

A Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions

**Prepared by Latham & Watkins LLP
for the Pro Bono Institute**

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FOREWORD

This Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions goes back to an initiative of the Pro Bono Institute and Latham & Watkins to make information about global *pro bono* legal services accessible. The first edition of the survey published in 2005 covered 11 jurisdictions, mostly in Europe. The 2012 edition covers over 70 jurisdictions in Europe, Asia and the Pacific region, the Americas, Africa and the Middle East. As the interest in global *pro bono* has grown, and this survey with it, the conversation about global and international *pro bono* has shifted. Whereas the focus just a few years ago was on issues of permissibility and compatibility with the local legal system, the focus today is decidedly practical: *pro bono* has gained in acceptance and the question is how, not whether, *pro bono* representations can be undertaken. The developments have been profound and exciting.

The survey is part of an ongoing effort, shared by many law firms, organizations and corporate legal departments, to promote and stimulate the growth of *pro bono* representation globally and in international settings. Its purpose is to serve as an introductory resource for law firms, private practitioners, in-house lawyers and NGOs seeking to engage or learn more about the culture and provision of *pro bono* in their own or other countries. The chapters describe, for each jurisdiction, what access-to-justice or publicly funded legal aid programs exist, what unmet needs for legal representation remain, what perceptions or culture shape the discussion of *pro bono*, and what professional-conduct laws and rules provide the framework for *pro bono* representation.

In 2012, lawyers from Latham & Watkins' 30 offices around the globe have updated all prior chapters and added chapters covering nearly 30 new jurisdictions. We consider the survey to be a work in progress and welcome your feedback and comments to help us improve future versions (please direct your requests to: Gianni.DeStefano@lw.com). While we have worked, to the extent possible, with local counsel and NGOs to provide information that is both current and accurate, we note that the situation in many of the jurisdictions is fluid, and that errors and omissions are unavoidable. The survey is therefore a work in progress in this sense as well and we invite your comments.

We owe a debt of gratitude to Esther Lardent and Tammy Taylor of the Pro Bono Institute, with whom we have collaborated on this project. The survey is the effort of a large team, involving not only many lawyers at Latham & Watkins, but also local law firms and practitioners, in-house lawyers and NGOs around the globe. We are grateful for their contributions and their time.

August 2012

Gianni De Stefano and Wendy Atrokhov

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THANKS

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NGOs: Canadian Bar Association (Canada) – Free Legal Advice Centres (UK) – MANS (Montenegro) – Mizan Law Group for Human Rights (Jordan) – the Peace Institute (Slovenia) – PILnet (China) – ProVene foundation (Uruguay) – Public Interest Alliance Centre (Ireland) – Public Interest Law Clearing House of Victoria (Australia) – Red Pro Bono (Mexico)

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Last, but not least, each individual, both in law firms and legal departments, active in *pro bono* representations to address the unmet legal needs of those with limited means.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE RUSSIAN FEDERATION¹

While Russia does not have a legacy of *pro bono* culture, a professional environment that accepts *pro bono* as part of a lawyer's role in the community is slowly developing. The government is also taking new steps to expand its role in the provision of free legal aid, evidenced by the Law. There is still much work to be accomplished in terms of developing the legal infrastructure in Russia and transforming how the local legal community thinks about *pro bono*. Nonetheless, there are a growing number of *pro bono* opportunities, both for litigators and transactional attorneys, available in Russia.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN THE RUSSIAN FEDERATION

A. The Legal Profession²

The legal profession in Russia is comprised of state-licensed attorneys (called “advocates”) and unlicensed lawyers (called “jurists”). Broadly speaking, the key distinction between these two types of lawyers is that advocates are allowed to represent clients in criminal matters, as well as in any other matters, whereas jurists cannot represent clients in criminal cases. Jurists do not need to meet the same licensure requirements as advocates but may still provide a broad range of legal services to the public.³ Advocates, on the other hand, must successfully complete an examination and application process administered by regional bar chambers and are thereafter subject to regulation by the Russian Bar. Given the ability to practice law without obtaining advocate status, many attorneys, particularly those practicing in commercial areas, do not ultimately become licensed.

Information about all advocates must be recorded in advocate's registers maintained by regional bar chambers. As of December 31, 2011, there are 66,524 advocates practicing in Russia.⁴ The number of advocates varies dramatically in different regions: at the beginning of 2011 there were 7,734 advocates in the city of Moscow (with a population of more than 11,612,943 residents),⁵ and 18 advocates in the Chukotka Autonomous District (approximately 51,000 inhabitants).

Advocates are allowed to practice in the following four forms only: (i) solo practice; (ii) collegium of advocates; (iii) bureau of advocates; and (iv) legal consultation office.

According to the Federal Bar Chamber, as of December 31, 2011, 28.1% (18,687) of Russian advocates prefer solo practice. Where an advocate aims to provide legal services as a solo practitioner, he or she must set up an advocate parlor.

Collegia and bureaus are both collective forms of practicing law. The bureau is a partnership providing legal services on behalf of all partners who bear joint responsibility. The collegium is a loose association of individual advocates who bear individual responsibility for their own cases. Under the most recent report of the Federal Bar Chamber, 44,441 advocates joined collegia, and 3,182 advocates set up bureaus.

Legal consultation offices must be set up by regional bar chambers in court districts where the number of advocates is lower than two per one judge. Therefore, the legal consultation office is a tool designed to secure remote and sparsely populated regions with sufficient legal aid. According to official statistics, currently 81 legal consultation offices operate in Russia, and only 214 advocates are engaged in their activity.

In contrast, jurists are not subject to registration. As a result there are no official statistics on unregistered lawyers in Russia. At a rough estimate,⁶ there are over 800,000 people in Russia who have a law degree.

¹ For a more general discussion of opportunities available in public international law, see, e.g., RICHARD J. FERRIS, JR., ET. AL., DIRECTORY OF PRO BONO OPPORTUNITIES IN INTERNATIONAL LAW (2004), <http://www.law.georgetown.edu/graduate/documents/InternationalDCProBono.pdf>.

² For more information see http://www.law.harvard.edu/programs/plp/pdf/Russian_Legal_Profession.pdf.

³ Federal Law No. 63-FZ, On Attorney's Activity and the Bar in the Russian Federation, May 31, 2002

⁴ See http://www.fparf.ru/resh/2012/spravka_o_sostoyanii.htm (in Russian).

⁵ See <http://www.fparf.ru/chambers/7.htm> (in Russian).

⁶ <http://www.mos360.ru/mneniya/98059/> (in Russian).

B. The Russian Judicial System

The Russian federal judicial system is a tri-partite system consisting of the constitutional, *arbitrazh* and general court systems. The constitutional court decides questions of constitutional law, statutory interpretation and allocation of powers; the *arbitrazh* court handles commercial matters; and the general court hears civil cases, criminal cases and disputes between individuals and State authorities.⁷ The regional court (the general court system's lowest level court) and magistrates' court hear more than 90% of all civil and criminal cases.⁸ The greatest need for *pro bono* assistance is at the magistrate and regional court level. Unlike courts in the United States and many European countries, which frequently encourage *pro bono* representation of *amicus curiae* at the appellate level, few such opportunities exist in the Russian Federation.

C. Regulation Of The Legal Profession And Legal Services

Advocates have an obligation under the Federal law to provide free legal aid. The mandatory legal aid provided by advocates is free to clients; however, the advocate is paid a minimal fee by the federal or regional governments in accordance with federal laws and local ordinances.⁹

Being a professional institute acting independently of the state, the advocates' society is the most significant link in a fragile chain of legal aid providers in Russia. According to the newsletter prepared by the Federal Chamber of Advocates,¹⁰ in 2011 approximately 33,285 advocates provided free legal aid to 158,805 low-income citizens.¹¹ Such *pro bono* services included legal advice on various legal issues, drafting legal documents and representation in court in civil proceedings.

Legal aid in criminal cases is administrated chiefly by the judiciary and the investigators' office through an assigned-counsel system in which courts or investigators appoint counsel for criminal suspects and defendants from a regional registry of licensed advocates.¹² In 2011 the assigned counsels represented more than 2 million criminal suspects which represents approximately 60% of all criminal cases. While there are few formal exceptions to providing such services when called upon by the government, in practice many advocates find ways to avoid providing the required legal aid service.

The Russian advocates' society does not have the sufficient human resources needed to meet the requirements for free legal aid of Russian citizens. This is particularly the case in sparsely populated regions and remote areas of Russia. At the present time, demand for free legal aid exceeds the number of advocates, and the government struggles with such disproportion by means of an assigned-counsel system and by launching the legal consultation offices. As a result, one advocate may be involved in a few cases for minimal fees, and the quality of free legal advice frequently suffers.

D. Legal Aid

The Constitution of the Russian Federation guarantees to Russian citizens the right to qualified legal counsel and, in cases set forth by law, the right to free legal aid.¹³ However, before 2012 this guarantee was not accompanied by any meaningful implementing legislation. The regulation of legal aid and the provision of free legal services in the Russian Federation were based predominantly on the Code of Criminal Procedure and the Federal Law – “On Attorney’s Activity and the Bar in the Russian Federation.” At the beginning of 2012, after 2 years of debate, the Law “On Free Legal Aid”¹⁴ came into force. This document is the first federal law dedicated specifically to regulating free legal aid across Russia.

⁷ Federal Constitutional Law No. 1-FZ, On Judicial System in the Russian Federation, Dec. 31, 1996

⁸ *See id.* (Comments to art. 21). Local justices of the peace also have jurisdiction to hear limited types of cases.

⁹ Under the Criminal Procedure Code and the Federal Law No. 63-FZ advocates' fees for the provision of legal aid are paid from the federal budget, save for the provision of legal aid in remote and sparsely populated areas. In these areas, advocates' fees are financed from regional budgets.

¹⁰ *See*: http://www.fparf.ru/resh/2012/spravka_o_sostoyanii.htm (in Russian).

¹¹ In 2010, 31,063 advocates provided free legal support to 150,016 law-income citizens.

¹² *See* The CRIMINAL PROCEDURE CODE, art 5. The investigators' office is part of the executive branch but separate from the prosecutors' office. Investigators are officers authorized to conduct pretrial investigations in criminal proceedings.

¹³ CONST. RUSSIAN FEDERATION art. 48.1.

¹⁴ Federal Law No. 324-FZ, On Free Legal Aid in the Russian Federation, Nov. 21, 2011.

Since the adoption of the Law “On Free Legal Aid” the list of recipients of legal aid and scope of free legal assistance in noncriminal proceedings has been significantly expanded. Free legal aid is provided at governmental (state) and nongovernmental (private) levels.

E. State (Governmental) Legal Aid System

State legal aid is administered by federal and regional executive authorities, nonbudgetary funds, state legal offices (bureaus in the form of government institutions), advocates or notaries. Under the Law “On Free Legal Aid,” local bar associations are responsible for providing lists of advocates who will participate in the free legal aid program for the next calendar year. These advocates are obliged to render free legal services on a contractual basis and each year submit free legal aid reports to the relevant state authorities.

The right to free legal assistance under the state system is available for the following recipients:

- Low income citizens
- Disabled people
- The Great Patriotic War veterans; Heroes of the Russian Federation; Heroes of the Soviet Union; Heroes of the Socialist Labour
- Disabled children, orphans, children left without parents’ care
- Elderly and disabled people who live in social establishments¹⁵
- Minors residing in state institutions with respect to child neglect and those imprisoned
- People with psychological disabilities¹⁶
- Legally incapable individuals

The above mentioned groups are entitled to oral advice and assistance with drafting legal documents, claims and petitions in the following areas of practice:

- Transactions in relation to real estate and title registration
- Consumer rights related to housing utilities provision
- Some labor and employment issues
- Damages caused by the death of a family provider, as well as death, injury or other health problems caused by working conditions
- Welfare and pension benefits, state-funded social assistance, etc.
- Maternity/paternity and alimony
- Rehabilitation of the politically repressed
- Limitation of legal capacity
- Mistreatment of psychiatric patients
- Administrative review of acts issued by governmental agencies, local self-governance bodies and public officials

F. Non-governmental (Private) Legal Aid System

Non-governmental legal aid may be performed by law clinics and nongovernmental (private) centers of free legal assistance.

The law clinics are funded by state and private universities as well as public nongovernmental organizations (“NGOs”) as part of education programs. According to the information published on the official web-site of Russian law clinics,¹⁷ more than 140 law clinics have been set up across the

¹⁵ Federal Law No. 122-FZ, On Social Services for the Elderly and Disabled People, Aug. 2, 1995.

¹⁶ Federal Law No. 3185-1-FZ, On Psychological Help for People and the Corresponding Guaranties, Jul. 2, 1992.

¹⁷ See: www.lawclinic.ru (in Russian).

country, where law students and young lawyers learn the practical skills of lawyering by offering free legal assistance to people in need.

Private centers of free legal aid have the right to independently decide on: the types of legal aid they provide, on the category of individuals to get the aid, as well as the scope of free legal aid. Still, the law emphasizes that individuals with low income and those in a difficult situation should have the priority right for free legal aid.

II. **PRO BONO IN THE RUSSIAN FEDERATION: OPPORTUNITIES AND OTHER CONSIDERATIONS**

Historically, there has been no culture of *pro bono* legal assistance in the Russian Federation. Under the communist regime that prevailed for so many years in the USSR, legal aid, as well as most other social services, was exclusively the province of the state and mostly free for individuals. Perhaps as a vestige of the former communist era and partly because of the immaturity of local business society, Russia still lacks a professional environment that fully supports *pro bono* work. However, with Russia's transition to a democratic government and capitalist economy, there has been an ideological shift from the expectation that legal aid be exclusively state-sponsored to an anticipation that private sector attorneys also play a role in the provision of free legal services. A growing number of international and local firms and nongovernmental organizations are appearing in Russia, many of which seek to foster *pro bono* and give back to the community.

There have also been some positive steps taken at the federal level which aim to expand regulation of the free legal aid system in the Russian Federation. One of the more significant developments in establishing *pro bono* services in Russia was the adoption of the Law "On free legal aid," which provides legal framework and key principles of both state and private legal aid systems. As a result, *pro bono* culture in Russia is slowly developing.

A. **Barriers To Pro Bono Work And Other Considerations**

Pro bono opportunities for international law firms located in the Russian Federation center largely around the representation of NGOs. While there is also a need for legal aid at the individual level, there are numerous barriers to taking on the representation of individuals in Russian courts – among them, admission to practice law in Russia and a high degree of fluency in the Russian language.

International NGOs are still relatively new to the Russian Federation. These NGOs provide a variety of humanitarian services ranging from the provision of legal assistance to meeting the basic day-to-day needs of Russia's indigent population. The function of NGOs in Russia, however, is not nearly as robust as it is in the United States or in other developed European countries. This is due, in part, to the fact that the Russian federal government has not taken a proactive interest in and has done little to stimulate or encourage the growth of NGOs.¹⁸

Moreover, Russian NGO legislation is complicated and is often applied by the government unevenly, making it difficult for NGOs to navigate the legal landscape.¹⁹ As a result, most of these organizations look to foreign and private sources, such as the New Eurasia Foundation,²⁰ for financial and other support. While such organizations are growing in Russia, their resources nevertheless remain limited.

In addition, Russian laws contain a lot of gaps. The Law "On free legal aid" aims to fill some of them, in particular, in the regulation regarding free legal support of foreign citizens and people without citizenship it grants them the right to take free legal advice in certain circumstances provided for by Russian laws and in accordance with legally established procedure. Before 2012 the right to receive free legal assistance was guaranteed exclusively to citizens of the Russian Federation – to the exclusion of a significant and growing number of foreign citizens, including refugees. Although Article 2 of the

¹⁸ Jeffrey Thomas, *U.S. Says Russian NGO Law Does Not Meet Human Rights Commitments*, http://www.pressmon.com/cgi-bin/press_view.cgi?id=509090 (criticizing Russian NGO legislation which gives the executive wide latitude to determine the fate of NGOs); see also L.U. Grudtsina, *History of Russian Bar*, THE ADVOCATE (2006).

¹⁹ Alison Kamhi, *The Russian NGO Law: Potential Conflicts with International, National, and Foreign Legislation*, 9 INT'L J. OF NOT-FOR-PROFIT LAW 1, 34 (Dec. 2006); see also *Moscow Branch of the Salvation Army v. Russia*, No. 72881/01, Eur. Ct. H.R. (2006), <http://www.echr.coe.int/echr>.

²⁰ The New Eurasia Foundation is a nongovernmental, noncommercial organization working to improve the lives of Russian citizens by consolidating the efforts and resources of the public, private and nongovernmental sectors and implementing social and economic development programs at the regional and local levels. See generally, NEW EURASIA FOUNDATION, *homepage*, <http://www.neweurasia.ru>.

Law “On free legal aid” declares that foreign citizens and people without citizenship have the right to free legal support, it does not provide any specific regulation on such support.

As the Law “On free legal aid” provides only a very basic framework and the key principles on legal aid in Russia, it requires subsequent adoption of numerous laws and administrative ordinances establishing more detailed regulation on the free legal services granted.

Tax consequences of free legal services are also an issue. Until a legal services agreement defines free legal aid as charity support, NGOs are subject to VAT and income tax for free legal services. The effective Russian tax legislation does not contain any provisions in relation to *pro bono*, therefore when providing free legal aid, both the lawyers and their *pro bono* clients must be capable of proving to state bodies the charitable nature of the relationship established between them by arming themselves with solid and scrupulously prepared documentation. And even so, the risk remains that tax authorities will deem the free legal services to be taxable.

B. *Pro Bono* Resources

Accordingly, NGOs in Russia have a substantial need for *pro bono* assistance. In recent times, international law firms located principally in Moscow and Saint Petersburg have provided legal aid to NGOs and other public or charitable institutions on a variety of different matters. Among the dozens of organizations that have requested and received *pro bono* assistance in recent times are the Hermitage Museum,²¹ the AIDS Foundation East-West,²² Doctors Without Borders,²³ the Danish Refugee Council,²⁴ Integra,²⁵ the Humanitarian Programs Support Charitable Foundation,²⁶ the International Center for Not-for-Profit Law,²⁷ and United Way Moscow.²⁸

In December 2007, the Public Interest Law Institute (“PILnet”) launched a *pro bono* clearinghouse in Moscow.²⁹ The clearinghouse attempts to bridge the gap between NGOs, which know the legal needs of the community but lack the ability to provide legal representation, and law firms, which possess the legal resources but lack a direct connection to local NGOs and individuals in need. PILnet identifies and screens potential *pro bono* clients and circulates a bi-monthly newsletter to participating firms that provides a description of clients in need of legal aid and a summary of the respective legal issues with which they need assistance.³⁰ The clearinghouse also provides Russian NGOs with training and know-how on a variety of issues related to the daily operation of nonprofit organizations.³¹ A firm having expertise or an interest in a particular area can notify PILnet’s Moscow office and PILnet will then put the firm into direct contact with the relevant client. PILnet also holds quarterly meetings with participating law firms and NGOs in Moscow to discuss the clearinghouse and various topical themes

²¹ BAKER & MCKENZIE, *Pro Bono and Community Service: The Rewards of Giving* (2007).

²² AIDS Foundation East-West (“AFEW”) is an international, humanitarian, public health, nongovernmental organization whose mission is to contribute to the reduction of the impact of HIV/AIDS in the Newly Independent States (NIS) of the former Soviet Union. *See generally*, AIDS FOUNDATION EAST-WEST *Homepage*, <http://www.afew.org>.

²³ MEDECINS SANS FRONTIERES, *homepage*, <http://www.doctorswithoutborders.org>.

²⁴ CHADBOURNE & PARKE LLP, *Pro Bono Year in Review 2005*, <http://www.chadbourne.com/files/upload/Pro%20Bono%20Year%20in%20Review%202005.pdf>.

²⁵ Integra is a nonprofit partnership whose mission is to alleviate poverty, reduce unemployment and help transform communities by supporting the development of small businesses. *See generally*, INTEGRA, *homepage*, <http://www.integrarussia.ru>.

²⁶ Humanitarian Programs Support Charitable Foundation (“HPSCF”) is a nonprofit organization aimed at implementing programs that contribute to the improved quality of life of children with disabilities and their families. *See generally*, HPSCF *homepage*, <http://www.fpgp.ru>.

²⁷ The International Center for Not-For-Profit Law (ICNL) is an international not-for-profit organization that seeks to promote an enabling legal environment for civil society, freedom of association, and public participation around the world. *See generally*, ICNL, *homepage*, <http://www.icnl.org>.

²⁸ United Way Moscow is a community based nonprofit organization dedicated to improving the lives of people in Moscow and fostering the concepts of modern philanthropic giving in Russia generally. *See UNITED WAY MOSCOW, homepage*, <http://www.unitedway.ru>.

²⁹ *See generally*, PUBLIC INTEREST LAW INSTITUTE, *homepage*, <http://pilnet.org/>. The clearinghouse was opened with the assistance of the American Bar Association Rule of Law Initiative and several private law firms. Since 2007, PILnet’s Russian clearinghouse has grown from partnering with four international law firms to more than 20 local and international firms and 2 corporations, and has taken on over 85 matters for more than 40 NGOs.

³⁰ PILnet connects with civil society networks, working through umbrella organizations such as the International Center for Not-for-Profit Law, Charities Aid Foundation, Lawyers for Civil Society, United Way Russia and UNHCR.

³¹ *See UNITED STATES AGENCY FOR INTERNAL DEVELOPMENT, Alliances in action: Pro Bono clearinghouse in Moscow*, <http://idea.usaid.gov/node/241>.

and issues in the sphere of Russian *pro bono* services. PILnet is currently exploring ways to replicate its Moscow-based clearinghouse in other Russian regions. Dmitry Shabelnikov is the country director for Russia at PILnet.

In addition to working for locally established NGOs, there are also opportunities for Russia-based lawyers to take on broader *pro bono* work in the European Community. For example, PILnet operates a global clearinghouse out of their headquarters in Budapest, Hungary. The international clearinghouse is open to firms from all countries and generates work relating to Europe, predominately representing *amicus curiae* before European courts. Additionally, through organizations such as the European Human Rights Advocacy Center (“EHRAC”), there are litigation opportunities to work on cases that have been appealed to the European Court of Human Rights.³²

Finally, the American Bar Association (the “ABA”), through its Rule of Law Initiative program, has made significant inroads in advancing *pro bono* and developing legal infrastructure in Russia.³³ Among other things, the ABA facilitates a series of public events aimed at publicizing and fostering a commitment to *pro bono* service within the Russian legal community. The ABA seeks to engage lawyers, judges and academics to publish works on *pro bono* as well as to attend, speak or otherwise participate at ABA conferences in Russia.

III. CONCLUSION

Despite the recent adoption of the specific Law “On free legal aid,” the current regulatory regime, is still limited both in terms of the categories of people that may avail themselves of free legal aid and the scope of services available to them. Funding from the federal and regional budgets remains limited and the fees authorized for lawyers who provide legal aid are minimal, making it difficult to attract lawyers and provide high quality legal aid. In addition, a significant portion of the population is often denied access to legal aid by virtue of their residence in remote and sparsely- populated areas with an inadequate number of legal offices and lawyers.

Thanks to PILnet, the Moscow-based *pro bono* clearinghouse now provides a steady stream of *pro bono* work for both Russian and foreign qualified lawyers to draw upon. While it is a first step in many respects, creating such opportunities is a critical component in developing a robust professional culture that embraces *pro bono* service.

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Pro Bono Practices and Opportunities in the Russian Federation

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³² <http://www.londonmet.ac.uk/research-units/hrs/ehrac/>. Established in January 2003, EHRAC (based at London Metropolitan University) works in Russia in partnership with the Memorial Human Rights Center through a dedicated project office in Moscow. EHRAC’s primary objective is to assist individuals, lawyers and NGOs within the Russian Federation in taking cases to the European Court of Human Rights.

³³ Significant projects have included: assisting in the reintroduction of jury trials in Russia; assisting in drafting a new criminal procedure code based on select adversarial principles; founding clinical legal education programs throughout Russia and publishing Russia’s first clinical legal education textbooks; providing training to social advocates to assist victims of domestic violence; and assisting in the adoption of judicial and legal profession codes of ethics. Telephone interview with Anton Alferov, Deputy Country Director, ABA/ROLI in the Russian Federation (Feb. 6, 2008); see also AMERICAN BAR ASSOCIATION, *homepage*, <http://www.abanet.org>.