

# ***Pro Bono Practices and Opportunities in France***

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

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France has a long-standing tradition of providing legal aid to indigent clients. French lawyers have historically viewed representing those without resources in criminal and civil proceedings as part of their role as the guardians of civil rights and liberties. By 1278 French institutions founded under Saint Louis had already secularized the practice of lawyers representing clients who could not pay for their services. For centuries thereafter the French *batonnier* (legal guild) independently assumed the responsibility for organizing *pro bono* activities, with little or no state help or financial sponsorship. Under this practice, lawyers were designated by the guild to serve those indigent clients who asked for legal assistance. The system presumed that those less fortunate had a right to bring a claim in front of the court, and it was therefore the lawyer's duty to represent them without a fee.

The American terminology of *pro bono* (from the Latin *pro bono publico*, meaning for the public good) does not exist in the French jurisprudential lexicon. Instead, the French refer to *assistance juridique gratuite* (free legal assistance) or *assistance bénévole* (benevolent assistance), terms that do not mean precisely the same as their American counterpart. Whereas *pro bono* in the American sense implies free services, the French model of legal aid often provides payment of lawyers by the state, albeit a small amount compared to typical legal fees. Further, the French Bar organizes legal aid through its general rules and regulations pertaining to the practice of law,<sup>1</sup> while *pro bono* practice in the United States generally consists of partnerships between a multitude of legal referral services, including various bar associations and law firms, which bring together indigent clients and lawyers seeking to fulfill their professional ethical aspirations. Lastly, as the French *pro bono* practice is highly centralized around the Paris Bar, it is appropriate to limit the scope of this inquiry to the Paris jurisdiction, noting that practices might differ in other jurisdictions.

## **I. *Legal Services and the Legal Profession in France***

The contemporary legal aid system in France has two components: (1) *aide juridictionnelle*, which coordinates funding public legal representation to those who fall below a certain financial threshold and (2) *accès au droit*, which gives all indigent clients the necessary resources to have equal access to legal information. Both systems grew out of a legislative initiative to systematize the legal assistance program in France, beginning with the law of January 3, 1972,<sup>2</sup> and then the law of July 10, 1991.<sup>3</sup>

### **A. Aide Juridictionnelle**

The first category of legal aid, *l'aide juridictionnelle*,<sup>4</sup> allows indigent clients to receive legal representation from a qualified attorney who is paid by the state. The program, run by the French Bar, has created an entire market of French lawyers whose practice focuses on cases referred through the *aide juridictionnelle* system. The work these lawyers receive tends to be individualized and often concerns smaller daily matters from clients who cannot afford any other form of representation. *Aide juridictionnelle* is generally available to several groups: French or European Union citizens, foreign citizens residing in France, and foreign citizens appearing in

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<sup>1</sup> See Le Règlement Intérieur du Barreau de Paris, available at: <http://www.avocatparis.org/ribp.html>.

<sup>2</sup> See Law of January 3, 1972, No. 72-11.

<sup>3</sup> See Law of July 10, 1991, No. 91-647. This law established the *Conseil National de l'Aide Juridique*, or C.N.A.J. (the National Counsel of Legal Aid).

<sup>4</sup> *L'aide juridictionnelle* was instituted by the law of July 10, 1991, and modified in particular by the law of December 18, 1998, No. 98-1163.

refugee cases. The aid can also apply to foreigners in other special circumstances: minors, witnesses, criminal defendants, convicted criminals, or those in exceptional situations.<sup>5</sup> The aid can be afforded to the plaintiff or the defendant in a proceeding in any of the three jurisdictions in France: civil, criminal, or administrative.<sup>6</sup>

The essential criterion for receiving *aide juridictionnelle* is financial. The system distinguishes between total and partial aid, depending on one's financial situation.<sup>7</sup> In 2010, applicants with total resources under €15 per month qualify for total aid, whereas applicants with less than €1,372 per month qualify for partial aid.<sup>8</sup> In order to receive the aid, each petitioner must fill out a request for *aide juridictionnelle*, along with proof of income. Once accepted, the choice of the lawyer is initially up to the petitioner. If the petitioner does not choose an attorney, the file is sent to the Bar Association, which designates a lawyer based on the specifics of the case.<sup>9</sup> In 2009, 908,000 matters were admitted to the *aide juridictionnelle* in France.<sup>10</sup>

The number of applicants to the *aide juridictionnelle* will almost certainly increase since, as per the Law of July 24, 2006,<sup>11</sup> asylum cases now fall within the scope of *aide juridictionnelle*.

Under the system of *aide juridictionnelle*, lawyers who donate their time receive payment from the Bar according to a level set by the state.<sup>12</sup> The amount paid for each matter is based on the Decree of December 19, 1991, which establishes a coefficient for each legal procedure and a base unit value which, multiplied together, determine the payment.<sup>13</sup> This payment, however, is insignificant in comparison to what many lawyers in Paris typically receive.<sup>14</sup> Unfortunately, a large percentage of lawyers rely on this type of aid as their primary source of income. It is therefore important to note that while the indigent do receive free legal services, the lawyers are not performing *pro bono* aid in the classic American sense insofar as they are not giving their services free of charge. Consequently, the use of the *aide juridictionnelle* mechanism by international law firms would conflict directly with the work of attorneys who make a living on this form of public aid, thereby jeopardizing their livelihood.

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<sup>5</sup> See Law of July 10, 1991, Article 3.

<sup>6</sup> See Law of July 10, 1991, Article 10. The constitutional right to legal counsel in the United States, by comparison, only applies to criminal infractions punishable with jail time.

<sup>7</sup> See Law of July 10, 1991, Article 4.

<sup>8</sup> See *Circulaire relative à l'aide juridictionnelle* of 31 December 2009, N° NOR: JUS A 0931885C.

<sup>9</sup> See Law of July 10, 1991, Article 25. England has a similar system where the client chooses his lawyer. In Germany, choice is possible for all legal matters, except in criminal proceedings. In Italy, clients do not have a choice of attorney for most matters before a civil court.

<sup>10</sup> See *Rapport de l'Assemblée nationale sur le projet de loi de finance 2010 (No. 1974)*, available at: <http://www.assemblee-nationale.fr/13/budget/plf2010/a1974-tV.asp>.

<sup>11</sup> See Law of July 24, 2006, No. 2006-911, as modified.

<sup>12</sup> See Law of July 10, 1991, Article 27.

<sup>13</sup> See Decree of December 19, 1991, No. 91-1266. For example, the unit value is €22.50 (V.A.T. excluded) since 2007, and the coefficient for a divorce proceeding is 36 (2009/2010), so the lawyer would be paid €765.

<sup>14</sup> See Alain Balsan, *Guide Pratique de l'Aide Juridictionnelle*, Paris: Edilaix. The base unit value varies from €22.84 to €25.90 (depending on the Bars), and the coefficients vary from 4 to 36 for civil matters, 2 to 50 for criminal matters, and 3 to 20 for administrative matters.

## B. Accès au Droit

The second category of legal aid, *l'accès au droit*,<sup>15</sup> serves as the corollary to *aide juridictionnelle*. It provides clients in need with consultations and assistance to help them make informed legal decisions.<sup>16</sup> For several years now the French Bar has provided free anonymous and confidential general consultations by volunteer lawyers, regardless of the client's financial situation, intended to guarantee equal access to legal information.<sup>17</sup> General consultations under the *accès au droit* program are available, in particular, at the *Palais de Justice*, in each of the 20 *arrondissements* in Paris, in the *Maisons de la Justice et du Droit* (MJD) and in the *Points d'accès au droit* (PAD). Specific legal advice is available in tax law, entrepreneurial law, employment law, family law, immigration/naturalization law, criminal law, juvenile law, elderly law, and general victims' rights.<sup>18</sup>

The *accès au droit* form of legal work, unlike *aide juridictionnelle*, is unpaid and completely voluntary. One problem that has emerged in recent years for some French lawyers is the inability of those who donate their time to perform a conflict-of-interest check for each individual client. Despite this difficulty, the *accès au droit* program has been such a success that the Paris Bar has been forced to turn away many lawyers who have volunteered.

## C. Barreau de Paris Solidarité

A recent initiative of the Paris Bar is the *Barreau de Paris Solidarité*.<sup>19</sup> To provide legal services to the most destitute, the Paris Bar has developed partnerships with public interest aid groups, such as *Droits d'Urgence*,<sup>20</sup> to address legal concerns in the poorest areas of the city. Started in March 2003, the *Barreau de Paris Solidarité* provides an effective comprehensive service for those in extreme difficulty. The scope of the activities undertaken by the *Barreau de Paris Solidarité* is vast: employment, housing, health, education, citizenship, etc. The program consists of several layers: permanent consulting centers in designated areas throughout the city, a bus that travels throughout the city in order to give legal advice to the indigent community, and partnerships with various humanitarian organizations. In 2008, legal services were provided to 3,303 people.<sup>21</sup>

## II. *Pro Bono Opportunities in France*

There are some opportunities for new forms of *pro bono* work in a French environment otherwise run by centralized institutions. First, a firm could establish strong relationships with and provide representation to public interest organizations. This form of representation has not

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<sup>15</sup> Implemented by the Law of July 10, 1991.

<sup>16</sup> See Law of July 10, 1991, Article 53.

<sup>17</sup> See Paris Bar website, available at: [http://www.avocatparis.org/avocats\\_service/consultations\\_gratuities2.aspx](http://www.avocatparis.org/avocats_service/consultations_gratuities2.aspx).

<sup>18</sup> See Paris Bar website, available at: [http://www.avocatparis.org/avocats\\_service/PDF/Recto\\_verso\\_consultations.pdf](http://www.avocatparis.org/avocats_service/PDF/Recto_verso_consultations.pdf).

<sup>19</sup> See Paris Bar website, available at: [http://www.avocatparis.org/avocats\\_service/consultations\\_gratuities\\_bus.aspx](http://www.avocatparis.org/avocats_service/consultations_gratuities_bus.aspx).

<sup>20</sup> See Droits d'Urgence website, available at: <http://www.droitsdurgence.org/partenariat-avec-le-barreau-de-paris/le-bus-barreau-de-paris-solidarite.html>.

<sup>21</sup> *Id.*

yet been attempted on a large scale in France. It appears that most French organizations are not aware that large law firms based in Paris provide *pro bono* assistance.

Large law firms in Paris may also consider working on projects with international human rights groups to expand their *pro bono repertoire* in France. Law firms could, for example, seek to represent individual clients before international bodies. This form of representation could consist of representing individuals or non-state actors before international institutions, representing underdeveloped countries in disputes between states, or involvement as *amicus curiae*. Organizations such as FIDH (International Foundation for Human Rights)<sup>22</sup> may gather the volunteers and assign them to relevant projects.

International law firms may also expand their presence within the *accès au droit* framework. The *accès au droit* form of public legal aid is the area in which most law firms have provided U.S.-style *pro bono* aid to the community. Many attorneys at large firms have opted to donate some of their time on a weekly or monthly basis to one or more of the consulting services. Firms could systematize their participation within specific *accès au droit* programs, such as by offering a rotation for young lawyers through an already established consultation agency. While publicity constraints would most likely impede firms from advertising this kind of *pro bono* work, the association in charge of the service could most likely advertise each individual law firm's involvement.

A group of firms in the Paris market could also potentially work together to deal with a deficiency in the current *pro bono* structure. One option would be to collaborate with the Paris Bar to develop a partnership that would effectively remedy a need that is not currently met by the centralized system. Another option is the development of partnerships with other large international law firms to create organizations that would deal with a specific *pro bono* problem. Justice for Cambodia, a partnership recently created to unite victims of the regime with lawyers around the world, is one example of this form of partnership.<sup>23</sup>

Finally, individual lawyers, either with a firm or individually, could more systematically take part in the *aide juridictionnelle* structure, work that is well-regarded by the legal community even if it is paid by the state. Entering this area of *pro bono* work may not be desirable because, as stated above, it will conflict with the market of French lawyers who rely on the income they receive from the *aide juridictionnelle* system. However, one possibility is for international law firms in France to get involved in exceptional, high-profile cases which require a substantial amount of material work.

An informal group composed of representatives of the large U.S. and U.K. law firms based in Paris (*Paris Pro Bono Roundtables*) was set up in 2007 in order to discuss ways to better promote and facilitate *pro bono* work. The group, which meets every trimester, works in close consultation with the Paris Bar. Among other proposals, the group is contemplating creating a clearinghouse for organizations willing to benefit from *pro bono* work and to lobby in favor of the creation of a specific tax-regime for *pro bono* hours.

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<sup>22</sup> See FIDH website, available at: <http://www.fidh.org/>.

<sup>23</sup> See Justice for Cambodia, available at: <http://www.justicepourleCambodge.org/sommaire.php3>.

### III. *Prohibition Against Advertising*

One problem facing *pro bono* practice in France is a restriction on legal advertising. Attorneys in France are only permitted to advertise their services in order to give the public the necessary information pertaining to the legal practice of the lawyer or law firm. It is illegal to solicit legal work in any form, either by going to the residence or workplace of a potential client or by sending a personalized proposition of work without having been properly invited beforehand.<sup>24</sup> It is also illegal to advertise the names of past and current clients. This form of advertising is nevertheless permitted if the client consents and the advertising is inaccessible from French territory.

Since advertising in France is only permissible in order to convey strictly necessary information to the public, the advertisement of *pro bono* services would be seen as beyond the scope of what is legal. Although firms can advertise their specialties, *e.g.*, securities, *pro bono* work does not fit neatly into that form of targeted solicitation. The only permissible form of publicity for *pro bono* work in Paris should be confined to advertising that is consented to by the client and inaccessible to the French market.

### IV. *Conclusion*

The French legal aid system attempts to create an exhaustive system run by the Bar to assist the indigent community. The *aide juridictionnelle* system gives all clients in need an attorney, paid for by the Bar, to represent their interests in a courtroom. The *accès au droit* system seeks to ensure that the indigent community is sufficiently well-informed to make proper legal decisions by organizing meetings with unpaid volunteer lawyers. Currently, lawyers who wish to represent indigent clients and do meaningful *pro bono* work must offer their services as part of the social legal aid system, but numerous opportunities for expanding the scope of *pro bono* work in France exist. However, any proposed changes to the legal aid system should include direct consultation and cooperation with the Paris Bar.

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<sup>24</sup> *Règlement Intérieur du Barreau de Paris*, Article 10.2.