CONFLICTS OF INTEREST:

Barriers and Solutions to Environmental Pro Bono Placements at International Law Firms

PILnet

Authors:
Erin McAndrews, Sofie Rudin, and Marianna Troia
NYU Paris European Public Interest Clinic

Coordination:
Prof. Lamin Khadar, NYU Paris European Public Interest Clinic
Giulia Patane, PILnet Program Director: Europe

Graphic Design:
Wendy Otieno, PILnet Communication Officer

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FOREWORD

Conflict of Interest: Barriers and Solutions to Environmental Pro Bono Placements at International Law Firms

Securing pro bono legal support from large international law firms is a crucial form of support for non-governmental organizations (NGOs) championing environmental and climate justice. Yet conflicts of interest often remain a persistent obstacle that hinders these vital partnerships. Whether the need involves direct legal advocacy or essential operational support, NGOs and clearinghouses frequently encounter closed doors due to perceived or actual conflicts. This challenge significantly limits the capacity of environmental organizations to effectively pursue their missions.

This timely study, conducted by NYU Paris European Public Interest Clinic students, delves into the complexities of this issue, exploring the multifaceted barriers that prevent the successful placement of environmental pro bono projects within large law firms. The research identifies and analyzes several key contributing factors, including limitations in specific environmental expertise within firms, anxieties surrounding potential repercussions from existing clients, and a general preference for less controversial pro bono matters. By shedding light on these often unspoken dynamics, this study offers valuable insights into this challenge.

This research would not have been possible without the dedication and hard work of the researchers and authors, Erin McAndrews, Sofie Rudin, and Marianna Troia. Their commitment to uncovering these critical issues is commendable. PILnet also extends its sincere gratitude to Professor Lamin Khadar for his expert guidance and support throughout the research process. Finally, and most importantly, PILnet would like to acknowledge the research participants—the legal professionals, clearinghouses and NGO representatives—who generously shared their time and perspectives, providing the foundation for this important work.

This report is essential reading for anyone concerned with environmental justice, pro bono legal services, and the role of large law firms in addressing the urgent challenges facing our planet. It offers not only a comprehensive analysis of the conflict of interest barrier but also explores potential solutions and strategies for overcoming these obstacles. By understanding the complexities of this issue, legal professionals and NGOs can work together to foster a more equitable and sustainable future. We hope that the findings and recommendations presented in this study will spark meaningful dialogue and inspire action towards bridging the gap between the legal resources available and the pressing needs of the environmental movement.

Giulia Patanè
Program Director: Europe

I. INTRODUCTION

Many pro bono clearinghouses, which connect civil society organizations to pro-bono legal assistance, face difficulty getting lawyers and firms to take on pro bono projects focused on environmental issues or serving environmental advocacy organizations. In surveys conducted by PILnet, a major pro bono clearinghouse that also coordinates a network of smaller clearinghouses, a key barrier identified by lawyers and environmental NGOs to establishing a pro bono relationship is conflicts of interest understood as sectoral conflicts due to a representation of the firms' clients that might be affected by taking climate justice cases.

In order to assist PILnet and other clearinghouses to navigate purported conflicts of interest lawyers face in prospective environmental pro bono matters, we have prepared this report to serve as a tool for clearinghouses to use when connecting lawyers and firms to environmentally focused pro bono projects. We conducted interviews with key decision makers at global law firms in order to provide tips for clearinghouse representatives in convincing lawyers to take on pro-bono matters, and to outline the diverse internal conflicts check processes lawyers engage in.

Through this report, we aim to increase clearinghouse teams' understanding of the presently opaque conflicts check process within law firms, in order to enable clearinghouses to understand how to frame pro-bono "pitches" to lawyers and preserve limited time and resources. This report aims to provide clarity on 1) issue framing strategies 2) existing conflicts check processes at law firms 3) potential pro bono partner lawyers/firms open to working with environmental advocacy clients.

"To do pro bono well, pro bono professionals have to be like water and find a way."

II. Barriers to placing environmental pro bono projects with firms

During the nine interviews we conducted, we inquired about the process for securing pro bono projects as well as the internal conflicts of interest check conducted at international commercial law firms. With regards to pro bono project acquisition, the method of securing projects varied; some interviewees suggested that their firms opted to design their own pro bono projects, while others preferred cultivating relationships with public interests organizations directly, with many noting that firm partners brought in pro bono projects on an ad hoc basis. More consistently, however, most lawyers emphasized that their firm did not typically take on projects proposed by clearinghouses on a regular basis.

See the Australian Pro Bono Center "Pro Bono Guide to the Climate Crisis" overviews the two types of conflicts: Legal conflicts (also known as direct conflicts) and commercial conflicts, also known as indirect conflicts. "A commercial conflict is where the firm understands that taking on a particular pro bono matter may deter a current or potential commercial client from working with the firm, because the matter is perceived to be damaging to the firm's relationships, or is prohibitively controversial. Many firms act for clients within industries that directly or indirectly contribute significantly to carbon emissions, such as energy, financial services, asset and investment management, transport, and infrastructure. This can give rise to commercial conflicts when pro bono clients request assistance from a firm on a climate-related matter" Commercial conflicts are indeed the more contentious type of conflict in pro bono legal work in the climate change area. And while there is typically no legal reason a firm cannot act for a pro bono client where there is a commercial conflict, "firms are often reluctant to take on pro bono clients in these circumstances.

Overall, the use of clearinghouses seemed to play a minimal role in the selection of pro bono projects for the lawyers we spoke to.

Throughout the interviews, all interviewees suggested that the conflicts of interest analysis conducted prior to taking on a pro bono client matter is largely consistent with the analysis for commercial clients. While the **specific process varies from firm to firm**, the process largely involves a multi-tiered review process, including review by various teams within a specific firm. The process typically includes a pre-screening process to determine if a pro bono client matter would be a good fit for the firm, often conducted by the pro bono team or a partner. Risk teams within firms usually conduct a review for existing or potential conflicts, which involves researching whether there exists any **adverse media or reputational concerns** for both the client and the matter. This analysis often includes **a review of the potential client's website to access the mission statement and overarching tone of the organization.**

"Training? Yes, it may help. However, there is a limitation to the benefits thereof because **reputational and conflict concerns can be so matter specific."**

In regards to environmental and climate change focused pro bono projects specifically, typically interviewees in pro bono roles within their firm generally had backgrounds in access to justice. Interviewees with pro bono roles within law firms noted that their teams did not typically have any specific experience in the environmental space. As for the kinds of organizations firms expressed discomfort pairing with, many interviewees noted that their firm would not represent organizations they determined had **"extreme" messaging or public reputations**, with multiple citing Greenpeace as an example of such an organization. Likewise, others noted that **environmental activist organizations more broadly were out of consideration for pro bono projects**. Despite this, most lawyers did not see the tightly shut doors as presenting an issue of access to quality legal services for public interest organizations perceived as extreme or activists by law firms. The general sentiment is fairly captured in the following quote.

"There is an **access to justice problem** —where big law firms will simply not take on certain types of pro bono clients or matters. However, **finding representation is not impossible; small boutique firms are still available."**

With regards to the **type of work, rather than the type of client**, some interviewees cited **anti-fossil fuel initiatives as a strict red line** for their respective firms, where no pro bono collaboration was possible. Some lawyers expressed more comfort with "less controversial" projects more tangential to climate change and environmental space (for example, one interviewee described advisory work on a contract for office supplies for an environmental organization). However, many lawyers also noted tha**t environmental projects are in some respects, unfortunately competing with other, potentially less controversial pro bono projects,** such as those with a more tangible h**uman impact or feel-good aspect**, of which there is no shortage.

Lawyers noted that the **decision** to take on a pro bono project **is a holistic approach,** where each potential project is analyzed on its own merits, rather than being measured up against another potential project. However, given that law firms are in the business of making money, have limited resources to devote to pro bono work, and the fact there are plenty of potential pro bono projects available to take on, in a theoretical choice between an organization or project deemed less controversial than a climate advocacy group, a global law firm with major oil clients would choose the **path of least resistance and risk**. Further, most lawyers also indicated that doing pro bono work anonymously for environmental public interest organizations or climate change focused projects was potentially an option, though not preferred.

"We generally don't like to do pro bono work anonymously, because we want to get credit for our work."

Overall, this concern for risk, specifically **reputational risk and negative impact on existing commercial client relationships,** was the most frequently cited barrier acknowledged throughout interviews, key decision makers within firms being highly risk-averse to placing environmental pro bono projects at firms. Again, because these global law firms are principally commercial entities reliant on fees from their commercial clients, some lawyers noted that their firms would not put a client relationship at risk for the sake of a pro bono client matter, even though it may be for a good cause. And if the key decision makers in the internal conflicts and risk assessment are highly risk averse, this can be a major roadblock to placing environmental and climate change public interest organizations at law firms.

"Pro bono lawyers fall into two camps: the very risk averse lawyers, and those who by their nature are negotiators interested in bringing people to the table and finding solutions."

III. Suggestions and Opportunities

The following suggestions and opportunities are informed both by our desk research and interviews. The interviewees shared their perspectives as individuals, not as representatives of their employers. The advice for clearinghouses and NGOs can be summarized into six major themes: knowledge, tailoring, framing, transparency, and specialization.

Knowledge: "Know your audience." Think about the type of work the firm is set up to do (value/volume). Many firms prefer higher value work, with lower volume. Taking on a new pro bono client is expensive, so there is a preference for creating a relationship and working together often rather than taking on many new clients.

Tailoring: "Think like your customers…structure offerings in a way that is tailored to individual firms." It may be useful for clearinghouses to play a more active and selective match-making role, rather than providing firms with a menu of pro bono projects to work on. If an organization features "environmental justice" or activism prominently on their website, it is likely NOT the organization of choice for a risk-averse, international law firm. Policy work is generally perceived as less likely to trigger conflicts than litigation.

Framing: Project framing is key; understanding the kind of industries certain law firms work with, and anticipating potential objections, can also help facilitate conversations around potential pro bono collaboration. Avoid language that would raise red flags, and break down the project into parts to clearly delineate the scope of the firm's involvement. Think about ways to align the proposal with firm values and established pro bono work. Consider ways pro bono can overlap with the firm's ESG/CSR goals. Highlight broader access to justice themes in discussions.

Transparency: "The more information about the project and its end goal, the better." While framing of the project is important, providing as much detail on the project and client as possible helps firms better assess conflict risks and avoid surprises which can undermine trust in the clearinghouses and respective organizations. For example, provide detail on the end goal of work, clarify whether the firm will be working with regional branch vs NGO headquarters, and so on.

Specialization: "NGOs and clearinghouses should reach out to specialized regional boutique firms for environmental pro bono matters because they have relevant expertise and have a lower likelihood of conflicts than large global firms." Pitching environmental projects to smaller, specialized firms will likely prove more fruitful as they are less likely to have conflicts across the globe. Furthermore, not all firms are equipped to take on environmental pro bono work. Expertise was cited as a major reason for not taking on certain projects. Unfortunately, the irony is that those with the most expertise are also the most likely to be conflicted out of such projects. A healthy dose of realism from one of our interviewees summarizes the situation: "Don't expect a dog to be a cat. Law firms are not NGOs…hire small firms if you want unconflicted advice, and pay them."

Turning to our takeaways on potential specific opportunities, law firms are open to environmental pro bono projects that firm leadership does not perceive as alienating commercial clients or raising reputational risks. This typically includes projects that do not address the sources of climate change, but rather attempt to mitigate second-order consequences of climate change and the impact on communities. The following areas have been highlighted on firm sites and in conversations as examples of possible continued collaboration:

Legal research: Legal research for environmental initiatives was cited as a common acceptable form of pro bono project. Interviewees cited the potential to clearly delineate the scope of their firm's participation, limiting collaboration to early-stage research to avoid creating conflicts down the line. Legal research can thus assist NGOs with future advocacy/litigation efforts without creating an immediate conflict for the firm. Legal research related to climate change featured on firm sites dealt primarily with issues of international law and was conducted in collaboration with the UN and UN-affiliated entities.

Local community sustainability projects: Projects with a primarily local scope and impact tend to be less likely to trigger firm conflicts. Supporting sustainable agriculture was featured as an example. Another example featured on a firm site involved partnering with a local university to support an organization whose purpose it was to provide pro bono legal representation to community groups and local residents who support renewable energy development in their communities, but face opposition. Assisting communities in the development of local neighborhood sustainability initiatives will likely raise fewer risk flags than state-wide or regional projects.

Public land protection/marine conservation/anti-deforestation: Rewilding efforts and the protection of public land was a popular area of support. Marine conservation was also perceived as being acceptable with many firms' values; one project involved legal support for the creation of the world's largest marine conservation area. Others felt that compared to other initiatives aimed at reducing CO2 emissions, supporting anti-deforestation policy initiatives was less controversial.

Water contamination/effluent discharge: This example was particularly interesting because of the analysis that went into accepting such a project; the interviewee highlighted that the source of the effluent discharge was studied for ties to a commercial client's industry before accepting the project. Thus, in considering pro bono projects dealing with pollution, a central question is what caused the pollution in the first place.

Miscellaneous: Projects related to the protection of endangered animals when the threat to the animals is not posed by client industries seems to be an acceptable area of collaboration. Blue and green bonds/financing schemes for conservation were also featured on firm sites.

APPENDIX A: INTERVIEW TAKEAWAYS

Summary: Our research included interviews with nine attorneys. All of the interviewees are currently employed by private law firms. Eight of the firms included in this sample are multinational firms, all of which have offices in Europe, and one of the firms operates in a single EU country. Of the attorneys we interviewed, seven are based in Europe (including the UK), and one each is based in Australia and the United States. Six of the interviewees specifically work in the pro bono office of their firms, and the others work in the in-house counsel, risk, and commercial divisions of their firms.

In total, we reached out to fourteen lawyers to request interviews. Of these, four did not respond. One declined the interview because she had retired, but she referred us to a colleague and responded via email (included in the takeaways below). Our outreach strategy prioritized individuals recommended by our professors, and we copied the professor in our initial email. The existing professional connection may have helped us obtain a high response rate.

The interviews were anonymized. The interviewees shared their perspectives as individuals, not as representatives of their employers. Of the nine people we spoke with, the following individuals agreed to have their names included in a list of interviewees:

- Eithne Lynch
- Joanna Khatib
- Kat Foran
- Nicolas Patrick
- Staś Kuźmierkiewicz

I. Process of taking on pro bono matters

Interviewee A:

- Partners and regional leadership within the firm have significant latitude to approve or veto pro bono work.
- As a pro bono coordinator, this person sometimes rephrases requests for pro bono work in a more "law firm friendly way." In at least one case, potential pro bono work for an international NGO was flagged by the firm's risk division as potentially adverse to some commercial clients because of environmental advocacy work by the NGO in one region, but the pro bono project was ultimately approved because the project involved internal support for a branch of the NGO in a different region.

Interviewee D:

- Analysis for whether to take on pro bono clients is generally the same as for commercial clients, but tends to be more selective for pro bono. The process involves reviewing all people and organizations involved in the potential matter, running it through a global system to see if there are any connections to other matters that the firm is working on.
- Opening a new client matter is expensive because of all the due diligence involved, so if a pro bono client would block the firm from work for other major commercial clients, it may not make financial sense.

The order of the names bears no relationship to the letters assigned to interviewees in the notes that follow.

Interviewee E:
- In deciding whether to take on a project, the nature of the work is more important than the organization itself, with exceptions. The firm has a hard rule is no environmental activists (i.e. Greenpeace) because of reputational risks to the firm.
- The firm uses a pre-screening process to assess whether the pro bono work is a good fit, usually looking on the organization's websites to assess tone, looking at mission statements for examples to see what the organizations stand for.

Interviewee F:
- The process for taking on new pro bono matters is the same as for commercial matters. Special analytical tools/technology help law firms assess risks and determine whether there is an existing (or potential) conflict globally. **Adverse media, reputational concerns**, etc. are factored in, and all risks taken into consideration, even if a direct conflict is tenuous. The final stage of risk check process is ensuring appropriate engagement terms are executed with the client.
- Partners who bring pro bono matters to the firm typically pre-screen these projects to assess whether they align with firm culture, so proposed pro bono projects rarely encounter issues down the line as checks are completed.
- There is no exact formula for accepting/rejecting projects. If there is a trade-off between work that is perceived as unproblematic and that which is perceived as problematic, then the firm will obviously choose the former.

Interviewee H:
- Priority in project selection is given to commercial matters.
- How a firm deals with a potential positional conflict between a potential pro bono client/matter and a commercial client is often affected by how important the commercial client is, i.e. if a commercial client brings in a disproportionate amount of income into the firm then a more risk averse firm will not want to step on the commercial client's toes by taking on a pro bono matter that could impact the relationship with the commercial client.

Interviewee I:
- **Reputational concerns are paramount.** We look for pro bono themes/areas that don't affect client interests.
- Selecting projects requires someone who understands the business of the law firm very well.
- Red lines exist for both pro bono and commercial matters. For instance, no defense of alleged child predators.

II. Role of conflicts analysis and positional risks in pro bono

Interviewee A:
- Scrutiny on reputational risks related to pro bono projects has increased within the firm. This may be due to a public backlash that the firm faced related to work on a particular pro bono project.

Interviewee B:
- The perception of pro bono work by commercial clients is increasingly important. Where pro bono work might compromise the firm's relationship with a client, the firm's management committee might decide not to take on the pro bono work. Conversely, corporate clients also increasingly have ESG targets and requirements for their suppliers and prefer firms that have robust pro bono practices.

Interviewee C:

- There may be hesitance within firms to take on matters that risk creating positional conflicts because of the extensive hoops that one would need to go to, i.e. all the **different sign offs from various higher ups.** For this reason, it may **not be worth it for a firm to take on small environmental matters.** These "hoops" aren't an explicit internal policy, rather they are the result of concerns about the firm's reputation. Pro bono teams are aware that the firm is dependent on commercial clients, so they may hesitate to push for a small, controversial, environmental pro bono matter as they **don't want pro bono to become an area of risk for the firm.**

Interviewee D:

- Emphasized concerns for reputational risks related to pro bono work. This can cut both ways: risk bad press of turning down environmental work, and also risk that alignment with a controversial organization that could impact commercial client relationships. These concerns are especially complex for global firms trying to balance different views in different parts of the world, which is especially complicated for political issues because of concerns for the safety of colleagues (for example, taking a public position on the Russia/Ukraine conflict if the firm has an office in Russia).
- It is **possible in some cases to create firewalls** within the firm to avoid conflict issues. However, in larger office locations, **clients dislike creating firewalls/information barriers** to restrict which lawyers have access to information on matters that are in conflict.

Interviewee G:

- Pro bono lawyers within large firms may be **overly cautious in avoiding perceived positional conflicts, particularly if they are relatively junior or lack clout within the firm**.

Interviewee H:

- How much weight firms give to commercial client's negative perception of taking on potential pro bono matters **varies from firm to firm**.
- Some firms are more willing to waive conflicts with their commercial clients so they can take on a pro bono matter, and employ firewalls to ensure no issues with confidentiality arise. This option is heavily dependent on the relationship with the commercial client/ how much money the client brings in and how secure the firm believes the relationship is.
- The type and scope of the work requested by the pro bono client also impacts the conflicts analysis and whether the firm can take on the matter.
- Taking on projects **anonymously** is sometimes an option.

Interviewee I:

- There is a very different process of conflicts checks for pro bono vs commercial matters. - Pro bono checks are deeper than those for commercial matters, as conflicts are more broadly defined —do no harm (to business) approach.
- **Conflicts checks are conducted on a global scale, not regionally.**

Email J:

- Law firms do not wish to jeopardize client relationships, a fact that may be magnified by the fact that the market is highly competitive and in most cases Big Law firms are very protective of their client relationships. Additionally, law firm partners who are dependent on the client relationship for their personal success may not be confident enough to discuss with the client if the client would accept the firm offering services to NGOs (especially those doing climate litigation) and simply block the firm from taking on the work, particularly if the partner is important within the law firm. I do not believe that the greater ESG focus that law firms need to have will change that position.

III. Experiences with environmental pro bono work

Interviewee B:

- In terms of environmental pro bono work, the firm has worked on non-contentious projects such as rewilding land and food waste recovery. **The firm has not received requests for pro bono work from more contentious environmental activist groups, perhaps due to a lack of trust in commercial law firms.**

Interviewee C:

- This firm is less likely to accept a pro bono matter from an environmental organization if the work is policy related, or involves the organization taking a strong position that is potentially a client relationship conflict. The firm is more willing to take on work if it
involves more neutral topics, citing example of a advisory work on a contract for office supplies for an organization's new office
- Firms that have not done much environmental pro bono work may **feel that they do not have the expertise to handle this type of work**. There is a sense that there haven't been many relevant opportunities to develop this expertise.
- There is interest by lawyers within firms to take on matters in the environmental space. But overall, not doing environmental pro bono work is not internally seen as a social responsibility issue within the firm because there is always other pro bono work they can take on that doesn't come with the same baggage.
- Whether this firm would take on a pro bono environmental matter comes down to the reputational concerns, based on the organization's public image (look at mission statement, strongly worded statements & value judgments, i.e. "defund oil")

Interviewee E:

- The firm is open to environmental pro bono matters and accepts this type of work, assuming there are no conflicts and assuming the firm has relevant expertise. Pro bono policy work (i.e. trying to change the laws in favor of pro-environment) is easier to take on than litigation. This is because environmental litigation usually leads to more conflicts. For litigation pro bono work, the firm searches the opposing party to see if it's a client or potential client. Risk and anti-money laundering teams do a straightforward conflicts check as well. In general, the firm does not do environmental litigation against financial companies.

Interviewee G:

- **Positional environmental conflicts are not as significant a concern as they were 15 years ago**. Global commercial **clients want to be seen as pro-environment, and in some ways are ahead of law firms in this area**. This makes pro bono work on environmental issues possible for firms.
- One barrier to placing environmental pro bono projects with firms may be that the environmental organizations actively asking for pro bono assistance are the most activist-oriented ones, as these are the groups that are most vocal in general. Helping less vocal environmental organizations may be a good entry point for firms, but these groups are less likely to be the ones asking for pro bono assistance.
- Many pro bono lawyers within law firms have a background in access-to-justice work, and may not have the expertise or knowledge specific to environmental pro bono work.

Interviewee H:
- For environmental projects, clearly outlining the scope of assistance helps avoid conflicts.
- For example, giving only high-level legal advice to environmental NGOs on environmental laws, but not representing them specifically in pushing for new legislation. The latter part **(litigation/lobbying) would be bad for commercial clients**, so firms revisit the relationship down the line in terms of ensuring the work being done doesn't create any potential conflicts.

Interviewee I:
- The firm does environmental pro bono work on matters that do not affect client interests. Red line is any matter dealing with fossil fuel production. They try to find areas— conservation, for example—that don't affect client interests.
- To walk through how a check for an environmental pro bono matter would go: example is a litigation involving effluent discharge, which poisons water and harms species. The process for accepting such a case involves considering whether there were any fossil fuels involved in producing the discharge. If there aren't, check for nuclear sources or other energy industries. Then check if any clients were involved, then conduct a broader check for public-private partnerships as well (finance etc). After no issues are found to exist, they ultimately take on such a case.

IV. Intersections of pro bono, ESG, and responsible business practices

Interviewee B:
- Pro bono work is an important part of the firm's effort to be a responsible business. The firm prioritizes building long-term partnerships with pro bono clients, as opposed to working on many ad-hoc projects.

Interviewee E:
- **A committee keeps an eye out for environmental pro bono matters perceived as falling within the firm's broader ESG strategy umbrella. <u>The head of this committee is also the head of the firm's risk department.</u>**
- With the introduction of ESG into firm culture, the **understanding of conflicts has narrowed over time for pro bono matters,** making the firm more open to working with NGOs.

Interviewee G:
- A selling point for taking on pro bono environmental projects is **that expertise developed in this area can be useful in building a fee-generating ESG advising practice**. There is value for firms in thinking about commercial ESG and pro bono work hand-in-hand.

Interviewee H:
- **CSR/ ESG movements are changing norms**. Some commercial clients are willing to work with firms' environmental pro bono clients as part of the commercial client's own ESG initiatives; don't underestimate the fact that commercial clients want to make themselves look good/build a positive/green reputation. Believes this is an "opportunity for them to redeem themselves."

Interviewee I:
- The firm's ESG commercial group helps commercial clients navigate complex areas, but it also affects pro bono, as the firm looks at pro bono through an ESG lens.
- This is not a settled question, but it does inform pro bono proposals. For example, pro bono proposals are run through the ESG team to search for potential issues.

V. Advice for clearinghouses

Interviewee D:
- The committee reviewing potential pro bono matters errs on the side of caution. But they are deciding only based on the detail they are provided, so the more information about the project and its end goal, the better.
- (More information may make the committee less concerned, whereas vagueness opens up the possibility of many potential conflicts).

Interviewee E:
- Communication is key to making pro bono compatible with the commercial identity of firms. When approaching pro bono projects, this individual asks whether the framing proposed by the potential client is it the "right way" to look at an issue, and sometimes will persuade the organization to change what they want to do, creating a forum where it's not adversarial but rather take a mediating approach. (Finding a more neutral framing that the firm is comfortable working on, but that also serves the client's goals).

Interviewee F:
- **NGOs and clearinghouses should reach out to specialized regional boutique firms for environmental pro bono matters** because they have relevant expertise and have a lower likelihood of conflicts than large global firms.

Interviewee G:
- **Know your audience**. Some firms are structured to work on low volume, high value cases. Other firms are structured to work on higher volume, lower value cases (for example: navigating tax problems and employment contracts for environmental NGOs).
- Additionally, some firms with robust pro bono practices, design their own pro bono projects, and do not take in matters from clearinghouses. Clearinghouses should consider what type of work the pro bono project is, and which firms are set up to do this type of work.

Interviewee I:
- Structure offerings in a way that is tailored to individual firms. (i.e. Vance center for example, does this well - City Bar)
- Think like your customers. Don't just offer radical projects (for example, defending those who knowingly break the law) because it undercuts the reputation of a clearinghouse if it offers things that don't match the audience.
- Constraints are natural. They're part of the deal.
- Hire small firms if they want unconflicted advice, and pay them.

Email J:
- Predict that law firms will become more polarised in the work that they take on. Those in the F category of the Law Students Climate Change scorecard have existing clients and will continue to work for energy companies. That means that, realistically, clearinghouses and environmental NGOs should focus on the law firms in the A & B categories and engage in capacity building.

VI. Miscellaneous

Interviewee C:
- Would be interested in trainings regarding understanding the nuances of different advocacy styles used by NGOs in order to understand the types of matters/ clients in the environmental/ climate pro bono space that can and cannot be taken on by the firm, but also recognizes the limitation of this kind of training because reputational/ conflict concerns can be so matter specific.

Interviewee E:
- Hopeful about the role of international law in environmental change, and sees room for law firm involvement in such matters in the future (cited example of Belgium labeling ecocide as an international crime).
- Sees pro bono lawyers as falling broadly speaking into two camps: very risk averse lawyers, and lawyers who are negotiators interested in bringing people to the table and trying to find solutions.

Interviewee F:
- **Change does happen within law firm culture, and progress is being made**. The pace of change echoes changing composition of law firms' employees. If there is an internal push for a change of values, it will eventually be reflected in the work a firm takes on.

Interviewee H:
- Acknowledges there is an access to justice problem in some areas, where big law firms will not take on certain types of pro bono clients or matters, but says finding representation is not impossible, small boutique firms are still there.

Interviewee I:
- **To do pro bono well, pro bono professionals have to be like water and find a way**. Ask: can we cut off 1 part of the project, or can we do it anonymously? However, silent **pro bono work is not popular generally because firms want to take credit for their work**. When pro bono work is done silently, it is typically for sensitive research projects. **Don’t expect a dog to be a cat - law firms are not NGOs.**

APPENDIX B: PUBLICLY AVAILABLE INFORMATION ABOUT LAW FIRM ENVIRONMENTAL WORK

1. Large international law firms: Existing visible projects on websites and in media

Summary of organizations partnered with:

- The Nature Conservancy (Dentons; Shearman & Sterling)
- Columbia Law School's Sabin Center for Climate Change Law and Renewable Energy Legal Defense Initiative (Arnold & Porter)
- United Nations (Clifford Chance; Freshfields; White & Case)
- International Wildlife Coexistence Network (IWCN) & Wolves of the Rockies (White & Case)
- The Liquidity and Sustainability Facility (LSF) (White & Case)
- Greenspark (White & Case)

Arnold & Porter

- Envi Pro Bono pg (only features project below)
- A&P/Columbia Renewable Energy Legal Defense Initiative

- Arnold & Porter has partnered with Columbia Law School's Sabin Center for Climate Change Law to launch the Renewable Energy Legal Defense Initiative (RELDI), a program whose purpose is to provide pro bono legal representation to community groups and local residents who support renewable energy development in their communities, but face opposition.

Clifford Chance

- Cyrus Vance - UN project - research right to healthy environment.

- The team surveyed and researched approximately 140 UN member states, with the remaining jurisdictions being analysed by the Vance Center, in coordination with other participating law firms, and Dr Boyd.
- The survey findings were used by Dr Boyd to prepare a report, titled "Right to a healthy environment: good practices", that was presented to the UN Human Rights Council in Geneva today.

- Responsible Business report 2023.

Covington

- 3 environmental pro bono projects - rainforest, protecting public lands, increasing energy access in Africa.

- Protecting Rainforests: The firm advises on policy initiatives undertaken in global climate change negotiations where the Coalition supports the inclusion of credits for reduced emissions from deforestation and forest degradation.
- Protecting Public Lands: Covington represents conservation and scientific organizations in a lawsuit challenging a 2017 Presidential Proclamation reducing the size of the Grand Staircase-Escalante National Monument in Utah—a national monument established in 1996 by President Clinton to preserve one of America's last wild and undeveloped areas and to protect its unparalleled archeological, paleontological and geologic resources.
- Increasing Energy Access in Africa: A team of London and Seoul-based Covington lawyers helped OnePower submit to the Government of Lesotho suggested amendments to improve draft regulations for Lesotho's renewable energy mini-grid market.

Dentons

- Dentons advises The Nature Conservancy on AUD$55 m protection deal - Australia: Partners John Mollard and solicitor Marco Madzzar advised on the hybrid conservation-commercial joint venture documentation between The Nature Conservancy and Tiverton Agriculture, a venture that will see continued support for local employment, balancing sustainable agriculture and long term conservation goals.

- Dentons partner John Mollard noted that Dentons was thrilled to be able to assist The Nature Conservancy in its mission to protect these important wetlands.

Freshfields

- Marine Diversity UN treaty

- A cross-office Freshfields team has consulted on the negotiations since the first IGC in 2018. Over five years of negotiations, our team has advised on a wide range of international law topics covered by the BBNJ Agreement and its prior drafts.
- New UN treaty on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Shearman & Sterling

- SHEARMAN & STERLING ADVISES THE NATURE CONSERVANCY IN $500 MILLION 'BLUE BONDS' OCEAN CONSERVATION PROJECT IN GABON.

- Shearman & Sterling advised The Nature Conservancy (TNC) pro bono in the creation of "Blue Bonds" to refinance $500 million of Gabon's national debt which will generate an expected $163 million in new funding for ocean conservation.
- For more than seven years, Shearman & Sterling has provided pro bono legal services to TNC, including transactional advice and legal research on a wide variety of topics that aid the organization's global environmental efforts. The Firm previously represented TNC, one of the world's leading conservation organizations, in similar Blue Bonds transactions on behalf of the governments of Barbados and Belize.

White & Case

- Wolf conservation and free speech

- Victory for wolves - W&C won.
- White & Case pro bono client International Wildlife Coexistence Network (IWCN) launched its #RelistWolvesNow campaign in October 2021 to advocate for the relisting of gray wolves on the US endangered species list.
- Another advocacy organization, Wolves of the Rockies (WOTR), had launched its own campaign, #RelistWolves, a few months before the debut of IWCN's campaign. Claiming to own exclusive trademark rights in the term "RelistWolves" and the "#RelistWolves" hashtag, WOTR filed a complaint against IWCN for trademark infringement. IWCN turned to White & Case.

- Facilitating green and blue bonds in the African continent.

- White & Case provided pro bono advice to The Liquidity and Sustainability Facility (LSF), an organization originally inspired by the United Nations Economic Commission for Africa, in collaboration with Afreximbank. The LSF's dual objectives are to support the liquidity of African sovereign Eurobonds and incentivize SDG-related investments such as SDG and green bonds on the continent.

- Identifying legal frameworks for developing countries to address climate change - “The first step toward accessing financing in relation to carbon rights, especially in developing countries, is a strong legal framework. We worked on behalf of our pro bono client, United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme), on the mammoth task of reviewing legislation on carbon rights, forest preservation and climate change in 27 countries.”

- Australian flood/contamination case pro bono

- “In one matter we helped a resident with his flood-related insurance claim, securing a payment equal to the maximum value of his insurance coverage. He is now awaiting government assistance for the clean up of contaminated land.
- In the second matter our client was uninsured, and she and her children have health conditions that make it unlikely they will be able to return to the contaminated property. Having lost their home—and rental income from a workshop that was part of their property—they are now living in temporary emergency accommodations. We wrote to the New South Wales agency managing the emergency accommodation to support her application for priority permanent housing given the family's health needs.”

- London office pro bono matter:

- Corporate advice to Greenspark, a women-founded social enterprise that helps companies take action on climate change, in collaboration with Prime Advocates, an incubator for startups with a social mission.

- Milan office pro bono matter:

- Ongoing legal assistance to Pro Bono Italia, an association of lawyers and law firms devoted to promoting and spreading a culture of pro bono throughout Italy.

- Jakarta office pro bono matter:

- Assisted the United Nations Environment Programme in drafting its biannual Global Environmental Report on the Rule of Law.

- Interview on ESG v Pro Bono

- **Jacquelyn MacLennan, EU competition and trade law partner, Global Pro Bono Practice Leader (2015 – 2022) and Business & Human Rights Interest Group member:**
- “Our pro bono work is much wider in scope than ESG but, of course, includes matters falling under the ESG framework. All our lawyers are encouraged to do pro bono work, and some are specialists in ESG areas. Members of our pro bono team are part of our ESG and Sustainability and Business & Human Rights groups, supporting institutional knowledge and information sharing.

Certainly, the impact of our pro bono work can be viewed, along with reporting on our responsible business operations, as part of our commitment to high ESG standards in the global citizenship role we have as a Firm. But pro bono is not ESG, and vice versa.”

- “Our commitment to providing access to justice and serving organizations with an environmental and societal mission will continue. Our pro bono work will respond to these major issues with an increased focus on rapid response and greater levels of collaboration between law firms and between NGOs and local legal providers.”

2. Smaller law firms representing climate activist groups

Note: This work may have been conducted on a paid, not pro bono, basis. The information is pulled from court filings and organization websites that did not specify whether the work was pro bono.

- **Baldon Avocats** (France)
  - Representing Greenpeace France and other activist groups against TotalEnergies (https://www.clientearth.org/media/bqqjrl0r/assignation_greenpeace_at_naat_c-tot al.pdf)
  - Clémentine Baldon, founding partner, was formerly a commercial competition lawyer at international firms (Freshfields, Weil Gotshal & Manges, Dentons, Bignon Lebray) who decided to start her own firm in order to work on "the transition to a more ecologically, economically and socially sustainable world." - **Glittertind** (Norway)
  - Representing Greenpeace Norway and Young Friends of the Earth Norway in case challenging Norway's permitting of arctic oil drilling (https://www.regjeringen.no/contentassets/4a0732c2360c4f7ca197ce19986f8f0f/d om-hoyesterett.pdf)
  - Website describes partner Emanuel Feinberg having "extensive experience within the full range of civil litigation, including disputes over commercial contracts, board and underwriter liability, M&A transactions, climate and ESG issues as well as general company law."

- **Bull** (Norway)
  - Representing Greenpeace Norway and Young Friends of the Earth Norway in case challenging Norway's permitting of arctic oil drilling. (https://www.regjeringen.no/contentassets/4a0732c2360c4f7ca197ce19986f8f0f/d om-hoyesterett.pdf)
  - Website describes partner Catherine Hambro as assisting "industrial companies and the waste disposal industry with pollution legislation, licensing issues, and contract preparation.... [and] Norwegian and international organisations with advice and litigation support related to environmental and climate issues" - **NautaDutilh** (Netherlands, Belgium & Luxembourg)
    - Counsel in Urgenda climate case in Dutch Supreme Court (https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgend a-v-Netherlands-20-12-2019.pdf)
    - Represented by Freerk Vermeulen, a "partner in our Litigation & Arbitration team and head of the Supreme Court litigation team. He works on a wide range of challenging cases, often defending sector interests."

- **O'Connell & Clarke** (Ireland)
  - Represented Friends of the Irish Environment in climate case (https://www.climatecaseireland.ie/climate-case/#about-us)

- Rechtsanwälte Günther (Germany)
  - Represented plaintiffs supported by Germanwatch, Greenpeace and Protect the Planet in Neubauer climate case (https://www.germanwatch.org/en/constitutional-complaint)

APPENDIX C: BACKGROUND RESOURCES BIBLIOGRAPHY

Resources

- The Impact of Climate Change on Solicitors (The Law Society, 2023)
- Pro Bono Guide to the Climate Crisis (Australian Pro Bono Centre)
- Global Pro Bono Climate Action Portal (PILnet & Australian Pro Bono Centre) ◯ Conflicts summary: "A commercial conflict is where the firm understands that taking on a particular pro bono matter may deter a current or potential commercial client from working with the firm, because the matter is perceived to be damaging to the firm's relationships, or is prohibitively controversial. Many firms act for clients within industries that directly or indirectly contribute significantly to carbon emissions, such as energy, financial services, asset and investment management, transport, and infrastructure. This can give rise to commercial conflicts when pro bono clients request assistance from a firm on a climate-related matter"
- Climate Scorecard (Law Students for Climate Accountability)

News Articles

- Biglaw Firms Ranked On How Much Their Work Contributes To Climate Change (Above the law, August, 2023)
- Society Watch: The leading UK lawyers who are refusing to work for fossil-fuel clients (Reuters, May 2023)
- London law firms facilitated £1.48 trillion for fossil fuel companies (The Independent, May 2023)
- Climate change 'valid' reason for law firms to reject clients, says Law Society (Legal Cheek, April 2023)

Academic Writing

- Le pro bono: the development of legal volunteerism in Europe (Edwin Rekosh and Lamin Khadar, 2022)
- Human rights and environmental due diligence for law firms? Bold ideas from the next generation of lawyers (Lamin Khadar, 2022)
- Be careful what you wish for: a European perspective on the limits of CSR in the legal profession (Birgit Spiesshofer, 2021)
- Advisors or Enablers? Bringing Professional Service Providers into the Guiding Principles' Fold (Anita Ramasastry, 2021)
- Expanding Access to Justice: an exploration of law firm pro bono practice across Europe (Lamin Khadar PhD thesis, 2018)
- The Growth of Pro Bono in Europe Using the Power of Law for the Public Interest (Lamin Khadar, 2016)
- Managing pro bono: Doing well by doing better (Scott L. Cummings and Deborah L. Rhode, 2009)
- The politics of pro bono (Scott L. Cummings, 2004)
- Barriers to pro bono: commercial conflicts of interest reconsidered (Elizabeth Wentworth, Paul Sofronoff, and Bruce Moore, 2001)
- Positional Conflicts in the Pro Bono Context: Ethical Considerations and Market Forces (Esther Lardent, 1998)
- The Prophet and the Bureaucrat: Positional Conflicts in Service Pro Bono Publico (Norman W. Spaulding, 1997)
- Public Assets Theory of Lawyers' Pro Bono Obligations (Steven Lubet and Cathryn Stewart, 1996)

Professional Codes of Conduct - Excerpts

● Council of Bars and Law Societies of Europe (CCBE) - Charter and Code of Conduct Preambe 1.1 - The Function of the Lawyer in society

- "A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. …
- A lawyer's function therefore lays on him or her a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards: the client; the courts and other authorities before whom the lawyer pleads the client's cause or acts on the client's behalf; the legal profession in general and each fellow member of it in particular; the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society."

● American Bar Association - Rule 2.1: Advisor

"In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."

● UK Solicitors Regulation Authority - Principles.

- You act: in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice; in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons; with independence; with honesty; with integrity; in a way that encourages equality, diversity and inclusion; in the best interests of each client.

● UK SRA - Code of Conduct for Firms, 6.1-6.2 Conflicts of Interest.

- "You do not act in relation to a matter or a particular aspect of it if you have a conflict of interest or a significant risk of such a conflict in relation to that matter or aspect of it, unless: (a) the clients have a substantially common interest in relation to the matter or the aspect of it, as appropriate; or (b) the clients are competing for the same objective, and the conditions below are met, namely that: (i) all the clients have given informed consent, given or evidenced in writing, to you acting; (ii) where appropriate, you put in place effective safeguards to protect your clients' confidential information; and (iii) you are satisfied it is reasonable for you to act for all the clients."

● International Bar Association - Principles of Conduct for the Legal Profession

- Principle 3 - Conflicts of interest: "A lawyer shall not assume a position in which a client's interests conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rules of professional conduct, or, if permitted, by client's authorisation."
- Principle 5 - Clients' interest: "A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards."

For more information email us at info@pilnet.org.