

# SUPPORTING JUSTICE

A Report on the Pro Bono  
Work of America's Lawyers



Standing Committee on  
**Pro Bono & Public Service**  
and the Center for Pro Bono

# SUPPORTING JUSTICE

## A FOURTH REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS

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STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE  
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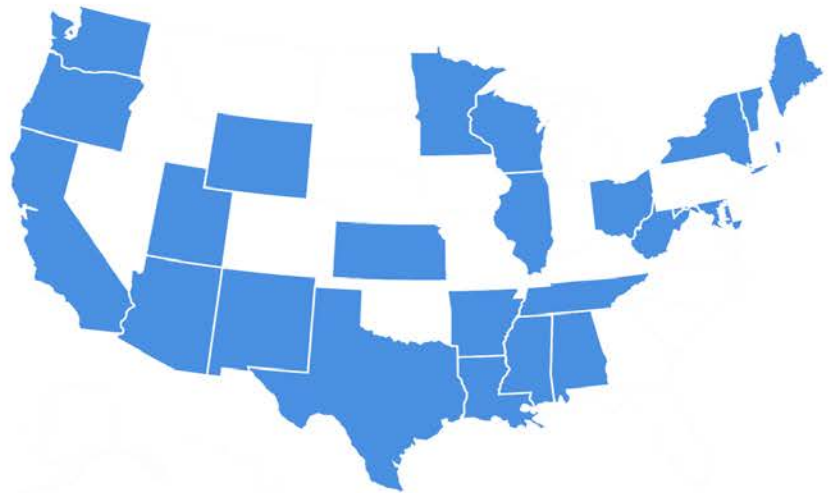
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# SUPPORTING JUSTICE

## A Report on the Pro Bono Work of America's Lawyers

The American Bar Association's Standing Committee on Pro Bono and Public Service conducted a study of the pro bono work of America's attorneys by surveying the attorneys in 24 states in 2017. This report presents findings based on the views of over 47,000 attorneys across the country, representing a range of backgrounds and geographic locations.

Over 47,000 attorneys in 24 states took the time to answer detailed questions about their pro bono work, including when, how, and why they either do or do not do pro bono.



### Key Findings: Amount of Pro Bono

81% of attorneys have provided pro bono services at some point in their lives and 52% provided such services in 2016

In 2016, attorneys provided an average of 36.9 hours of pro bono services

In 2016, almost 20% of attorneys provided at least 50 hours of pro bono service

Approximately 1 out of 5 attorneys has never undertaken pro bono service of any kind

## Key Findings: Recent Pro Bono Experience

The most typical recent pro bono experience was a limited scope representation case, provided to an individual of limited means, referred through a legal aid pro bono program or a personal contact, and within the attorney's area of expertise. This case was likely to take about 16 hours of the attorney's time, and a quarter of the cases concerned an issue within family law.



81% of attorneys provided services to **individuals**, as opposed to a class of individuals or organizations



55% of attorneys provided **limited scope representation**, as opposed to full representation or mediation



72% of attorneys found their client **indirectly**, most commonly through referral



69% of attorneys took a case that was **within their area of expertise**



25% of the cases were in the area of **family law**, representing the most common area of law

## Key Findings: Motivations and Barriers

Attorneys were most **motivated** by:

1

helping people in need

2

ethical obligations

3

duty as a member of the legal profession

81% of attorneys believe that pro bono services are either somewhat or very important, but when asked if they were likely to undertake pro bono in 2017, only 45% indicated that they were either likely or very likely to do so



Attorneys were most **discouraged** by:

1

lack of time

2

commitments to family or other personal obligations

3

lack of skills or experience



## | INTRODUCTION |

Over 62 million Americans volunteer through or for an organization each year, representing almost a quarter of the U.S. population.<sup>1</sup> This culture of volunteering motivates people of all ages to give back to the community and results in services worth \$193 billion per year.<sup>2</sup>

In the legal profession, this duty is arguably heightened, as services can only be provided by those who are licensed to practice. With the privilege of being admitted to the bar comes a responsibility. This responsibility is articulated in the American Bar Association's Model Rule 6.1, which states, in part, that every lawyer "has a professional responsibility to provide legal services to those unable to pay." Almost all states have adopted some version of this rule, and many of these states follow the ABA's aspirational goal of 50 hours per year. Over the past 30 years, pro bono work by the private bar has grown in scope and visibility. Law firms, law schools, corporate counsel offices and government law offices have worked toward integrating pro bono functions and policies into their environment.

This study explores how the culture of volunteering has manifested in the legal profession. By surveying the attorneys in 24 states, this study describes the amount and type of pro bono legal services provided in 2016 and assesses how, when, and why attorneys are motivated to undertake pro bono.

### **Background**

The ABA's Standing Committee on Pro Bono and Public Service (referred to as "the Committee") is charged with the responsibility of reviewing, evaluating and fostering the development of pro bono publico programs and activity by law firms, law schools, bar associations, corporate law departments and other legal practitioners. The Committee works to analyze and define the appropriate scope, function and objectives of pro bono publico programs; to establish an interest in such programs; and to review and propose policy that has an impact on the ability of lawyers and law students to provide pro bono service. Toward that end, the Committee has conducted three previous national pro bono empirical studies.

The first study was commissioned in 2004 to establish an accurate and credible baseline for tracking and measuring individual attorney pro bono activity on a national level and to devise replicable materials for use on the state and local levels. The Committee then replicated this study in 2008 to further clarify some of the original findings and to obtain a sense of whether pro bono participation has increased over time. And finally, the most recent national study was

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<sup>1</sup> See Bureau of Labor Statistics, "Volunteering in the United States News Release," February 25, 2016 (last accessed September 14, 2017) at <https://www.bls.gov/news.release/volun.htm>.

<sup>2</sup> See Corporation for National Community Service, "Volunteering and Civil Life in America (last accessed September 14, 2017) at <https://www.nationalservice.gov/vcla>.

completed in 2013, which implemented an Internet-based as opposed to telephone-based survey methodology.

The 2016 study, however, utilized a slightly modified version of the survey instrument that was used for the prior national studies, but with a new data collection methodology that yielded a significantly larger sample than previous studies. Rather than distributing the survey to nationally-available lists of attorneys, which represent a sample of the attorney population, this survey was distributed through state entities to the full lists of licensed attorneys available in the 24 states that participated.<sup>3</sup> The 24 participating states yielded a representative sample of states nationally in terms of attorney demographics, urban/rural breakdown, political leaning, and pro bono policies. The attorney sample highlighted in this report represents the views of almost 50,000 attorneys across the country. Response rates for the participating states ranged from 1% to 18%, with an overall response rate of 7.3%. This significant sample allows for more granular detail than has been available in past survey data. See Appendix for additional information on the survey methodology and sample.

### **The Supporting Justice Surveys**

The results from the three previous national studies made it clear that the definition of pro bono is subjective and personal for many attorneys. Consequently, establishing a definition for survey purposes has been one of the greatest challenges. Indeed, in the process of coordinating with the 24 states that partnered on this project, the definition of pro bono service was the single most debated aspect of the survey.

Ultimately, the definition offered to the surveyed attorneys specified that pro bono legal services are personally performed, without charge or expectation of fee, to persons of limited means or organizations that serve persons of limited means. It was further clarified that such services do not include legal services performed to develop a paying client (e.g. a free initial consultation to a paying client) or legal services for which payment was expected, but not collected. Nor do such pro bono services include free legal services provided for family or friends who are not of limited means. The concept of “limited means” was also defined as financially disadvantaged persons who are unable to pay for legal services, and reference was made to Federal Poverty Guidelines as guidance in interpreting this concept. See the Appendix for more information.

As expected, some attorneys disagreed with this definition and lamented that it leaves out the very good work done by public interest attorneys in the course of their paid work, as well as acts of public service provided in the form of free legal services to friends and family with moderate incomes. This work is very important, but was simply beyond the scope of this survey. It is hoped

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<sup>3</sup> The Committee conducted a pilot of this study in 2015. The results are not included in this report because the data collected was not contiguous to the 24 states which participated in 2016/2017. However, the full Nebraska report is available here: [https://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_2015\\_Nebraska\\_report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_2015_Nebraska_report.authcheckdam.pdf)



that future research might capture and measure the considerable good work done by attorneys in these efforts.

This survey did include a final set of questions to measure and understand the nature of related activities that fall outside the strict definition of pro bono. These activities include grassroots community advocacy, serving as a board member for a legal services or pro bono organization, lobbying on behalf of a pro bono organization, or speaking at a legal education event. See the Appendix for the survey language.

## **Report Overview**

This report is organized into the five following sections:

**Section 1: Amount and Type of Pro Bono.** This section describes the amount of pro bono undertaken by the surveyed attorneys in 2016, as well as the type of services provided and to whom these services were provided.

**Section 2: Most Recent Pro Bono Experience.** This section describes the details of the attorneys' most recent pro bono experience. Such details include the type of services provided, to whom they were provided, how the attorneys and clients found each other, the extent to which a pro bono program or other referral source was involved and provided support throughout the process, how the clients' low-income status was determined, what legal tasks were performed, what area of law the case or matter involved, and how much time the attorneys spent helping the client.

**Section 3: Motivations and Attitudes.** This section describes what motivates or discourages attorneys from doing pro bono work. Additionally, this section explores the extent to which specific actions that pro bono programs could implement would encourage more pro bono work, as well as whether the actions that employers and law schools are taking have an impact on pro bono work.

**Section 4: Other Public Service Activities.** This section describes the amount and type of law-related public service activities undertaken by the surveyed attorneys in 2016. Among the services described in this section were reduced fee services and limited scope representation (for a fee).

**Section 5: Population Trends.** This section breaks down the trends described throughout the report by age, practice setting, geography, and state.

## **Key Findings**

This report provides new insights into the pro bono work done by America's attorneys. It also adds to previous surveys on this topic by describing more detailed and local trends.

Overall, American lawyers demonstrate a strong ongoing commitment to providing pro bono services to meet the legal needs of the poor. Most attorneys (81%) have provided pro bono service at some point in their lives, and in 2016, provided an average of 36.9 hours of pro bono. Despite this, there is certainly room to expand pro bono, as one out of five attorneys have never undertaken pro bono, and in 2016, 48% of responding attorneys did not undertake pro bono.

When reporting on their most recent pro bono matters, the vast majority of responding attorneys (81.3%) indicated that they had focused their pro bono representation on serving individuals, as opposed to a class of individuals or an organization. And, just over half (54.6%) provided limited scope representation services, as opposed to full representation or mediation.

Most clients and attorneys connect with each other through referrals from legal aid pro bono programs, family members or friends, present/former clients, or professional acquaintances. Family law was the most common practice area served, and this was true whether the attorney engaged in full or limited scope representation. Of the attorneys that provided full representation, the average amount of time spent on the case was 45.7 hours. Of the attorneys that provided limited scope representation, the average amount of time spent on the case was 16.4 hours.

When asked about their motivations and barriers to pro bono, attorneys generally expressed strong support for the practice of pro bono within the legal profession. However, when asked whether the attorneys were likely to provide pro bono in 2017, under half indicated that they were either likely or very likely to do so. The top three factors that motivated attorneys to do pro bono were: 1) helping people in need, 2) ethical obligations, and 3) professional duties. The top three barriers to doing pro bono were: 1) lack of time, 2) commitment to family or other personal obligations, and 3) lack of skills or experience in the practice areas needed by pro bono clients.

Respondents offered important insight into actions that pro bono programs could undertake that would encourage them to do pro bono work. These actions included engaging judges in soliciting pro bono, providing limited scope representation activities, offering CLE credit in exchange for pro bono, offering malpractice insurance, and engaging attorneys in asking their colleagues to take pro bono cases.

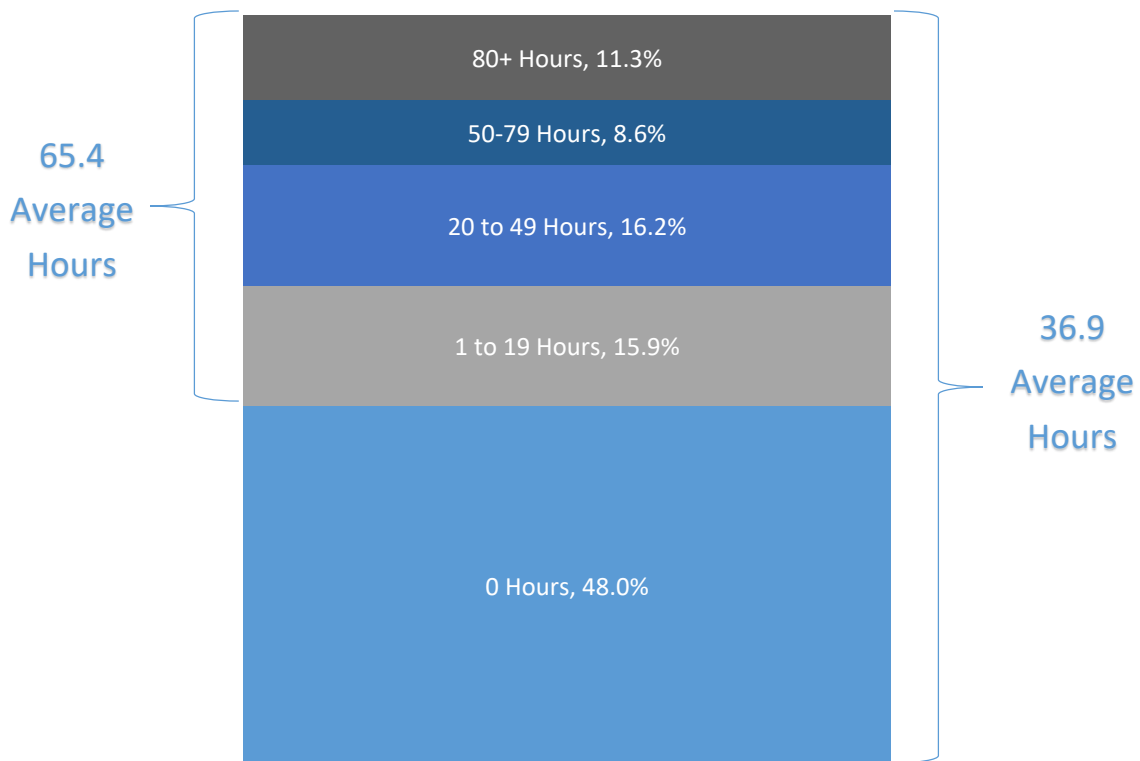
In 2016, the surveyed attorneys provided a range of public service activities that expand beyond the traditional definition of pro bono as legal services provided without fee to persons or organizations of modest means. The most common public service activities reported were legal services for a reduced fee, being a trainer or teacher on legal issues, and being a speaker at a legal education event for non-lawyers. Although most attorneys (69.2%) indicated that none of their cases involve unbundled legal services for a fee, 22.6% of attorneys indicated that one to twenty percent of their caseload involves unbundling.

## | SECTION 1 | Amount and Type of Pro Bono

Providing pro bono services is an integral part of being a member of the legal profession. Indeed, most (81%) attorneys have provided pro bono services at some point in their careers and over half provided pro bono services in 2016.

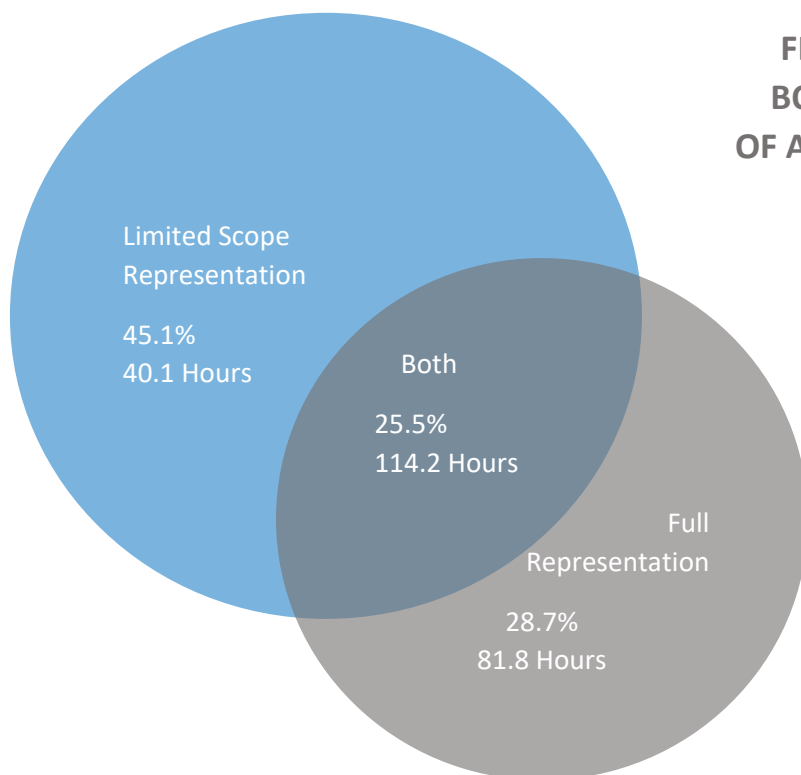
The number of attorneys who provide regular and significant pro bono work is not ubiquitous, suggesting that there is room for expanding such services. Overall, attorneys provided an average of 36.9 hours<sup>4</sup> of pro bono service in 2016, suggesting that many of the attorneys are providing well below the aspirational goal of 50 hours per year set forth in ABA Model Rule 6.1 and followed by many states. As shown in Figure 1, only 20% of the attorneys had provided 50 hours or more of pro bono service in 2016. Meanwhile, there is a significant segment of the attorney population – approximately one out of five attorneys -- that has *never* undertaken pro bono of any kind.

**FIGURE 1: HOURS OF PRO BONO SERVICE PROVIDED IN 2016, BY PERCENT OF ATTORNEYS**



<sup>4</sup> Among the surveyed attorneys, the average hours of pro bono provided in 2016 was 36.9, with a median of 3. The average number of matters was 6.5. The average hours specifically among the attorneys who had provided 1 or more hour of pro bono in 2016 was 65.4, with a median of 30, and the average number of matters was 11.4

Among the attorneys who provided pro bono services in 2016, the majority provided limited scope representation. However, the attorneys providing full representation typically did more hours of pro bono in 2016 than attorneys who opted for limited scope representation. Specifically, 45.1% of the attorneys surveyed indicated that they had only provided limited scope representation pro bono services in 2016, and they averaged 40.1 hours of such services throughout the year. Meanwhile, 28.7% of the attorneys provided pro bono services only in the form of full representation, with an average of 81.8 hours throughout the year. The attorneys that provided both types of services – full and limited scope – provided the most hours in 2016, with an average of 114.2 hours.



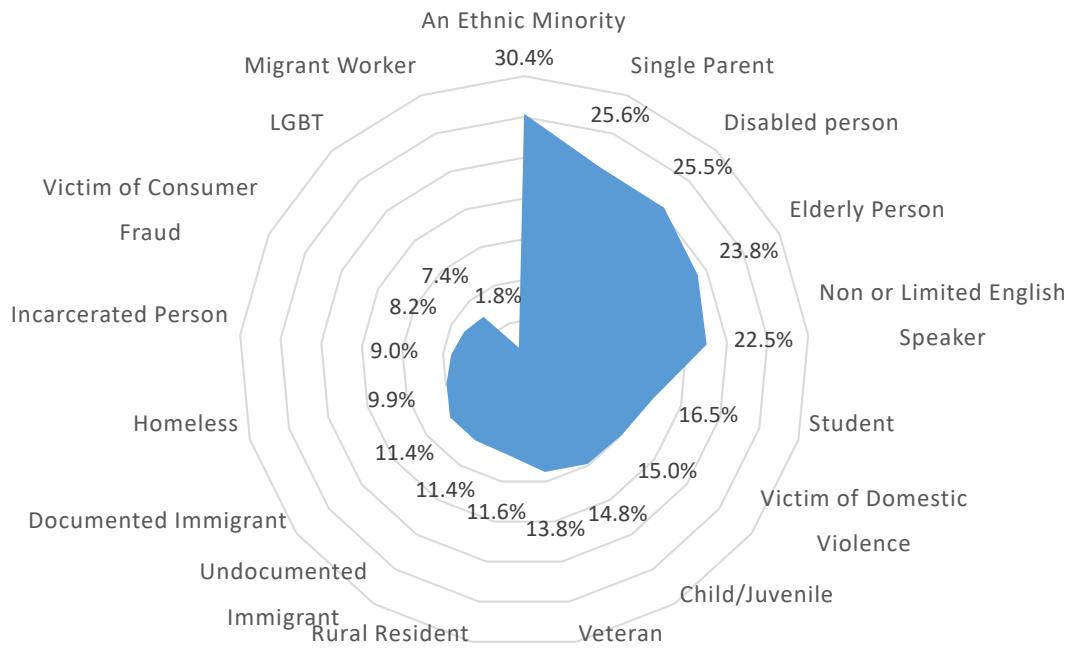
**FIGURE 2. TYPES OF PRO BONO SERVICE, PERCENT OF ATTORNEYS PROVIDING AND AVERAGE HOURS**

Among the attorneys who provided pro bono in 2016, a large majority provided services to individuals. Specifically, 85.2% provided services to individuals, 6.4% had provided services to classes of individuals, and 35.5% had provided services to organizations. Of the pro bono services provided to individuals in 2016, the average hours were 57.3 (10.7 matters), compared to an average of 41.1 hours of services to organizations (5.8 matters) and 15.4 hours of services to classes of individuals (2 matters).

The attorneys who had provided pro bono in 2016 were asked to indicate if they had represented at any point during the year specifically listed vulnerable client types. Over 30% of the attorneys indicated that they had represented an ethnic minority in 2016, followed by just

over 25% having represented a single parent, and just over 25% having represented a disabled person. Other types of clients that attorneys represented are in Figure 3 below.

**FIGURE 3: PRO BONO CLIENTS**

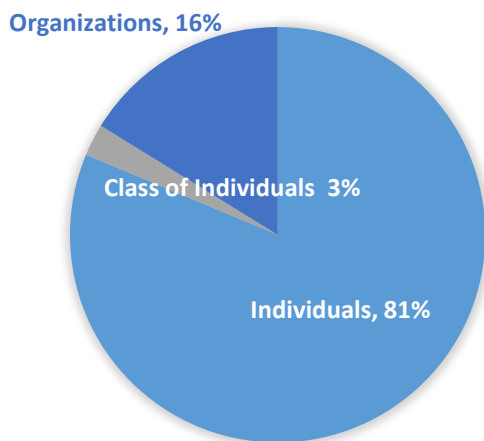


■ Percent of attorneys having represented this client type in 2016

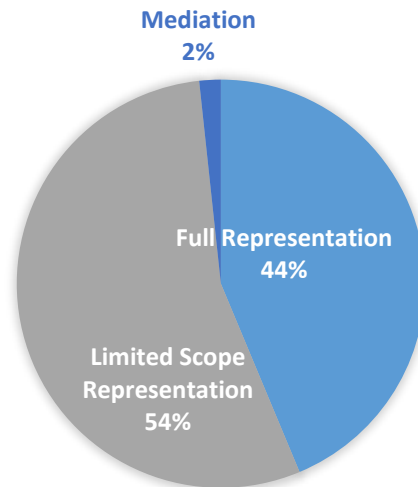
## | SECTION 2 | Most Recent Pro Bono Experience

To capture the details of typical pro bono experiences, the attorneys who provided pro bono in 2016 were asked a series of questions about their most recent pro bono experience. The vast majority of pro bono services were undertaken on behalf of individuals (81%) as opposed to a specific class of individuals (3%) or an organization (16%). See Figure 4. Attorneys in private practice or the non-profit setting or located in rural areas or towns were all more likely to represent individuals, as opposed to organizations. Meanwhile, attorneys in the corporate setting or located in urban or suburban areas were more likely to represent organizations.

**FIGURE 4. TO WHOM PRO BONO WAS PROVIDED**



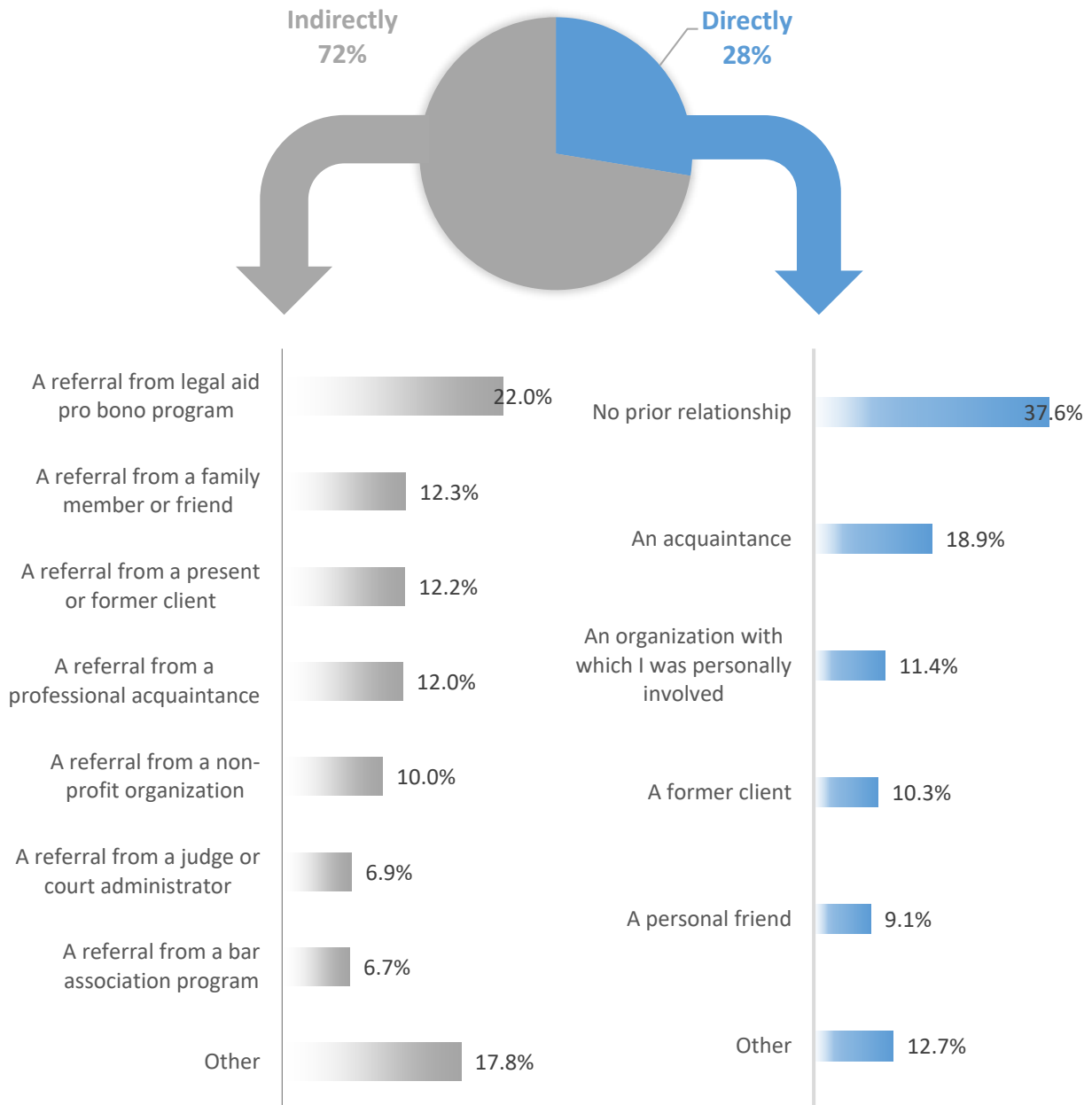
**FIGURE 5. TYPE OF PRO BONO SERVICE**



Additionally, the majority of these services were limited scope representation (54.6%) as opposed to full representation (43.7%) or mediation (1.7%). See Figure 5. Attorneys participating in an emeritus/pro bono licensure program were more likely to have done litigation-related limited scope representation.

Most clients and attorneys connected with each other through indirect methods, as opposed to finding each other directly. Over 70% of the attorneys reported that their clients found them through some indirect method, most commonly referrals through legal aid pro bono programs, family members or friends, present or former clients, or professional acquaintances. Of the 28% of attorneys who had reported that their most recent client came to them directly, over a third said that they had no prior relationship with the client. Otherwise, one out of five said the client was an acquaintance. See Figure 6.

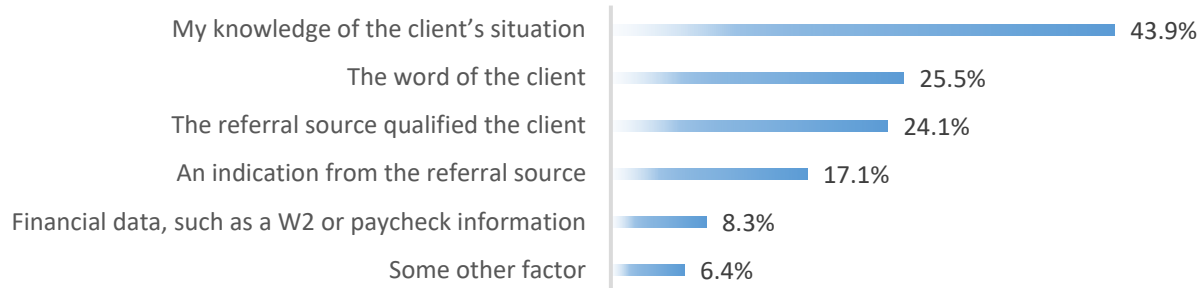
**FIGURE 6. HOW ATTORNEYS AND CLIENTS FIND EACH OTHER**





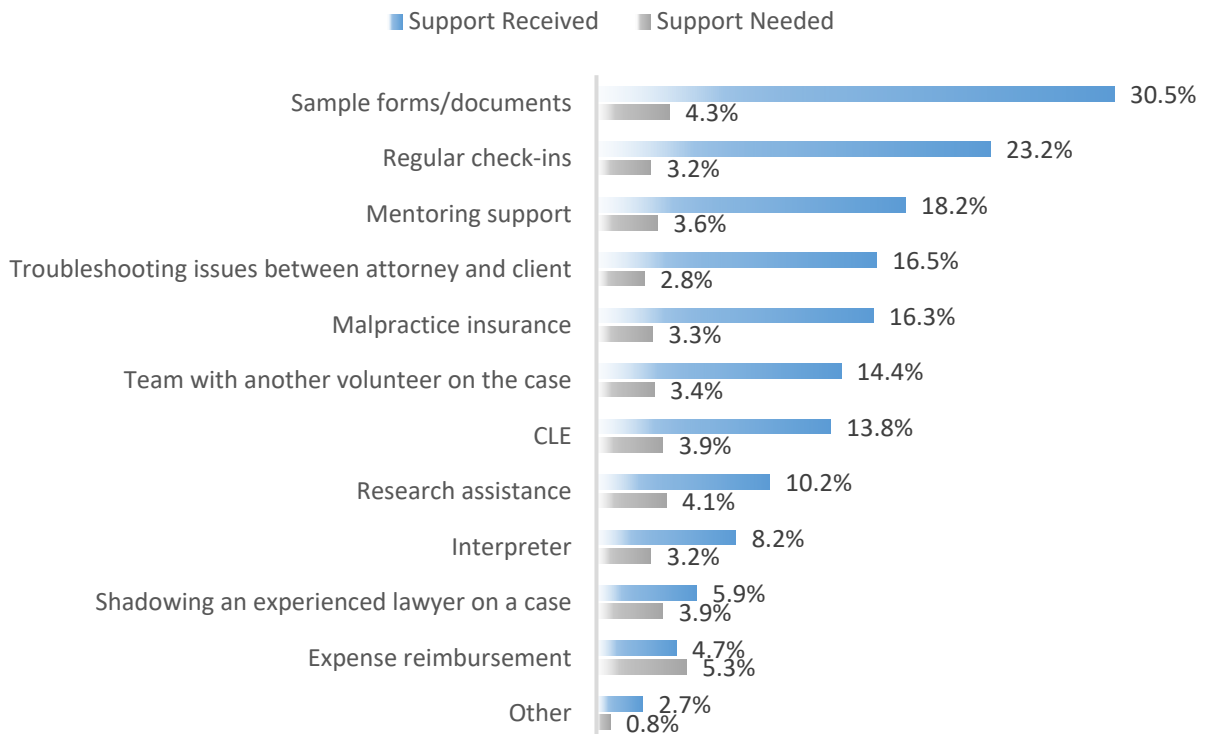
To determine whether a client was low-income, most attorneys primarily used impressionistic methods, such as relying on the word of the client or on the attorney’s knowledge of the client’s situation to vet the client’s financial eligibility. Otherwise, 41.2% relied on the referral source to vet the client’s financial eligibility and 8.3% vetted the client’s financial data themselves.

**FIGURE 7. DETERMINATION OF CLIENT LOW INCOME STATUS**



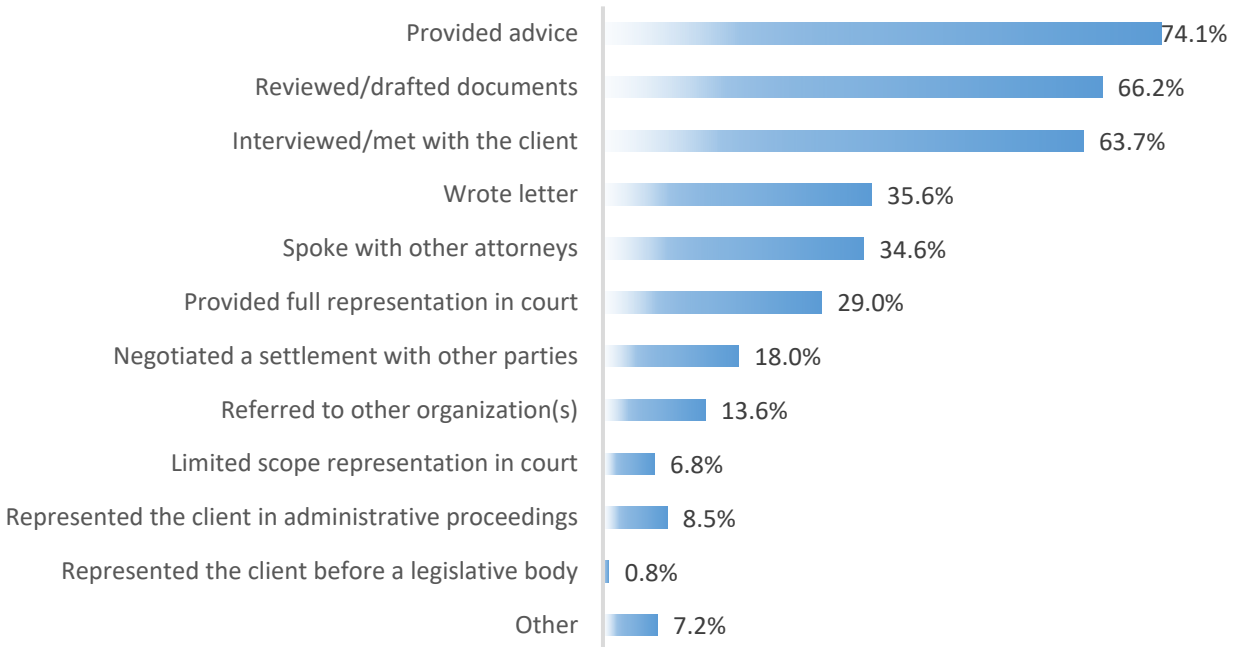
When referral organizations provided support, the most common types used by attorneys included sample forms/documents, regular check-ins, mentoring, troubleshooting issues that arise between the attorney and client, and malpractice insurance.

**FIGURE 8. REFERRAL PROGRAM SUPPORT**



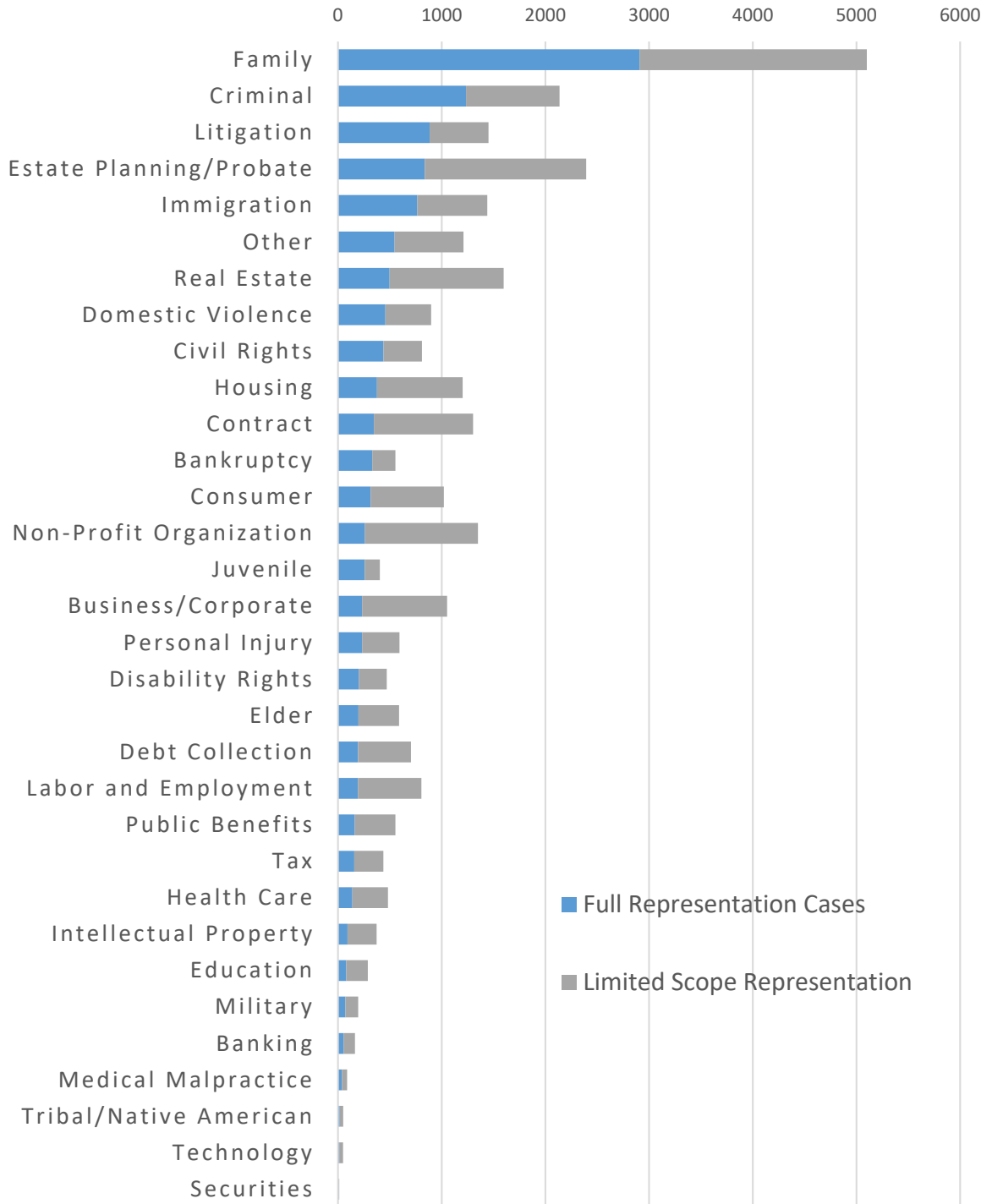
Attorneys performed a range of types of tasks when undertaking pro bono in 2016. The most frequently reported tasks consisted of providing advice, reviewing and/or drafting legal documents and interviewing/meeting with the client. Only 29% of attorneys reported providing full representation in court to their pro bono clients. See Figure 9.

**FIGURE 9. LEGAL TASKS PERFORMED**



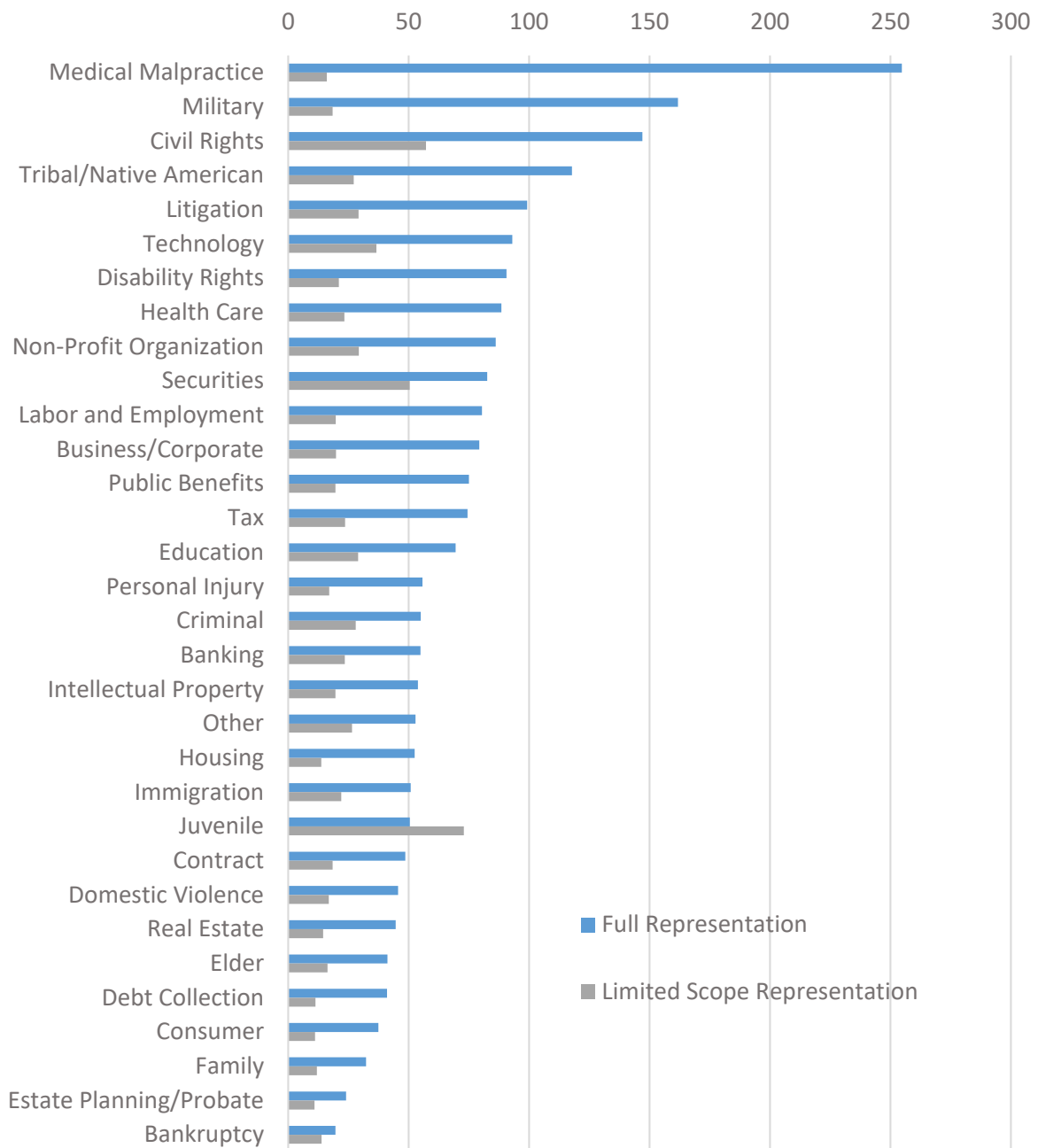
Family law was the most common practice area served, whether full or limited scope representation was being provided. Specifically, 32% of the full representation cases and 19% of the limited scope representation cases were in family law. Otherwise, there were some differences in which areas were most served based on the type of representation provided. Following family law, the top areas of law for the full representation cases were: criminal, litigation, estate planning/probate, immigration, and real estate. However, the top areas of law for the limited scope representation cases were: estate planning/probate, real estate, non-profit organization, contracts, and criminal. See Figure 10.

**FIGURE 10. NUMBER OF CASES, BY AREA OF LAW**



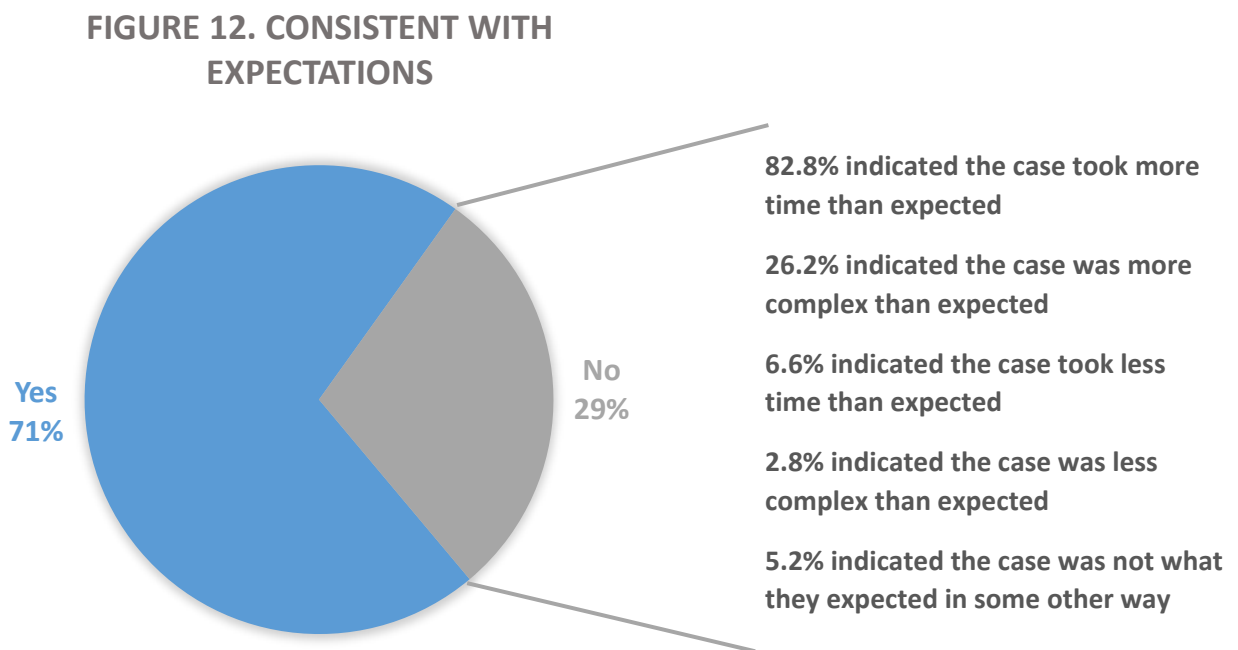
The average amount of time attorneys spent on their most recent case was 45.7 hours for full representation cases and 16.4 hours for limited scope representation. Areas of law for which the most time was spent on full representation cases were: medical malpractice, military, civil rights, and tribal/Native American. Areas of law for which the most time was spent on limited scope representation were: juvenile, civil rights, securities, and technology.

**FIGURE 11. AVERAGE HOURS, BY AREA OF LAW**



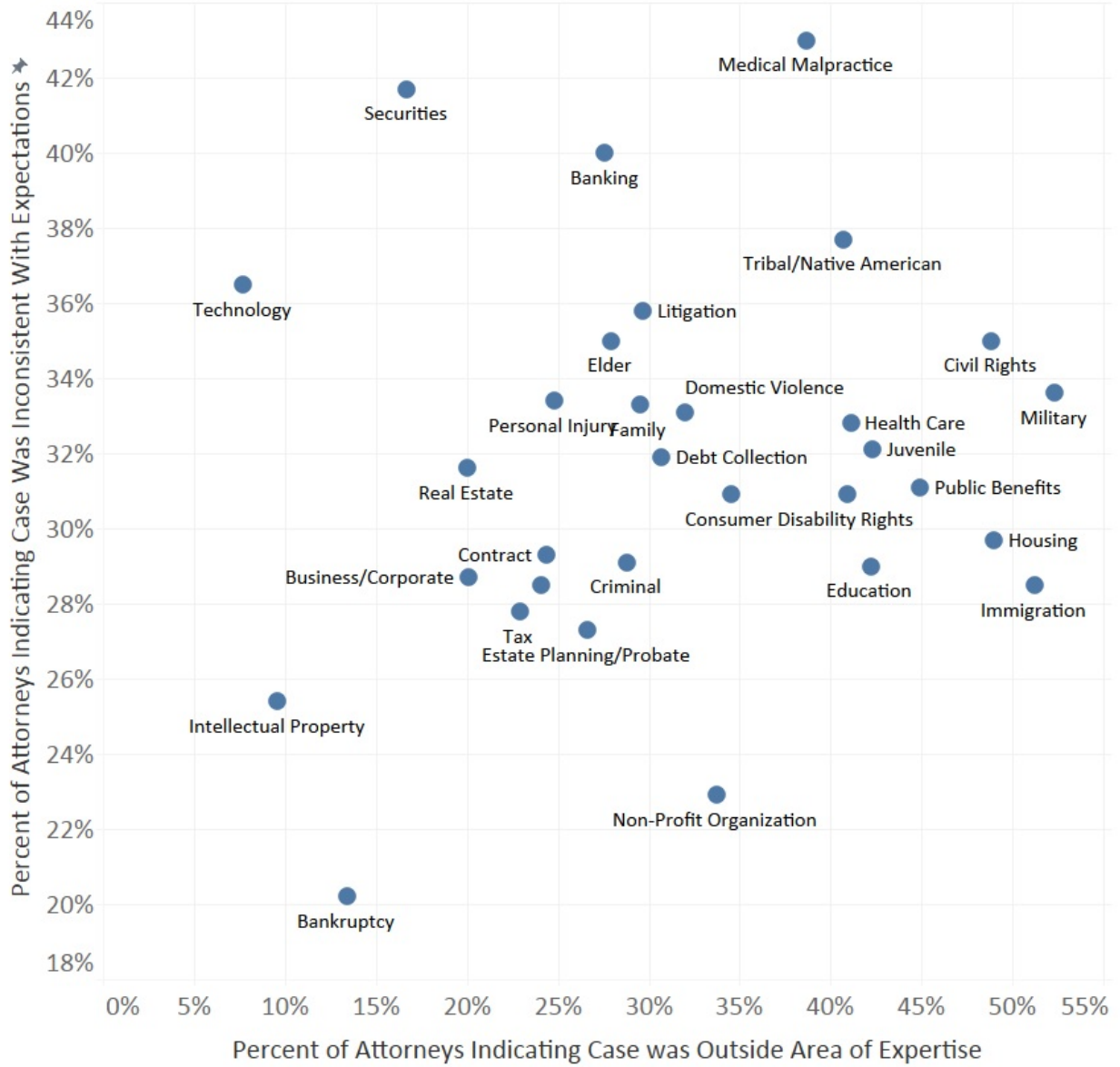
According to the data, attorneys tend to accept cases within their area of expertise. Specifically, 69% indicated that their most recent pro bono experience was within their area of expertise, leaving only 31% accepting a case outside their area of expertise. The areas of law for which attorneys were most likely to take a case outside their area of expertise were: military, immigration, housing, civil rights, and public benefits. See Figure 13.

Meanwhile, most responding attorneys (71%) indicated that their most recent pro bono experience was consistent with their expectations. Approximately 24%, however, indicated that the case took more time than expected, and 7.6% said that the case was more complex than expected. See Figure 12.



Notably, the areas of law for which attorneys were most likely to report that the case was inconsistent with their expectations – medical malpractice, securities, banking, tribal/Native American, and technology – were not the areas of law for which attorneys were typically going outside their areas of expertise. See Figure 13.

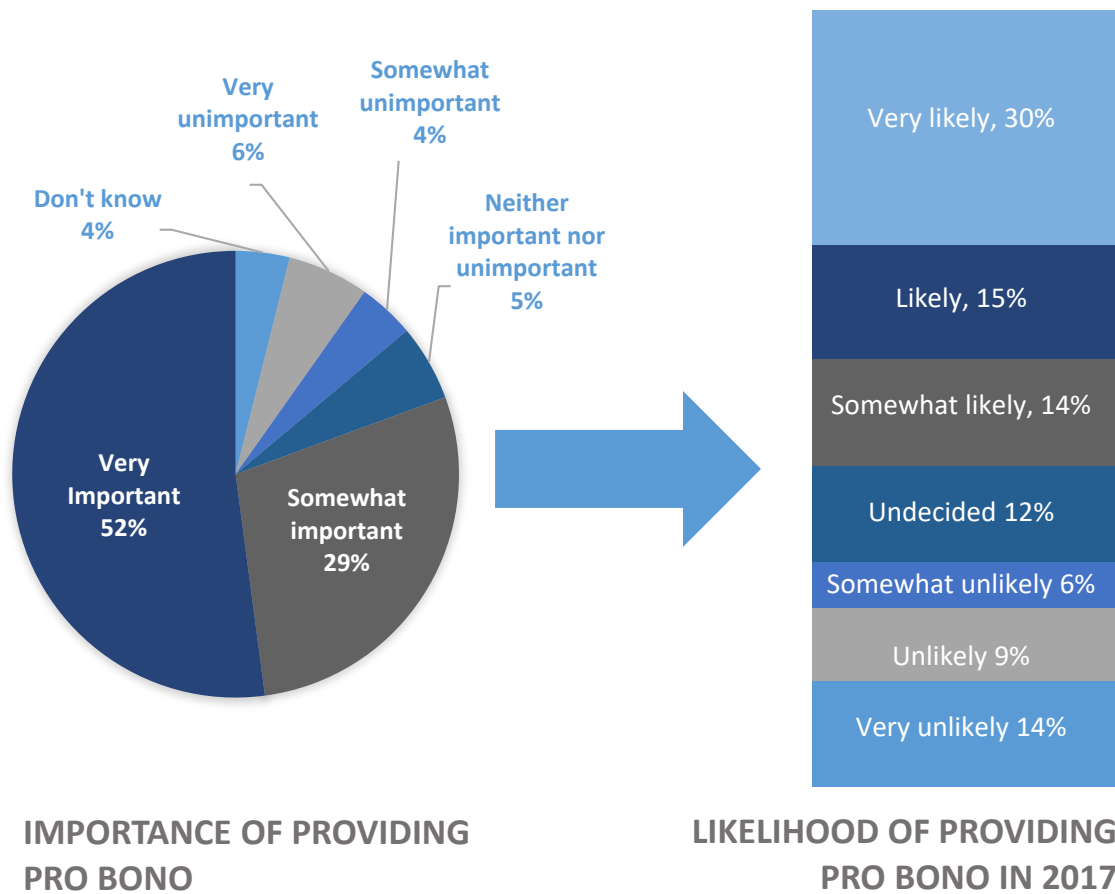
**FIGURE 13. EXPERTISE AND EXPECTATIONS,  
BY AREA OF LAW OF RECENT CASE**



### | SECTION 3 | Motivations and Attitudes

Overall, attorneys express strong support for the practice of pro bono within the legal profession. In fact, 80.6% of the surveyed attorneys indicated that they believe pro bono services are either somewhat or very important. However, when asked whether the attorneys were likely to provide pro bono in 2017, under half indicated that they were either likely or very likely to do so, and almost a quarter indicated they were unlikely or very unlikely to offer such services. See Figure 14.

**FIGURE 14. SUPPORT FOR AND LIKELIHOOD OF PROVIDING PRO BONO**



Overall, attorneys had very positive views of pro bono and these views rated as highly influential on their decision to provide pro bono service. The top three factors that motivate



attorneys to do pro bono are: 1) helping people in need, 2) ethical obligations, and 3) professional duties. See Figure 15.

Generally, attorneys reported that they were motivated to do pro bono by either empathetic or ethical motivations, such as helping people, reducing social inequalities, being a good person, and ethical or professional obligations. Statements related to professional development - such as working directly with clients, gaining experience outside of one’s expertise, and opportunities to go to court - tend to only moderately motivate attorneys to do pro bono service. Attorneys reported being least motivated by recognition.

**FIGURE 15. MOTIVATING FACTORS**



Despite being highly motivated to do pro bono, attorneys face many barriers to being able to undertake such services. The top three barriers to doing pro bono were: 1) lack of time, 2) commitment to family or other personal obligations, and 3) lack of skills or experience in the practice areas needed by pro bono clients. See Figure 16.

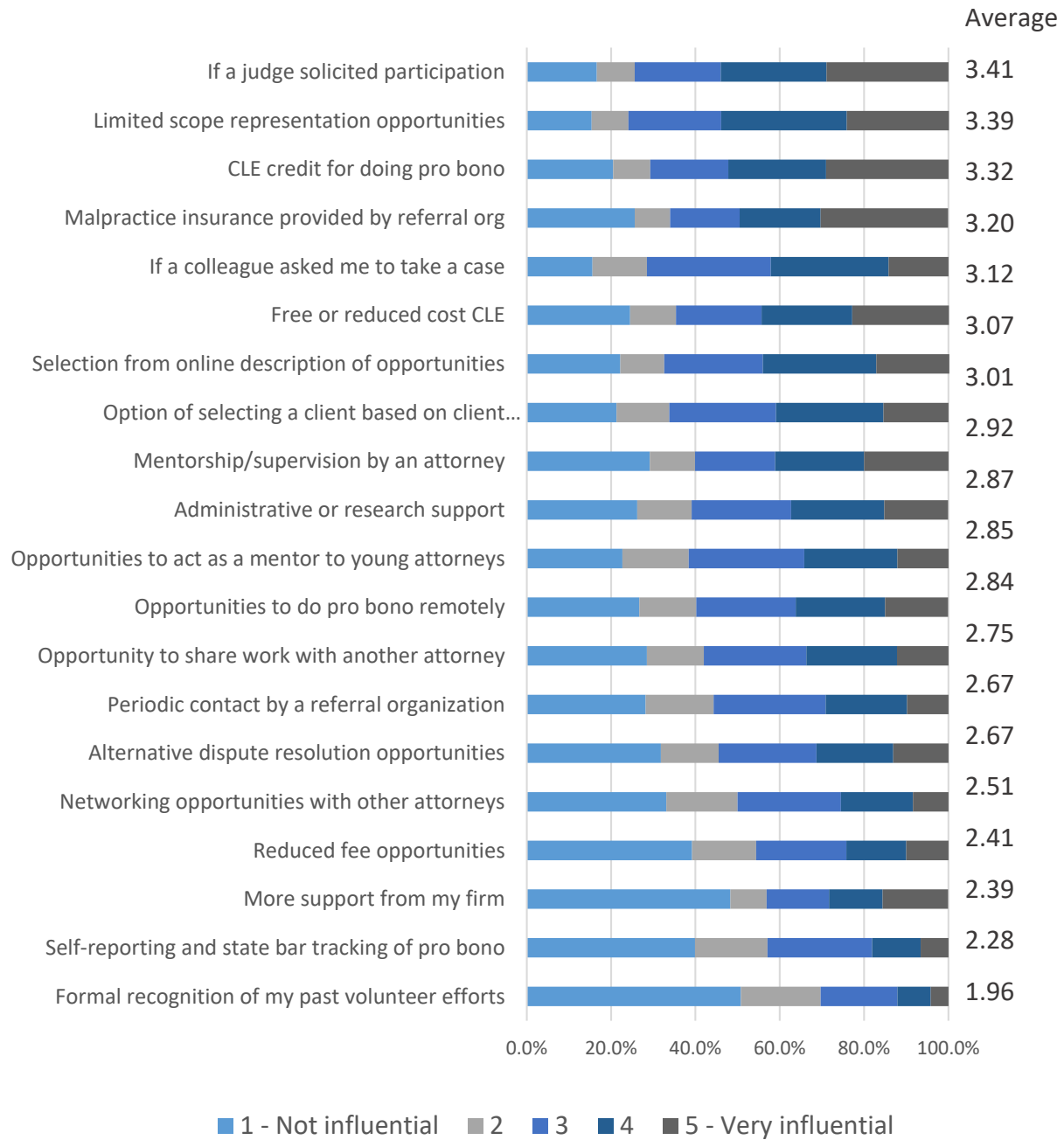
Aside from the top three discouraging factors, attorneys were moderately discouraged by a sense that clients have unrealistic expectations, a lack of clarity on how much time a case might take, scheduling conflicts, a lack of malpractice insurance, competing billable hour expectations, and a lack of interest in the types of pro bono cases for which attorneys are needed. Very few attorneys had personal objections to providing pro bono and few believed that pro bono clients could afford services.

**FIGURE 16. DISCOURAGING FACTORS**



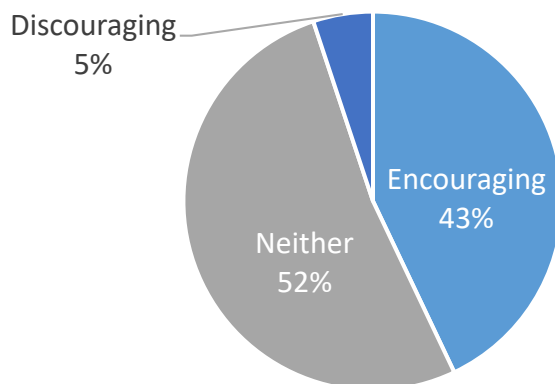
Many of these barriers can certainly be addressed or eased by specific actions or support that might be provided by pro bono programs. When asked about how helpful or motivating such actions would be, attorneys indicated that they would be most influenced by: 1) a judge soliciting participation, 2) limited scope representation opportunities, and 3) CLE credit for doing pro bono. See Figure 17.

**FIGURE 17. ACTIONS TO ENCOURAGE PRO BONO**



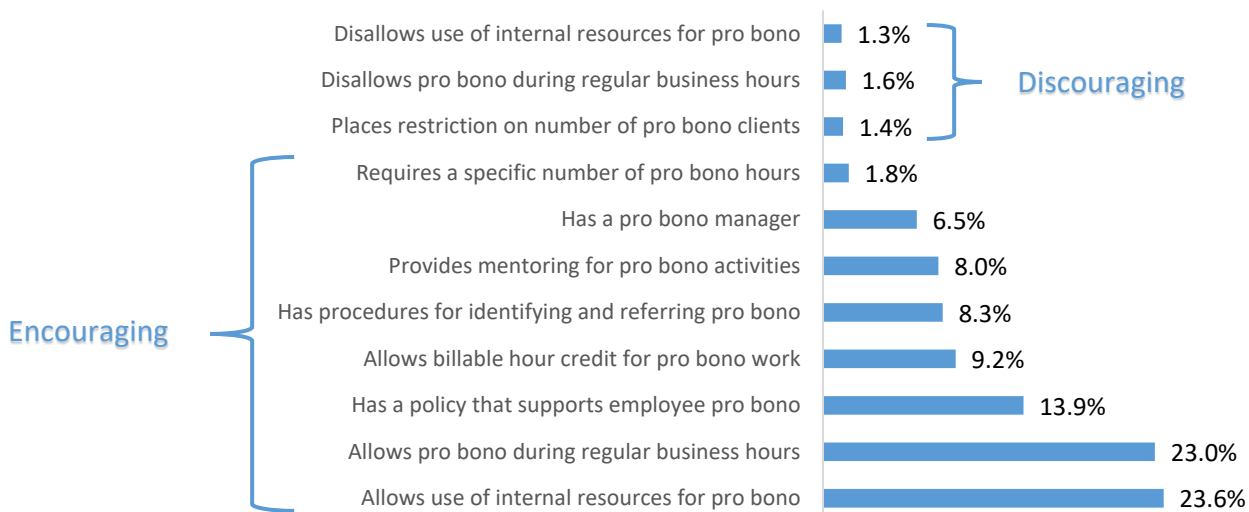
Overall, about half of the attorneys indicated that their employer did not either encourage or discourage pro bono. Just shy of 43% indicated that their employers were encouraging of pro bono activities. Only 5% of the attorneys indicated that their employer discouraged pro bono services.

**FIGURE 18. EMPLOYER SUPPORT FOR PRO BONO**



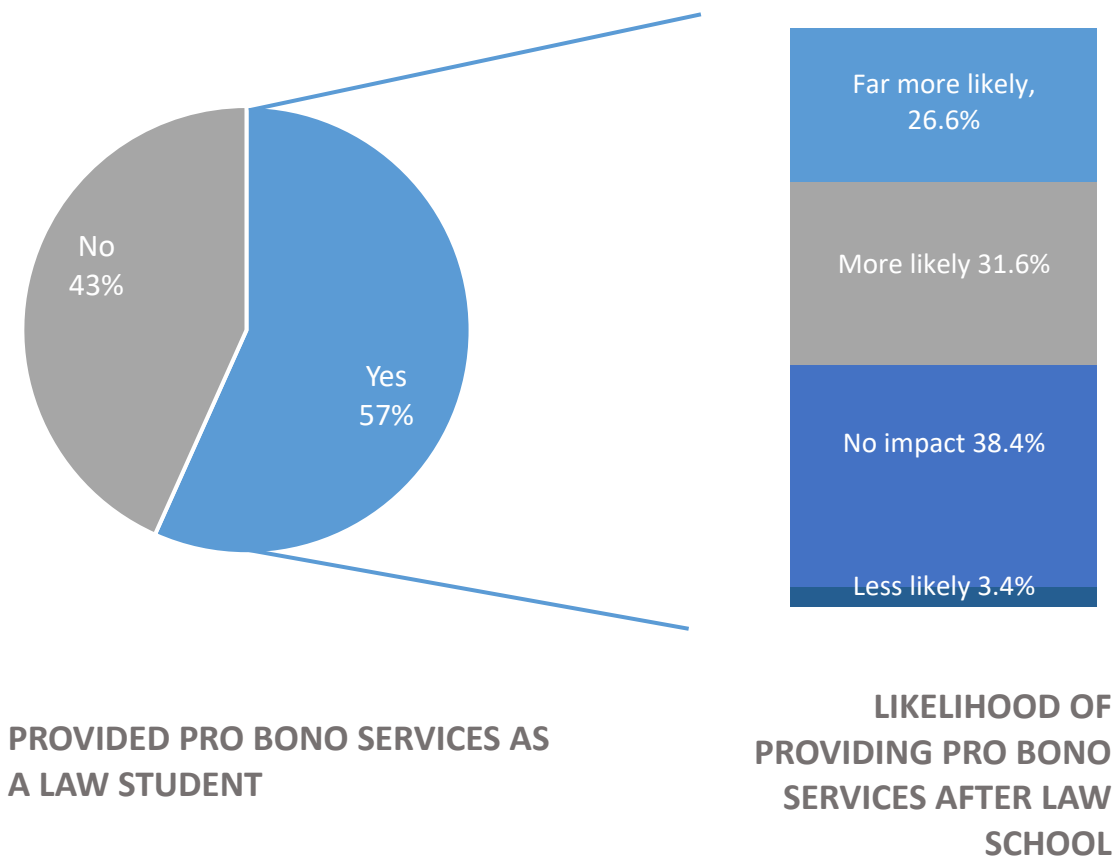
Although employer discouragement was not one of the top barriers to pro bono, there appear to be some additional actions that employers can take to support pro bono. The most common ways employers support pro bono, according to the surveyed attorneys, is by allowing the use of internal resources for pro bono activities and by allowing pro bono during regular business hours. See Figure 19. Only a small percentage reported that their employers have taken steps to discourage pro bono.

**FIGURE 19. EMPLOYER ACTIVITIES RELATED TO PRO BONO**



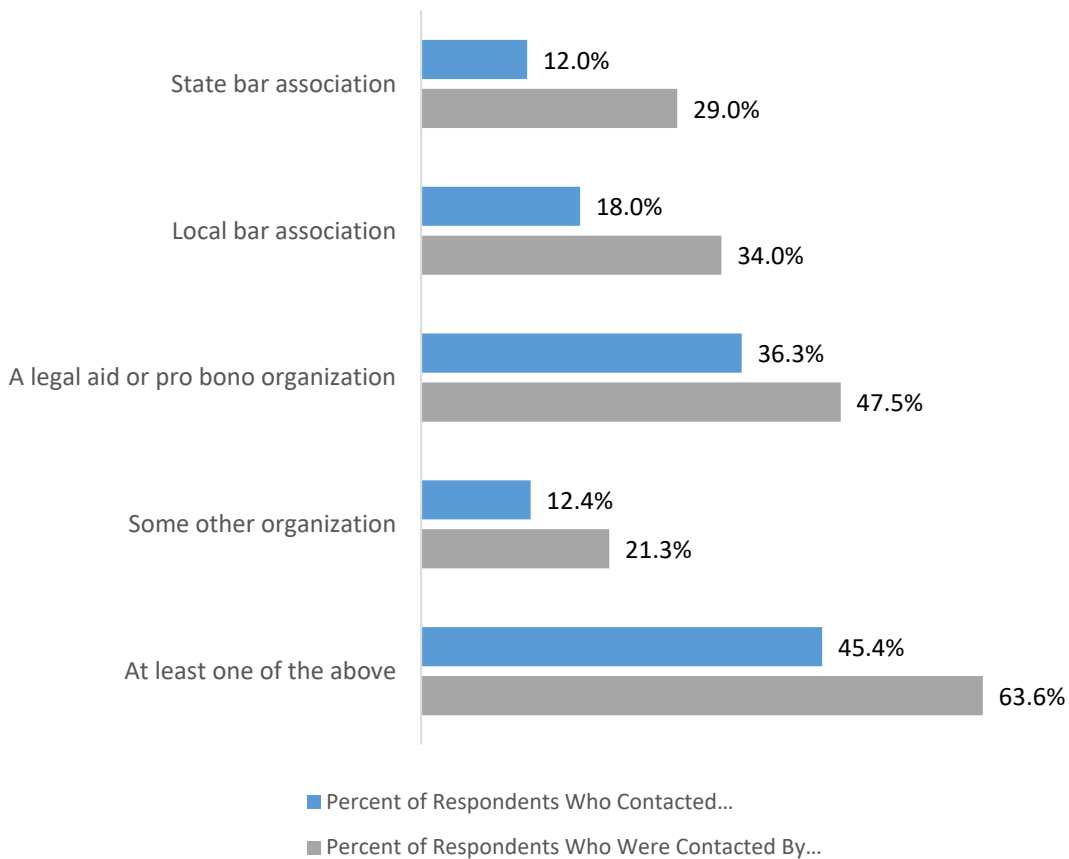
Many law schools provide pro bono opportunities to their students and it is believed that engagement in pro bono as a law student may lead to increased pro bono services provided after graduation. Of the 57% of respondents who indicated that they had provided pro bono legal services as a law student, around 60% noted that doing so made them “more” or “far more” likely to provide pro bono services after graduating from law school. Around 38% indicated that it had no impact on their likelihood of providing pro bono services after law school, and only 3.4% reported that it made them less likely to provide pro bono services after law school.

**FIGURE 20. IMPACT OF PROVIDING PRO BONO AS A LAW STUDENT ON PRO BONO SERVICE PROVIDING AFTER GRADUATING**



To identify pro bono opportunities, attorneys both reached out to organizations and had been contacted by organizations. Specifically, 45.4% had contacted some organization to identify a pro bono case: 36.3% contacted a legal aid or pro bono organization, 18% had contacted their local bar association, 12% had contacted their state bar association, and 12.4% had contacted some other organization. The majority of attorneys (63.6%) had been contacted *by* some organization: just under half (47.5%) had been contacted by a legal aid or pro bono organization, 34% had been contacted by their local bar association, 29% had been contacted by their state bar association, and 21.3% had been contacted by some other organization. See Figure 21.

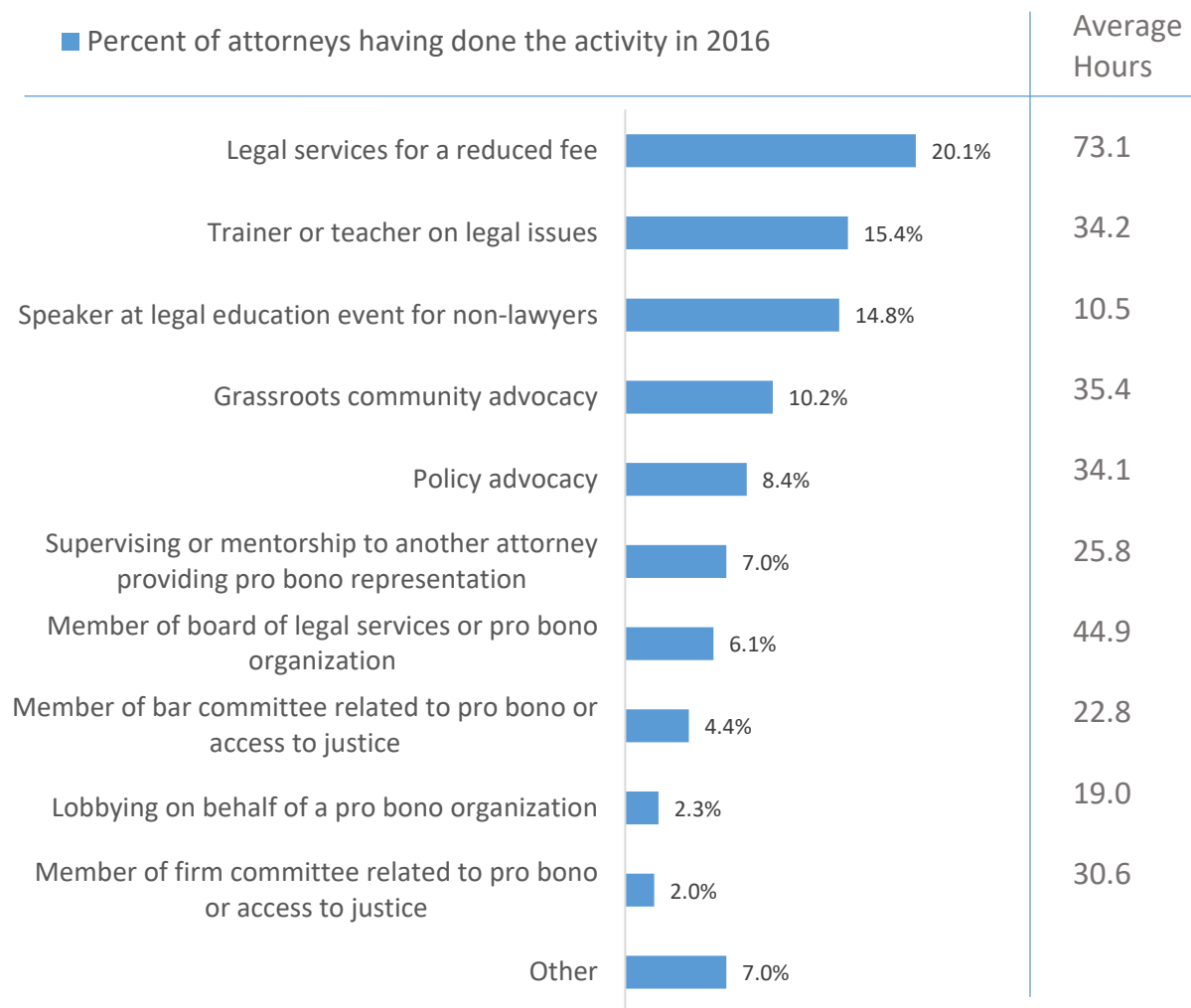
**FIGURE 21. CONTACT WITH ORGANIZATIONS**



## | SECTION 4 | Public Service Activities

In 2016, the surveyed attorneys provided a range of public service activities that expand beyond the traditional definition of pro bono. The most common public service activities reported were legal services for a reduced fee, being a trainer or teacher on legal issues, and being a speaker at a legal education event for non-lawyers. See Figure 22.

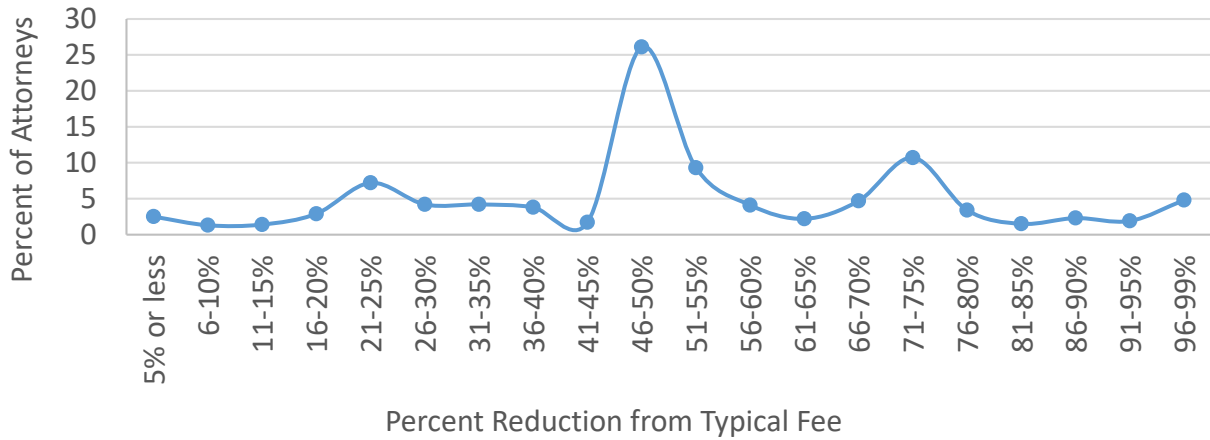
**FIGURE 22. PUBLIC SERVICE ACTIVITIES PROVIDED IN 2016**



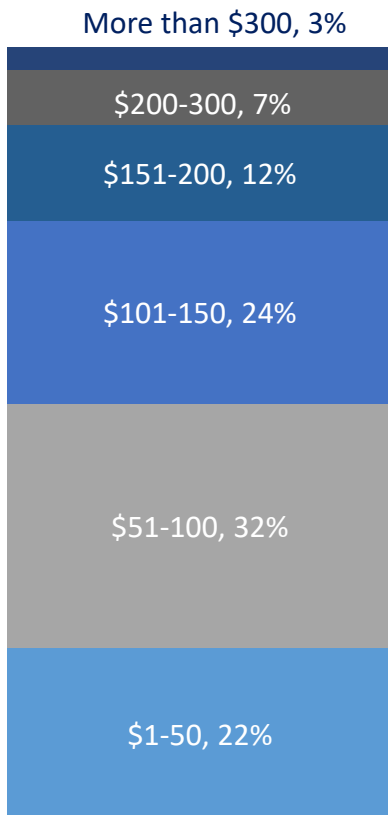
Of the list of public service activities provided in 2016, reduced fee legal services was the most common. Approximately 20% of the attorneys reported that they had provided such services and that the average hours they had committed to this activity were 73.1 for the year. Of the attorneys providing this service, 1 out of 4 had reduced their fees by 46-50%, followed by 1 out of 5 attorneys reducing their fees by 71-75%.



**FIGURE 23. AVERAGE REDUCED FEE AMOUNT**



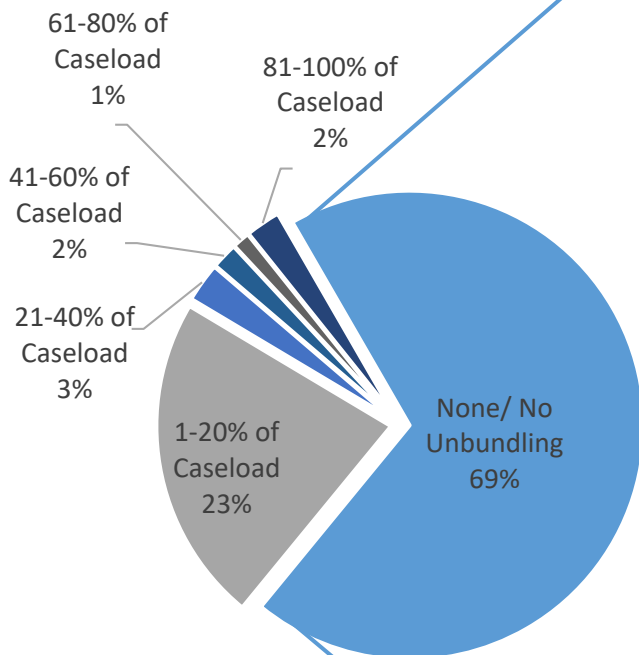
**FIGURE 24. AVERAGE REDUCED HOURLY FEE**



After the above reductions, most of the final hourly fees ended up being anywhere from \$1 to \$150. Just under one third of the attorneys ended up charging \$51-100 an hour. A quarter ended up charging \$101-150 an hour and a quarter ended up charging \$50 or less. Only around a fifth of the attorneys charged more than \$150 an hour.

Another type of service that is recognized as helping to reduce the cost of paid legal services is limited scope representation, also known as “unbundling.” The private practice attorneys surveyed were asked a series of questions about their use of limited scope representation for a fee as part of the practice in 2016. Although the majority of attorneys (69%) indicated that none of their cases involve unbundled legal services for a fee, 23% of attorneys indicated that 1-20% of their caseload involves unbundling.

**FIGURE 25. PERCENT OF CASELOAD INVOLVING UNBUNDLING**



Primary reasons for NOT providing limited scope representation<sup>5</sup>

**01** 75% agreement with the statement “I don’t think unbundling would work for much of my practice”



**02** 67% agreement with the statement “I worry that unbundling would expose me to malpractice claims”



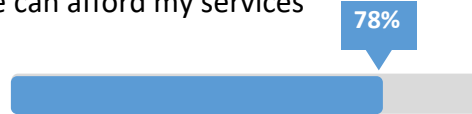
**03** 63% agreement with the statement “It is difficult to get enough clients to make unbundling worthwhile”



<sup>5</sup> Other common reasons with which responding attorneys agreed or strongly agreed include: prospective clients are not interested in unbundled legal services (57.9%); unbundled cases do not produce enough revenue (53.3%); I am concerned that unbundling may be unethical (45.7%); and my law firm does not permit me to unbundle (30.3%).

For those who had provided limited scope representation, their primary reasons were:<sup>6</sup>

**01** 78% agreement with the statement “Unbundling lowers the cost of cases so that more people can afford my services”



**02** 70% agreement with the statement “Unbundling allows me to offer legal services as a more competitive price”



**03** 60% agreement with the statement “Unbundling lowers receivables and results in fewer uncollectable fees”



All private practice attorneys – whether they had provided unbundling or not – were asked to rank a list of actions that might encourage them to provide (more) unbundled services. Although, just under a third of the attorneys indicated that nothing would encourage them and that unbundling is just not in their future, the remaining two thirds of the attorneys ranked the actions as follows:

1. More guidance or clarity concerning ethical obligations
2. More guidance or clarity concerning malpractice exposure for unbundled matters
3. More guidance or clarity concerning court procedures for unbundled matters
4. Programs to connect attorneys with prospective clients interested in unbundled legal services
5. Sample limited- scope agreements
6. Information to better understand fee structures for unbundled legal services
7. Opportunities to network with lawyers who unbundle

<sup>6</sup> Other common reasons provided were #4) unbundling clients are likely to become full-service clients (49.3% agreed or strongly agreed), #5) unbundling clients are more engaged in the process and invested in the outcome than full service clients (36.4% agreed or strongly agreed), #6) unbundling clients are more satisfied with their service than full-service clients (33.4% agreed or strongly agreed), and #7) I am less worried about disciplinary complaints for unbundled cases (32.4% agreed or strongly agreed)

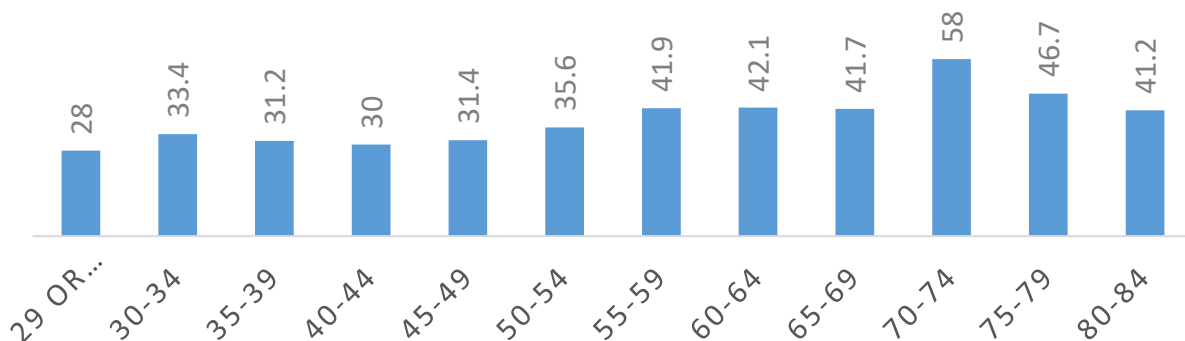
## | SECTION 5 | Population Trends

In evaluating population trends, it is apparent that despite the aspirational goal articulated in Model Rule 6.1, which encourages all attorneys to dedicate at least 50 hours of pro bono legal services annually, our attorney population (regardless of gender, race, ethnicity, age, practice setting or geography) is falling short of this important goal. As such, the below information is provided as a means of assisting the public interest community with determining how best to encourage and/or craft opportunities for various segments of our attorney population.

### AGE

**HOURS.** For a variety of reason, older attorneys provided more pro bono than younger attorneys, with those in the 70-74 age group providing the most average hours of pro bono in 2016 (see Figure 28). Notably, attorneys participating in pro bono licensure programs (such as emeritus programs) provided significantly more hours of pro bono service – an average of 107 hours (with median of 8 hours) – than attorneys with active licenses. Many of the attorneys participating in these programs do so because they have retired and have chosen to dedicate much of their time to pro bono work. Notably, younger attorneys were more likely to indicate that they had never provided pro bono legal services than older attorneys.

**FIGURE 28. AVERAGE PRO BONO HOURS IN 2016, BY AGE**



**CLIENTS.** In terms of the types of clients represented, younger attorneys (under age 45) were more likely to have represented an ethnic minority, a limited or non-English speaker, an immigrant, or a victim of domestic violence. Attorneys under age 50 were more likely to represent an LGBTQ client. Attorneys under age 55 were more likely to have represented a child or juvenile. And, attorneys over 50 were more likely to have represented an elderly client. Attorneys specifically participating in a pro bono licensure program were more likely to have

represented an ethnic minority, disabled person, elderly person, limited or non-English speaker, veteran, rural resident or victim of consumer fraud compared to attorneys with a regular, active license.

**RECENT EXPERIENCE.** Older attorneys were more likely to report that their most recent client came to them directly or through a present/former client, compared to younger attorneys. For example, among the 29 or younger age group, 15.9% indicated their client came to them directly, compared to 30.7% of the 55-59 age group. Younger attorneys, meanwhile, were more likely to report that their most recently client came to them through a legal aid program, their employer, or a coworker. Younger attorneys (under 45) were more likely to report that their recent client was a personal friend. And, younger attorneys were more likely to indicate having taken a case outside their area of expertise.

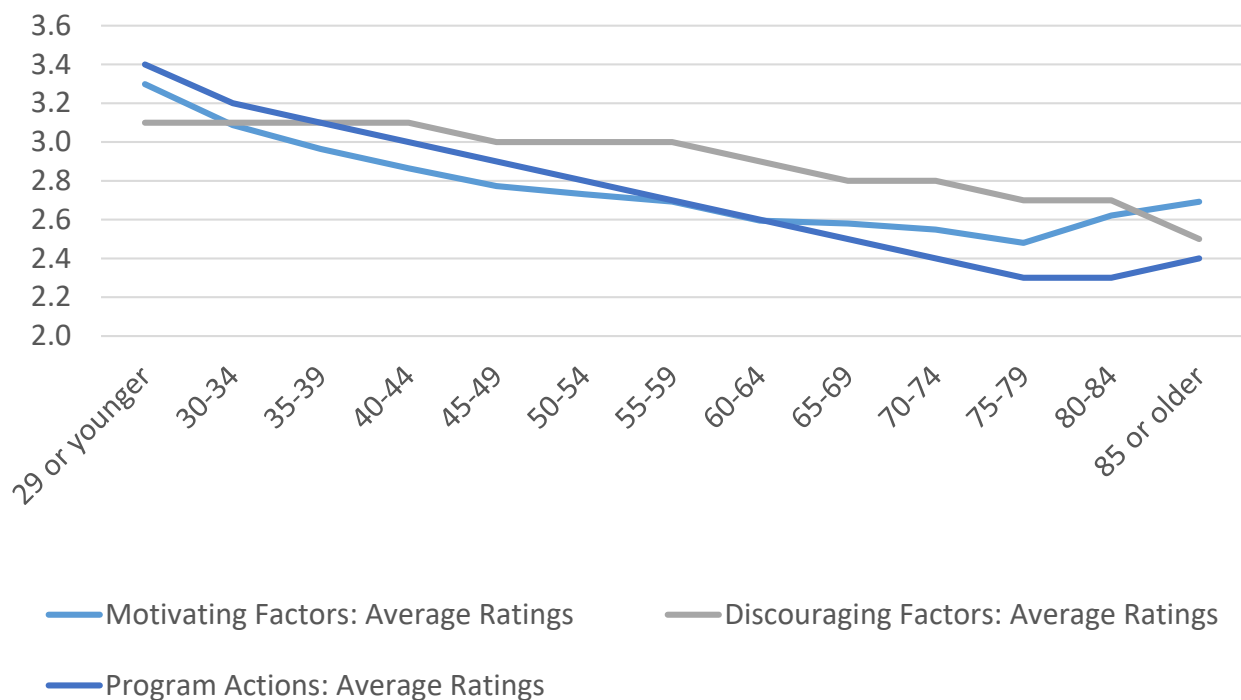
**PUBLIC SERVICE ACTIVITIES.** Attorneys over age 40 were more likely in 2016 to have provided reduced fee services, acted as a teacher or trainer on legal issues. Attorneys in the 40-70 age range were more likely to have been a speaker at a legal education event for non-lawyers.

**MOTIVATIONS.** Attorneys, regardless of their age, were most motivated by helping people in need. Attorneys under age 50 were also highly motivated by feeling like a good person and reducing social inequalities.

For most age groups, the top three discouraging factors were: lack of time, commitment to family and other personal obligations and lack of skills in the areas needed by pro bono clients. However, for attorneys over age 65, concerns about the lack of skills in the needed areas were more pressing, and on average, ranked as their second most discouraging factor, behind lack of time and ahead of commitment to family and other personal obligations.

Younger attorneys were both more motivated and more discouraged when asked about doing pro bono work compared to older attorneys. On the 5 point scale used throughout this report, where 5 is the most motivating or discouraging, the 29 and younger age group, for example provided an average rating of 3.3 across motivating factors and 3.1 across the discouraging factors, while the 75-79 age group provided an average rating of 2.5 for the motivating factors and 2.7 for the discouraging factors. See Figure 29.

**FIGURE 29. AVERAGE RATINGS FOR MOTIVATING AND DISCOURAGING FACTORS**

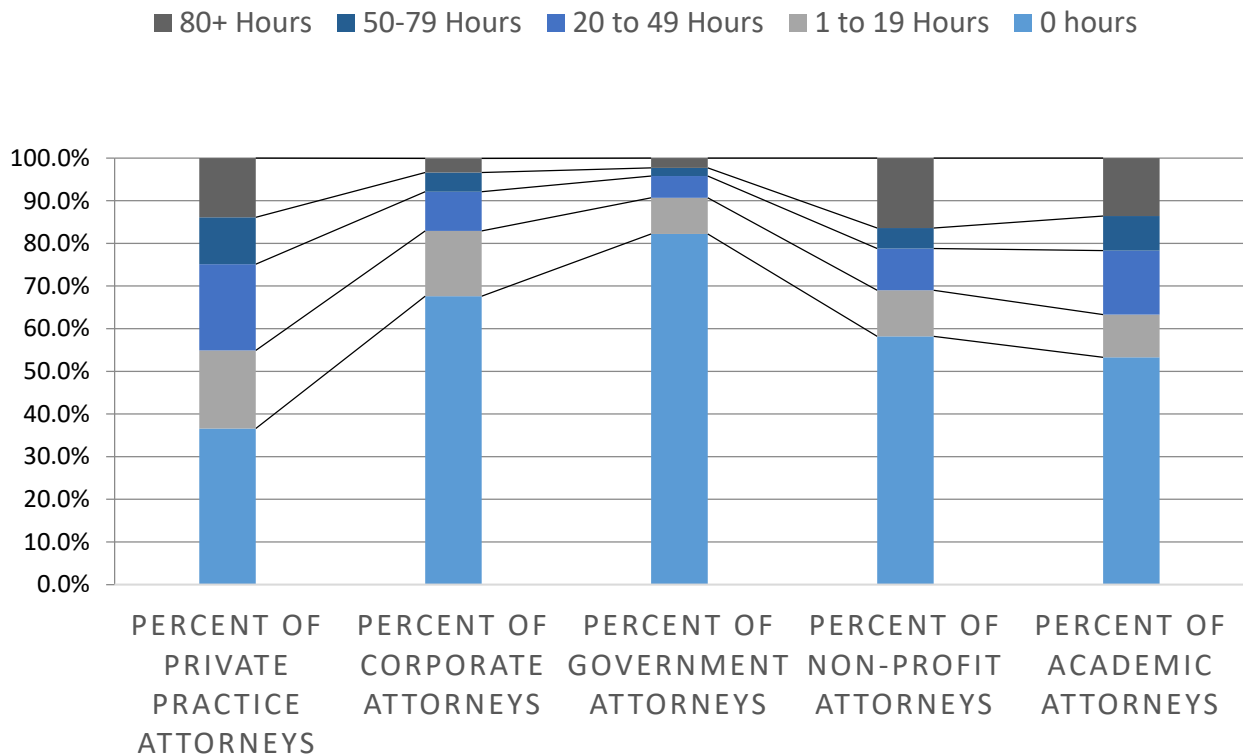


Younger attorneys provided higher ratings than did older attorneys for the list of actions that a pro bono program might implement. For example, attorneys in the 29 and younger age group provided an average rating of 3.4 compared to the 75-79 age group which provided an average rating of 2.3. Specifically, attorneys under age 35 were most influenced by: limited scope representation opportunities, mentorship by an attorney with expertise in the subject matter and CLE credit. Attorneys age 35-64 were most influenced by: limited scope representation opportunities, CLE credit, and if a judge solicited participation. Attorneys 65 and older were most influenced by: if a judge solicited participation, followed by either limited scope representation opportunities or if a colleague solicited participation.

## PRACTICE SETTING

**HOURS.** The vast majority of pro bono work is undertaken by attorneys in the private practice setting. Not only do private practice attorneys make up the majority of the attorney population, but more of them are doing pro bono work compared to attorneys in other practice settings. Specifically, private practice attorneys did an average of 41 hours of pro bono, compared to 11.4 hours among corporate attorneys and 10.5 hours among government attorneys.<sup>7</sup> And, relatedly, only 12.5% of the private practice attorneys reported that they had never done pro bono, compared to 25.7% of the corporate attorneys, 43.1% of the government attorneys and 26.8% of the non-profit attorneys.

**FIGURE 30. HOURS OF PRO BONO SERVICE PROVIDED IN 2016**

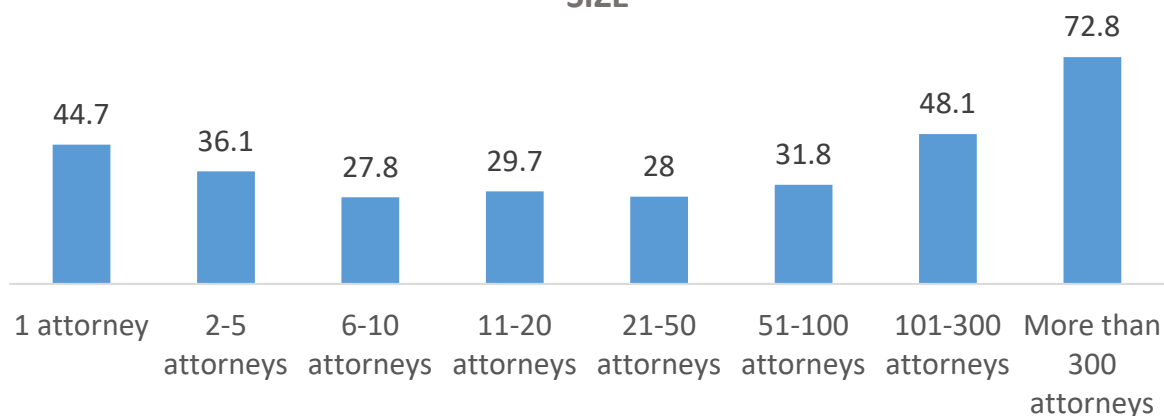


<sup>7</sup> The sample of non-profit and academic attorneys dedicated significant pro bono in 2016, with non-profit attorneys providing an average of 102 hours and academic attorneys providing an average of 68.7 average hours. It is not entirely clear, however, if non-profit and academic attorneys were reporting on pro bono hours only or hours related to their employment (e.g. academics in charge of running a pro bono clinical education program). Some of the narrative responses demonstrated some confusion over this distinction.



Within private practice, attorneys in the largest firms did more pro bono than the smaller firms. Specifically, attorneys in firms that had more than 300 attorneys provided an average of 72.8 hours of pro bono in 2016. This was followed by the attorneys in firms with 101-300 attorneys who performed an average of 48.1 hours of pro bono in 2016. Solo practitioners also did significant pro bono in 2016, with an average of 44.7 hours of pro bono.

**FIGURE 31. AVERAGE PRO BONO HOURS IN 2016, BY FIRM SIZE**



Within the government setting, attorneys at the federal level did more pro bono (68.4 average hours) compared to other levels (49.8 at the state level, 46.2 at the county level, and 32.6 at the city/local level). And, in the corporate setting, attorneys in companies with only one attorney provided more pro bono (43.0 average hours), compared to attorneys in companies with more attorneys (30.8 in companies with 2-9 attorneys, 27.6 in companies with 10-30 attorneys, and 28.4 in companies with more than 30 hours).

**CLIENTS.** In terms of types of pro bono clients represented in 2016, private practice or non-profit attorneys were more likely to represent a single parent or an elderly person, compared to other practice settings. And, attorneys in the non-profit setting were more likely to represent a disabled person, a limited or non-English speaker, a victim of domestic violence, a veteran, a rural resident, an immigrant, a homeless person, an LGBTQ person, or a migrant worker. Attorneys in the non-profit or academic settings were more likely to have represented a student in 2016.

**RECENT EXPERIENCE.** Attorneys in the private practice, government or academic settings were more likely to report that their most recent client came to them directly, compared to corporate and non-profit attorneys. When attorneys received their client through a referral, corporate and government attorneys were more likely to report that their recent client came to them through a family member or friend (11.8% and 14.3% respectively). Private practice attorneys were more likely to have received their recent client through a present or former client (10.1%) or a judge/court administrator (5.4%). Corporate and non-profit attorneys were

more likely to have received their most recent client through a legal aid program (20.1% and 18.4% respectively). Non-profit attorneys were more likely to have received their most recent client through a non-profit organization (15.8% - presumably their own organizations). Attorneys in the corporate and government practice settings were more likely to report that their recent client was a personal friend (19.1% and 12.5% respectively). Private practice attorneys were more likely to report that they had no prior relationship with their most recent client (40.1%). And, attorneys in the corporate or government practice settings were more likely to indicate having taken a case outside their area of expertise.

**PUBLIC SERVICE ACTIVITIES.** Private practice attorneys were significantly more likely in 2016 to have provided reduced fee services (28.5%) compared to attorneys in the corporate, government, nonprofit or academic settings (4%, 2.6%, 5.9% and 3.6% respectively). Nonprofit and academic attorneys were more likely to have acted as a teacher/trainer on legal issues (23% and 54.8% respectively) compared to private (15.2%), corporate (12.4%) and government (16.5%) attorneys. Attorneys in the nonprofit or academic settings were more likely to have been a speaker at a legal education event for non-lawyers (22.6% and 34.3% respectively) compared to private (15.6%), corporate (11.3%) and government (13.1%) attorneys. Attorneys in the nonprofit or academic settings were more likely to have provided grassroots community advocacy (21% and 16%).

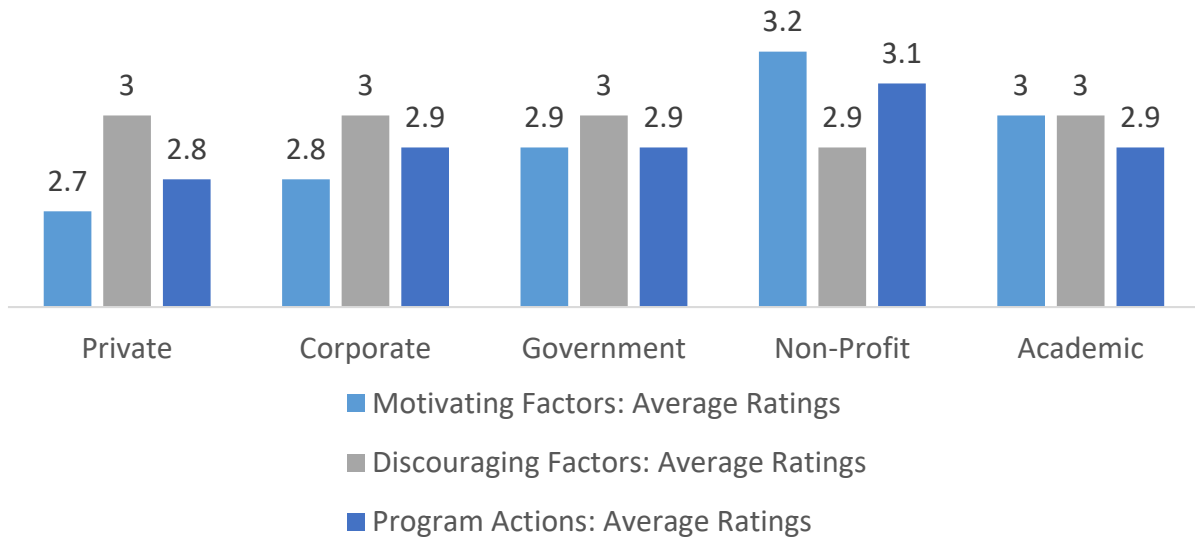
**MOTIVATIONS.** Attorneys regardless of practice setting were most motivated by helping people in need. Attorneys in the private practice were also highly motivated by ethical obligations and professional duties. Corporate and government attorneys were highly motivated by feeling like a good person and reducing social inequalities. And, non-profit and academic attorneys were highly motivated by reducing social inequalities and ethical obligations.

Private practice attorneys provided slightly lower average ratings for the list of motivating factors as well as the list of actions to encourage pro bono, compared to corporate and government attorneys (see Figure 32). Non-profit attorneys provided the highest ratings for both the motivating factors and the list of actions. The small group<sup>8</sup> of academic attorneys provided high ratings for the motivating factors, with an average of 3.0 – higher than private, corporate and government attorneys, but not as high as the non-profit attorneys.

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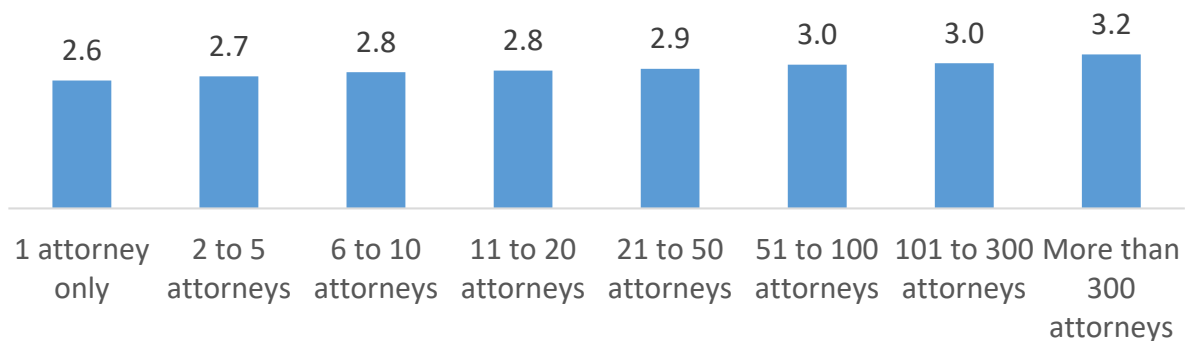
<sup>8</sup> A total of 226 attorneys identified themselves as being in the academic setting.

**FIGURE 32. RATINGS FOR MOTIVATING AND DISCOURAGING FACTORS**



Within private practice, attorneys from larger firms provided higher ratings for the motivating factors (the average rating for solos was 2.6 and the average rating for 300+ firms was 3.2). See Figure 33.

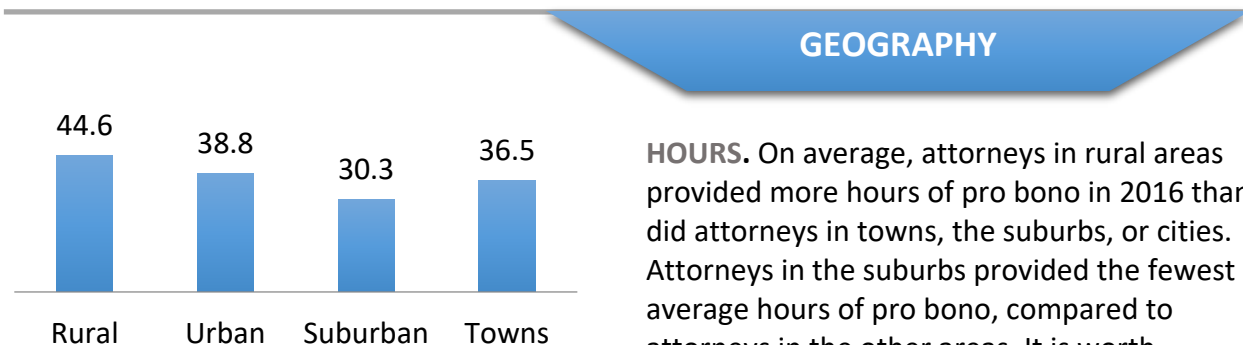
**FIGURE 33. AVERAGE RATINGS FOR MOTIVATING FACTORS, BY FIRM SIZE**



There were also notable differences in terms of which actions received the highest ratings. Specifically, private practice attorneys were most motivated by a judge soliciting their participation in a pro bono case. Corporate, government, non-profit and academic attorneys tended to rate malpractice insurance in their top three. Specifically:

- Private practice attorneys were most influenced by: 1) if a judge solicited participation, 2) CLE credit, and 3) limited scope representation opportunities

- Corporate attorneys were most influenced by: 1) limited scope representation opportunities, 2) malpractice insurance and 3) CLE credit
- Government attorneys were most influenced by: 1) malpractice insurance, 2) limited scope representation opportunities, and 3) CLE credit
- Non-profit attorneys and academic attorneys were most influenced by: 1) malpractice insurance, 2) limited scope representation opportunities, and 3) if a judge solicited participation



**FIGURE 34. AVERAGE HOURS OF PRO BONO IN 2016, BY GEOGRAPHY**

**HOURS.** On average, attorneys in rural areas provided more hours of pro bono in 2016 than did attorneys in towns, the suburbs, or cities. Attorneys in the suburbs provided the fewest average hours of pro bono, compared to attorneys in the other areas. It is worth noting, however, that these trends were, in part driven by the trends in particular states: in New York and Minnesota, urban and rural attorneys provided the most pro bono. In Wisconsin and Ohio, rural attorneys provided

significantly more pro bono. In Maryland, pro bono was driven by the attorneys located in towns. And, in Illinois, it was the urban attorneys that significantly outperformed attorneys in other areas.

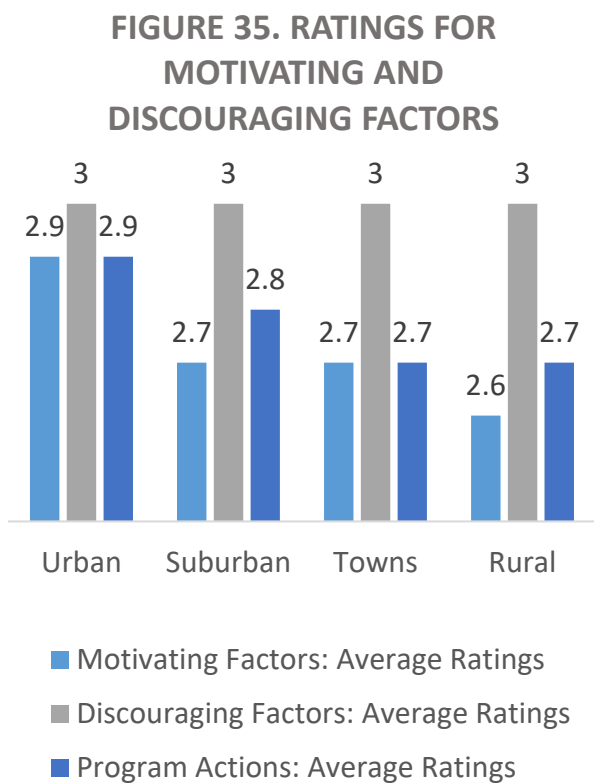
**CLIENTS.** In terms of types of pro bono clients represented in 2016, attorneys in urban areas were more likely to have represented an ethnic minority, a limited or non-English speaker, an immigrant, or a homeless person. Meanwhile, attorneys in towns or rural areas were more likely to have represented a single parent, a disabled person, an elderly person, a victim of domestic violence, a child or juvenile, a veteran, a rural resident, or a victim of consumer fraud.

**RECENT EXPERIENCE.** Attorneys in towns or rural areas were more likely to receive a client directly (38.9% and 39.3% respectively) compared to attorneys in urban and suburban areas (25.3% and 27.6% respectively). When attorneys accepted a client through a referral, urban attorneys were more likely to report that their recent case came to them through a legal aid program (17.2%). Meanwhile, attorneys in towns or suburban or rural areas were more likely to report receiving their client through a family member or friend or through a present/former client. Attorneys in rural areas and towns were more likely to report that they had no prior relationship with their most recently client (46.9% and 42.2% respectively). And, attorneys in urban areas were more likely to indicate having taken a case outside their area of expertise.

**PUBLIC SERVICE ACTIVITIES.** Attorneys in rural areas and towns were more likely to provide reduced fee services (28.2% and 31.1% respectively) compared to attorneys in cities (18.6%) and suburban areas (22%). Attorneys in rural areas or towns were also more likely to have been a speaker at legal education events for non-lawyers (16% and 17% respectively) compared to attorneys in cities (15%) and suburban areas (14%). The providing of limited scope representation as part of their practice was more prevalent among attorneys in rural areas or towns: 39.7% of the rural attorneys and 37.4% of the attorneys in towns had provided limited scope representation in 2016, compared to 29.4% of urban attorneys and 30.8% of suburban attorneys. Of the attorneys who provided limited scope representation, they tended to have done so in less than 20% of their cases.

**MOTIVATIONS.** Across the board, attorneys regardless of their geographic location were most motivated by helping people in need and fulfilling their ethical obligations.

On the 5 point scale used throughout this report, where 5 is the most motivating or discouraging, urban attorneys provided the highest overall ratings for the motivating factors, with an average of 2.9, compared to suburban attorneys (2.7), rural attorneys (2.6) and attorneys in towns (2.7). There were no differences in the average ratings for discouraging factors based on geography.



**TOP MOTIVATORS**

Urban and rural attorneys:

1. helping people in need
2. ethical obligations
3. professional duties

Suburban attorneys:

1. helping people in need
2. ethical obligations
3. feeling like a good person

Attorneys in towns:

1. helping people in need
2. ethical obligations/professional duties
3. feeling like a good person

Attorneys in rural areas provided lower ratings for the list of activities, with average ratings of 2.7 compared to attorneys in urban areas (2.9), suburban areas (2.8) and towns (2.7). Urban attorneys were most influenced by a judge soliciting participation, limited scope representation opportunities, and CLE credit. Suburban attorneys were most influenced by limited scope representation opportunities, a judge soliciting participation, CLE credit and malpractice insurance. Rural attorneys were most influenced by a judge soliciting participation, CLE credit, and limited scope representation opportunities. Attorneys in towns were most influenced by a judge soliciting participation, CLE credit, and limited scope representation opportunities.

## STATE

**HOURS.** Out of the 24 states that participated in this survey, there were a few states that outperformed the others in terms of amount of pro bono reported for 2016, along several different ways of measuring this, as described below. The three top performing states included Washington, Tennessee and Wyoming and details for these states are provided below.



Washington State. The attorneys in Washington reported an average of 57.4 hours of pro bono in 2016 – the highest among all the states that participated in the survey. Just over 68% of the attorneys reported having done at least some pro bono in 2016, and the average hours for these attorneys was 77.4. This state had the lowest percent of attorneys who had never performed pro bono, with only 10% making this claim.

Washington state was also one of the highest in terms of the percent of their attorney population that performed 80 or more hours of pro bono in 2016, with 18.6% of the attorneys reporting this. Washington was also one of the leading states in terms of percent of attorneys undertaking limited scope representation pro bono work (53.5% of those who provided pro bono in 2016 provided this type of service) and percent of attorneys providing pro bono services to organizations (49.2%) in 2016. In terms of population trends, attorneys who were male, older, and/or living towns tended to do the most pro bono work.



Tennessee. The attorneys in Tennessee reported an average of 53.1 hours of pro bono in 2016 – the second highest among all the states that participated in the survey. Just shy of 67% of the attorneys reported having done at least some pro bono in 2016, and the average hours for these attorneys was 75.5. This state had the second lowest percent of attorneys who had never performed pro bono, with only 10.1% making this claim.

Tennessee was the highest in terms of the percent of the attorney population that performed 80 or more hours of pro bono in 2016, with 19.5% of the attorneys reporting this. Tennessee was one of the leading states in terms of the percent of attorneys providing pro bono to individuals (91.6% of the attorneys who provided pro bono in 2016 provided services to individuals).



Wyoming. Wyoming attorneys reported an average of 48.6 hours of pro bono in 2016 – the third highest among all of the states that participated in the survey. Just over 70% of the attorneys reported having done at least some pro bono in 2016, and the average hours for these attorneys was 65.4. Just over 14% of Wyoming’s attorneys had never performed pro bono and 13.6% of the attorneys had performed 80 or more hours of

pro bono in 2016. Wyoming was one of the leading states in terms of percent of attorneys providing pro bono to individuals (94.3% of the attorneys who provided pro bono in 2016 provided services to individuals), but one of the lowest in terms of services to organizations (23.2% of the attorneys who provided pro bono in 2016 provided services to organizations).

Other states that were high-performing in terms of the quantity of pro bono included Oregon, New Mexico, Utah, Wisconsin, and Arizona. In these five states, pro bono hours were more driven by the older attorney populations and the providing of limited scope representation.

**PUBLIC SERVICE ACTIVITIES.** Out of the 24 states that participated in this survey, there were a few states that outperformed the others in terms of the public service activities offered in 2016. In all of the states, over half of the attorneys had engaged in some type of public service activity in 2016, but in Vermont, Washington State and Wyoming over 75% of the attorneys offered such services.



Vermont. In Vermont, 77.5% of the attorneys reported having done at least some type of public service activity in 2016 – the highest percentage among the states participating in the survey. Additionally, attorneys in Vermont outperformed other states in terms of the percent having offered reduced fee services in 2016. Approximately one third (33.6%) of Vermont’s attorneys had offered such services. Finally,

Vermont was one of the top states in terms of the percent of attorneys having offered limited scope representation as part of their practice, surpassed only by Wisconsin; 41.5% of Vermont’s attorneys offered such services in 2016.



Washington State. Seventy-seven percent of the attorneys in Washington State reported having done at least some type of public service activity in 2016. And, although Washington was not among the top states in terms of the percent of attorneys offering reduced fee services, when Washington attorneys did offer such services, they

reduced their fees significantly. Specifically, among the attorneys who offered such services, almost half (48.8%) reduced their fees by over 50%.<sup>9</sup> Finally, Washington was among the top 5

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<sup>9</sup> Only 3 states had higher percentages for the attorneys providing reduced fee services who reduced their fees by over 50%: WY (50.1%), MD (49.2%), and AR (48.9%). These numbers compare to the state with the lowest percentage of 36.4% reducing their fees by over 50%.

states in terms of the percent of attorneys offering limited scope representation as part of their practice: 38.6% of the attorneys reported offering such services.



Wyoming. Seventy-six percent of the attorneys in Wyoming reported having done at least some type of public service activity in 2016. And, Wyoming attorneys offered significant reduced fee services, with 31.7% of the attorneys reporting having done so in 2016. Indeed, Wyoming attorneys outpaced attorneys in other states in terms of how significantly they reduced their fees, with 50.1% of these attorneys reducing their fees by more than 50%. Although Wyoming attorneys significantly participated in such public service activities, these attorneys were not significant providers of limited scope representation as compared to attorneys in the other 23 states.

Other states that were high-performing in terms of such public service activities included Tennessee, Oregon, West Virginia, Maryland, Arkansas, and Utah. Tennessee had a high proportion of attorneys doing at least one public service activity (75.1%) and specifically, was a leader in the proportion of attorneys offering reduced fee services (29.9%). Oregon had a high proportion of attorneys doing at least one public service activity (75%) and was also among the leading states in terms of the proportion of attorneys offering limited scope representation (41.1%). West Virginia was among the leading states in terms of the proportion of attorneys offering reduced fee services (26.8%). Among the attorneys providing reduced fee services, Maryland and Arkansas attorneys offered significant reductions, with 49.2% and 48.9% respectively offering over 50% reductions. And finally, Utah was one of the leading states in terms of the proportion of attorneys offering limited scope representation (39.4%).

**MOTIVATIONS.** The states with the attorneys indicating the highest levels of motivation to do pro bono included Washington, New Mexico, Minnesota and Arkansas. Overall motivation for doing pro bono is assessed in this section based on the percent of attorneys indicating they believe pro bono is important, the percent of attorneys indicating they are likely to do pro bono in 2017, and average ratings for the lists of motivating and discouraging factors.



Washington State. The vast majority of Washington's attorneys (88.9%) indicated that they believe pro bono is either somewhat or very important. Washington was only surpassed by one state – Maine – on this factor. Meanwhile, on a scale from 1 to 5, where 1 is the least motivating and 5 is the most motivating, Washington's attorneys provided an average rating of 2.94 for the list of motivating factors. This was the highest average rating among all of the states that participated in the survey. And, when asked about their likelihood of providing pro bono in 2017, 68.5% of the attorneys answered in the affirmative (again, the highest among all of the participating states). Meanwhile, compared to other states, Washington attorneys reported low rates of discouragement (average rating of 2.81 on a scale from 1 to 5, where 5 is the most



discouraging) and high ratings for the list of actions pro bono programs could implement to encourage pro bono (2.93).



New Mexico. The vast majority of New Mexico's attorneys (85.3%) indicated that they believe pro bono is either somewhat or very important. And, 59.9% of the attorneys in New Mexico indicated that they were likely to provide pro bono in 2017. Notably, New Mexico was *not* one of the leading states for the average rating of motivating factors, however. New Mexico attorneys were not particularly discouraged (average rating of 2.85) compared to other states. The ratings for the list of actions pro bono programs could implement to encourage pro bono were low as well (2.67).



Minnesota. The vast majority of Minnesota attorneys (85.1%) indicated that they believe pro bono is either somewhat or very important. Meanwhile, on a scale from 1 to 5, where 1 is the least motivating and 5 is the most motivating, Minnesota's attorneys provided an average rating of 2.9 for the list of the motivating factors. Notably, however, discouragement ratings were not particularly low (2.9) compared to the other states. Overall, the attorneys were not particularly optimistic that they would do pro bono in 2017 compared to other states. Specifically, 42.5% indicated that they were likely to do pro bono in 2017.



Arkansas. With an average rating of 2.9, Arkansas was one of the leading states for the list of motivating factors. It was also one of the leading states in terms of the percentage of attorneys (57.4%) who indicated that they were likely to do pro bono in 2017. However, Arkansas was about average in terms of the percentage of attorneys who indicated that pro bono is important (82.4%) and about average in terms of its discouragement ratings (2.9). Arkansas was among the leading states in terms of how encouraged the attorneys were by the list of actions pro bono programs could implement (average rating of 2.9).

Other states that had high levels of motivation for doing pro bono included Maine, Oregon, California, New York, Mississippi, and Vermont. Maine and Oregon were leading states for the percent of attorneys (89.3% and 85.8% respectively) indicating that they believe doing pro bono is important. Both states also had relatively low ratings for the list of discouraging factors (2.8 and 2.69 respectively). California and New York were both leading states for the average ratings for the list of motivating factors (2.9 and 2.84 respectively). Mississippi and Vermont were both leading states in terms of the percent of attorneys indicating they were likely to do pro bono in 2017 (62.9% and 58.9% respectively). Meanwhile, both Wyoming and Vermont had particularly low ratings for the list of discouraging factors (2.79 and 2.81 respectively).

## | CONCLUSION |

An essential finding in this report is that most attorneys understand the need for doing pro bono and generally have an interest in and desire to do so. Nonetheless, there is substantial opportunity to broaden pro bono opportunities and to enlist more lawyers in providing the types of pro bono that most directly benefit poor clients.

Although attorneys face time constraints and other barriers to doing pro bono, there are some policy and program actions that can be taken to expand the ability for attorneys to undertake pro bono work. These include:

- Ongoing education about the definition of pro bono and continuing to emphasize in both policy and programs the importance of lawyers doing pro bono work.
- Developing diverse messaging about pro bono, recognizing that attorneys undertake pro bono work for many different reasons, including personal, professional, and moral.
- Engaging judges in supporting pro bono work by encouraging them to write support letters, ask attorneys to take pro bono cases, recognize attorneys who do pro bono work, and cultivate court-based pro bono programs.
- Further developing rules and policies that allow for the referral of limited scope representation matters and screening cases to identify limited scope pro bono opportunities.
- Developing more mentoring resources and opportunities for attorneys to co-counsel (e.g., sharing the responsibility for a case).
- Offering free or reduced-fee continuing legal education as an incentive to providing pro bono service.
- Increasing support to government attorneys and corporate lawyers to help them provide more pro bono services.
- Educating lawyers about the opportunities, resources and support services referral programs provide to volunteers. This is especially true with respect to the availability of malpractice insurance.
- Continuing to cultivate channels for referrals, not only through legal aid pro bono programs and other organizations, but through attorneys' personal and professional networks.
- Increasing employer encouragement and support including allowing the use of workday time and resources for pro bono activities.

- Continuing to develop law school pro bono programs to support a culture of pro bono among young attorneys.
- Continuing to collect information on attorney behaviors and attitudes with regard to pro bono to better understand the attorney population and to develop evidence-based program and policy changes.
- Developing and promoting technical and other innovations (e.g. ABA Free Legal Answers) that help to broaden the involvement of attorneys in providing high quality pro bono assistance.
- Offering a broad menu of service, case-type, and client need options to prospective volunteers.

## | APPENDIX |

**Survey Design** – The survey was organized in four substantive sections: 1) the quantity of pro bono in 2016, 2) recent pro bono experience, 3) motivating and discouraging factors and 4) other public service activities. Each attorney was asked their work environment, position, firm/office size and location, as well as demographics such as gender, age, and race/ethnicity. Survey logic was built in such that only relevant questions were shown to the attorneys, as determined by how they responded to questions early in the survey. For example, attorneys who had not done any pro bono in 2016 were not asked questions about the details of their 2016 pro bono experiences.

**Survey Definitions** – Past national surveys of pro bono completed by the ABA revealed disagreement among the surveyed attorneys regarding which services qualify as pro bono and which do not, as well as who qualifies as a person of limited means. Consequently, a more explicit definition was used for these surveys and a final section of the survey asked questions about the more indirect and less-conventionally included services. See the below text for the definitions of pro bono, limited means, and public service activities that were provided.

### **Defining Pro Bono.**

Thank you for answering our background questions. Now we will ask a series of questions about the level and type of pro bono services you may have provided in 2016. First, let's make sure we are all on the same page about the definition of pro bono.

Pro bono legal services are:

- personally performed
- without charge or expectation of a fee
- to persons of limited means or organizations that serve persons of limited means

Pro bono does not include legal services performed to develop a paying client (e.g. a free initial consultation to a potential paying client) or legal services for which payment was expected, but not collected. It also does not include free legal services provided for family or friends who are not of limited means. And, it does not include pro bono activities you performed as part of your paying job responsibilities.

### **Defining Limited Means**

For this survey, persons of limited means are defined as financially disadvantaged persons who are unable to pay for legal services. This determination should be made by either a pro bono attorney or a legal aid (or similar) organization at the time of screening and according to the program's criteria. In some circumstances, it may include individuals and families earning below 125% of the Federal Poverty Line (approximately \$15,000 annually for a family of one or \$30,000 annually for a family of four), or up to 200% of the Federal Poverty Line (approximately \$25,000 for a family of one or \$50,000 annually for a family of four), depending upon the type of case and client involved.

### **Other Public Service Activities**

Earlier in this survey you were asked about legal services that you may have provided directly to clients, whether individuals or organizations, without fee or expectation of fee. For this final set of questions we will ask about other public service activities that may provide assistance to low and moderate-income people. Note that these questions are specifically inquiring about activities **in 2016** and not previous years.

Outside of your paid job responsibilities, did you perform any of the following public service activities in 2016? (select all that apply)

- Legal Services for a reduced fee
- Speaker at legal education event for non-lawyers
- Trainer or teacher on legal issues
- Supervising or mentorship to another attorney providing pro bono representation
- Lobbying on behalf of a pro bono organization
- Policy advocacy
- Grassroots community advocacy
- Member of board of legal services or pro bono organization
- Member of bar committee related to pro bono or access to justice
- Member of firm committee related to pro bono or access to justice
- Other, please specify

**Survey Distribution** – The Web-based survey was distributed by email to all attorneys for whom contact information was available in the 24 participating states. Almost all of the states reported having contact information for over 95% of their attorney population. The surveys were distributed in January and February of 2017. Many of the states followed up using social media to encourage attorneys to complete the survey. Some states also offered a survey incentive as well.

**Response Rate and Final Sample** – The final sample of surveys amounted to 47,242, with 45,941 of these responses being from attorneys with active licenses. The response rate was therefore 7.3%. The sample fairly closely matched the known demographics of the attorney population, with slight deviations with respect to practice setting. Consequently, weights were applied to adjust the sample to represent the state attorney population. Weighting is a standard practice that addresses inconsistencies in distributions between survey responses collected compared with the actual distributions of the population being studied. The weight does not change a respondent's answer; rather, it gives appropriate relative importance to the answer. Figure 36 demonstrates the final weighted sample distributions by race/ethnicity, gender, age, and practice setting.

**Analysis** – The aggregate results were analyzed and summarized for the attorney population in the 24 states. These results were also broken down by work setting, geography, gender, age, and race/ethnicity. All significant results noted throughout this report are at the 95 percent confidence level. Additionally, each of the 24 states received a report of the state’s findings in more detail than is included in this report and the findings can be obtained by contacting the state’s bar association, access to justice commission, or court administrator.

*Figure 36. Weighted Distributions*

Category	Percent
<b>Race/Ethnicity</b>	
White, Not Hispanic	84.4%
Black, Not Hispanic	4.1%
Hispanic	4.5%
Asian, Pacific American, Not Hispanic	2.9%
Other	4.1%
<b>Gender</b>	
Male	61.6%
Female	37.5%
Gender Non-Conforming	0.2%
<b>Age</b>	
29 or younger	7.7%
30-34	12.1%
35-39	10.6%
40-44	8.8%
45-49	9.8%
50-54	9.8%
55-59	11.3%
60-64	11.9%
65-69	9.5%
70-74	5.4%
75+	3.3%
<b>Practice Setting</b>	
Private Practice	68.3%
Corporate Counsel	8.7%
Government	12.1%
Non-profit	5.1%
Other	5.9%
<b>License Status</b>	
Active	97.2%
Inactive	2.4%
Emeritus/Pro Bono License	0.4%