

*“Ask not what you can do for pro bono,  
but what pro bono can do for you.”*

HBA Litigation Section Luncheon  
October 17, 2018

# Pro Bono Representation in the Trial Courts and On Appeal

## Panelists



The Honorable Justice William J. Boyce  
Fourteenth Court of Appeals in Houston

The Honorable Mike Engelhart  
151st Judicial District Court of Harris County

Moderated by Whitney Brieck, BoyarMiller



# Pro Bono Representation in the Trial Courts and On Appeal

## Topics to Cover

1. Why Pro Bono?
2. Perspective from the Civil District Courts
3. Perspective from the Courts of Appeals
4. Common Concerns
5. Get Involved: At Trial and On Appeal

# Why Pro Bono?

6 million Texans qualify for legal aid, but the Texas legal community meets only 20% of their need

“A lawyer should render public interest legal service.

“The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, ***and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.***

***“Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer as well as the profession generally.”***

See Tex. R. Prof. Conduct Preamble



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## Why Pro Bono?

# Pro Bono College of the State Bar of Texas

Recognizes attorneys “who have far exceeded the State Bar’s aspirational pro bono goal in their efforts to address the vast unmet legal needs of the poor.”

- Eligibility
  - Lawyers: minimum 75 hours outside of normal work
  - Paralegals and law students: minimum 50 hours outside of normal work
- Qualified Pro Bono Hours
  - Direct services to the poor without fee
  - Simplifying the legal process or increasing availability and quality of services
  - Services to charitable, public interest organizations addressing needs of poor
  - Legislative, administrative, or systems advocacy provided for the poor

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## Why Pro Bono?

# Pro Bono College of the State Bar of Texas

## BENEFITS

- Certificate signed by the State Bar President and Chief Justice of the Supreme Court of Texas
- Free one-year subscription to TexasBarCLE Online library
- Recognition at State Bar Annual Meeting
- Subscription to LegalFront e-newsletter
- Reduced tuition at Annual Poverty Law Conference

*“Most important, perhaps, is the intangible benefit of knowing that you have provided access to the legal system for people who otherwise would have been denied justice.”*

# Perspective from the Civil District Courts



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# Perspective from the Civil District Courts

## Pro Se Representation



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# Perspective from the Civil District Courts HBA Litigation Section & Houston Trial Lawyers' Association

## PRO SE TRIAL COUNSEL PROGRAM

- Objectives:
  - “To provide counsel to pro se individuals on the eve of trial, thereby facilitating their access to justice and to ensure that due process rights have been preserved; and
  - “To provide participating counsel the opportunity to hone necessary skills involving client contact and interaction, as well as courtroom and trial experience.”

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# Perspective from the Civil District Courts

## HBA Litigation Section & Houston Trial Lawyers' Association

### PRO SE TRIAL COUNSEL PROGRAM

- Assignment Process:
  - HBA and HTLA notify members and give firms and counsel opportunity to sign up to be added to rolling volunteer list
  - Judge/coordinator identifies a case on the upcoming trial docket and refers pro se party to the program or pro se party can apply through worksheet
  - HBA Litigation Section Chair will provide applicant with next name on rolling volunteer list
  - Pro se party contacts the firm or counsel and firm or counsel has one week to accept or reject the representation



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# Perspective from the Civil District Courts

## Fees and Costs

- Consider waiver applications for court costs, filing fees, and deadlines
- Investigate the basis for awarding attorneys fees before seeking them
  - *Gluck v. Hadlock*, No. 02-09-00411-CV, 2011 Tex. App. LEXIS 2011, at \*13-14 (App.—Fort Worth Mar. 17, 2011, no pet.) (permitting fee award for pro bono representation)
  - *Cruz v. Van Sickle*, 452 S.W.3d 503, 523-24 (Tex. App.—Dallas 2014, pet. denied) (rejecting fee award for pro bono representation where statute authorized recovery of fees “incurred”)
  - *Brown v. Comm’n for Lawyer Discipline*, 980 S.W.2d 675, 684 (Tex. App.—San Antonio 1998, no writ) (noting fee award for pro bono representation “encourages pro bono service to the Bar”)
- What to do if you’re awarded attorney’s fees in a pro bono case
  - In the engagement letter, specify who retains such fees in the event of an award
  - Be cautious of ethical fee-splitting restrictions if anyone but the client retains the award
    - Tex. R. Prof. Conduct 5.04: A lawyer or law firm shall not share or promise to share legal fees with a non-lawyer
    - Tex. Comm. On Prof. Ethics, Op. 502: A non-profit lawyer referral agency may collect a reasonable fee earned by its referral panel attorneys without violating the Texas Disciplinary Rules of Conduct

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# Perspective from the Civil District Courts

## Successes and Failures

**Pro Bono Successes**

**(Anonymous!) Failures**

# Perspective from the Courts of Appeals



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# Perspective from the Courts of Appeals

## Appellate Pro Bono Program

**State Bar of Texas Appellate Section Pro Bono Committee +  
HBA Appellate Practice Section Pro Bono Committee**

*“The goal of the program is to match clients who are financially unable to obtain legal representation with volunteer lawyers who agree to serve without expectation of compensation for their service.”*

- **Benefits:**
  - Additional and more frequent appellate experience
  - More exposure to First and Fourteenth Courts of Appeals
  - Access to forms for engagement, motions, and other matters

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# Perspective from the Courts of Appeals

## Appellate Pro Bono Program

### PROCESS

- Pro se requests pro bono assistance on docket sheet
- Committee chair evaluates minimum criteria (income, etc.)
- Committee reviews record and recommends reject/accept
  - Committee has first opportunity to volunteer
  - Or, circulates through state-wide list-serv
  - Forms provide assistance with each stage of process

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# Perspective from the Courts of Appeals

## Appellate Pro Bono Program

### A WELCOME RECEPTION

- Process for waiving cost for filing fees, clerk and reporter's record
- Obtain any extensions to current deadlines
- Special consideration to hearing oral argument in accepted cases

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# Perspective from the Courts of Appeals Successes and Failures

**Pro Bono Successes**

**(Anonymous!) Failures**

# Common Concerns



# Common Concerns

## Subject-Matter Expertise

**Tex. R. Prof. Conduct 1.01(a): A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence, unless:**

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances



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## Common Concerns

# Subject-Matter Expertise

- Many pro bono engagements deal with specialized practices:

|                                  |                           |
|----------------------------------|---------------------------|
| Family Law                       | Tax Disputes with the IRS |
| Guardianship                     | Landlord/Tenant Disputes  |
| Estate Planning                  | Homeownership             |
| Probate                          | Consumer/Bankruptcy       |
| Social Security & Other Benefits | Immigration/Asylum        |

- How to navigate tricky subject matters:
  - Partner with groups or experts for matters involving specialized knowledge
  - Consider the Texas State Bar Pro Bono Mentor program for a guided tour
  - Many volunteer attorney programs offer substantive law and ethics training

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## Common Concerns

# Conflicts and Withdrawal

### CHECK FOR CONFLICTS

- Rule 1.06: conflicts between clients
- Rule 1.13: conflicts involving legal services, civic, charitable orgs

### CONSIDER LIMITATIONS ON WITHDRAWAL

- Rule 1.16: withdrawal for good cause, or must stay if ordered

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## Common Concerns Insurance

- Malpractice coverage through the State Bar of Texas
  - Available through approved legal services providers (i.e. HVL)
  - Both pro bono and reduced fee cases can qualify
  - Offered through Malpractice Insurance Network Exchange
- Ask your provider whether they offer malpractice insurance

# Get Involved

Pro Bono Programs



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# Get Involved Houston & Texas

|   |  |
|---|--|
| <b>Walk-In and/or Call-In Legal Advice Clinics</b><br>(One-Time or Recurring) | HVL<br>HBA Saturday Legal Advice Clinics<br>YMCA<br>Lone Star Legal Aid  |
| <b>Full-scope Litigation Advice</b>   | HVL<br>HBA Trial Counsel Program<br>HBA Appellate Counsel Program<br>ACLU<br>KIND (Kids in Need of Legal Defense)<br>Lone Star Legal Aid |
| <b>Niche Pro Bono Legal Services Providers</b>                                | Advocate Legal Senior Center Texas<br>Accountants and Lawyers for the Arts (non-profit formation, arts-related representation)           |

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# Get Involved

## Partnering Opportunities

### HOW ELSE CAN I HELP?

- Partner with in-house counsel
- Sponsor a neighborhood clinic
- Chip in during National Pro Bono Celebration Month: October!

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## Get Involved Tracking

Report on an individual and firm-wide basis, to help the State Bar track attorney pro bono service across Texas:

[probono@texasbar.com](mailto:probono@texasbar.com)

QUESTIONS?

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