

In it together

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Our third annual pro bono survey asks what steps firms are taking to join the pro bono system. By Rosie Cresswell



If the pro bono coordinator of a law firm in Colombia isn't quick enough, another firm snaps up the latest project advertised by the country's pro bono clearing house before they've even had time to read the e-mail - a strong sign of the enthusiasm for pro bono work among Colombian lawyers today.

The Fundación Pro Bono, set up in May last year, is the result of a team effort among firms to galvanise lawyers into providing free legal services to those who can't afford them, in a legal market that previously lacked the necessary focus and support structure for such work to be done in an organised, regular fashion.

The founders met up recently to discuss the progress of the clearing house, which started sending out cases in October, during its first six months of operation. So far, so good: in that time it has found lawyers for 80 cases, well on target for its goal of 200 by 2011 which it promised to its benefactor, the Tinker Foundation. On top of that, its membership has grown from 15 to 20 law firms.

"It is working beautifully," says [Gómez-Pinzón Zuleta Abogados SA's](#) Eduardo Zuleta of the clearing house, the existence of which is to a large part down to his colleague Paula Samper, who helped found it. "Pro bono work in firms has grown tremendously. We basically had nothing, now we have something very interesting, with all firms working together. There is a lot of enthusiasm in getting the projects - you see firms competing. In terms of billed hours, enthusiasm, quality of work, I think law firms have improved a lot."

On top of linking lawyers to those in need of legal advice, a clearing house supports law firms implementing pro bono programmes internally, mainly by providing a forum to share best practices. For it is not just the wider legal market that requires infrastructure to make pro bono in Latin America a commonly occurring practice; law firms

also require clearly set out policies internally to institutionalise it.

"It is very important that firms institutionalise pro bono," says Marcela Fajardo, executive director of Chile's Fundación Pro Bono, created in 2001 and widely regarded as an exemplar of how such an organisation should work. "If they have no clear structure or internal policies pro bono does not work."

Fortunately, many firms across the region are working hard to introduce pro bono programmes, which is why LATINLAWYER chose to focus its third annual pro bono survey on the institutionalisation process. Here, based on data from more than 70 firms across the region that responded to the survey, we examine the initiatives that have worked and ask what solutions are available for challenges thrown up along the way.

The good news

The good news is that some 80 per cent of our respondents have taken steps to institutionalise pro bono, most commonly through the creation of a pro bono committee and/or a coordinator. A good number have created formal pro bono policies, or are in the process of doing so, and a handful of firms say they have a pro bono manual. It is important to mention here that some 250 law firms were invited to participate. The reason at least some of those firms did not respond will surely be that their pro bono programmes are far less advanced.

But what's encouraging among those that did respond is that firms are seeing the benefits of this structured approach. "This results in a more efficient, more organised way of doing pro bono work, since all the pro bono requests are submitted by the coordinator. The coordinator also takes care of the day-to-day relations with the pro bono foundation, and helps with its administrative duties," says Juan Cristóbal Gumucio, the partner overseeing pro bono at [Cariola, Diez, Pérez-Cotapos & Cía Ltda](#) in Chile.

Fully institutionalising pro bono in a law firm can take time, as it requires completing a number of stages - as seen at [Cárdenas & Cárdenas](#) in Colombia. First, partners' approval was obtained to create a pro bono committee, and then a new category of clients had to be created in the firm's time registration system. Now all associates are encouraged to voluntarily get involved in a pro bono project, under the guidance of the firm's pro bono manual. The manual lays out what pro bono means for the firm; the rights of the pro bono clients and duties of lawyers who are in charge of pro bono cases; procedures for accepting a case, functioning of the follow up on the cases, and how to end a pro bono case once the need of the client has been addressed.

The work doesn't stop once the policy is place. Usually it falls to the committee or coordinator to monitor who is doing what, and make sure the system works. In Argentina, [Estudio Beccar Varela](#)'s committee meets once a month to discuss obstacles and find solutions. Crucially, it also promotes pro bono work to the rest of the firm; right now it's planning a breakfast to which all lawyers will be invited to hear the outcome of all pro bono cases

CASE STUDY, PERU: IN THE COURTS

[Estudio Eche copar](#) is defending a physically handicapped person who was discriminated against when seeking employment. The judicial process is currently being tried.

LAWYERS ON THE CASE: Partner Samuel Abad Yupanqui and associates Ursula Indacochea Prevost and Roxana Gayoso Arnillas

HOURS COMPLETED TO DATE: 45 hours and 35 minutes since 2 February 2010

SOURCE: Peruvian NGO Ciudadanos al Dia

[Estudio Eche copar](#) is conducting a lawsuit against a state agency that didn't respect a quota for the physically disabled in the job application procedure in which the firm's client participated. The fight for disabled people's rights in Peru has just begun. It wasn't until recently that Congress passed a law to regulate building accessibility and quotas in public jobs for the physically disabled. In this case, the defendant is claiming that the quota is not applicable based on a technicality. "We took this case on to make disabled people's issues stand out, in regard to the enforcement of the aforementioned act. If appealed by the agency, this case will create an important precedent in our legal system and will affect thousands of other disabled persons," says Roxana Gayoso Arnillas.

the firm has had in the last year.

Keeping track of what is being done is critical for the institutionalisation process. For example, also in Argentina, [Marval, O'Farrell & Mairal](#)'s committee created a pro bono hours report, published monthly and annually. The report lists the total hours completed, the number of hours per subject, per every lawyer, and per lawyer per pro bono matter. "It's very useful as there is a concern that lawyers might overload their pro bono hours in order to fill empty space in the day and this helps control that," says the firm's coordinator, María Clara Bouchoux.

Road blocks along the way

Regular committee meetings are essential for ironing out any creases in the process, which do crop up. The most frequently cited obstacle to formalising pro bono among respondents to our survey was actually getting lawyers to commit the time. On the face of it, lawyers are enthusiastic about doing pro bono, but getting them to actually put in the hours seems to be another matter.

"There are few incentives to divert energies to non-billable work-loads amid increasing demands from clients," says José Augusto Toledo of [Arias & Muñoz \(Guatemala\)](#). Jaime Trujillo at [Baker & McKenzie \(Colombia\)](#), who is on the board of Colombia's clearing house, speaks of a "bottleneck" scenario - one where there is no shortage of junior associates who want to do the work, but the challenge is finding a senior associate willing to devote time to supervise the junior to ensure quality standards are met.

"The constant challenge is to motivate people to participate in pro bono work; convincing them that an hour worked for a pro bono client is as valuable as an hour worked in the most important transaction or case in which the firm is involved," says [Claro y Cía](#)'s pro bono partner, Rodrigo Ochagavía.

The blame does not lie at associates' feet; inspiring motivation among the younger ranks of a firm falls to its partnership. One group of associates from a Latin American firm felt so strongly about the apathy of the partners they reportedly locked them in a room and said they were not leaving until there was a written pro bono policy. As strategies go it was certainly effective, but something of a last resort. It also highlights how crucial top-down implementation is for the system to work.

If partners don't demonstrate their commitment to pro bono by actually taking part in a project, it sends a confusing message to younger lawyers who are torn between allotting time to help an orphanage with its legal housekeeping and billing enough hours to show they are serious about their career. It's something Samper is working hard to change in Colombia, as executive director

CASE STUDY, MEXICO: MICROFINANCE IP

Mijares Angoitia Cortes y Fuentes SC advises the local arm of FINCA International, a microfinance NGO that provides financial services to the world's lowest-income entrepreneurs so they can create jobs, build assets and improve their standard of living.

LAWYERS ON THE CASE: Associates Martin Sanchez Breton (also project supervisor) and Alejandro Ascencio Lucio for corporate matters, and associate Luis Torres-Septien Warren for IP

HOURS COMPLETED TO DATE: 60 hours in 2009 (the firm began working with FINCA in 2007, but only formalised its pro bono programme at the end of 2008)

SOURCE: Taisa Markus, partner of Milbank Tweed Hadley and McCloy, started working with FINCA International through the Vance Center, and put the NGO in touch with Mijares Angoita.

The firm advises FINCA in its corporate and industrial property matters, notably seeing it through its corporate restructuring and consolidation process in Mexico. A team has also advised FINCA representatives in labour matters related with the corporate restructuring, and industrial property matters concerning preventive and protective measures against possible violations to FINCA's trademark.

The IP team has advised FINCA in several infringement actions before the Mexican Institute of Intellectual Property (IMPI) against a number of entities using the FINCA trademark and its financial model to penetrate the microfinance market to obtain an economic

of the clearing house. "You see a tendency among law firms to delegate this to young lawyers, especially women, and I would like to keep partners of firms more involved," she says. "Last week we had a board meeting and with the exception of Baker & McKenzie's Jaime Trujillo and Brigard & Urrutia Abogados' Álvaro Cala [the two male partners on the executive committee], the rest were young women. It's difficult to encourage partners to keep coming to meetings and not just sending younger lawyers. It requires patience and me calling them. It's only two or three meetings a year."

Partners pitching in on projects can make all the difference in how the rest of the firm perceives pro bono. Take

Bustamante & Bustamante's founding partner Roque Bustamante in Ecuador, for example, who wrote the charter for a foundation that assists the blind, and later helped it to recover land for the construction of a hospital for low-income patients. This surely helped raise the importance of such work in the firm. At BLP Abogados, perhaps Costa Rica's most proactive firm when it comes to this matter, all 10 partners do pro bono work, with one partner leading a group of lawyers on each project. Gabriela Morales, director of the firm's pro bono foundation, believes partner participation is key to driving enthusiasm across the firm as it helps create a culture of social responsibility. "It's a good opportunity for lawyers to show to partners the different kinds of work they can do. It's very effective in every sense," she says.

A good number of firms are wise to the issue and encourage partners to participate actively in pro bono matters. But changing perception takes time and is not just down to leading by example, as Agustín Mayer, who supervises Ferrere Abogados' pro bono work in Uruguay, explains: "We had to overcome our associates' tendency to focus almost all their efforts on remunerated work. It was an education process within the firm, led for years by our former managing partner and most senior partners of the firm."

Firms have begun changing evaluation policies so lawyers feel that pro bono work yields the same results, career-wise, as commercial projects. Just over 16 per cent of the firms that responded to the survey and who do pro bono regularly say they see a direct link between time dedicated to pro bono work and performance. Ferrere Abogados recently made pro bono work a formal part of the evaluation process for partners and associates, and at Noguera, Larrain & Dulanto in Chile, pro bono hours count towards associates' billable requirements and are discussed in self-assessments. Other strategies are being employed; Marval O'Farrell's next project is to establish a minimum number of pro bono hours per team.

Of course, external barriers to institutionalising pro bono in a law firm remain too. Tax is a particular problem for Peru, according to one respondent. As it stands, Peru's tax administration considers that any free services rendered should be charged and therefore taxes must be paid. Firms are calling for legislative changes alongside NGO Ciudadanos al Día that would allow lawyers to provide pro bono services tax-free. Ciudadanos al Día, led by the highly regarded Beatriz Boza, has been vital in mobilising firms in Peru, which faced the challenge of bettering the wider legal profession's poor image and overcoming mistrust within the legal community when it set up its clearing house in November. This began operating in February and now has 22 member firms.

In Mexico there is no mandatory bar, which Lila Alejandra Gasca Enríquez, pro bono coordinator at Barrera, Siqueiros y Torres Landa SC, says makes it hard to motivate lawyers to do pro bono work regularly. "Pro bono is not an integrated part of Mexican law firms' working structure, even when pro bono is fundamental to the practice of law and an ethical responsibility of lawyers," agrees Rocío González-Alcántara Lammoglia, an associate and pro bono coordinator of Mijares, Angoitia, Cortés y Fuentes SC, a firm that has nonetheless developed a significant programme influenced by Columbia Law School's pro bono programme, information on which González brought back to the firm having studied there. In fact, Mexico generated the highest proportion of our

benefit as opposed to the non-profit purpose of FINCA's activities. "In those cases, it was very interesting to see the huge success that FINCA's project has had in Mexico and the penetration of the FINCA brand in the microfinance market," says Martin Sanchez Breton.

Recently the firm obtained favourable resolutions from IMPI with respect to some of these cases.

region's respondents - 14 per cent. It's worth noting that Brazil yielded among the fewest replies to our survey: four firms answered, with two saying they do not do pro bono regularly. São Paulo has had a clearing house since 2001, when a group of firms persuaded the state bar association to pass a resolution that allows firms to do pro bono, but it is still not allowed elsewhere in the country (apart from the state of Alagoas). While there are still barriers to pro bono even in São Paulo, they are not sufficient to prevent firms from actually doing it.

The road ahead

To some extent, but by no means entirely, firms have taken these steps to institutionalise pro bono having signed up to the Pro Bono Declaration of the Americas, driven by the Cyrus R Vance Center for International Justice. Signatories to the declaration are required to eventually commit an average of 20 hours per lawyer per year. Such a commitment requires some organisation, which is why, on signing up, firms are handed the PBDA implementation handbook which provides helpful tools for establishing a pro bono programme. Examples of these - creating a commission, a coordinator, an implementation manual - are mentioned above.

The PBDA's implementation phase began in January 2008 and is due to end in December this year. Elise Colomer, associate director and director of the Latin America programme of the Vance Center, has been watching pro bono develop in Latin America for a decade, making her well placed to see how the region has progressed. So far she is encouraged by the results. Pro bono may still be evolving in Latin America, but there have been significant achievements. "When we started 10 years ago it was with a concept that was personal to some people; it was not part of firm culture. We are in the process of changing corporate culture and that doesn't happen overnight - we have to remember that. Not even in four or five years. By that measure, a lot has happened."

Of course, there is still further to go. Often firms have taken one or two steps towards implementing a pro bono programme, but few have travelled the full distance. Colomer gets the impression that firms take a handful of the steps rather than adopting the full package. "They are testing the water rather than using it as a comprehensive model. They apply a few strategies and find it's not enough."

There is an argument for looking to the US to see what firms are aiming for. There, pro bono is a given for firms. The third sector is far stronger, there are more clearing houses and bar associations are on board. On top of that, firms in the US are larger and so have more infrastructure. This is reflected by responses to our survey by Mexican outposts of US firms, which show sophisticated approaches - [Thompson & Knight SC](#) recently implemented a programme that provides associates with unlimited billable-hour credit for pro bono work they complete each year, while [White & Case SC](#) has instituted a 200-hour guideline, with four professionals dedicated to full-time pro bono administration, and pro

CASE STUDY, CHILE: RESPONSE TO DISASTER

[Philippi, Yrarrázaval, Pulido & Brunner](#) is working alongside Chile's environment ministry to rebuild the island of Juan Fernandez, which was severely damaged by the tsunamis that followed the quake.

LAWYERS ON THE CASE: Associates Jose Tagle and Gerardo Cruzat

HOURS COMPLETED TO DATE: N/A

SOURCE: Ricardo Irarrazabal from the Ministry of Environment

The response of lawyers to the devastating earthquake in Chile has been overwhelming, as evidenced at the IBA Biannual Latin American Regional Forum in Santiago not long after.

Philippi Yrarrázaval is assisting in a project that aims to turn the island of Juan Fernandez into an icon for sustainable tourism with the support of companies including b2o, Honda and Turner Associates Architects.

The ministry asked Philippi Yrarrázaval to prepare a draft law, known as the Juan Fernandez Act, to regulate various issues on the island enabling the reconstruction and the creation of a specialised tourism focus of the site. There are several bills already prepared in this regard and the idea is to merge them into one. So far the lawyers have had two meetings with the mayor of Juan Fernandez and the draft bill is under discussion in Congress.

bono assignments are mandatory for summer and first-year associates. Since the survey White & Case has also launched a global pro bono group to coordinate its efforts in offices across the world.

But perhaps the US model is not the right benchmark for Latin American firms at this stage. As firms in Latin America grow they will implement more parallel programmes in different areas, like pro bono, but they have some way to go before pro bono budgets and social responsibility programmes are as commonplace as in the US, which makes it all the more important for firms to communicate their experiences through the clearing houses and regular meetings among firms' coordinators so that they might create their own benchmark. A more pressing issue for Latin America right now is that of money. For pro bono to have a long future in the region, law firms need to be financially committed.

According to Colomer, firms in Brazil have pledged financial support to the clearing house this year for the first time. "Firms realise they have a responsibility to continue to meet obligations. In addition to doing pro bono, it means making financial contributions to develop and strengthen networks that allow that will become standard practice," she says.

One of Samper's current projects in Colombia is to make sure firms find the clearing house sufficiently worthwhile to review their economic contributions. "This year we are asking members to pay a fee of US\$2,500 for the biggest firms and US\$1,250 for smaller ones. It's difficult, as some thought they would only be asked for funding in the first year - but most international organisations that help clearing houses financially only do it if founding members contribute too." So far 50 per cent have agreed to the new fee, with some having already deposited money. Which means, as Samper says, firms find the clearing house important and they don't want to be left out of the process.

WORKING TOWARDS INSTITUTIONALISATION



Marcela Fajardo, executive director of Chile's Fundacion Pro Bono, shares the eight steps the clearing house has followed to organise pro bono work and help firms with the institutionalisation process.

The advisory council

The foundation's advisory council is composed mainly of lawyers from law firms that are members of the foundation. The council sits two times a year and its role is to guide the foundation's work, make recommendations and opinions, and support the implementation of pro bono work.

The pro bono committee

Firms that are members of the foundation are expected to form a pro bono committee comprising at least one member of the firm and a pro bono coordinator. The coordinator manages the firm's pro bono programme and receives projects from the foundation. He or she is a lawyer (partner or associate) working at the firm, who assumes the role of bridge between the firm and the foundation.

The coordinator is not the one doing the pro bono work; rather he or she filters the cases according to the firm's guidelines and sends them to other lawyers to see if they are interested in assuming the project. The coordinator should not last more than three years in their position, as pro bono cannot be institutionalised in a person alone.

The implementation guide

In January 2009, the foundation conducted a survey to establish whether law firms had established internal pro bono policies, whether those policies include restrictions and if firms monitor the practice. The results of

the survey showed that the majority of firms have established internal policies, but have not officially recognised them. In this context, last March a guide to implementing pro bono programmes in Latin American firms was launched in Chile, published by the Cyrus R Vance Center for International Justice, and edited by Juan JosÉ Bouchon, an associate at Carey y Cia.

The pro bono report

The foundation has created an annual pro bono report through which firms report the amount of pro bono hours performed and in what areas. This report is accompanied by a survey that measures the level of organisation of pro bono work in the firm, whether it carries out surveys and if the practice is publicised. Firms are asked to evaluate the work done by the foundation too. There have already been four annual reports.

The referral system

To organise pro bono work, the foundation has established a system of referral. This is done by means of a computer system which individuals or organisations requiring free legal advice can enter via the website (www.probono.cl).

Applications are reviewed by coordinators within the foundation who determine whether the case is something the foundation would consider. If so, the coordinator arranges a meeting with the applicant and opens a file. Every Wednesday filtered cases are referred to all law firms' coordinators and individual lawyers, who then indicate their interest in any of the applications online. The case is assigned to the first firm to respond. A work agreement is then signed, which establishes the rights and obligations of each party. The applicant, the firm's pro bono coordinator, the lawyer taking the case and a representative from the foundation must all sign the agreement. The foundation is involved if either party requests it.

Commitment

Firms wanting to be part of foundation must sign a declaration of commitment to pro bono, through which they become members. The firm should endeavour to motivate, support and recognise pro bono internally, implement institutional policies that facilitate pro bono, publicise activities in media, highlighting the lawyers to do pro bono work. The firm should also inform the foundation of all pro bono hours performed, and whether they relate to cases referred by the foundation. It must also contribute an annual fee to fund the foundation.

The seal

The foundation has created a pro bono seal certifying that the firm performs pro bono work and contributes to financing the foundation. The seal should be visible in the firm's office, and most put it on their website.

Recognition

The foundation holds an annual pro bono dinner attended by leading representatives of the legal community and the majority of member firms. At the event the foundation pays tribute to the work of lawyers and rewards best practices ñ best coordinator, firm, case, etc. This has become a tradition and winners are given a sculpture designed by a Chilean artist. This year the fifth annual dinner will be held in September. The foundation also publishes a quarterly newsletter which reports the major activities that firms have done.