Mecklenburg County Bar
Volunteer Lawyers Program
Best Practices for Law Firms and Attorneys Providing
Pro Bono Services in the Mecklenburg Community

Scope and Purposes

The Mecklenburg County Bar Volunteer Lawyers Program (VLP) began in 1983 as a joint venture of the Mecklenburg County Bar and Legal Services of Southern Piedmont (LSSP). The program continues as a cooperative effort of these two organizations and now includes, among other responsibilities, assisting Legal Aid of North Carolina (LANC), The Council for Children's Rights (CCR) and other service providers—together with LSSP known as "Community Partners" of the VLP and the Mecklenburg County Bar. In addition to assisting our Community Partners, the VLP also provides direct support to the Pro Bono for Non-Profits Program, which provides business law services to qualified nonprofit corporations or community groups, and houses a pro bono program which provides estate planning to qualified individuals.

The mission of the Mecklenburg County Bar's VLP is to serve individuals and groups who cannot afford to pay for legal services by developing, expanding, and supporting programs involving volunteer attorneys, while providing lawyers in Mecklenburg County with meaningful opportunities to perform pro bono legal work. One method the VLP performs this mission is insuring necessary augmentation is accessible and available to the full-time attorneys of the VLP's Community Partners that provide free legal services in civil matters to qualified clients in Mecklenburg County, North Carolina. The ultimate goal of the VLP is to enable the attorneys of the Mecklenburg County Bar to fulfill their ethical obligations to provide pro bono services to needy clients in the community in a coordinated manner.

"Best Practices for Law Firms Providing Pro Bono Services in the Mecklenburg Community" is a cooperative effort of the VLP, its member law firms, and the Community Partners. It was conceived to develop reasonable principles to guide law firms wanting to support pro bono efforts in the community. The principles set forth are intended to be concrete enough to provide actual direction, but flexible enough to address the myriad existing law firm structures. The principles recognize that growth in our community has increased both the need for pro bono legal services and the number of attorneys available to provide pro bono legal services. These dual increases have outpaced the existing systems designed to match those in need with qualified attorneys efficiently and effectively.

The principles have but one goal—assuring legal assistance to those in need.

I. Case Assignment

A. *Each law firm should have a single point of contact and entry for assignment of pro bono matters.*

Case assignment by the VLP and Community Partners requires access to the largest pool of attorneys in the shortest amount of time. A single point of contact at each law firm is the most efficient method of case assignment. When a new case becomes available, the VLP or Community Partners will e-mail or call the firm point of contact so the information can be disseminated firm wide. The point of contact is not responsible for case representation but instead is responsible for insuring proper conflicts checks occur, determining the firm's interest in the case assignment, and navigating the firm's internal procedures for assigning pro bono representation. The firm point of contact must be responsive to pro bono case assignment requests by the VLP or Community Partners in a timely manner. The point of contact's phone number and e-mail address should be provided to the VLP and to the Community Partners.

The firm point of contact should e-mail or phone the VLP or Community Partner who has sent the case for placement to acknowledge receipt. Some cases are difficult to place either because of subject matter or pending deadlines, so whenever necessary, it is the responsibility of the firm point of contact to "sell" the case to his or her colleagues.

B. *Each law firm should have an alternate point of contact for assignment of pro bono matters.*

Personal and professional demands on law firm staff, paralegals, and attorneys often prevent primary law firm points of contact from being available to respond to request for pro bono assistance from the VLP and Community Partners. A designated alternate point of contact can prevent requests for pro bono assistance from becoming stale and unassigned because of demands on the primary point of contact. The alternate firm point of contact would be contacted only when the VLP or Community Partner is notified that the primary point of contact is unavailable, such as receiving an "out of office" reply e-mail or voice mail or when the primary point of contact does not respond to a request for pro bono assistance within 24 hours.

Each law firm should identify the names and contact information of the primary and secondary contacts to each Community Partner at least once each year and whenever those contacts change.

C. *Conflicts checks must be performed immediately.*

The first hurdle to assigning a pro bono matter is insuring that the law firm does not have a professional conflict that would prevent representation. An initial request for pro bono assistance from the VLP or Community Partner contains only the names of the potential client(s) and adverse party or parties. The law firm point of contact must initiate a conflicts check in accordance with the law firm's procedures immediately upon receiving a request for pro bono assistance. For domestic violence cases requiring court appearances within 48-72 hours, the conflicts check must be completed within 24 hours. For all other matters, law firms should attempt to complete the conflicts check within 48 hours. After conflicts are cleared, the VLP or Community Partner will forward a case description to allow the firm point of contact to place the case.

D. *Engagement and representation agreements prevent misunderstandings*.

Engagement and representation agreements are not required by the Community Partners. Misunderstandings about the scope of representation, however, are one of the most common sources of problems between lawyers and their clients. The potential for such problems can be minimized at the outset of a representation by well-written engagement letters that clearly document the volunteer's and law firm's understanding with the client regarding the scope of the work to be performed by the volunteer.

A law firm's standard representation letter, modified to reflect the volunteer services undertaken on behalf of the pro bono client, may be used. Alternatively, one of the draft representation letters attached as Appendix A may be used. Volunteer attorneys choosing to execute a representation agreement should provide a copy to the client and to the Community Partner.

E. *The volunteer lawyer shall not charge or receive any fee or financial reward from the client regarding any work done in relation to the matters referred by Community Partners*.

Clients referred by the Community Partners are often indigent. Whenever possible and appropriate, the volunteer lawyer shall seek indigence status for waiver of fees and costs. The Petition to Sue/Appeal as an Indigent is available at http://www.nccourts.org/Forms/Documents/561.pdf.

The volunteer lawyer shall not charge or receive any fee or financial reward from the client regarding any work done in relation to the matters covered by the representation agreement. Notwithstanding the above prohibition, the volunteer lawyer is not prohibited from entering into a separate, subsequent agreement with the client for representation in an unrelated, fee-generating matter.

The VLP and its Community Partners hope that any costs incurred in representation of pro bono clients will be borne by the volunteer lawyer's firm. If this is not possible, the primary and ultimate responsibility for costs incurred in representation belong to the client and that obligation should be established in a representation agreement. If any such costs that cannot be advanced by the client at the time required totals less than One Hundred Dollars ($100), the volunteer lawyer is expected to advance the costs and so notify the client. If the costs may exceed One Hundred Dollars ($100) or may involve some substantial litigation expense (such as a deposition), the volunteer lawyer shall seek permission from the assigning Community Partner to incur the expense. After the client has contributed all that the client can afford, any remaining expense approved shall be reimbursed by the Community Partner upon proper documentation.

The volunteer lawyer may seek attorney's fees, costs, and other appropriate sanctions from opposing parties or opposing counsel where there is a good factual and statutory basis to pursue them. However, if the volunteer attorney collects any such fees by negotiation or court order, such collection may need to be treated as income for tax purposes. The volunteer attorney should seek professional advice regarding tax treatment of such collection. Further, it has been the practice of most law firms to donate any such fees to the referring Community Partner or other charitable organization. The disposition of such fees must be reported to both the client and the Community Partner.

F. *A firm has responsibility for determining representation in pro bono cases when a volunteer attorney leaves that firm.*

When a volunteer attorney leaves a firm, that firm has a responsibility to determine whether the departing volunteer attorney will continue representation of a pro bono client. If the volunteer attorney intends to continue legal practice in the Charlotte community, the volunteer attorney is expected to continue representation of the pro bono client unless extenuating circumstances dictate that continuing representation is impossible. If the volunteer attorney is not going to continue representation of the pro bono client, either because the volunteer attorney is leaving the Charlotte community or the practice of law, the attorney's firm should seek to transfer management of the case to another attorney within the firm. Under all circumstances, the firm should assure that the Community Partner assigning the case is informed of the disposition of the pro bono case.

II. Case Representation

A. *Attorneys shall provide pro bono clients with the same level of competent, prompt, professional and courteous treatment as provided to all other clients in a legal practice.*

The volunteer lawyer shall pursue the pro bono client's interests in a competent, prompt and professional manner as the lawyer would for all clients of the lawyer's legal practice. If the volunteer lawyer needs assistance or guidance from other attorneys, the lawyer shall promptly seek such support from within the volunteer lawyer's law firm or from one of the subject matter experts employed by the Community Partners. Any problems of communication or case representation should be reported to the Community Partner for assistance or guidance.

B. *Attorneys should routinely update the Community Partner about case status.*

The Community Partners track case status for a variety of reasons, including internal and external reporting requirements. At a minimum, the Community Partner should be informed after the volunteer lawyer and client have first met, after any major case events, and at least quarterly for cases not resolved within that time frame.

C. *Citizenship attestation must be obtained for clients assigned by LANC.*

LANC receives Federal funding and must meet Federal regulations requiring that the pro bono client attest to U.S. citizenship. This requirement does not apply to other Community

Partner referrals. If your client is unable to attest to U.S. citizenship, you should return the case to LANC for alternate disposition. A copy of a Citizenship Attestation is at Appendix B.

D. *Later-discovered conflicts must be handled promptly without prejudice to the client*.

If the volunteer attorney discovers a conflict with a firm client that was not apparent initially, ideally the volunteer should attempt to get the firm client to consent to the representation of the pro bono client unless the conflict is irreconcilable. Consent to representation should be obtained in writing after disclosure of the conflict. If the conflict is unavoidable, the volunteer attorney shall immediately notify the client and the Community Partner for reassignment of the case.

E. *Conflicts over case objectives or ethical issues should be handled through firm counsel or with the assistance of the Community Partner*.

If the volunteer develops a conflict with the client over objectives or ethical matters, the volunteer shall seek immediate assistance from firm counsel, referring Community Partner, or the VLP, if the matter was referred by the VLP. If the conflict cannot be resolved, the volunteer may petition the court and seek to withdraw from further representation in any pending litigation. If there is no pending litigation and it is determined that the volunteer is not responsible for the conflict, the volunteer may rescind the representation agreement. Subsequently, further representation may be declined or the case may be reassigned.

F. *In matters of personal hardship, volunteer lawyers should look to find substitute counsel within the firm and only if unsuccessful return the case to the Community Partner*.

If the volunteer attorney develops a personal hardship that interferes with the ability to continue representation of the client, the volunteer attorney shall so notify the client and the Community Partner. Unless the volunteer attorney is physically or mentally unable to proceed, the volunteer shall attempt to find a suitable substitute volunteer to assume responsibility for the matter. Where feasible, the volunteer shall attempt to have another attorney within the attorney's law firm handle the matter. If the volunteer attorney's firm is unable to assume representation, the Community Partner will reassign the matter.

G. *Cases should be handled until completion in accordance with the representation letter; representation for any appeals is within the discretion of the volunteer attorney in consultation with the Community Partner*.

Continuity of representation and economy of legal assets weigh heavily in favor of the law firm and attorney initially agreeing to accept representation of a pro bono client continuing to represent that client until the matter is completely resolved. If the client loses at the initial administrative or trial level and desires an appeal, the volunteer should counsel the client on the prospects and risks involved with an appeal. If the volunteer believes that the client has a good basis for an appeal but does not want to represent the client, the volunteer shall so inform the client and the Community Partner promptly, stating the grounds for appeal and the appeal deadline.

If the volunteer lawyer desires to represent the client on an appeal and the original engagement did not contemplate appellate representation, the volunteer lawyer shall make a new representation agreement with the client that includes the issues to be pursued. The volunteer shall attempt to qualify the client as an indigent to minimize the costs and fees.

If the client won at the initial administrative or trial court level and the opposing party appeals, the volunteer shall inform the client of the apparent grounds and risks of the appeal. If the volunteer decides to represent the client in the appeal and the original engagement did not contemplate appellate representation, the volunteer shall prepare a new representation agreement. If the volunteer decides not to represent the client in the appeal, the volunteer shall counsel the client until the client finds another attorney through the assigning Community Partner or otherwise.

III. Case Closing and Special Situations

A. *Case closing forms are required for recordkeeping*.

All volunteer attorneys are provided a case closing form when a case is assigned by a Community Partner. Attorneys must complete the form and return it to the Community Partner in order for the case to be closed. VLP and its Community Partners depend on these closing forms for data on volunteer hours, case outcomes, and case timelines. This data is necessary for compliance with existing grants and for writing new grants. Copies of case closing forms are attached as Appendix C.

B. *Death of a client requires survivorship evaluation and estate representation*.

In the unlikely and unfortunate event of the death of a pro bono client, the volunteer attorney must determine whether or not the client's claims survive. If so, the volunteer attorney shall determine whether, as an evidentiary matter, it is practical to pursue the claims without the client available. If pursuit of the claim is a viable option, the volunteer attorney should then determine whether the deceased client had a will appointing an executor of the estate. If the decrease client died intestate, the volunteer attorney should determine whether or not there exists a suitable and appropriate person to represent the estate. *See* N.C.G.S. § 28A-4-1. If the volunteer attorney is able to identify a satisfactory estate representative, the volunteer attorney should refer the potential representative of the client's estate to the Community Partner assigning the case. If the Community Partner determines the potential estate representative is eligible for service, the volunteer attorney may continue pursuing the deceased client's claims on behalf of the estate. Under such circumstances, the volunteer attorney should execute a new representation agreement with the estate's representative. The Community Partner should be contacted as soon as the volunteer attorney learns of a pro bono client's death.

C. *Volunteer attorneys changing careers should manage pro bono clients as they would all other firm clients*.

It is a fact of today's legal practice that attorneys move in and out of firm practice and occasionally leave the practice of law entirely. Pro bono case files should be handled as all other client matters are handled. If the volunteer attorney intends to continue legal practice in the Charlotte community, the volunteer attorney is expected to continue representation of the pro bono client unless extenuating circumstances dictate that continuing representation is impossible. If the volunteer attorney is not going to continue representation of the pro bono client, either because the volunteer attorney is leaving the Charlotte community or the practice of law, the attorney's firm should seek to transfer the case file to another attorney within the firm. Under all circumstances, the Community Partner assigning the case must be informed of the disposition of the pro bono case file.

D. *Pro bono clients with complaints or grievances concerning representation must be referred to the Community Partner*.

Client grievances and complaints are unlikely but on occasion do arise. All pro bono clients with complaints concerning representation should be referred to the Community Partner who assigned the case. Each Community Partner has internal procedures and structures that should be employed before a formal grievance is filed with the Mecklenburg County Bar or the North Carolina State Bar.

Typically, the Community Partner will investigate the complaint and try to facilitate a resolution with the client and the volunteer. If the grievance cannot be resolved informally, the Community Partner may advise the client to take one of several further actions, depending on the nature of the grievance. If the Community Partner concludes that the volunteer attorney has not represented the client adequately and that it is not too late for substitution of alternative counsel, the Community Partner will find another volunteer attorney for the client.

If the Community Partner determines that the volunteer attorney's conduct has caused damage to the client that cannot be remedied with substitute counsel, the Community Partner will typically refer the pro bono client to Community Partner's malpractice insurance carrier. If the Community Partner determines that the volunteer attorney's conduct also breached the Rules of Professional Conduct, the coordinator shall take other appropriate actions, including meeting with the volunteer attorney and, if necessary, a representative of the volunteer attorney's law firm to discuss the ethical issues.

If the Community Partner determines that the volunteer attorney's representation and behavior have been satisfactory, the Community Partner shall so notify the client and the volunteer attorney. The Community Partner will attempt to have the volunteer attorney resume representation of the client, if necessary and possible. If the client is unreasonably opposed to continuing with the volunteer attorney, the Community Partner shall inform the client of his or her right to discharge the volunteer attorney but will warn the client that no substitute volunteer attorney will be provided. The Community Partners have internal appeals processes for client grievances.

E. *Volunteer attorneys are covered by Community Partner malpractice insurance. The VLP does not have malpractice insurance for cases directly placed through the VLP*.

Certain Community Partners maintain malpractice coverage for all work performed by volunteer attorneys. The coverage is limited to the actions taken by the volunteer attorney according to the referral by the Community Partner and the representation agreement with the client. The VLP does not maintain malpractice coverage for work directly assigned by the VLP – typically, pro bono for non profits placement and certain estate planning projects. Volunteer attorneys who accept assignments directly from the VLP or other Community Partners that do not maintain malpractice coverage must maintain such coverage individually or through their firm.