



Getting Good “Mileage” from Your Pro Bono Cases

Get Picky About Pro Bono Cases and Get Better at Advocacy

By James W. Gibson

If you graduated from law school in this century, you’ve heard no shortage of stories from more senior attorneys about how they learned to try cases back in the good ol’ days, when the rules didn’t matter and everything went to the courthouse. While that litigation climate may be quite conducive to developing great lawyers, it’s difficult to recreate, given the dwindling number of cases that go to trial, as well as the frequent client insistence that those same senior lawyers handle the heavy lifting in their most important cases.

One often-proposed cure to this problem is seeking opportunities to handle pro bono cases that are likely to go to trial, including some criminal matters, prisoner’s rights cases, immigration disputes, and other suits that are unlikely to settle. Taking one of these cases to a jury will undoubtedly provide a younger lawyer with invaluable courtroom experience, but it will also likely require hundreds of hours of pro bono service over a lengthy period of time. Of course, we should all feel compelled to give back to our community through our legal work, but in reality, many of us in private practice are unable to sacrifice the equivalent of several months of full-time work to try a pro bono matter.

For those of us who seek the courtroom exposure of a trial but simply can’t donate the time required for protracted litigation, a middle-ground approach may work well. Over the past several years, I have volunteered regularly at a “Help Desk” that our local volunteer lawyers program operates on a monthly basis. (For me, that’s the Birmingham Bar Volunteer Lawyers Program, found at vlpbirmingham.org). These programs, which are common across the country, allow lawyers to meet with low-income clients and discuss recommendations for handling whatever conflict an individual may be facing. These conferences are usually quite short, and most volunteer lawyer programs have ensured that the applicable professional rules allow for these consults with-

out requiring any detailed conflict check in advance or creating any ongoing fiduciary obligations after the discussion ends.

In addition to genuinely enjoying these few hours that I try to donate each month, I use my time at our local Help Desk to try to spot clients who would benefit from continued legal representation and flag these individuals to the organizing group. I also make a particular effort to identify clients who are in legal situations that I find interesting, who might benefit from the legal skill-set that I’ve developed in my career, and who have cases that (importantly) appear to be resolvable with five or 10 or 20 hours of volunteer time over several weeks, as opposed to several hundred hours over many months or even years. When I’m considering these would-be cases, I try to do a quick analysis of how time-intensive the matter might be if it can’t be resolved without meaningful litigation. In other words, if I can’t negotiate a resolution that satisfies my potential client, how long would it take for me to get this case ready and go try it?

Using this strategy, I have handled several cases that began as a 10-minute, no-strings-attached consult and evolved into short (*i.e.*, just a few weeks) matters that allowed me to develop a relationship with my client, interview potential witnesses, negotiate face-to-face with an opposing party, and evaluate which litigation-related steps might be beneficial to furthering my client’s goals. Over time, I’ve been able to help clients clear improper criminal charges, get a full refund of money paid for a fraudulently-advertised used car, and recover money stolen through common check fraud. In two of those three instances, I was able to help my client achieve the desired result without any courthouse time. In the other, a quick hearing was all that was required.

In each of these matters, I would have been selfishly thrilled had the matter ultimately required a trial. However, despite the lack of meaningful courthouse time accompanying these cases, each brought valuable experience that benefitted my litigation skills in meaningful ways. You want good practice for appearing before a hostile judge or negotiating with belligerent opposing counsel? Take a run at trying to convince a used car dealer with a huge “*All Sales Final*” sign over his desk that your client deserves to get back every penny she paid for her



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lemon. That interaction taught me as much about client advocacy as any interaction I've had with someone wearing a black robe.

Of course, not every jurisdiction offers a Help Desk or equivalent program that lawyers can use as a de facto vetting ground for identifying the “in-between”-type cases that have become a favorite of mine. If that type of program isn't available to you, instead try reaching out to the folks who run your preferred pro bono organization and be very candid with them about the type of case—and related level of commitment—that you're seeking. No pro bono specialist would *ever* be upset with that type of call, and you

may well end up with a file in your lap that is exactly what you're trying to find.

Finally, if you're unsure about a case you're considering and whether you have the capacity for it, find a more seasoned lawyer in your firm who will help you candidly assess the time and skill-level required to do the client justice. If you handle the intake process correctly, you're already on your way to a successful matter for both you and your client, which should translate into experiences for you that are similar to the ones that have made many older attorneys so skilled and comfortable in the courtroom. 