



PRO BONO MATTERS

Pro Bono as a Business Development Tool

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Attorneys do pro bono work for a variety of reasons. The most common reason is that you enjoy helping those with limited means who could not otherwise afford to hire any attorney. Other reasons may be that your state bar or law firm require pro bono hours, or your law firm counts pro bono hours toward creditable hours for compensation purposes. Additionally, you may view pro bono work as an opportunity to hone your legal skills and gain more responsibility on a matter than you would get doing your normal billable work. Regardless of these other reasons why you do pro bono work, the client is happy to have legal assistance that he or she would not otherwise receive.¹

I first started doing pro bono work over fifteen years ago, primarily in the form of representing low-income taxpayers in Tax Court cases, for several of the above reasons. I enjoyed giving back, but I also appreciated the ability to “first chair” a case while still an associate. Thus, pro bono work allowed me both to help low-income taxpayers and to gain valuable experience running an entire matter. It also allowed me to have cases in front of more judges at the Tax Court, with the benefit that I could learn more about each judge’s approach in a pro bono setting that I could later apply in larger cases for paying clients. Nonetheless, one benefit that I never imagined when I first started doing pro bono work was on the business development side.

Generating Business at a Law Firm

Attorneys generate business in a variety of ways. Marketing, branding, and referrals are common methods to get new clients (or keep existing ones). A proven track record of success and excellent client service are extremely important. Thus, attorneys often tout their substantive experience or win-loss record in litigation. There is no one-size-fits-all method for generating business, and attorneys often utilize many different methods. One of the most successful business generators I know simply made strong personal relationships with everyone he met and, after a certain point in time, his phone was ringing off the hook with referrals.

So where does one’s commitment to pro bono fit here? Well, first and foremost, I would say that one should always do pro bono to help others without any expectation of a “reward.” With that understood, doing pro bono work can have the side benefit of helping an attorney obtain billable work. Below are some examples of how this has worked in my career and those of others.

¹ Another benefit of doing pro bono work, at least work through a referral from a low-income taxpayer clinic (LITC), is the benefit to the LITC in the form of increased funding based on volunteer hours.

The Pro Bono Benefit

I have yet to meet a potential client (or existing one) that discourages attorneys from doing pro bono work. Rather, the overwhelming response is one of respect and appreciation for attorneys who give back their time for free. I have even had clients offer to attend Tax Court calendar calls with me to observe the process and provide their thoughts. Thus, at least in my experience, it has been universal that doing pro bono work is seen by clients as a positive that enhances the attorney's, and his or her law firm's, reputation. Below are three ways that pro bono has had business development benefits in my career.

Gaining Expertise in an Area

The first benefit is through litigating a pro bono case in an area that is of importance to clients that can afford to engage you for their matters. I have had two instances where I obtained billable work based on Tax Court cases involving issues of first impression that I litigated that resulted in T.C. opinions. One of those situations involved a client simply seeing my name listed on the Tax Court opinion and calling me for assistance on a similar issue. The other involved penalty issues where the low-income taxpayers prevailed on statutory interpretation grounds. Because both cases involved important questions that were resolved in the taxpayers' favor, the new clients reached out for my assistance.

This is similar to what tax controversy attorneys do in non-pro bono cases. They obtain a favorable result for a client in a high-profile tax dispute that is covered by the tax press, leading other clients to engage them with the hopes of a similar outcome on a related issue. In both situations, the substantive experience gained can help with cultivating future work.

Establishing Relationships with Co-Counsel

The second benefit is through relationships that you might establish working with colleagues on a pro bono case. For example, you may partner with another associate or partner on a case and that attorney later leaves the law firm and goes in-house or moves to another law firm. They will remember their experience working on a pro bono case and likely will have good memories of the experience and you.

If the in-house counsel is subsequently looking for tax counsel or the attorney at the other law firm is conflicted, they may remember their experience with you and decide to reach out. Both situations have happened to me, the most recent being a former colleague who is now in-house reaching out to ask me and my firm to pitch for a large tax litigation matter. Absent our prior experience together, I would not have received the call.

Establishing Relationships with IRS Counsel and Tax Court Judges

The last benefit to be discussed here relates to the cultivation of relationships with opposing counsel and Tax Court judges that can be used in demonstrating familiarity and experience that will help clients in their tax disputes. I have met dozens of IRS attorneys through my pro bono cases, often running into them again in matters for paying clients. Although I know many of the Tax Court judges through my prior clerkships at the court and through Tax Court functions, I have interacted more closely with others through pro bono cases. For example, I picked up a case during the COVID-19 pandemic that involved novel procedural questions and required multiple Zoom calls with Judge Toro. After the case concluded I saw Judge Toro at a function, and we had a great follow-up discussion about the issues in the case. Throughout the process I learned a great deal about his judicial approach that will be beneficial the next time I have a case in front of him.

Clients who are thinking of litigating in Tax Court often look to hire counsel who are familiar with both IRS counsel and Tax Court judges. Being able to tell the client that you have worked with the same IRS attorneys assigned to their case and are knowledgeable about most, if not all, of the Tax Court judges is a tremendous selling point in the hiring process.

Final Thoughts

In my opinion, the motivation for doing pro bono work is to assist those in need who cannot afford our services. But if you need a little extra motivation to assist the needy, think about the ways that doing pro bono work can help you in your day-to-day practice. The benefits are numerous, from honing your skills to developing important relationships. During that process, you might even find an ancillary business development benefit. ■