

# PRO BONO IN THE ARTS COMMUNITY

By David Valentine-Elam



*On The Move* (2007, various fabrics, suede), by Don "DonCee" Coulter, a pro bono client of David Valentine-Elam.

I am a photographer. That may not be what it says on my business card, but it is true; I was a photographer long before I became a lawyer, and (technology permitting) I will continue to be a photographer long after I retire from the law. For me, pro bono service is about serving one's community, and my community has always been the arts community, so my service starts there.

To that end I have had the remarkable pleasure of working with art professors, radio stations, independent photographers, painters, authors, performers, designers, musicians, gallery owners, and more. The work is varied, interesting, and intensely rewarding. And in spite of the "pro bono" label, I have come to find my office well adorned with a variety of artistic works.

Artists and arts organizations are a vital

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part of what defines our communities, and they need legal assistance. Desperately. In case you are in doubt, read the following excerpt from a contract, read and signed by a graphic designer, and tell me artists don't need attorneys:

It is agreed that the confidential information to any and all the terms of this agreement is to be considered confidential and shall be held in the same confidence, and shall not use the confidential information or disclose such information.

Um, what? Or how about this:

Artist shall hereby agree that this "work for hire" agreement is for commissioned work and as such any copy rights and other intellectual property rights that may vest in artist are the sole intellectual property rights of distributor. Notwithstanding the previous sentence all remaining rights remain with artist.

Wait, what just happened? For those of you not familiar with copyright law, let me assure you that paragraph is even more of a train wreck than it first appears to be. Artists sign contracts like this far too often, wrongly attributing the confusing language to immutable legalese. And these types of contracts spread through the art community like a disease as artists attempt to adapt past flawed contracts to make new deals resulting in documents only Mary Shelley could appreciate.

Their need is not limited to reviewing and drafting contracts, although that presents an excellent and rare opportunity for transactional attorneys to contribute pro bono time in their area of expertise. Artists operate small businesses like any others—they need tax advice, entity advice, advice on commercial leases. Legal aid societies do not handle these types of issues, and emerging artists and arts organizations face tight budgets with little or no room for legal counsel.

Fortunately, in the largest cities, there are already systems in place to address these needs. Volunteer Lawyers for the Arts (VLA; [www.vlany.org](http://www.vlany.org)) is a nationwide network of nonprofits that provide an array of services for artists, including referrals to volunteer attorneys. Interested attorneys need only contact their local VLA for more

information on how to help.

Most cities, however, lack established organizations like the VLA, and emerging artists must depend on the pro bono efforts of individual attorneys. If you want to help, the modest commitment of a few minutes or hours of your time for an individual artist is a good start, but your impact can be much greater if you choose.

Consider teaching a "legal basics for artists" class in a gallery or studio space. You should cover topics such as basic copyright law with special emphasis on work-for-hire, what it means and how it works; employment issues; licensing agreements; consignment agreements; First Amendment rights and fair use; privacy and publicity issues; and some basic business law on entity formation and liability. Most importantly, you should field questions during or after the class to get a feel for what kind of information your community needs. I structure my classes as a 30-minute lesson with 15 minutes of general questions, and then I set aside another 30 minutes to answer individual questions one-on-one. Of course you don't have to be an expert in all of these areas, and if you are uncomfortable covering certain topics, you can tailor your class to your expertise—mine started out simply as Copyright Law for Artists 101.

You can also contact your local arts council about establishing a referral program in your area. This takes a little more work—developing a group of willing attorneys and getting word out to artists about the existence of the program—but the impact can be immeasurable and long lasting. You can start by setting up a CLE covering the issues faced by emerging artists and recruit the attorneys in attendance. Working with the local arts council will help you get the word out to the artists that this help exists and why they should take advantage of it.

You need not be an artist, an aspiring artist, or even a lover of the arts. No one will fault you for not knowing the difference between Monet and Manet if you can explain the difference between a license and an assignment. This community needs attorneys, and I am confident you will find this work as enjoyable and satisfying as I do. **GPSOLO**

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