

Pro Bono Practices and Opportunities in Japan

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

September 2010

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Providing legal assistance to the indigent is an important value in the Japanese legal tradition. Yet, compared to the United States, there is a different understanding and approach to fulfilling this public interest component of the legal profession. In Japan, there is no statutory mention of the term “*pro bono*.” Instead, the public interest cause is expressed through terms such as “human rights” and “social justice.”¹ These ideals are specifically set forth as the mission of each and every practicing attorney.²

Legal aid has been, and remains, the traditional and primary means of providing legal services to the indigent in Japan. Bar associations and the government play a large role in administering the legal aid system. In addition to legal aid, certain large multinational law firms in Japan, both foreign and domestic, engage in a limited amount of *pro bono* work.

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

A. The Legal Profession

Japan’s legal profession experienced two fundamental changes after WWII with the adoption of a new Japanese Constitution and the Attorney Act. The Japanese Constitution was adopted in 1946, including provisions on guaranteeing fundamental human rights. This was followed by the enactment of the Attorney Act in 1949, a general law governing attorneys with a human rights philosophy, consistent with the Japanese Constitution.³ In particular, the Attorney Act provided, among other things, that the mission of a practicing attorney is to protect fundamental human rights and to realize social justice.

Under the Attorney Act, the Japan Federation of Bar Associations (the “Federation”) was formed in 1949. The Federation became the controlling body overseeing the nation’s attorneys, instead of the government’s Ministry of Justice, freeing the profession from governmental influence and potential conflicts of interest. As the national bar association, the Federation has self-regulatory powers, such as the ability to formulate its own rules and regulations and the power to discipline its members.⁴

This autonomy enables the Federation to achieve its two-fold objectives of governing matters related to the supervision and guidance of its members,⁵ and acting “as a source of protection of fundamental human rights and of [the] realization of social justice.”⁶

¹ Attorney Act, Law No. 205 of 1949, art. 1, no. 1., *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1>. “An attorney is entrusted with the mission of protecting fundamental human rights and achieving social justice.”

² *Id.*

³ See Japan Federation of Bar Associations, <http://www.nichibenren.or.jp/en/about/profile.html> (last visited Sep. 7, 2010).

⁴ See Japan Federation of Bar Associations, http://www.nichibenren.or.jp/en/about/attorney_system.html (last visited Sep. 7, 2010). Members of the Bar include all licensed attorneys from any of the 52 local bar associations throughout the country.

⁵ See Attorney Act, Law No. 205 of 1949, art. 45, no. 2., *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1>.

⁶ Articles of Association of Japan Federation of Bar Associations, *available at*: <http://www.nichibenren.or.jp/en/about/pdf/articles.pdf>.

The independence of the Federation, protection of fundamental human rights, and achievement of social justice continue to be the core ideals under which practicing attorneys in Japan operate today.

B. Legal Aid

Given the clear focus on human rights and social justice in the Attorney Act, the Federation created the Japan Legal Aid Association in 1952. This nonprofit, government-subsidized organization was modeled after the British system of using public funds to establish a system of advice, aid, and assistance to service the legal needs of those unable to afford them. Services were originally offered only in civil matters, but they were subsequently expanded to include criminal matters as well. As government funding of the Japan Legal Aid Association was not mandatory, the Association experienced serious and chronic fiscal deficits over the years as demand for legal aid increased. This issue triggered the gradual adoption of the new legal aid system as described below.

In 2000, Japan passed the Civil Legal Aid Act as the general legal aid law of the country for civil matters. The Civil Legal Aid Act was the first law to stipulate that it was the government's responsibility to support the legal aid system. Long-awaited, it was the product of efforts by both the Federation and the Japan Legal Aid Association calling for greater government involvement in expanding and improving the existing system. The Civil Legal Aid Act's objective was to make the judicial system more accessible to the public in furtherance of the greater constitutional mandate that "[n]o person shall be denied the right of access to a court."⁷

In 2004, Japan passed the Comprehensive Legal Support Act, which superseded the Civil Legal Aid Act. Its objectives are considered groundbreaking, and include (1) ensuring that all individuals can access legal services via any of the 50 newly created legal aid local offices located throughout Japan; and (2) the provision of comprehensive legal aid services to those who do not have financial means, regardless of whether the case involves a civil or criminal matter.⁸ The Comprehensive Legal Support Act also enhanced the government's role in the administration of legal aid, as evidenced by the creation in April 2006 of a new centralized organization called the Japan Legal Support Center (the "Center").⁹

Under the Comprehensive Legal Support Act, the newly-created Center replaced the Japan Legal Aid Association and became the central legal aid organization for the country.¹⁰ It assumed the staffing, administrative, and other logistical functions that were previously provided to the Japan Legal Aid Association by the Federation and local bar associations, and further benefits from greater management support from the government.¹¹ The various activities of the Center are generally aimed at expanding access to legal services, including comprehensive legal aid services in both civil and criminal matters.

⁷ The Constitution of Japan (Kenpo), art. 32, *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=174&vm=02&new=1>.

⁸ See Japan Legal Support Center, http://www.houterasu.or.jp/en/about_jlsc/executives.html (last visited Sep. 7, 2010).

⁹ See Japan Legal Support Center, http://www.houterasu.or.jp/en/about_jlsc/history.html (last visited Sep. 7, 2010).

¹⁰ The Japan Legal Support Center began providing services in October of 2006, while the Japan Legal Aid Association dissolved in 2007.

¹¹ See Comprehensive Legal Support Act, Law No. 74 of 2004, art. 1, *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1832&vm=02&re=02&new=1>.

As to civil legal aid, the Center offers support to indigents through legal consulting without charge, loans for attorney's fees for preparation of documents to be submitted to the court, and loans for attorney's fees for legal representation in civil trials, including family-related cases and administrative cases. Loans extended by the Center for attorney's fees are ultimately forgiven if the recipient is a welfare recipient at the time of application and remains a welfare recipient at the repayment date. Foreign nationals lawfully residing in Japan may also receive assistance through the civil legal aid system.

As to criminal legal aid, prior to indictment, suspects under detention for offences punishable by death, life imprisonment, or imprisonment for a term longer than 3 years who are indigent are entitled to the appointment of defense counsel. If indicted, regardless of the gravity of the alleged offence, the defendant is entitled to defense counsel if he/she is indigent. A defense counsel appointed prior to indictment may be reappointed as trial counsel upon request by the defendant. If a defendant is indicted for an offence punishable by death, life imprisonment, or imprisonment for a term longer than 3 years and there is no defense counsel, a court will appoint a defense counsel, regardless of whether it is requested by the defendant. In each of the foregoing cases, all legal fees and expenses for the court-appointed defense counsel are paid from public funds through the Center. Foreign nationals may also receive assistance through the criminal legal aid system regardless of their status of residence.

C. Additional Aid Provided by the Federation and Local Bar Associations

Certain types of legal services for the indigent are not covered by the Center. Thus, the Federation and local bar associations still play important roles in providing legal services in such areas.

The duty attorney system is one of the legal services provided by the Federation and the local bar associations. This system was created to protect the rights of criminal suspects, prior to indictment, who are detained and not provided with, or otherwise eligible under, the legal aid regime to receive assistance from a court-appointed attorney. The goal of this system is to ensure that those detained are sufficiently informed of their rights. When requested by a suspect under detention, the duty attorney, who is a defense attorney appointed by a local bar association, will immediately visit the suspect's place of detention and attend suspect interviews in order to inform the suspect of his or her rights, including, for example, the right to remain silent and the right to deny depositions drafted by investigators. The Federation provides duty attorney services to criminal suspects, regardless of nationality or visa status of such suspect. If the suspect is a foreign national, an interpreter accompanies the attorney. The first consultation with a duty attorney is free of charge. Interpreting fees are likewise free and borne by the local bar associations.¹² If a suspect wishes to receive further assistance, the suspect may appoint the duty counsel as his or her defense attorney at his or her own expense.

There are some areas of Japan where the number of attorneys is extremely low relative to the population. While the Center provides services in some of these areas, the Federation, local bar associations, and regional federations of bar associations also operate Federation- and bar-funded law offices in rural areas that may not otherwise be covered. In addition, in June 2008, the

¹² The Federation collects special dues from its members in order to financially support this system. See Japan Federation of Bar Associations, <http://www.nichibenren.or.jp/en/about/activities.html> (last visited Sep. 7, 2010).

Federation began providing economic support aimed at encouraging attorneys to settle in areas with a shortage of attorneys.¹³

II. *Pro Bono Opportunities in Japan*

The primary channel through which *pro bono* work is undertaken by practicing attorneys in Japan is the local bar association. Each local bar has broad discretion in formulating its own bylaws and “rules pertaining to legal support.”¹⁴ Thus, there is no standard mandatory requirement for practicing attorneys in Japan to participate in *pro bono* activities, unless their local bar association has adopted such rules in its articles of association. In some of the more progressive districts, such as Tokyo, and in 8 of the 52 other districts, local bar associations have adopted rules requiring their members to perform mandatory public interest service.

For example, the Tokyo Bar Association, one of the three local bar associations in Tokyo, with some 6,000 members, compels its members to perform public interest activities, such as civil legal aid work or acting as court-appointed or duty attorneys for criminal suspects and defendants, at least once a year.¹⁵ If the attorney does not comply, he or she can face consequences, including admonition, publication of their names as non-compliers, and paying a ¥50,000 penalty per year.

Certain local bar associations expressly define what kind of activities qualify as public interest activities. Bar associations that define public interest activities more narrowly and specifically are generally more effective than those that simply define them as “activities done without asking for payment.” For example, the Daini Tokyo Bar Association, another local bar association in Tokyo, defines, among others, activities as a duty attorney, certain legal consulting organized by the local bar association, and activities for indigents and vulnerable groups as public interest activities. In addition, activities at committees of local bar associations are also usually regarded as public interest activities. In effect, the range of the activities considered as public interest activities in Japan are broader in scope than “*pro bono* activities” in the United States and other countries.

The Federation and local bar associations are also generally open to expanding their areas of public interest activities. For example, the Daini Tokyo Bar Association has set up a counseling service to handle children’s problems through which individuals can seek advice on issues, such as bullying and corporal punishment. Among the attorneys actively contributing to these local bar association-led, public interest activities are those from large law firms, and large law firms often publicize their participation in such activities.¹⁶

¹³ *Id.*

¹⁴ Practicing Attorney Law, Law No. 205 of 1949, art. 33, no. 2 (9), available at: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1>.

¹⁵ The duty attorney system is a private-sector system created by the bar associations in order to effectively guarantee the right of suspects to court-appointed attorneys. When requested by a suspect, the duty attorney will immediately visit the suspect’s place of detention and interview him or her, regardless of nationality or visa status. If the suspect is a foreign national, an interpreter accompanies the attorney. The first consultation with a duty attorney is free of charge. Interpreting fees are likewise free and borne by the local bar association. The number of duty attorney cases in 2005 was 67,711.

¹⁶ <http://www.noandt.com/en/practice/probono.php> (last visited Oct. 4, 2010), <http://www.mhmjapan.com/en/probono/index.html> (last visited Oct. 4, 2010).

In addition to local bar association activity, a limited number of large law firms have also contributed their services to the community on a *pro bono* basis.¹⁷ Because there are still many cases that fall outside of local bar association activities and Center-provided services, *pro bono* services by private law firms are generally aimed at filling this gap. However, *pro bono* activity among law firms is still relatively limited. This may be due, in part, to the fact that no *pro bono* clearinghouses currently exist in Japan to match law firms and lawyers with *pro bono* clients.

Multinational western law firms with local branch offices in Japan have also engaged in public interest and *pro bono* services including, for example, fundraising campaigns for charitable causes, working with humanitarian organizations, such as the Japanese Red Cross,¹⁸ and asylum representation.¹⁹ However, the time spent on *pro bono* activities by these firms generally comprises a very small portion of the firms' overall volume of work, particularly when compared to their respective domestic offices in the United States or United Kingdom.

III. Conclusion

Whereas the relationship between legal aid and the local bar associations in Japan is a close and dependent one, the relationship between legal aid and private law firms has room to grow. Although *pro bono* activity by law firms has historically been, and remains, relatively limited, the legal aid and other public interest activities led by the Federation and local bar associations in Japan function as good alternatives, and meet the need for free legal services among many within Japan's indigent population. However, there are still matters falling outside of the areas covered by the Federation, the Center, and local bar where law firms can meaningfully contribute through their *pro bono* efforts to fill the gap.

¹⁷ <http://www.mhmmjapan.com/en/probono/index.html> (last visited Oct. 4, 2010).

¹⁸ <http://www.allenoverly.com/AOWEB/Community/Editorial.aspx?contentTypeID=1&itemID=52811&prefLangID=410> (last visited Sep. 7, 2010).

¹⁹ Latham & Watkins 2005 Pro Bono Annual Review, p. 15 (where Latham's Tokyo attorneys successfully handled an asylum case, achieving a rare grant of asylum by the Japanese government for their client, a refugee from the Democratic Republic of the Congo).