clinic programs come to the Board to discuss their programs over lunch with agency lawyers. Invites include the Washington Legal Clinic for the Homeless, the Legal Network, the Clinic for the Elderly and the Legal Aid Society. The lunches allow these organizations to promote their programs by describing the type of cases they refer and the resources they provide to volunteer lawyers. In addition to promoting particular programs, sponsoring and promoting these lunch get-togethers also provides another opportunity to advertise the existence of the agency’s Pro Bono Legal and Volunteer Program and encourages more lawyers to become involved.

**Conflicts Check**

A system for checking potential conflicts of interest should be an essential component of all government-sponsored pro bono programs. Before a Board lawyer can accept a pro bono case, the case must be screened to determine whether a conflict exists. The NLRB, like most federal agencies, has a designated agency ethics official who checks for potential conflicts of interest and statutory prohibitions and restrictions. The NLRB’s computerized case tracking system makes it reasonably easy to identify possible conflicts of interest that need to be addressed by agency ethics officials. The computerized system provides a database of parties before the agency that can be cross-checked against the parties to a prospective pro bono case to ensure that no conflicts exist. Cases referred by the Clinic Night program are pre-screened for ethics conflicts, but lawyers taking cases from other clinics (identified on the agency’s electronic bulletin board or from other sources) must run the case by the agency’s ethics officer and obtain approval from the lawyer’s supervisor before agreeing to handle the case.

**Recognition Ceremony**

Lawyers who volunteer their time and take on pro bono cases should be acknowledged and recognized. The Department of Justice has made a strong effort to recognize the contribution of its employees who provide pro bono legal representation. These individuals are acknowledged at receptions, through agency awards and in articles in the DOJ’s monthly newsletter. Not only do these activities reward the participant, but they may spur others to get involved. The NLRB plans to follow Justice’s model which will ensure that employees who contribute in this way will be recognized and appreciated.

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Conclusion

With President Clinton’s executive order on pro bono legal and volunteer service, federal agencies now have a mandate to make it easier for committed public servants to give even more to their communities. In addition to providing important and necessary legal assistance to indigent clients, volunteer lawyers receive excellent training in interviewing and working with clients, as well as a chance to appear in court and to try jury and bench trials. With careful planning, a sensible but complete policy statement, and a minimal expenditure of agency time and resources, agencies can identify and facilitate valuable pro bono and volunteer opportunities for their employees—a great way to attract and retain committed public servants.

Endnotes

1 Copies of policy statements adopted by both Justice and the NLRB, and those of other federal agencies, can be obtained by contacting the author at (202) 273-3745 or by e-mail at dcoll PhD@nlrb.gov.
2 American Bar Association’s Center for Pro Bono is located at 541 N. Fairbanks Court, Chicago, IL 60611, 312-988-5769.