Pro Bono Counsel – a View from the Bench

By Hon. Elizabeth S. Stong

“Good morning! Welcome to bankruptcy court. I’m glad you’re here.” That’s how I often greet pro se debtors who are appearing in my courtroom, the U.S. Bankruptcy Court for the Eastern District of New York, in Brooklyn, nervous and concerned that something has gone wrong in their case. Sometimes I also explain that bankruptcy relief has deep roots in the U.S. legal system, and that it is provided for in the United States Constitution where the Founders empowered Congress in Article I, Section 8 to “establish . . . uniform Laws on the subject of Bankruptcies.” Then as now, a federal bankruptcy law was viewed as necessary to provide relief and a “fresh start” to the “honest but unfortunate debtor” who is overwhelmed by debt.

More than one million bankruptcy cases were filed in the United States last year, and each one might have led to a discharge for the debtor and, where there were assets, a distribution to creditors. But in tens of thousands of those cases, the debtor filed the case without the assistance of a lawyer. And many of those cases ended in a dismissal for failure to comply with one of the Bankruptcy Code’s procedural or administrative requirements. The prospect of relief for the debtor, and perhaps a distribution to creditors, was lost.

How can a pro bono lawyer help? Even the decision whether to file for bankruptcy requires thoughtful legal advice. In one case, “Jane” (not her real name), a senior citizen living in Queens, had lived in her home for many years and built up a good deal of equity. After a serious illness, she faced large medical and other bills, and also the need to take early retirement. Jane consulted with a non-lawyer bankruptcy
petition preparer and filed a Chapter 7 bankruptcy case – only to discover that because she had equity, her home would be sold to pay her creditors.

A pro bono lawyer saved the day – and Jane’s home too. He worked with Jane to restructure her pension in a more favorable way and helped her to put together an affordable refinancing that allowed her to pay back her creditors. He also applied to the bankruptcy court to dismiss the case. At the hearing, he explained that Jane never would have filed a Chapter 7 liquidation case if she had understood the consequences. Misinformation nearly caused Jane to lose her home, and excellent lawyering by a dedicated pro bono lawyer rescued her.

In another situation, Nora (not her real name), a domestic violence survivor, filed a Chapter 7 bankruptcy case. Her ex-boyfriend had taken her savings, mortgaged her home, run up balances on her credit cards, and damaged her credit. Finally, she got up the courage to walk away and start afresh. With the help of a bankruptcy attorney, she filed a Chapter 7 case.

But the trustee in the case did not agree that Nora was entitled to a discharge of her debt. When Nora walked away, she left behind most of her documents and records – information that was important to the trustee’s administration of her case. The trustee brought an action to deny Nora a discharge, and Nora didn’t have any funds left to pay her lawyer to represent her in that action. But he stayed in as pro bono counsel and represented her at trial. Nora testified about her reasons for not having the missing financial records. It’s difficult to imagine how she could have made her case without that help. Nora prevailed in that action and received her bankruptcy discharge and a fresh start, thanks to the efforts of that lawyer.
Often the benefits of a pro bono lawyer in a bankruptcy case are never seen in the courtroom. Many pro bono programs that serve our court, including the New York City Bankruptcy Assistance Project led by Bill Krandsorf, the City Bar Justice Center’s Consumer Bankruptcy Pro Bono Project, headed by John McManus, and the Brooklyn Bar Association Volunteer Lawyer Project, directed by Jeannie Costello, assist prospective debtors with deciding whether to file a bankruptcy case, collecting the required information, and preparing the bankruptcy petition. If the case presents no issues that require judicial intervention, then three to four months after the case begins, a discharge will issue and the debtor will have a fresh start. And as with Jane and Nora, it is not an exaggeration to say that the lives of the debtor and the debtor’s family will be changed forever.

So I continue to greet apprehensive pro se debtors with a smile, a big “good morning,” and a welcome to our court – often every week, sometimes every day. When it is possible to refer someone who needs a lawyer to a pro bono program that can connect them to a lawyer and help assure their access to justice, it is a very good morning indeed.
What is ABA Free Legal Answers?
Sponsored by the ABA Standing Committee on Pro Bono and Public Service, ABAFreeLegalAnswers.org is an on-line virtual legal clinic through which income-eligible clients can post civil legal services questions to be answered by pro bono attorneys from their state. Currently, 42 jurisdictions are committed to participate. Of those jurisdictions, 39 are connected to the site in various stages of access by clients, pro bono attorneys and/or state administrators.

Over 61,500 Client Questions Have Been Submitted to ABA Free Legal Answers Since 2016 Launch
Percentage of Questions Submitted by Category
Nearly half of all questions submitted to ABA Free Legal Answers are family law related and a quarter of all questions involve housing and consumer rights.

Number of Pro Bono Attorneys Registered by State
Over 5,700 pro bono attorneys are registered to respond to civil legal questions on ABA Free Legal Answers and just over one-third of all ABA FLA attorneys are registered on the Florida, Tennessee and Texas sites.
ABA FLA 2018 Pro Bono Leader Recognition

- As part of the first year of what will be an annual ABA FLA national recognition campaign, 73 attorneys were recognized for answering 50 or more civil legal questions on ABA FLA in 2018 and 12 law firms and other legal groups were recognized for each collectively answering 75 or more questions in 2018. All recipients were provided with a letter from the Committee, a color certificate signed by Buck Lewis and two versions of a digital ABA Pro Bono Leader badge that can be used by the recipient in their signature block or website. A list of all ABA FLA 2018 Pro Bono Leaders can be found here.

- An article announcing the recognition campaign and interview conducted by the Center for Pro Bono with the attorney who answered the most questions in 2018 is available on the FJE website here.

Website Development

- All state sites have been updated with the January 2019 federal poverty guidelines used to determine income eligibility for site registration.

- In an effort to provide users with legal resources while they are waiting for an attorney to submit an answer to their legal question, a link to each state’s legal resources page has been added to an email sent to all users whose questions have been sitting in the available questions queue for over 10 days.

Disaster Relief

- On January 16, 2019, the North Carolina Supreme Court order authorizing out of state attorneys to temporarily practice law to assist hurricane survivors expired. As a result, the accounts of the 41 out-of-state attorneys who registered on the North Carolina site for this purpose had their accounts disabled on the North Carolina site. The North Carolina state administrator has expressed her appreciation to all the out-of-state attorneys who played such a vital role in the disaster recovery process of many North Carolina residents over the last four months.

- ABA FLA continues to have an increased income/asset maximum to allow more South Carolina, North Carolina and Virginia residents to access civil legal advice and get assistance with post-hurricane issues from pro bono attorneys licensed in those states. Since Hurricane Florence made landfall on September 14, 2018, 1600 additional questions were submitted on the North Carolina, South Carolina and Virginia sites combined.

- On January 16, 2019, upon request of the Florida state administrator, the alert to attorneys encouraging them to answer hurricane-specific questions was removed. The Florida site has received 802 volunteer attorney registrations, the highest nationwide. Of those registrations, 36 registered since Hurricane Michael made landfall on October 10, 2018 and 387 questions were submitted by site users since that time.

- The ABA FLA national administrator is currently working with the Alaska state administrator to explore options to utilize ABA FLA as a relief tool for survivors of Alaska’s 2018 earthquake.

- Based on experience managing the ABA FLA site, the national administrator has been advising legal services partners on options to use technology as a disaster relief tool.

Outreach and Fundraising Efforts

- Copies of the ABA Free Legal Answers 2018 Summary Report were professionally bound and disseminated at the ABA Midyear meeting in January as well as to project partners and donors.

- ABA staff continues to explore ways to highlight ABA FLA on the newly revised ABA Center for Pro Bono, Center for Public Interest and FLA pages of the ABA website.
In cooperation with ABA FJE, fundraising efforts with current donors are ongoing and new bases of support are being solicited from law firms and corporations with significant numbers of registered volunteer attorneys. The Committee's ABA FLA Working Group continues to explore additional fundraising opportunities.
Spotlight on Business Law Pro Bono: How Business Law Lawyers Contribute to Economic Justice

By Kimberly Lowe

"Pro bono service has to become as much a part of our substantive efforts as corporate law, tax law, real estate law and all of the other aspects of law that form part of our business law practice." — Joseph Mulaney, General Counsel of Gillette Company

Business law lawyers often feel challenged to provide pro bono legal services within their legal practice area. In an effort to increase the number of pro bono volunteers, many pro bono organizations and professionals claim (and in some instances proclaim) how much business law lawyers grow when they "step out of their comfort zone" and tackle litigation-based pro bono cases. Most business law lawyers (myself included) take offense to the suggestion that we somehow need to grow. Instead of encouraging a business law lawyer to grow experientially through litigation based pro bono, we should encourage each business law lawyer to use his or her legal skills to meet the ethical obligations of ABA Model Rule 6.3, which encourages every lawyer to provide pro bono legal services to "persons of limited means or ... charitable, religious, civic, community, governmental, and educational organizations in matters which are designed primarily to address the needs of persons of limited means." A business law lawyer need not depart from his or her practice area in order to meet this obligation. Assisting a client of limited means in obtaining economic justice (or a nonprofit organization assisting their clients to do the same) is just as laudable as bartending on behalf of a client of limited means in a court of law.

Put most simply, economic justice involves the laws and institutions that determine how each person earns a living, enters into contracts, exchanges goods and services with others, and, otherwise produces an independent material foundation for his or her economic sustenance. While the economic justice system includes multiple interfaces with the law, very few of these encuentras involve the court system. Who is better equipped than a highly-trained business law lawyer to assist persons of limited means in navigating and succeeding in the economic justice system? The business law section created its own pro bono committee in 1993.

While business law lawyers are well equipped to help pro bono clients navigate the economic justice system, finding eligible pro bono clients poses a challenge. There are no courthouse steps where people of limited means line up to be told the economic justice system. Connecting business law lawyers who want to provide pro bono legal services within the business law context with potential pro bono clients is less direct than a self-help desk at the court house.

In keeping with Model Rule 6.3, in his 2002 law review article entitled "Fulfilling the Promise of Business Law Pro Bono," James Baillie, a one-time chair of the ABA Standing Committee on Lawyers' Public Service Responsibility and the Business Law Section's Pro Bono Committee, outlined a path for business law lawyers to provide business law pro bono. Mr.Baillie generally defined business law pro bono to include any legal services in the broad category of business law (as contrasted with litigation) provided to any person or entities that need legal services on a pro bono basis. Mr. Baillie stated that "the recipients of these services can, for the most part, be divided into two broad categories: nonprofits and microenterprises."

Since business law pro bono is by definition provided to persons or entities that are participating in the stream of commerce, one critical component of business law pro bono is making sure the clients being served actually cannot afford to pay for the legal services provided. Given the diversity of the lawyers in the legal profession and the clients served, one lawyer's pro bono client could be another lawyer's paying client. Means testing business law pro bono clients is just as important as means testing any other pro bono client.

Determining the personal economic means of an individual who desires to start a microenterprise, or who needs assistance with a business law issue related to an existing microenterprise, is fairly straightforward. The same can actually be said for nonprofit organizations. According to Marica Levy, the Executive Director of Pro Bono Partnerships, "in evaluating whether we can represent a nonprofit that otherwise meets our mission-based criteria, we look at whether the organization can afford legal representation without significantly impacting their resources for services. It is a means test, but one with flexibility based on the totality of the circumstances, including whether they have a paid relationship with a lawyer or law firm."

While the theoretical and professionalism aspects of business law pro bono are critical, what really matters is the impact of business law pro bono legal services and how a business lawyer can make a difference in the lives of people of limited means. Gary Connelly, Pro Bono Counsel for Crowley Fleck PLLP, a regional firm with offices in Montana, North Dakota and Wyoming, said it best. "As far as the impact, we often get feedback from the organizations on the value of our services to their clients, but not much from the clients of those organizations directly. I just spoke with one of our senior partners who has done considerable work with Turntable, especially negotiating a lease from the county for an overnight shelter for homeless teens. When I asked him about the impact of that work on him, he just mentioned that knowing there were now beds (where there were none before) for teens who would otherwise be under the bridges, vulnerable to sexual predators, was a source of pride and great satisfaction to him."

Below are three pro bono client stories that show how business law lawyers have helped people struggling to participate in the market economy obtain economic justice—or at least access to economic justice—through direct legal services to people and or nonprofit organizations of limited means that provide services to individuals of limited means.
While President of the Hennepin County Bar Association in 2015 and 2016, Kim blogged regularly with random thoughts about her random thoughts. These blogs are being “republished” here in the order they appeared during Kim’s bar presidency. Going forward more Deep (or Random Thoughts) by Kim Lowe may or may not be forthcoming. It all depends on what thoughts pop into Kim’s head (or under her high school hair) during the course of the day.

R.E.S.P.E.C.T.
Posted By HCBA President Kimberly A. Lowe, Monday, November 2, 2015

Last week was the ABA Pro Bono Week; a week-long event where pro bono is encouraged and celebrated. Now, it goes without saying that I am a little bit of a pro bono junkie. But why am I a pro bono junkie? When asked why I provide pro bono legal services, my answer is not exactly nuanced – pro bono makes me feel good about what I do as a business law lawyer. This is basically a “because I said so” answer. It works for me.

But if I think about songs that come to mind when I reflect on why I do pro bono, my canned answer above starts to take on a much more nuanced flavor.

One song that immediately stands out for me is Aretha Franklin’s Respect. When I was a kid growing up in the 1970s and ‘80s, and I told people I wanted to be a lawyer, without hesitation, those people would either laugh into lawyer jokes, tell me there were too many lawyers in the world or self-importantly mis-quote Shakespeare. Doing pro bono makes my choice to be a lawyer a valid, community-serving choice. As I said, free association of songs often allows us to reconsider why we make the choices we make. Basically, pro bono allows me to demand RESPECT!

As I try to take the edge off my first song choice, Bill Wither’s Lean on Me and Dionne Warwick’s That’s What Friends are For come to mind. But these songs continue the theme of bolstering my decision to do pro bono as a choice to feel good about myself. I vividly recall my college psychology/sociology/philosophy classes where my professors would proclaim there is no such thing as altruism. Everything we do as a human being is self-motivated. Is the motivation bad if it the end result is good?

So after contemplating songs reflective of my motivation, Shakespeare, and the social sciences, is there really one right answer as to why a lawyer does pro bono? I think the answer is still a personal one, “Because . . .”

But this whole discussion then leads to two more questions: Why does the legal profession require/strongly encourage its licensed participants to provide pro bono legal services? And why do some lawyers decide not do pro bono?

Your thoughts are appreciated on my questions or my reasons.