

A Law Firm Guide To Helping Victims Of Human Trafficking

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Increased awareness among law enforcement, the courts, schools and the public about human trafficking and the identity of its perpetrators and victims has caused a surge of human services needs across the country. Survivors of human trafficking need health care, counseling, housing and support/empowerment programming, but they also need lawyers. Unlike victims of many other crimes, trafficking survivors have their own uniquely complicated legal needs due to their experience of being trafficked; yet they are not always entitled to a court-appointed attorney or eligible for legal aid. Without legal representation, survivors of trafficking can be left to wade through the rocky waters of justice alone, un-empowered and misunderstood; an experience not too dissimilar from being trafficked.

Law firms are well positioned to step up and assist victims of human trafficking with their various legal needs. Our firm in Charlotte, North Carolina, built its Human Trafficking Pro Bono Project in 2013 and, to-date, has served victims in over 100 matters. We offer this guide in the hopes that other firms will engage in this unique pro bono opportunity to support victims of such a horrific crime.

Areas of Assistance Law Firms Can Offer

Criminal Records

Many sex trafficking victims first interface with the justice system as perceived criminals. The experience of being trafficked can involve criminal activity beyond commercial sex, such as drug use and sales, illegal firearm possession and robbery. As a tactic to further trap their victims, traffickers threaten to report criminal activity if the victim does not continue to "work" for them. Once a survivor is free from exploitation, she may be left with debilitating criminal charges or convictions. Despite the current wave of "ban the box" type efforts, a criminal record can still be an absolute bar to employment, housing or education.

Pro bono lawyers can lift this barrier to independence for survivors by helping them vacate or expunge criminal records related to being trafficked. Vacatur and expunction statutes vary by state and require eligibility analysis. Pro bono lawyers can assist survivors with that analysis and, if eligible, the petition or motion paperwork required by the applicable court. This is a process that many survivors otherwise find inaccessible, confusing and intimidating — yet can yield a lifetime of benefits.

An easier task, which also yields great reward, is when the survivor comes to the pro bono lawyer with a pending charge. "Un-doing" a conviction by expunction or vacatur can be much more challenging than addressing a charge before it turns into a permanent record. Law firm lawyers can provide meaningful assistance in the survivor's defense, even when a criminal lawyer has been appointed by the court.

Victim-Witness Assistance in the Investigation and Prosecution of the Trafficker

Some survivors want assistance prompting an investigation of the trafficker once they feel safe, stable and on their way to recovery, so that nobody else has to endure what they did. Others feel forced into participation in the investigation and prosecution despite tremendous fear of the trafficker and their own criminal liability. Although the victims' rights are at stake and their fears significant, our criminal justice system does not afford legal representation for victims of crimes — but pro bono attorneys can. Helping survivors obtain mandatory restitution for their victimization (i.e., backpay and damages for medical and psychological harm) can be some of the most meaningful work for both lawyers and their clients.

These two areas of assistance are particularly important for trafficking survivors because of their previous adverse experiences with law enforcement and the courts. Pro bono lawyers can inspire renewed trust in the legal system and access to justice.

Other Civil Matters

Unlike other pro bono efforts (e.g., will drafting or eviction defense), trafficking clients often present unclear and various legal needs. Common areas of need for survivors include representation in custody disputes, immigration assistance for foreign-born victims, name change petitions to seek anonymity, and protective orders if those they fear are not in custody of law enforcement. Many law firms already provide assistance in these areas and can easily transition those resources and expertise to aid trafficking survivors.

Steps to Get Started

Sources of Client Referrals

Most other law firm pro bono programs receive client referrals from nongovernmental organizations that serve an intended population, legal aid corporations, or local bar referral programs. Because there are very few organizations, particularly in smaller cities and rural areas, that specifically support victims of human trafficking, there often isn't a natural referring agency for this type of pro bono program. Similarly, most legal aid corporations don't have a specific mission of providing representation to trafficking survivors and are often bound by government requirements regarding permitted services areas and income requirements.

Therefore, the first step to establishing a law firm human trafficking pro bono program is to establish trusted relationships with law enforcement, state and federal prosecutors, public defenders, local legal aid organizations and service providers that support or just intersect with victims of trafficking. These are the institutions that first interface with victims and are equipped to identify them as such. Note that without the middleman of a single and specialized referring agency, the law firm is primarily responsible for client intake and issue spotting. This also makes for a uniquely rewarding pro bono experience.

Match Needs with Firm Competencies

Existing firm practice areas for both paying and other pro bono clients create the primary areas of service of a human trafficking pro bono program. Just because a law firm may not regularly provide family or criminal law assistance, this doesn't have to be a barrier to meeting those types of needs. Lawyers must consult the applicable rules of professional conduct to ensure that they can provide competent representation but rest assured that association with outside lawyers who possess the subject matter expertise and necessary study can often render a law firm competent. Further, there are many lawyers and anti-trafficking organizations across the country that have been assisting victims of human trafficking for many years. Law firms starting such a pro bono program are encouraged to make contact with them for when client needs arise. Every lawyer in this space wants to get more lawyers involved and spare them having to "reinvent the wheel." Although dispersed in all parts of the country, there exists a reliable network of expertise ready and willing to help.

Anticipate the Challenges

A unique pro bono opportunity indeed; both in rewarding and challenging ways. Firstly, these pro bono clients don't always walk into your office with one identified legal need. Intake meetings often involve "issue-spotting" and "desire-spotting"; meaning, what legal needs does this survivor have and with which ones are they asking for help. An initial request for expunction analysis can evolve into a request for help appealing a disability claim denial.

Secondly, most trafficking survivors battle post-traumatic stress disorder, depression and/or anxiety. Lawyers often expect clients to narrate the timeline of facts giving rise to their legal need; yet, PTSD and other psychological trauma can impair an individual's ability to recall facts accurately and linearly. In addition, shame, distrust and fear of criminal liability can prevent survivors from providing candid and comprehensive information at the intake phase. Lawyers should set aside extra time and multiple meetings to both build trust and afford the time to gather the necessary information for the representation.

Thirdly, as they work to rebuild their lives, survivors may change housing and service providers. While they may currently live in the geographic area of the law firm, many come from other parts of the country or world. They are in great transition. Due to a variety of factors like this, legal representation is sometimes terminated prematurely. This can be disappointing for the lawyer who set out to help, but they should trust that the short relationship that was established likely had an impact.

Lastly and perhaps most challenging is the fact that far too many trafficking victims are children. Representing children presents its own set of challenges for lawyers. Working to identify criminal records can be difficult because minor records are often sealed. Lawyers may also confront ethical challenges in the representation of a minor's expressed interest or over the objection of their parents. However, these obstacles pale in comparison to the profound reward in helping a child who has endured such horror.

Do It Anyway

Despite the foregoing challenges, the uniqueness of this type of pro bono practice makes it tremendously rewarding. Victims of human trafficking feel abandoned by “the system” and powerless in dictating their fate, and yet, they have less access to justice than so many other populations in need. Law firms with a commitment to pro bono, courageous lawyers, and the desire to meet an unmet need ought to pursue this truly unique pro bono opportunity.

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