



## ***Raising the Bar in D.C.: A Funding Campaign for Legal Services***

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District law firms are among the most generous in the nation in providing pro bono and financial support for legal services. Because of this tradition of engagement, law firms are a crucial part of the legal services delivery system and valued partners in access to justice efforts. Despite this commitment, too many vulnerable residents are forced to navigate the legal system alone, even when those things they most value are in jeopardy. There is no doubt that the recession and the aftermath of a weakened economy has widened the justice gap.<sup>1</sup> Funding for legal services dropped an alarming 25% in 2009 while requests for legal services increased by approximately 20%. Even before the recession, however, the legal services network could meet only a fraction of the need. Even in good economic times, the legal services network is chronically underfunded and lacks the capacity to meet the urgent legal needs of the District's indigent residents.

The D.C. Access to Justice Commission, with the endorsement of the D.C. Bar Foundation and the D.C. Bar, launched the ***Raising the Bar in D.C. Campaign*** in December 2010 to strengthen law firm giving to legal services organizations. A Leadership Circle of eight leading law firms – Akin, Gump, Strauss, Hauer & Feld LLP, Covington & Burling LLP, Crowell & Moring LLP, DLA Piper, Jenner & Block LLP, Sidley & Austin LLP, Sutherland Asbill & Brennan LLP (now Eversheds Sutherland LLP), and Steptoe & Johnson LLP – joined in the launch of the Campaign by pledging to donate funds to local legal services providers at a benchmark level in 2011 and by joining the Commission in an appeal to the law firm community

The obligation to ensure that all persons have access to legal counsel regardless of income or the ability to pay is one that is shared by every member of the Bar of the District of Columbia. Lawyers in the District have a long and rich tradition of providing pro bono services and support for legal services programs. This commitment is not only a matter of culture, but an obligation imposed by the D.C. Rules of Professional Conduct. Rule 6.1 requires all lawyers to provide pro bono service, a substantial financial gift to legal services,

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<sup>1</sup> In 2009, the Commission and the D.C. Consortium of Legal Services Providers jointly released a report, *Rationing Justice: The Effect of the Recession on Access to Justice in the District of Columbia*, which assessed the impact of the recession on the provision of legal services. The results were alarming. Providers estimated a 20% increase in demand for legal services in 2009. In the same period, all traditional sources of revenue for legal services plummeted. The network lost approximately \$4.5 million in 2009 alone – a 25% decrease in funding. This meant the loss of 12% of attorneys, and nearly 40% of non-legal staff, at a time when clients are faced with more – and increasingly urgent – legal problems. Because of these staff losses, thousands of indigent clients, many with resolvable legal issues, have had to face legal crises without the help of an attorney.

or both. The rule “recognizes that the basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and that every lawyer, regardless of professional prominence or professional work load, should find time to participate in or otherwise support the provision of legal services to the disadvantaged.”<sup>2</sup>

The D.C. Bar Pro Bono Initiative was established in 2001 to provide law firms with guidance in meeting their ethical obligation and to recognize pro bono contributions by District firms. While the District of Columbia Circuit gives individual lawyers a target for financial support, law firms have no similar benchmark. The ***Raising the Bar in D.C. Campaign*** is designed to work with law firms to meet targeted giving levels and to encourage the entire law firm community – regardless of law firm size -- to provide generous financial support to civil legal services for District residents.

To most effectively address the needs of the District’s poorest residents, the network needs a combination of both pro bono **and** financial support. Without a cadre of well-trained and adequately resourced legal services staff, pro bono is nearly impossible. Providers identify and screen cases, mentor volunteers, provide training and support pro bono efforts. At the same time, the funds provided by law firms and individual donors keep the doors of these vital organizations open. Support for civil legal services has never been more critical. The recession and ensuing weakened economy has driven more District residents into poverty, increased the complexity and urgency of many legal problems, and starved social services entities. Legal services lawyers are often the only thing standing between a poor family and a disastrous legal crisis.

### **Benchmarks for Law Firm Giving**

The ***Raising the Bar in D.C. Campaign*** establishes benchmarks for law firm giving. It creates three tiers – platinum, gold and silver – that recognize contributions firms make to local legal services organizations either through donations of cash or attorneys’ fees, or payment for fellowships sponsored by the firm. Benchmarks are calculated as a percentage of law firm revenue. This ensures that the benchmarks reflect changes in the economic climate.

To set these benchmarks, the Access to Justice Commission’s Private Revenue Committee asked Ernst & Young to confidentially collect and aggregate information from local legal services organizations and law school clinics about the amount of money donated by area law firms. After reviewing the aggregated data, as well as information about law firm revenues, the Committee identified several giving levels at or near which some of the most generous firms are already clustered. It concluded that if those giving levels were established as the benchmarks, it would substantially increase the net amount of giving while only requiring the most generous firms to increase their individual giving incrementally, if at all. Several firms are already meeting – or are close to meeting -- the highest benchmark and others are meeting or are near the second and third-tier benchmarks.

The benchmark categories are as follows:

- Platinum tier:** .11% of D.C. office revenue
- Gold tier:** .09% of D.C. office revenue
- Silver tier:** .075% of D.C. office revenue

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<sup>2</sup> D.C. Rules of Professional Conduct, Rule 6.1, Comment 2.  
*Raising the Bar in D.C.* - Project Summary

In determining a firm's giving level, only donations to local legal services organizations and the D.C. Bar Foundation are included in the base calculation.<sup>3</sup> The Committee recognizes that law firms make critical contributions to other local non-profit organizations as well as national organizations and urges firms to sustain funding to those entities at traditional levels. However, this initiative is intended to reflect the unique obligation that lawyers have to ensure equal access to justice for low-income individuals in the local communities in which they are located.<sup>4</sup>

Although the primary objective of the campaign is to increase giving to legal services, it will also provide firms with valuable guidance as they consider their giving levels. Until now, firms have not had a framework within which to make educated decisions about giving levels and to compare their donations to those of other firms.

## **Pro Bono and IOLTA**

Although the *Raising the Bar in D.C. Campaign* focuses on monetary support of legal services, pro bono work and IOLTA participation are also critical to ensuring access to justice for the District's indigent residents. The private bar plays a critical role in the provision of civil legal services. In addition to providing financial support, the Commission urges firms to reaffirm their commitment to pro bono by joining (or continuing to participate in) the D.C. Bar Pro Bono Initiative (if the firm is one of the top 100 firms) and by encouraging its lawyers to each contribute at least 50 hours of pro bono work annually. It also encourages firms to support civil legal services by maximizing usage of IOLTA accounts and choosing a "D.C. IOLTA Prime Partner" bank.

## **Mechanics**

To participate in this initiative, a firm must take the following steps:

1. Pledge to donate a benchmark percentage of revenue in the current calendar year to one or more of the eligible organizations. The pledge should be calculated based on a rolling average of the firm's three previous years' D.C. office revenues. (For example, for giving during the year of 2016, the firm would look to the average of D.C. office revenue in 2013, 2014, and 2015.)

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<sup>3</sup> Donations to law school clinics are not included. Although the Commission greatly values the exemplary work done by many area law school clinics on behalf of low-income clients, the primary mission of the clinics is educational, not the provision of services to D.C. residents. Although some information about giving to law school clinics was included in the initial survey, the amount reported is a negligible portion of total giving. Donations to the D.C. Access to Justice Commission are credited only to move a firm from the silver benchmark level to a higher level. Such donations cannot be included in the base amount needed to establish that a firm has reached the silver level.

<sup>4</sup> It is important to note that the original survey on which the benchmarking levels are based excluded contributions made to national organization or local non-profits that are not legal services providers. Accordingly, donations to those entities should not be affected by this initiative.

2. All cash contributions, attorneys' fees donations, and payments for fellowships<sup>5</sup> sponsored by the firm (e.g., Equal Justice Works or Skadden Fellowships) at one of the eligible organizations is counted in calculating the donation level. Once a firm has reached the silver giving level, donations to the D.C. Access to Justice Commission may also be included in the calculation. Contributions made to organizations by individual attorneys, the value of loaned associates (which are considered pro bono hours), and in-kind donations should not be counted.
3. At the end of the calendar year, firms provide confidential information to Ernst & Young that will enable Ernst & Young to inform the Commission that the law firm has met a benchmark level for the previous year. Specifically, firms provide the aggregate amount donated to the eligible organizations for the year under consideration and what benchmark category this represents for the firm. It is also helpful for the firm to provide the aggregate increase in donations from the previous year. Firms will not be asked to provide any information about their revenue or information about amounts donated to individual organizations. Ernst & Young keeps all such information confidential and will release to the Commission only a certification of the benchmark level met by the firm, the aggregate amount of money donated by all the participating firms to the legal services community through this campaign and any aggregate increase in giving from participating firms.

### **Recognition of Firms**

Law firms that participate in the initiative will be publicly recognized. All firms that give at the benchmark levels will be honored at a reception, and the Commission will look for additional ways to publicize their generosity.

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<sup>5</sup> Fellowship donations may be amortized over a five-year period. Please alert the Executive Director of the Commission, Nancy Drane ([nancy.drane@dcaccesstojustice.org](mailto:nancy.drane@dcaccesstojustice.org)) if the firm is electing to take this option.