

National Family Planning & Reproductive Health Association

MEMORANDUM

TO: Interested Parties

FROM: Robin Summers, Vice President and Senior Counsel

DATE: October 22, 2024

RE: Process for Finding and Securing Qualified Local Pro Bono Legal Counsel

The information in this memorandum is intended to help publicly funded family planning providers find qualified local pro bono legal counsel. This memorandum has been prepared from publicly available information and is not intended to and does not provide legal advice to any entity or individual nor is it intended as a solicitation. Organizations should always consult with their own legal counsel about specific legal issues.

INTRODUCTION

The process of finding local pro bono counsel can be daunting. Finding “qualified” local counsel does not necessarily mean the attorney has subject-matter expertise in Title X, publicly funded family planning, or even sexual and reproductive health, since not many attorneys have such experience. Instead, finding a qualified attorney means identifying counsel that seems like they will be a good fit for your organization, its risk tolerance, and most pressing needs, and that is willing to provide risk assessment and mitigation pro bono (meaning free).

This memo is the second in a series of resources offering learnings, tips, and considerations that NFPRHA is making available to the Title X network to assist publicly funded family planning entities in engaging their own pro bono legal counsel to help assess and mitigate organizational risk. Risk assessment and mitigation does not include litigation. This memo explores the process for finding and securing qualified local pro bono counsel.

PROCESS FOR FINDING LOCAL PRO BONO LEGAL COUNSEL

Step 1: Assess your legal needs. Before you embark on the process of finding counsel to help you navigate and mitigate the legal risks of a changing policy and service delivery landscape, it is important to first evaluate the types and amount of risk that your organization is willing to take on to achieve its mission. In other words, what is your risk tolerance?

- Does the organization’s risk tolerance change with respect to different issues?
- Has organizational risk tolerance changed over time?

- Does your Board need to be involved in determining organizational risk tolerance?

The other essential element before you seek out legal counsel is to define the scope of the legal representation you're seeking.

- What are the immediate and longer-term legal needs of your organization?
- Are there particular legal projects on which you need help right away?
- Roughly what kind of time commitment are you looking for on a monthly basis?

Step 2: Seek out mission-aligned attorneys with the capacity to undertake a pro bono representation. If you're not sure where to start in finding a local attorney, consider reaching out to people at the following types of organizations:

- Other sexual and reproductive health provider organizations in your area
- Reproductive justice/reproductive health and rights advocacy organizations
- State or local bar associations
- Law school clinics

Don't limit your search to a range of practice areas (such as reproductive health care); civil and/or criminal attorneys from a wide range of practice areas could suit your needs (e.g. administrative law, family law, medical malpractice, criminal defense, etc.).

Conduct initial outreach primarily over the phone if possible. If you must start with an email, be as non-specific as possible and ask them to contact you to discuss the matter further.

PROCESS FOR SECURING LOCAL PRO BONO LEGAL COUNSEL

Step 3: Plan and hold an initial introductory meeting. Once you have connected with potential counsel, set up an initial meeting, preferably in person but video conferencing is also an option. The important thing is you want to be face to face in some capacity for this discussion.

- Bring to the meeting any of your team that you think could be useful in:
 - Providing important information or insight to the attorney about your organization and the issues you're facing
- Let the attorney get to know you
 - Spend some time on introductions of your team, the attorney, and your organization
 - Talk about your mission and priorities
 - Explain how your organization operates, including how you use Title X funding. This will educate them about Title X and help them identify any initial potential

conflict of interests they may have with other clients if they were to represent you.

- Ask questions about the lawyer's experience:
 - How long have they been practicing?
 - Do they have any legal experience working on matters in the reproductive health space? What types of projects did they do for those clients?
 - Have they done a lot of pro bono work? Can they give you some examples of the type of work they've done/issues they've worked on?
 - How would they describe their involvement (professional or personal) with State government? Do they have experience at/with the legislature, Attorney General's office, Governor's office, etc.?
- Ask questions about what you could expect as a client:
 - Who would work on the matter? Would other attorneys get involved, or would the initial contact be the primary attorney? Are there others with expertise at the practice who may be helpful in advising the organization?
 - What kind of response time can the organization expect if staff email or call the lawyer with a question?
- Discuss the scope of the representation you're seeking. What are some of your top concerns? Note: you will have time to get into more detailed substance at a later meeting.
- Ask about the steps they would need to take at their firm in setting up a pro bono engagement.
- After the meeting, debrief with your team:
 - Did the attorney seem engaged and interested? Or did it seem more like they were only "checking a box"? Many bar associations have pro bono requirements for attorneys, meaning that some attorneys engage in pro bono work as a requisite for their law license while others are passionate about pro bono representation generally or on specific issues like sexual and reproductive health.
 - What was your sense of the tone of the meeting? Did anything in the attorney's visible or verbal reactions in your discussion give you pause? Do you think they would be a good partner to your organization?
 - Is there anything you have more questions about or would like to follow up on before deciding whether you want to pursue establishing a representation agreement?

Step 4: Hold a follow-up meeting. If you decide that you think the attorney could be a good fit for your organization, set up a second meeting to ask any follow-up questions or concerns and

discuss in more detail the scope of the representation you're seeking. This is an opportunity to explore additional organizational concerns or to discuss in more detail the organizational concerns you raised at the introductory meeting.

Final Step: Execute an engagement agreement. It is crucial to memorialize the terms of your agreement in an engagement agreement. For tips on what to include in that agreement, consult NFPRHA's *Pro Bono Engagement Agreement Considerations* memo.

CONCLUSION

The information provided in this memo is intended to assist family planning providers in identifying potential qualified local pro bono legal counsel, having initial discussions, and securing agreements with this counsel if appropriate.

If you have questions about the information contained in this memo, please contact Robin Summers, NFPRHA's Vice President and Senior Counsel, at rsummers@nfprha.org.