

Pro Bono Practices and Opportunities in Colombia

***Excerpt from: A Survey of Pro Bono Practices and
Opportunities in Selected Jurisdictions***

September 2010

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The *pro bono* movement in Colombia has gained significant momentum over the last few years. Though the Colombian legal establishment does not have a long history of commitment to *pro bono* work, this is changing significantly. This change comes as a result of both the concerted efforts of a younger generation of attorneys and the increased emphasis on and visibility of *pro bono* work throughout Latin America. Today, many of the leading law firms in the country engage in systematic *pro bono* activities. This newfound commitment has encouraged a nascent culture of *pro bono* work that appears certain to only increase in the coming years. This section provides a brief overview of the Colombian legal system, reviews different avenues of no-cost legal aid available to indigent persons and introduces a number of organizations currently providing *pro bono* services in Colombia.

I. *Legal Services and the Legal Profession in Colombia*

A. Overview of Legal System

The current Colombian Constitution was enacted in 1991, replacing the Constitution of 1866.¹ This document establishes Colombia as a unitary republic with a national government composed of legislative, judicial and executive branches. The judicial power is exercised by four roughly coequal, supreme judicial organs. The Supreme Court of Justice is the highest court of civil, labor, land, commercial and criminal law. The Council of State is the highest court of administrative law. The Superior Judicial Council administers and disciplines the civilian judiciary and resolves jurisdictional conflicts arising between other courts. Finally, the Constitutional Court is the sole judicial body with jurisdiction in constitutional law, hearing and deciding on actions that seek to uphold fundamental rights or to attack unconstitutional laws and regulations. The Constitution includes a wide range of rights that are aimed at providing legal avenues for the underprivileged to have access to justice. Largely because of this, actions before the Constitutional Court have become an important way to safeguard the legal, social and human rights of the Colombian population.

B. Requirements to Practice Law

To practice law in Colombia, an attorney must be registered with the *Consejo Superior de la Judicatura*.² To obtain such registration, an attorney must hold a law degree from a licensed Colombian university. Attorneys holding law degrees from foreign universities may be admitted to practice if their degree is evaluated and considered by the authorities to be the equivalent of a Colombian degree, and they pass the ECAES, the national qualification exam. While degrees granted in some jurisdictions, such as Spain and other Latin American countries, are regularly deemed to be equivalent, degrees granted in the United States are unlikely to be so regarded. This difference is likely explained by the divide between civil and common law. As such, a U.S.-trained attorney must associate herself with a licensed Colombian attorney if she wishes to provide any sort of legal services in Colombia.

C. Right to Legal Assistance

All criminal defendants in Colombia are entitled to the assistance of counsel. Indigent criminal defendants are understood to have the Constitutional right to be represented by counsel

¹ Andrade and de Castro, 956 T.M., Business Operations in Colombia, A-2.

² Martindale-Hubbell Law Digest 2007, COL-11.

free of charge.³ Assistance is provided by the *Defensoría del Pueblo*, an entity created by the Constitution of 1991 and charged with providing free services for indigent criminal defendants. The *Defensoría del Pueblo* is also empowered to provide legal assistance to those persons who are not indigent, but are unable for another reason to obtain competent legal representation.⁴

All licensed and practicing attorneys may be required to provide free assistance to indigent criminal defendants if called to service by the *Defensoría del Pueblo*. This occurs where no *defensor público* is available to take the case because they are over-committed on other cases.⁵ These *defensores de oficio*, are called by the *Consejo Superior de la Judicatura* and must serve as part of their professional obligation to protect the State of Law and human rights.⁶ While *defensores de oficio* receive payment only in exceptional situations, they are subject to the same obligations as a *defensor público*. The failure of an attorney to respond to such a summons may result in the institution of disciplinary proceedings against him or her.⁷ Disciplinary sanctions include censure, fines, suspension and expulsion from the profession.⁸

Indigent criminal defendants may also obtain free legal assistance from the *consultorios jurídicos* (legal clinics) run by all registered Colombian law schools. These programs were established over two decades ago and have been instrumental in instilling a sense of duty to the community in a younger generation of attorneys. Law students must provide free legal services in a *consultorio jurídico* during their last year of studies. While the *consultorios jurídicos* are supervised by a licensed attorney, law students are explicitly authorized to provide representation in certain types of criminal cases.⁹ Students in *consultorios jurídicos* may also assist clients in connection with civil, family, or labor matters. Law schools also have *centros de conciliación*, which engage in enforceable mediations.

II. *Pro Bono Opportunities in Colombia*

Historically, most *pro bono* services were performed by attorneys on a purely altruistic and sporadic basis, rather than as part of structured programs. This has changed in the last few years, in part because a new generation of attorneys, active in providing direct services in the *consultorios jurídicos* during their training, has felt a need to contribute to society through the provision of free legal services. This new generation has been able to overcome some initial institutional resistance to *pro bono* work on the part of the legal establishment. A second contributing factor is that the Latin American legal community as a whole has placed an increasing emphasis on *pro bono* services in recent years. This emphasis is evidenced by the recent development and implementation of the *Pro Bono Declaration for the Americas*. This Declaration was drafted by a committee of leading lawyers from Latin America and the United States. To date, nearly twenty Colombian law firms and some law faculties have signed on to it,

³ Colombian Constitution art. 29; Ley 1123 de 2007, Libro II, Título I, Capítulo I, art. 21; <http://www.defensoria.org.co>

⁴ Art. 43, Ley 941 de 2005.

⁵ Constitutional Court Decision C-075 of 1995 (Law 941 of 2005 tried to eliminate the duty of *defensores de oficio*, there were simply not enough *defensores públicos* to meet the demand. Thus the Constitutional duty to be a *defensor de oficio* when called prevails.).

⁶ Ley 1123 de 2007, lib. II, tit. I, cap. I § 21 (the national disciplinary code of attorneys).

⁷ *Id.*; Art. 8, Ley 941 de 2005; Constitutional Court Decision C-075 of 1995.

⁸ *Id.* at lib. II, tit. II, cap. I art. 40.

⁹ Art. 17, Ley 941 de 2005; Constitutional Court Decision C-075 of 1995.

thereby committing themselves to provide an average of more than twenty annual *pro bono* hours per practicing attorney.¹⁰

It should be noted that the bulk of *pro bono* services currently provided by Colombian law firms are corporate services to non-profit entities. For various reasons, including security concerns, many law firms and attorneys do not currently provide direct representation in controversies concerning political and human rights. Below is a brief introduction to several organizations that currently provide *pro bono* services in Colombia.

In addition to legal clinics, Colombian law schools are growing “*grupos de derecho publico*,” which undertake high-impact human rights litigation, mainly through constitutional actions. *Universidad Los Andes* has a number of them, including the *grupo de derecho publico* (“G-DIP”), run by Professor Daniel Bonilla, and PAIIS, which focuses on disability rights. *Universidad del Rosario* has a similar group: *Grupo de Acciones Públicas*, as does *Universidad Sergio Arboleda*.

Fundación Pro Bono Colombia is a *pro bono* clearinghouse.¹¹ Officially launched in 2008, its members include over twenty law firms. Within its first year of operation, *Fundación Pro Bono Colombia* received approximately one hundred cases and referred eighty of those to firms and private attorneys. In addition, the foundation runs legal seminars for the underprivileged and researches human rights issues.

Servicios Jurídicos No Remunerados is a partnership formed between *Universidad de Los Andes* and a number of Colombian law firms. The entity offers free legal services to non-profit groups dedicated to humanitarian causes, in particular in the areas of health, education, environment, disability and children’s law.¹² Over twenty-five Colombian law firms donate their services to this project, permitting the organization to provide its clients with specialized support in nearly every area of substantive law. Initially, the program offered only services related to legal incorporation and the negotiation of contracts. However, attorneys linked to the program also now provide representation in specific controversies concerning the public interest.

Compartamos con Colombia is an alliance of professional services firms formed to support not-for-profit entities. It undertakes initiatives designed to contribute to Colombia’s development. The alliance counts seventeen world-class law firms, investment banks and consulting firms among its ranks.¹³ *Compartamos con Colombia* provides subsidized institutional support to non-profit organizations, projects that seek to efficiently channel resources, projects promoting social entrepreneurship and initiatives furthering self-sustaining social investment. The organization also develops strategies promoting corporate responsibility and family-based philanthropy. To date, *Compartamos con Colombia* has provided free or low-cost institutional support to over sixty non-profit organizations operating in the areas of sustainable development, children’s rights, education, health and microfinance, among others.

The NGO *Comisión Colombiana de Juristas* is dedicated to the preservation of human rights in Colombia. Its activities include commenting on proposed legislation, compiling and distributing information and legal analysis to the population at large and providing direct

¹⁰ <http://www.nycbar.org/VanceCenter/Declaration.pdf>.

¹¹ <http://probono.org.co>.

¹² http://www.abcnyc.org/VanceCenter/PDF/strategysummit/programprofiles/Servicios%20Los%20Andes_Esp.pdf.

¹³ <http://www.compartamos.org>.

representation in impact litigation aimed at preserving and safeguarding human rights.¹⁴ It files cases both before the Constitutional Court and other Colombian bodies and before the Inter-American Commission on Human Rights.

Attorneys not licensed in Colombia may provide services in specific controversies if they partner with locally licensed attorneys. For example, a foreign attorney may aid in the drafting of briefs filed before Colombian courts that seek to safeguard human and social rights. Note that the Constitutional Court may consider foreign law in its decisions, and amicus briefs based on foreign or international law have therefore begun to play an important role in constitutional litigation.¹⁵ In one recent notable success, the New York-based firm of Weil, Gotshal and Manges LLP partnered with *Universidad de los Andes* in submitting to the Constitutional Court an amicus brief in support of extending the benefits of marriage to unwed same-sex couples. This brief helped the plaintiffs obtain a landmark decision permitting same-sex couples to register their domestic partnerships and receive economic benefits on equal terms with opposite-sex couples. The Cyrus R. Vance Center for International Justice in New York serves as a clearinghouse for these types of opportunities.

III. Conclusion

The last few years have seen great strides in the field of *pro bono* legal services in Colombia. A *pro bono* clearinghouse was founded. Many of the top law firms in the nation have publicly committed themselves to devoting a percentage of their time to providing *pro bono* services and have established programs for doing so. Despite these advances, much work remains to be done. The Colombian legal codes contain numerous actions and remedies designed to safeguard the legal and social rights of its citizens—these, however, are technical and complex, and their application often requires the specialized assistance of an attorney. Furthermore, as one leading practitioner notes, the country has significant unaddressed needs in the areas of population displacement, the environment, anti-corruption programs, family law and children's rights, among others.¹⁶ There is much reason for optimism, however, given the recent trajectory of *pro bono* services in Colombia

¹⁴ <http://www.coljuristas.org>.

¹⁵ http://nycbar.org/VanceCenter/eNotesandNews/06_Aug_amicus.htm.

¹⁶ Paula Samper Salazar, *Pro Bono en Colombia*: <http://www.probono.cl/>.