

SUPPORTING JUSTICE IN ARKANSAS: A Report on the Pro Bono Work of Arkansas's Lawyers

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AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE
321 N. CLARK STREET
CHICAGO, ILLINOIS 60654

Author and Contact:

April Faith-Slaker

Director, [Resource Center for Access to Justice Initiatives](#)

Senior Staff Attorney, [Standing Committee for Pro Bono & Public Service](#)

American Bar Association

P: 312.988.5748

E: april.fath-slaker@americanbar.org

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The American Bar Association’s Standing Committee on Pro Bono and Public Service (referred to as “the Committee”) is charged with the responsibility to review, evaluate and foster development of pro bono publico programs and activity by law firms, 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 to provide pro bono service. Toward that end, the Committee has conducted three national pro bono empirical studies. In 2014 the Committee piloted the survey at the state level in Nebraska. Based on the success of this model, the Committee conducted this survey in 24 states in 2017. Presenting and analyzing the results of this state-level data collection, this report contains the results for Arkansas. A national report on the aggregate findings from the 24 participating states is forthcoming.

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Section 1: Amount and Type of Pro Bono in 2016

When did attorneys most recently provide pro bono?

Respondents were asked to indicate when they most recently provided pro bono service. The majority (69.5%) indicated they provided pro bono most recently in 2016, while 12.6% indicated they had never provided pro bono service. Attorneys in private practice were significantly more likely to indicate having done pro bono most recently in 2016 (81.4%) compared to attorneys in other practice setting (43.3% in the corporate setting, 36% in the government setting, 57.1% in the non-profit setting). Private practice attorneys were less likely to indicate they had never done pro bono (7.7%), compared to corporate (26.7%), government (28%) and non-profit (24.4%) attorneys.

In what year did you provide your most recent pro bono service?	Number	Percent
2016	196	69.5
2015	13	4.6
2014	10	3.5
2013	7	2.6
2012	3	1.0
2011	1	.4
2010	3	1.0
2009	2	.7
2008	1	.4
2007	2	.6
2006	0	.1
2005 or earlier	9	3.1
I have not yet provided pro bono service	35	12.6
Total	282	100.0

How many hours of pro bono were provided in 2016?

The respondents were asked to complete a grid regarding their pro bono hours and matters for the year. Approximately 35.6% indicated they had provided no hours of pro bono in 2016. Almost 26% provided 1-19 hours; 20.9% provided 20-49 hours, 10.6% provided 50-79 hours and 6.9% provided 80 or more hours. Overall, the surveyed attorneys provided an average of 35.9 (and a median of 10) hours of pro bono service in 2016. And, the average number of legal matters were 7.2.

Among those who had provided pro bono in 2016 (as opposed to including the “zeroes” for those who had not provided pro bono in 2016), the average was 51.7 (and a median of 24) hours. And, the average number of matters were 10.3.

		Number	Percent	
35.9 Average Hours	Pro Bono	None	101	35.6
	Hours in 2016	1-19	73	26.0
		20-49	59	20.9
		50-79	30	10.6
		80+	19	6.9
		Total	282	100.0

51.7
Average
Hours

Notable trends for hours provided in 2016:

- GENDER: Female attorneys provided more hours of pro bono (57 average hours) compared to male attorneys (22.6 hours).
- PRACTICE SETTING: Attorneys in the private practice setting provided more hours of pro bono (39.9 hours) compared to other practice settings (7.8 hours in the corporate setting and 6.1 hours in the government setting).

To whom were these pro bono services provided?

Among the attorneys who provided pro bono in 2016, 87.5% provided services to individuals and 37.7% had provided services to organizations. Of the pro bono services provided to individuals in 2016, the average hours were 42.1, compared to an average of 38.8 hours of services to organizations.

Client Type	Percent of Attorneys Providing to the Client Type in 2016	Average Pro Bono Hours Provided	Average Number of Matters
Individuals	87.5%	42.1	9.5
Organizations	37.7%	38.8	5.4

What type of pro bono services were provided?

Among those who provided pro bono in 2016, 38.1% provided *only* limited scope representation and 33.1% provided *only* full representation. Almost 28.7% had provided both full and limited scope representation in 2016.

Service Type	Percent of Attorneys Providing this Type in 2016	Average Pro Bono Hours
Full and Limited Scope Representation	28.7%	97.2
Full Representation Only	33.1%	54.4
Limited Scope Representation Only	38.1%	26.9

Who were the pro bono clients in 2016?

Among the attorneys who had provided pro bono in 2016 (i.e. omitting respondents who provided no pro bono service), respondents were most likely to indicate that they had represented a single parent, an ethnic minority or an elderly person compared to the below list of client types.

Type of Client	Percent of Attorneys Having Represented This Client Type in 2016
Single Parent	38.6%
An Ethnic Minority	27.2%
Elderly Person	32.6%
Non or Limited English Speaker	15.9%
Disabled person	33.4%
Victim of Domestic Violence	25.4%
Student	19.4%
Veteran	16.3%
Child/Juvenile	16.5%
Undocumented Immigrant	7.9%
Rural Resident	26.5%
Incarcerated Person	8.2%
Documented Immigrant	7.1%
Homeless	7.1%
Victim of Consumer Fraud	5.3%
LGBT	6.2%
Migrant Worker	1.7%

Section II: Most Recent Pro Bono Case/Experience

Which type of pro bono service is most typical?

The vast majority of the most recent pro bono service fell into the category of free legal services to persons of limited means (81%) as opposed to a class of persons (2.3%) or an organization (16.7%). And, most of these services were full representation (52.5%), as opposed to limited scope representation (46.5%) or mediation (1.1%).

How do attorneys find their clients?

Of the attorneys who provided pro bono, 28.7% indicated that their most recent client came directly to them. The remaining 71.3% were referred from some specific source. The most common referral source was a legal aid pro bono program. Attorneys in urban areas were less likely to report that their client came to them directly (25.6%).

How did this client come to you?	Number	Percent
The client came directly to me	54	28.7
A referral from a family member or friend	17	9.3
A referral from your employer	2	1.2
A referral from a co-worker within your organization	1	.5
A referral from an attorney outside of your organization	1	.4
A referral from a present or former client	14	7.6
A referral from legal aid pro bono program	57	30.5
A referral from an independent pro bono program	2	.8
A referral from a religious organization	3	1.5
A referral from a non-profit organization	17	9.3
Other	3	1.7
A referral from a bar association pro bono program	6	3.0
A referral from a guardian ad litem program	2	.8
A referral from a professional acquaintance	1	.8
From a posting on a pro bono listserv to which I subscribe	8	4.1
Total	187	100.0

Among the respondents whose clients came directly to them, 19.7% reported that they had no personal relationship with the person. Otherwise, 25.6% said the client was an organization with whom they were personally involved and 14.3% said the client was an acquaintance.

How would you describe your relationship with the client before the legal engagement began?	Number	Percent
A personal friend	4	9.0
A relative	2	4.6
An acquaintance	7	14.3
A former client	3	7.0
A class of persons with whom I had a relationship with at least one class member	1	1.8
An organization with which I was personally involved	12	25.6
An organization with which my employer was involved	2	3.6
An organization with which a friend or family member was personally involved	2	4.1
Another relationship	5	10.3
None of the above- no prior relationship	9	19.7
Total	46	100.0

How was the client determined to be low-income?

As noted in the below chart, to determine whether a client qualified for pro bono service, just under half of the attorneys relied on the referral source to vet the client’s financial eligibility. Otherwise, respondents primarily used impressionistic methods, such as relying on the word of the client or on the attorney’s knowledge of the client’s situation, rather than vetting the client’s financial data.

Low Income Determination (Multiple Choice)	Percent of Respondents
An indication from the referral source	15.5%
The referral source qualified the client	33.6%
Financial data, such as a W2 or paycheck information	4.1%
The word of the client	20.2%
Some other factor	6.2%
My knowledge of the client’s situation	37.2%

What tasks were performed and what was the scope of the work?

The most frequently reported pro bono legal tasks consisted of providing advice (77.4%), reviewing and/or drafting legal documents (66%) and interviewing/meeting with the client (62.5%).

Legal Task (Multiple Choice)	Percent of Respondents
Provided advice	77.4%
Reviewed/drafted documents	66.0%
Interviewed/met with the client	62.5%
Provided full representation in court (trial or appellate)	39.6%
Wrote letter	30.1%
Spoke with other attorneys	25.1%
Negotiated a settlement with other parties	12.1%
Referred to other organization(s)	9.6%
Represented the client in administrative proceedings	6.1%
Limited scope representation in court (trial or appellate)	1.8%
Represented the client before a legislative body	1.4%
Other	5.4%

Within the scope of the attorneys' expertise?

The tasks performed were generally within the attorneys' area of expertise. Specifically, 78% indicated that their recent pro bono experience was within their area of expertise. Attorneys in urban areas were less likely to indicate that their recent case was within their area of expertise (67.3%) compared to attorneys in other areas.

Consistent with the attorneys' expectations?

Most (56.3%) of the attorneys indicated that their most recent pro bono experience was consistent with their expectations. Approximately 35.3%, however, indicated that the case took more time than they had expected.

Response (Multiple Choice)	Percent of Attorneys
Yes – it was consistent in terms of time and complexity	56.3%
No – it took more time than I expected	35.3%
No – it took less time than I expected	4.6%
No – it was more complex than I expected	4.6%
No – it was less complex than I expected	0%
No – it was not what I expected in some other way	3.7%

Hours of service provided?

On average, attorneys spent 14 hours on their most recent pro bono case.

Section III: Motivations and Attitudes

The importance of pro bono services?

The vast majority of attorneys (82.4%) believe that pro bono services are either somewhat or very important. Very few attorneys did not believe that pro bono services are important.

Thinking about the legal needs of the low-income population in your state, how important is it for local attorneys to offer pro bono services?	Number	Percent
Don't know	9	3.4
Very unimportant	12	4.4
Somewhat unimportant	18	6.7
Neither important nor unimportant	8	3.1
Somewhat important	66	24.3
Very important	158	58.1
Total	271	100.0

What motivates attorneys to do pro bono?

As noted in the below chart, the top three motivators for undertaking pro bono included:

1. Helping people in need
2. Ethical obligation
3. Duty as a member of the legal profession

Motivator	Average Rating (on a scale from 1-5, where 1 is the least motivating and 5 is the most motivating)
Helping people in need	4.36
Ethical obligation	3.86
Professional duty	3.77
It would make me feel like a good person	3.63
Participating in reducing social inequalities	3.62
Helping the profession's public image	3.28
Opportunities to interact with low-income populations	2.74
A firm culture that encourages pro bono	2.56
Gaining experience in an area outside of my expertise	2.49
Opportunities to work directly with clients	2.48

Opportunities to work with other attorneys	2.46
Opportunities to go to court	2.00
Recognition from colleagues and friends	1.95
Strengthening relationships with my private practice clients who value pro bono engagement	1.91
Recognition from employer	1.88
Average across all factors	2.9

Are Attorneys Reactive or Proactive Concerning Pro Bono Opportunities?

To identify pro bono opportunities, just over half of the attorneys (53.2%) had reached out to some organization and the majority (79.2%) had been contacted by an organization.

Organization	Percent of Respondents Who Contacted ...	Percent of Respondents Who Were Contacted By...
State bar association	11.9%	31.5%
Local bar association	10.7%	26.7%
A legal aid or pro bono organization	52%	74.9%
Some other organization	8.7%	20.6%
One of the above	53.2%	79.2%

What can pro bono programs do to engage more attorneys?

According to the respondents, in order to engage more attorneys, pro bono programs should:

1. Offer CLE credit for doing pro bono
2. Offer free or reduced cost CLE for doing pro bono
3. Engage judges in soliciting participation

Action	Average (on a scale from 1-5, where 1 is the least encouraging and 5 is the most encouraging)
CLE credit for doing pro bono	3.67
Free or reduced cost CLE for doing pro bono	3.64
If a judge solicited my participation	3.54
Limited scope representation opportunities	3.46
Online description of case opportunities from which to select	3.31
Malpractice insurance provided by referral org	3.26
If a colleague asked me to take a case	3.23
The option of selecting a client based on demographics/descriptors	3.13

Administrative or research support	3.01
Mentorship/supervision by an attorney specializing in the legal matter	2.99
Opportunities to do pro bono remotely	2.89
Periodic contact by a referral organization (I'll take a case when I can)	2.85
Opportunities to act as a mentor to young attorneys or law students	2.82
If I were matched with another attorney to share the work	2.80
Reduced fee opportunities as opposed to free service opportunities	2.71
Availability of networking opportunities with other attorneys providing pro bono in my community	2.55
Alternative dispute resolution opportunities	2.52
Self-reporting and state bar tracking of voluntary pro bono contributions	2.34
More support from my firm	2.18
Formal recognition of my past volunteer efforts	1.95
Average of All Factors	2.9

Notable trends:

- GENDER: Female attorneys provided higher ratings for the list of actions (3.1 compared to 2.9 for male attorneys). Specifically,
 - o For female attorneys, the top three influential actions were: 1) CLE credit, 2) limited scope representation opportunities, 3) Free or reduced cost CLE
 - o For male attorneys, the top three influential actions were: 1) Judge solicitation, 2) CLE credit for doing pro bono, 3) Free or reduced cost CLE
- RACE/ETHNICITY: Black attorneys provided higher ratings for the list of actions (3.5 among the 11 Black attorneys who responded to the survey).
- AGE: Younger attorneys provided higher ratings than did older attorneys for the list of actions. For example, attorneys in the 29 and younger age group provided an average rating of 3.5, compared to the 75-79 age group which provided an average rating of 2.5.

What discourages attorneys from doing pro bono?

According to the respondents, the top three discouraging factors were:

1. Lack of time
2. Commitment to family or other personal obligations
3. Lack of skills or experience in the practice areas needed by pro bono clients

Factor	Average (on a scale from 1-5, where 1 is the least discouraging and 5 is the most discouraging)
Lack of time	4.29
Commitment to family or other personal obligations	3.92
Lack of skills or experience in the practice areas needed by pro bono clients	3.67
The unrealistic expectations of clients	3.34
Lack of clarity on how much time I would end up having to commit	3.23
Too costly; financially burdensome to my practice	3.17
Scheduling conflicts making it difficult to be available for court appearances	3.15
Lack of malpractice insurance	3.08
Lack of interest in the types of cases	3.05
Competing billable hour expectations and policies	2.89
Lack of administrative support or resources	2.86
Lack of information about opportunities	2.67
A preference for spending volunteer time on non-legal matters	2.59
Concerns that doing pro bono work would compromise the interests of my other clients	2.34
Discouragement from employer/firm	2.33
A preference for providing reduced fee assistance rather than no fee assistance	2.10
I feel that a lot of pro bono clients really can afford legal assistance	2.08
Personal or philosophical objections	1.66
Total for all factors	2.9

Notable trends:

- AGE: Younger attorneys were more discouraged than were older attorneys. The 29 and younger age group, for example, provided an average rating of 3.2, while the 70-74 age group provided an average rating of 2.7.

Firm/Employer attitude toward pro bono?

Private practice attorneys were asked about their employers' attitudes towards pro bono. Just under half (48.5%) indicated that their employer encourages pro bono activities, while 49.5% indicated that their employer neither encourages nor discourages pro bono activities.

Which of the following best describes your firm's or employer's attitude toward pro bono?	Number	Percent
Employer encourages pro bono activities	40	48.5
Employer neither encourages nor discourages pro bono activities	41	49.5
Employer discourages pro bono activities	2	2.0
Total	83	100.0

According to the surveyed attorneys, the most common ways their employers encouraged pro bono was by allowing the use of internal resources for pro bono activities (21.6% reported this) or by allowing pro bono during regular business hours (20.3% reported this). Only a small percentage reported that their employers did things that discouraged pro bono.

Employer Activity (Multiple Choice)	Percent of Attorneys
Employer allows use of internal resources for pro bono activities	21.6%
Employer allows pro bono during regular business hours	20.3%
Employer has a pro bono policy that supports employee pro bono activities	12.3%
Employer provides mentoring for pro bono activities/matters	5.1%
Employer allows billable hour credit for pro bono work	2.1%
Employer has procedures in place for identifying and referring pro bono cases internally	2.1%
Employer has a pro bono manager	0.4%
Employer requires a specific number of pro bono hours or matters per year	0.4%
Employer places restriction on number of pro bono clients or matters in a fiscal year	0.4%
Employer does NOT allow pro bono during regular business hours	0.8%
Employer disallows use of internal resources for pro bono activities	1.3%

Pro Bono as a law student and its impact on future pro bono?

Of the 54.3% of respondents that indicated they provided pro bono legal services as a law student, over half (56%) said that doing so made them “more” or “far more” likely to provide pro bono after graduating from law school. Around 41.1% said it had no impact on their likelihood of providing pro bono after law school. Only 2.8% said it made them less likely to provide pro bono after law school.

If you provided pro bono legal services while you were a law student, to what degree did that experience affect your decision to provide pro bono services as a practicing attorney?	Number	Percent	Percent of attorneys who did pro bono as a law student
Far more likely to provide pro bono services	33	12.7	23.4
More likely to provide pro bono services	46	17.9	32.6
It had no impact on my provision of pro bono services	58	22.3	41.1
Less likely to provide pro bono services	4	1.4	2.8
I did not provide pro bono legal services while I was a law student	118	45.7	N/A
Total	259	100.0	100

Likelihood of providing pro bono in 2017?

Overall, 57.4% of the respondents indicated that they were either “likely” or “very likely” to offer pro bono services in 2017, while 16.8% indicated they were “unlikely” or “very unlikely” to offer such services.

How likely are you to offer pro bono services in 2017?	Number	Percent
Very Unlikely	28	10.7
Unlikely	16	6.1
Somewhat Unlikely	6	2.5
Undecided	24	9.3
Somewhat likely	37	14.2
Likely	42	16.4
Very Likely	106	41.0
Total	259	100.0

Section IV: Other Public Service Activities

What public service activities did attorneys provide in 2016?

The surveyed attorneys provided a range of public service activities in 2016. Approximately 26% had provided legal services for a reduced fee, with an average of 106.7 hours in 2016. See chart below for information about additional public service activities provided.

Public Service Activity	Percent of Attorneys Providing Activity in 2016	Average Hours in 2016
Legal services for a reduced fee	25.8%	106.7
Speaker at legal education event for non-lawyers	19.8%	6.4
Trainer or teacher on legal issues	17.5%	16.9
Grassroots community advocacy	14.8%	44
Policy advocacy	13.0%	27.1
Supervising or mentorship to another attorney providing pro bono representation	7.1%	10.3
Member of board of legal services or pro bono organization	6.5%	14.6
Member of bar committee related to pro bono or access to justice	5.8%	6.7
Lobbying on behalf of a pro bono organization	3.3%	16.8
Member of firm committee related to pro bono or access to justice	2.8%	7.5
Other	6.7%	
None of the above	30.4%	

See the below chart for the various reductions provided by the attorneys who had reduced their fees. Most had reduced their fees by between 46 and 75%.

Reduced Fee - Average Reduction Percent	Number	Percent
5% or less	3	3.8
16-20%	1	1.1
21-25%	3	4.4
31-35%	2	2.2
36-40%	2	2.0
41-45%	1	.9
46-50%	28	36.5
51-55%	11	14.4
56-60%	8	11.1

61-65%	1	1.1
66-70%	3	4.4
71-75%	10	13.8
96-99%	3	4.1
Total	76	100.0

And, based on this reduction, the below chart shows the average hourly fees that resulted from the above reductions.

And, based on this reduction, approximately what was your average reduced hourly fee?

	Number	Percent
\$1-50	16	21.7
\$51-100	44	60.1
\$101-150	10	13.6
\$151-200	1	1.1
\$200-300	3	3.4
Total	74	100.0

How much unbundling are attorneys doing?

The private practice attorneys were asked a series of questions about their use of limited scope representation/unbundling as part of the practice in 2016. The majority (74.2%) of attorneys indicated that none of their cases involve unbundled legal services for a fee. However 18% indicated that 1-20% of their caseload involves unbundling.

In 2016, approximately what percentage of your overall caseload involved unbundled legal services for a fee?

	Number	Percent
0%	135	74.2
1-20%	33	18.0
21-40%	5	2.8
41-60%	3	1.4
61-80%	3	1.4
81-100%	4	2.3
Total	182	100.0

What encourages or discourages unbundling?

Attorneys were asked to rank a list of actions that might encourage them to provide unbundled services. The top three actions that attorneys said would encourage them to do more unbundling were:

- 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

Activity and Ranking	Percent Selecting Activity as #1	Ave Ranking (1 being the most encouraging)
(1) More guidance/clarity concerning ethical obligations for unbundling	29.5%	2.46
(2) More guidance clarity concerning malpractice exposure for unbundled matters	7.8%	3.52
(3) More guidance/clarity concerning court procedures for unbundled matters	10.2%	3.68
(4) Sample limited-scope agreements	4.2%	4.46
(5) Programs to connect you with prospective clients interested in unbundled legal services	13.9%	4.48
(6) Information to better understand fee structures for unbundled legal services	8.4%	5.45
(7) Opportunities to network with lawyers who unbundle	1.2%	6.00
Nothing. Unbundling is just not in my future	24.7%	

For those who had not provided any unbundling, most (67.7%) indicated that agreed or strongly agreed with the statement “I don’t think unbundling would work for much of my practice” and many (61.4%) indicated that they agreed or strongly agreed with the statement “I worry that unbundling would expose them to more malpractice claims.”

Statement	Average (1= strongly disagree and 4=strongly agree)
I don’t think unbundling would work for much of my practice	2.93
I worry that unbundling would expose me to more malpractice claims	2.77
Prospective clients are not interested in unbundled legal services	2.66
I am concerned that unbundling may be unethical	2.47
Unbundled cases do not produce enough revenue	2.46
It is difficult to get enough clients to make unbundling worthwhile	2.72
My law firm does not permit me to unbundle	1.82

For those who had provided unbundling, most (81.1%) agreed or strongly agreed with the statement “unbundling lowers the cost of cases so that more people can afford my services”. Meanwhile, 77.3% also agreed or strongly agreed with the statement “unbundling allows them to offer legal services at a more competitive price”. And, 65% agreed or strongly agreed with the statement “unbundling lowers receivables and results in fewer uncollected fees.”

Statement	Average (1= strongly disagree and 4=strongly agree)
Unbundling lowers the cost of cases so that more people can afford my services	3.04
Unbundling allows me to offer legal services at a more competitive price	2.98
Unbundling lowers receivables and results in fewer uncollectable fees	2.65
Unbundling clients are likely to become full-service clients	2.40
Unbundling clients are more engaged in the process and invested in the outcome than full service clients	2.38
Unbundling clients are more satisfied with their service than full-service clients	2.29
I am less worried about disciplinary complaints for unbundled cases	2.09

Appendix

Methodology: the web-based survey was distributed to all attorneys for whom contact information was available in the 24 participating states. The surveys for Arkansas were distributed by email on January 31, 2017. The final sample of surveys amounted to 286, with 282 of these responses being from attorneys with active licenses.

The sample fairly closely matched the known demographics of the attorney population, with slight deviations with respect to gender and 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. The below chart provides the final weighted sample distributions by race/ethnicity, gender, age, and practice setting. All significant results noted throughout this report are at the 95 percent confidence level.

Category	Percent
Race/Ethnicity	
White, Not Hispanic	93.2%
Black, Not Hispanic	3.9%
Hispanic	0.5%
Asian, Pacific American, Not Hispanic	0.5%
Gender	
Male	62%
Female	38%
Gender Non-Conforming	0%
Age	
29 or younger	4.4%
30-34	14.9%
35-39	16.8%
40-44	11.6%
45-49	9.7%
50-54	9.8%
55-59	11.1%
60-64	9.7%
65-69	8.5%
70-74	2.8%
75+	0.6%
Practice Setting	
Private Practice	69%
Corporate Counsel	10.2%
Government	9.3%
Non-profit	4.9%
Other	6.6%