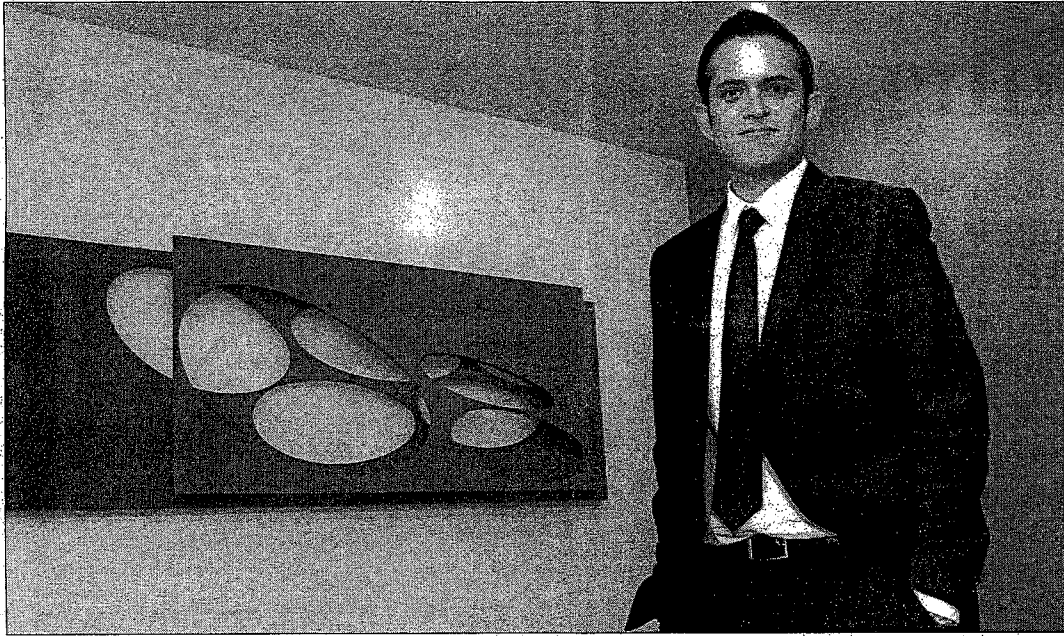


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Robert Levis / Daily Journal

Ilan Wisnia, an associate at the boutique Valle Makoff LLP in Los Angeles, sought out pro bono cases to work on.

Nonprofits Sag Under Crush Of Cases Involving Financial Industry

Experts Cite Conflicts At Large Firms, Poor Outreach to Smaller Firms

By Ben Adlin
Daily Journal Staff Writer

The worst of the economic crisis may have passed, but legal nonprofits are still struggling under a rash of foreclosures, bankruptcies and other consumer cases.

Frustrating the massive caseload is the fact that many big law firms, which provide the bulk of volunteer work to legal nonprofits, are conflicted out of consumer cases because financial services companies are their clients. The situation (some nonprofit administrators describe it as a crisis) has exposed a deeper problem in the way pro bono services are sought: Legal nonprofits have largely ignored small- and mid-sized firms in their outreach efforts.

"In a big city, it is definitely easier and more efficient a lot of times for legal aid organizations to reach out to big firms," said James J. Sandman, president of Legal Services Corp., the quasi-governmental organization that doles out federal grants to legal nonprofits. He added, "There may well be smaller firms that have the resources and interest in handling those cases."

The recent spike in demand for legal aid is staggering. Among the programs LSC funds, Sandman said, foreclosure cases rose 20 percent from 2009 to 2010. And between 2008 and 2011, the number of Americans qualifying for assistance — a family of four must make less

than \$27,938 annually — has risen 17 percent.

"It's sort of a perfect storm with the increased demand for matters relating to banks, lenders and credit cards," said Tai Glenn, pro bono director for the Legal Aid Foundation of Los Angeles. Her organization saw more bankruptcies in 2010 than in corresponding months the year before, "and so far this year," she said, "California is on track to have increased filings."

It should be expected that legal aid groups would turn to large law firms, especially in times of crisis. After all, their vast bullpens of lawyers — including young associates eager for experience — and institutional pro bono programs lead to tens of thousands of pro bono hours every year.

"Large firms have resources that are committed to pro bono in a way that make it easier to get back to them," said David Daniels, pro bono director for Public Counsel.

The American Lawyer magazine's annual ranking of pro bono work done by large law firms has only increased the incentive for big firms to participate. Many firms have full-time pro bono coordinators whose sole job is to find pro bono opportunities for their lawyers.

The [American Lawyer] rankings "are a big driver and changed the nature of pro bono dramatically in the past couple years," said Tiela Chalmers, executive director for Bar Association of San Francisco's Volunteer Legal Services Program.

But, in the current crisis, large firms have almost categorically kept their distance from bankruptcy and foreclosure cases. Most do considerable work for financial services clients like banks and other lending companies. And taking a pro bono consumer case could require arguing against a client or potential client's in-

terest — even if that client isn't involved in the matter at hand.

"The issues you're going to raise are going to damage your client," said Ira Rheingold, executive director of the National Association of Consumer Advocates and the Institute for Foreclosure Legal Assistance. In foreclosure cases, he said, "you're going to have to say that the mortgage industry is broken or they're committing fraud."

Sometimes the repercussions can be severe. A pro bono lawyer in Maine, for example, was instrumental in uncovering the widespread practice known as robo-signing, in which loan servicers signed stacks of foreclosure documents without even reading them. That case shined a harsh spotlight on banks, delayed foreclosure proceedings and led to congressional hearings that were embarrassing for the financial services sector.

Traditionally, firms have sought waivers from institutional clients to take on small pro bono cases that otherwise would be flagged as posing potential conflicts.

"A conflict is not a conflict if you get a client waiver," said Scott Edelman, national pro bono chairman at Gibson, Dunn & Crutcher LLP.

Bank of America Corp. and Citigroup Inc. declined to comment on their waiver policies. Others, including JPMorgan Chase & Co. and Wells Fargo & Co., did not respond to multiple requests for comment.

The magnitude of the current crop of cases — and a reluctance on the part of lawyers to rock the boat with clients during hard times — has made it difficult for firms to seek waivers.

Sandman, who was the firmwide managing

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partner at Arnold & Porter LLP lawyer boutique Valle Makoff LLP in Los Angeles, volunteered for pro bono cases at Bet Tzedek and Public Counsel while carrying a full caseload for paying clients. The work won him the State Bar's Wiley W. Manuel Award for Pro Bono Legal Services.

He is currently handling a bad mortgage case that he found through Public Counsel. But that's the rub: Public Counsel and Bet Tzedek didn't find Wisnia — he found them.

Wisnia said he understands why legal nonprofits aren't turning to him first to handle their cases. "It's a numbers game," he said. "You approach a firm with a thousand attorneys, and you'll probably find some."

Daniels of Public Counsel and Lauren Teukolsky, pro bono director at Bet Tzedek, said they have programs set up to reach lawyers at smaller firms. He said Public Counsel has a volunteer page on its website that generates emailed queries from small- and medium-sized firms "on a regular basis." Outreach through bar associations also generates contacts with lawyers at smaller firms, he said.

The fact remains, there is a growing need for pro bono services that isn't being met, lawyers in the industry said. Said Chalmers of the Bar Association of San Francisco: "There's a huge volume of people who aren't able to get legal help."

But the vast yet shallow pool of lawyers at smaller firms has not been a priority for many legal nonprofits, administrators and others in the industry acknowledge.

Lawyers who practice at these firms say they are willing to provide time.

GUEST COLUMN