AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES
August 7-8, 2006

RECOMMENDATION

RESOLVED, That the American Bar Association urges lawyers in solo and small firms, larger firms, and corporate law departments to serve their communities through pro bono and public service activities consistent with applicable rules of professional conduct;

FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial and local government and military lawyers to serve their communities through pro bono and public service activities consistent with applicable rules of professional conduct;

FURTHER RESOLVED, That the American Bar Association urges solo and small firms, larger firms, corporate law departments and government and military law offices to adopt effective strategies to provide their lawyers with opportunities to do pro bono work and to adopt specific internal policies and procedures to support such work;

FURTHER RESOLVED, That the American Bar Association specifically urges larger law firms, larger corporate law departments, and government and military law offices to adopt the applicable portion of the Pro Bono Policies and Procedures, dated August 2006;

FURTHER RESOLVED, That the American Bar Association calls on state, local and territorial bar associations and legal services providers to employ effective strategies for engaging all lawyers in pro bono and public service activities including providing training, mentoring, malpractice insurance, assistance in developing best practices, and similar support services; and

FURTHER RESOLVED, That the American Bar Association urges all lawyers and law practices to seek out and utilize the resources and support offered by state, local and territorial bar associations and legal services providers that enable these lawyers to do pro bono and public service work.
I. POLICIES AND PROCEDURES FOR LARGER LAW FIRMS

Pursuant to Resolution 121-A, the American Bar Association urges larger law firms to adopt effective strategies to provide their lawyers with opportunities to do pro bono work and to adopt internal policies and procedures to support such work, including policies and procedures that ensure that firms:

(a) count pro bono hours as billable hours;

(b) consider attorneys’ commitment to pro bono activity as a favorable factor in advancement and partner and associate compensation decisions;

(c) set annual goals regarding the number of hours contributed through firm pro bono programs and the number of attorneys who participate;

(d) establish and maintain systems that ensure that firm pro bono programs are managed effectively, that participating attorneys receive training and guidance, and that the highest levels of firm management oversee and participate in their programs;

(e) support the pro bono commitment and involvement of senior and retired lawyers; and

(f) report to law school placement offices specific information regarding their pro bono policies, practices and activities, including:

   (i) their stated goals regarding the number of pro bono hours to be contributed by the firm each year;

   (ii) the number of actual pro bono hours contributed by the firm in each of the last three years;

   (iii) the average number of pro bono hours contributed by junior associates, midlevel associates, senior associates, and partners at the firm in each of the last three years;

   (iv) whether and to what extent pro bono hours are counted as billable hours (if attorneys are expected to meet billable hours targets);

   (v) whether and to what extent attorneys’ commitment to pro bono activity is considered a favorable factor in promotion and compensation decisions;
(vi) what formal structures the firm maintains to manage its pro bono program and to provide training and guidance to participating attorneys; and

(vii) whether the firm provides opportunities to participate in pro bono activities through sabbatical and part-time pro bono programs, fellowships, or rotation programs.

II. POLICIES AND PROCEDURES FOR LARGER CORPORATE LAW DEPARTMENTS

Pursuant to Resolution 121-A, the American Bar Association urges larger corporate law departments to adopt effective strategies to provide their lawyers with opportunities to do pro bono work and to adopt internal policies and procedures to support such work, including policies and procedures that ensure that these law departments:

(a) count pro bono hours as billable hours if attorneys are expected to meet targets for billable hours;

(b) consider attorneys’ commitment to pro bono activity as a favorable factor in advancement and compensation decisions;

(c) set annual goals regarding the law department’s pro bono commitment including, as appropriate, the number of hours contributed, the number of lawyers and legal department staff to be involved, and the number of cases to be handled;

(d) establish and maintain systems that ensure that law department pro bono programs are managed effectively, that participating attorneys receive training and guidance, and that the highest levels of law department management oversee and participate in their programs;

(e) support the pro bono commitment and involvement of senior and retired lawyers; and

(f) report to law school placement offices specific information regarding their pro bono policies, practices and activities, including:

(i) their stated goals as described in (c) and their actual pro bono performance in achieving those goals each year;

(ii) whether and to what extent pro bono hours are counted as billable hours (if attorneys are expected to meet billable hours targets);

(iii) whether and to what extent attorneys’ commitment to pro bono activity is considered a favorable factor in advancement and compensation decisions;

(iv) what formal structures the law department maintains to manage its pro bono program and to provide training and guidance to participating attorneys; and
(v) whether the law department provides opportunities to participate in pro bono activities through sabbatical and part-time pro bono programs, fellowships, or rotation programs.

III. POLICIES AND PROCEDURES FOR GOVERNMENT AND MILITARY LAWYERS

Pursuant to Resolution 121-A, the American Bar Association urges federal, state, territorial and local government and military law offices, insofar as possible, to:

(a) encourage all government and military attorneys to provide pro bono service consistent with applicable law, regulations, and ethical requirements;

(b) adopt written policies and procedures for the government or military law office that enable and encourage attorneys to engage in pro bono work that, at a minimum, define pro bono, set forth case approval and conflicts checking procedures and discuss use of office resources;

(c) designate a pro bono coordinator or committee to manage and oversee such work;

(d) communicate the extent to which such work is permitted and encouraged;

(e) identify and work to correct any unnecessary restrictions in law or regulations that impede or deter government or military lawyers from doing pro bono work consistent with appropriate rules of professional conduct;

(f) work with bar associations and legal service providers in identifying opportunities for the government or military law office's lawyers to assist in pro bono and legal services projects; and

(g) develop and maintain programs to facilitate and reward such work.
REPORT

Introduction

A recent report by the Legal Services Corporation confirmed that there is a “major gap between the legal needs of low-income people and the legal help that they receive.”¹ Forty-three million Americans currently qualify for civil legal assistance provided by LSC-funded programs.² Yet legal services lawyers cannot begin to handle this case load. At best, they can provide assistance to fewer than one in five poor Americans and to fewer than half of those clients who find their way to a legal services office. The President’s proposed fiscal 2007 budget would cut LSC funding by more than four percent, from $326.5 million to $312 million, further impairing the availability of legal services to the poor.

In August 2005, ABA President Michael S. Greco responded to the unmet need for legal services by calling for a Renaissance of Idealism in the Legal Profession—a “recommitment to the noblest principles that define the profession: providing legal representation to assist the poor, disadvantaged and underprivileged; and performing public service that enhances the common good.” He appointed a commission³ to develop approaches for advancing these goals among lawyers in every segment of the profession.

At the 2006 Midyear Meeting, the House of Delegates adopted a policy presented by the Commission which urged all lawyers to engage in community service activities.⁴ This report and the two reports (121B and 121C) that accompany it seek to build on that policy.

The present report urges lawyers in solo and small firms, larger law firms, corporate law departments and government and military law offices to participate in pro bono and public service activities consistent with applicable rules of professional conduct. It urges the firms, departments and law offices that employ them to adopt effective strategies to provide them with opportunities to do pro bono work and to adopt specific internal policies and procedures to support such work. Finally, it calls on bar associations and legal services providers to assist

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¹ Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans, Legal Services Corporation (September 2005)
² Eligibility is 125% of the Federal Poverty Income Guidelines, or $24,188 for a family of four.
³ The Commission includes lawyers drawn from diverse practice settings, including the managing partner of one of the nation’s largest law firms and the former managing partner of another; solo and small firm lawyers; the general counsel of a major corporation; government and military lawyers; a lawyer for a nonprofit organization; a law school dean; and a sitting federal judge.
⁴ That policy reads as follows:

RESOLVED, That the American Bar Association urges all lawyers to contribute to the public good through community service in addition to exercising their professional responsibility to deliver pro bono service, in accordance with Model Rules of Professional Conduct Rule 6.1, where applicable.

FURTHER RESOLVED, That the American Bar Association urges legal providers and other entities that employ lawyers to adopt policies and practices that afford lawyers the time and opportunity to engage in community service, and urges law schools and state, local and territorial bar associations to take all appropriate steps to facilitate and encourage lawyers to undertake such service.
lawyers in undertaking and carrying out pro bono and public service work and urges lawyers to seek out such assistance.

Every day across America, lawyers are providing pro bono representation -- to criminal defendants, victims of domestic violence, immigrant children, elderly residents in need of affordable housing and medical treatment, and small business owners struggling with legal problems. In countless ways, lawyers are making a difference in the lives of those in need and finding greater fulfillment in their own lives as well.

Yet the pace and pressures of modern legal practice are making it harder and harder for lawyers to continue to perform these vital roles in their communities. Too many young lawyers enter the profession eager to make a difference, only to become frustrated as their practice leaves them little opportunity to do so. If this situation is to change, lawyers must be able to strike a better balance in their lives and law practices.

The key to that balance is persuading the decision makers in America’s law offices to free up time to enable lawyers to volunteer their skills to those in need, to help improve their communities, and in the process to find greater satisfaction in their legal careers. That is the goal of this report.

I. Strategies for Promoting Pro Bono Participation by Lawyers in Solo and Small Firms

The vast majority of attorneys in America practice as solos or in firms of 50 or fewer. According to ABA membership data, for example, over 83% of attorneys practice in such settings. While many of these lawyers actively participate in pro bono work, recent studies have identified special challenges that prevent many solo and small firm practitioners from doing so.5

Some of the factors that inhibit small firm and solo practitioners from committing to pro bono work include: limited time, inadequate resources, reluctance to tackle unfamiliar areas of law, and difficulty in locating the right opportunity. In the latter instance, the problem is not an unwillingness to volunteer so much as a lack of information about how to do so.

Recently, the ABA Standing Committee on Pro Bono and Public Service released the results of the first national survey on pro bono activity.6 The survey suggests the need for more effective strategies to overcome obstacles to lawyer participation in pro bono. Some of the obstacles identified in the survey—lack of time, billable hours expectations, lack of specialized expertise—affect attorneys in various practice settings. But other obstacles are specific to solo and small firms. For example, the survey revealed that only 37% of pro bono attorneys working in solo or small firm practices (i.e. 1-9 attorneys) received their pro bono referrals from organized programs. This is an indicator that lawyers in small firm settings are less likely to be connected to the resources, support and assistance that such programs have to offer.

A key to increasing the pro bono participation of small firm lawyers is to develop partnerships with bar associations and legal services providers that can provide them with the resources and support they lack, from pro bono referrals to client screening, training, mentoring, malpractice insurance, forms and materials and other kinds of assistance. This report urges both solo and small firm practitioners, and bar associations and legal services programs, to enter into such partnerships.

One successful partnership, the New Hampshire Pro Bono Program’s Domestic Violence Emergency (DOVE) Project, has engaged a large number of solo and small firm attorneys in meeting the emergency needs of domestic violence victims. Other programs across the country have had similar success in recruiting solo and small firm lawyers to serve the needs of homeless clients (Cleveland) and advocate on behalf of unrepresented children (Montgomery County, Pennsylvania). The New York and North Carolina state bar associations provide assistance to solo and small firm lawyers in office management and administration, including strategies for overcoming the difficulties they face in undertaking pro bono work.

Despite those difficulties, many small firms have managed to sustain and institutionalize a commitment to pro bono. Examples include a four-lawyer firm in Anchorage, Alaska, which dedicated approximately 12 percent of its billable hours to providing free legal services to needy clients in 2003. With just two partners and two associates, the firm took on pro bono cases that ranged from death row representation in Texas to helping a single mother with breast cancer retain custody of her son. Another example is a small firm in Pittsburgh which was recently honored for its contributions to the Debt Advice Clinic and bankruptcy referral program of Neighborhood Legal Services in that city. The program noted that the firm’s pro bono efforts have succeeded because the firm’s leaders have made it clear that pro bono work is valued and all members of the firm are expected to make this contribution to the profession.

These examples demonstrate how small firms can overcome the obstacles and develop a pro bono culture in their practices. Their success comes from a combination of commitment, leadership, organization and utilization of the partnerships and resources that are available to them in their communities.

II. Strategies for Promoting Pro Bono Participation by Lawyers in Larger Law Firms

The ABA Model Rules of Professional Conduct call on every lawyer to provide a minimum of 50 hours of pro bono legal services annually to persons of limited means and to the organizations that serve them. In an effort to meet or exceed that target, major law firms have increasingly shifted from largely ad hoc and informal pro bono programs to structured, proactive efforts supported by top firm leadership, overseen by active and respected pro bono committees, and focused on maximizing pro bono participation by lawyers across practice areas, offices and

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8 www.nlsa.us/news/v2_issue2/newsletter_v2_issue2_p7.htm
9 ABA Model Rules of Professional Conduct, Model Rule 6.1. In 2003 additional language was added to the commentary of Model Rule 6.1 noting that: “Law firms should act reasonably to enable and encourage all lawyers in the firm to provide pro bono legal services called for by this Rule.”
seniority. The *American Lawyer* magazine now includes pro bono in the set of criteria used to determine whether a law firm will make its “A-List”.\textsuperscript{10}

In addition, large law firms participate in the Pro Bono Institute’s Law Firm Pro Bono Challenge\textsuperscript{SM}.\textsuperscript{11} Signatories to the challenge commit substantial resources – either three or five percent of the firm’s total billable hours or 60 or 100 hours per lawyer – to providing free legal services to those of limited means.\textsuperscript{12}

Yet despite these innovative and successful efforts, significant obstacles stand in the way of greater lawyer participation in pro bono and public service work.

*Supporting Justice: A Report on the Pro Bono Work of America’s Lawyers*\textsuperscript{13} suggests the need for more effective strategies to overcome obstacles to lawyer participation in pro bono. Some of the obstacles to doing pro bono noted by those surveyed, including lawyers from large law firms, include lack of time, billable hour expectations, and the lack of specific expertise or skills in the required practice area.

An ongoing study of over 5,000 young lawyers\textsuperscript{14} indicates that those working in large firms report the highest levels of satisfaction with compensation but much lower levels of satisfaction with the work they do and other aspects of their work environment, including longer hours, a lack of independence and responsibility, and insufficient opportunities to connect their work with broader social issues.

Not surprisingly, these factors contribute to relatively high rates of attrition among larger firms. Given the substantial investment these firms make in recruiting and training young lawyers, these attrition rates carry a substantial cost.\textsuperscript{15}

The Commission believes that the opportunity to perform pro bono services can help law firms stem attrition. Pro bono work provides attorneys with a sense of responsibility, autonomy and accomplishment, and offers earlier professional skills development and client contact opportunities that may otherwise be unavailable in many large firms.

In this and other ways, pro bono benefits not only the lawyers who perform these services but also the law firms that employ them. Much has been written about the value to law firms of organized, committed and active pro bono programs. Those benefits include enhanced opportunities for recruiting the top law school graduates, providing training and professional

\textsuperscript{11} The Law Firm Pro Bono Challenge\textsuperscript{SM}, first instituted in 1993, has played a leading role in encouraging law firms to commit to a series of policies and practices closely related to those recommended here. See www.probonoinst.org for more information about the Pro Bono Challenge, including a list of participating firms.
\textsuperscript{12} Id.
\textsuperscript{13} FN 6, Id.
\textsuperscript{14} FN 5, Id.
\textsuperscript{15} “According to [ABA President] Greco, if an associate leaves a firm after one to three years of service, the firm is out the hundreds of thousands of dollars it has spent to recruit and train him. More pro bono means a lower associate attrition rate for law firms, which will more than offset the loss of billable hours, Greco argues. *Stephanie B. Goldberg*, *Restoring Lawyers as Public Servants*, 34 *Student Lawyer*, March 2006.
There are many different methods and models that firms have used to successfully implement a culture of pro bono. Based on its examination of these successful approaches, the report recommends that firms adopt written policies and practices that support and reward pro bono work, including policies and practices that:

- **Count pro bono hours as billable hours.** It is essential that pro bono hours be counted as billable hours and that they also count, like hours spent on client work, toward annual billable hours targets, requirements or expectations. The failure to treat pro bono hours as billable hours sends a signal that the firm does not truly value and support this work,

- **Consider attorneys’ commitment to pro bono activity as a favorable factor in advancement and compensation decisions.** If a pro bono culture is to flourish, the attorneys who engage in pro bono work need to know that their efforts will be viewed favorably by the firm when the time comes to make advancement and compensation decisions.

- **Set annual goals regarding the number of hours contributed through firm pro bono programs and the number of attorneys who participate.** By setting goals, firms can continually monitor participation while demonstrating their commitment to pro bono and public service to their lawyers, clients and prospective recruits.

- **Establish and maintain systems that ensure that firm pro bono programs are managed effectively, that participating attorneys receive training and guidance, and that the highest levels of firm management oversee and participate in their programs.** Law firms need a structured program, supported by the highest levels of firm management, which not only demonstrates the level of the firm’s pro bono commitment but ensures an organized and cohesive approach to maximize the program’s success.

- **Support the pro bono commitment and involvement of senior and retired lawyers.** As lawyers near the age when they are ready to retire or wind down the practice of law, having the support of the law firm to do pro bono work provides added incentive for them to stay engaged. In addition, these lawyers can serve as mentors for younger lawyers in the firm who take on pro bono assignments.

- **Report to law school placement offices specific information regarding their pro bono policies, practices and activities.** More and more law students want to know what pro bono opportunities they will have with a prospective employer. Full disclosure of a wide range of information about a law firm’s pro bono activities will provide incentives for law firms to meet their goals in order to favorably compare with firms competing for the best and the brightest law school graduates.

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These strategies serve the interests of America’s law firms by providing lawyers with active, meaningful and rewarding opportunities that improve society and enrich their professional lives.

III. Strategies for Promoting Pro Bono Participation by Lawyers in Corporate Law Departments

Research demonstrates that active corporate citizenship is critical to business success. Many Americans report that they feel a company’s image in the community is important: they factor social responsibility into their investment decisions and would switch their allegiance to a company involved in a good cause. Corporations have many strategies available to them for achieving their corporate citizenship goals. For lawyers in corporate law departments, one critical strategy involves pro bono work, which enables companies to effectively combine the donation of product and employee time.

A well designed pro bono program can enhance a company’s philanthropic initiatives to increase its impact in the community while fulfilling internal objectives that ultimately strengthen the company’s performance. Those objectives include enhancing lawyer recruitment, development and retention, facilitating internal communication, and fostering innovation. A successful pro bono program also can strengthen a company’s relationship with partner organizations.

In addition to the impact a pro bono program can have on a corporation’s overall status in its community, integrating pro bono work into the company’s business practice provides job satisfaction for attorneys in the legal department and an incentive for potential recruits. Pro bono service creates an opportunity for attorneys to hone their legal skills, as well as such other essential skills as communication, collaboration, team building and creative thinking. With respect to recruitment, corporations competing for top candidates from leading law schools and law firms often find that the opportunity to do pro bono and public service work is a significant inducement.

There has been a substantial increase in organized corporate pro bono activities in recent years. National organizations including the American Bar Association, the Pro Bono Partnership and Corporate Pro BonoSM (CPBO -- a project of the Pro Bono Institute and the Association of Corporate Counsel) have helped to develop resources, model programs and policies, awards programs and more. State, local, diversity and specialty bars have also developed resource,

17 The Commission recognizes that many smaller corporate law departments may not have the numbers of lawyers or infrastructure needed to carry out the recommendations of the Pro Bono Policies and Procedures set forth in 121A. Such departments are urged to undertake the steps recommended for solo and small law firms as described in part I of this report.
20 Id.
21 Corporate Citizenship Company, www.corporate-citizenship.co.uk/
22 For example, in the fall Corporate Pro BonoSM will be launching the CPBO Corporate Pro Bono ChallengeSM. See, www.cpbo.org/challenge/
referral and project opportunities for their corporate law department members and constituents. In addition, pro bono programs across the country have identified corporate lawyers as an important untapped resource that is available to make significant pro bono contributions.

With the appropriate training, mentoring, oversight and resources, corporate lawyers can serve as pro bono counsel in a wide range of cases in areas as diverse as domestic violence, landlord/tenant law, consumer issues and civil rights. Other opportunities for corporate pro bono work include placement of a general counsel staff "extern" in a legal services office and providing advice in areas in which corporate counsel have special expertise, such as immigration, intellectual property, employment and human resources.

In addition, corporate lawyers have expertise that is relevant to the legal needs of not-for-profit organizations and community groups that promote the public interest, including organizations that supply affordable housing, foster economic growth in disadvantaged neighborhoods, promote a safe environment, and provide necessary services, such as day care, literacy assistance, substance abuse programs, counseling, emergency shelters and hunger relief. Most have very limited financial resources and are not able to hire an attorney without sacrificing client services.23

Corporate leaders have used a number of successful approaches to implement a culture of pro bono. Based on its examination of these successful approaches, the report recommends that corporate law departments adopt written policies and practices that support and reward pro bono work, including policies and practices that:

- counting pro bono hours as billable hours (if attorneys are expected to meet targets for billable hours);
- considering attorneys’ commitment to pro bono activity as a favorable factor in advancement and compensation decisions;
- setting annual goals regarding the law department’s pro bono commitment including, as appropriate, the number of hours contributed, the number of lawyers and legal department staff to be involved, and the number of cases to be handled;
- establishing and maintaining systems that ensure that law department pro bono programs are managed effectively, that participating attorneys receive training and guidance, and that the highest levels of law department management oversee and participate in their programs; and
- supporting the pro bono commitment and involvement of senior and retired lawyers
- reporting to law school placement offices specific information regarding their pro bono policies, practices and activities.

By adopting these policies and practices, corporate law departments can play a critical role in serving the needs of their communities.

IV. Strategies for Promoting Pro Bono Participation by Lawyers in Government Offices

It is a widely-held belief that government attorneys are prohibited from doing pro bono work, either because of bar rules or because of perceived conflicts of interest. This is a myth, albeit a particularly persistent one. In actuality, while they must comply with some special rules and restrictions, thousands of federal, state and local government lawyers have contributed their time and talents to pro bono service, and they are actively encouraged to do so.24

Federal Agencies:

Although the ABA Rules of Professional Conduct and most state bar rules have long made pro bono service a component of lawyers’ professional responsibility,25 coordinated efforts to promote pro bono work among federal government attorneys only began in 1996, with President Clinton’s issuance of Executive Order 12988.26 The Executive Order directed federal agencies to develop policies to enable their attorneys to do pro bono work, and instructed the Attorney General to “coordinate efforts by Federal agencies to implement” the order. The President’s Executive Order not only endorsed pro bono but made it a component of federal service.27

After the Executive Order was issued, a number of agencies, including the Department of Justice, instituted pro bono policies to provide guidance to their attorney employees. Attorney General Janet Reno convened an Interagency Pro Bono Working Group (the Working Group) to assist agencies in developing pro bono policies and otherwise complying with the Executive Order. Since that time, the Working Group has assisted many agencies in adopting formal pro bono policies and actively encouraging pro bono work.28

State, Territorial and Local Agencies:

Across the country, government attorneys constitute a large pool of potential volunteers. Pro bono programs and government agencies at the state, territorial and local level are designing new ways and opportunities for engaging them in pro bono and public service work.

As in the federal government, support for pro bono participation at the highest levels and the institution of clear policies at the state, territorial and local level, have eased many former barriers to pro bono. For example, the Attorney General in Maryland established a Pro Bono

24 The ABA Government and Public Sector Lawyers Division has developed a web site providing their members and others with extensive information about government attorney pro bono. See www.abanet.org/govpub/probono.html.
25 See, for example, ABA Model Rules of Professional Conduct, Rule 6.1.
26 Executive Order 12988, Section 5(a) (February 5, 1996).
27 Id.
28 In 2005, John C. Cruden became the first government lawyer to serve as President of the District of Columbia Bar. Upon taking office, he wrote to the General Counsel of every federal government agency, urging each of them to promote pro bono service, develop pro bono policies, and provide a formal representative to the Working Group. At his request, ABA President Michael S. Greco sent a letter to every General Counsel expressing his support for President Cruden’s request. To date, 33 federal agencies have joined the Working Group.
Program Committee in 1989 to coordinate and oversee the Attorney General's Pro Bono Program. The Committee sets policy for the Program, provides administrative support, and resolves questions about potential conflicts of interest. Similar programs and policies have been adopted by the Attorneys General in Washington, Texas, New York, Pennsylvania and Ohio.

The involvement and support of bar associations and the legal services community has been critical; they have worked with government attorneys to develop volunteer opportunities tailored to the restrictions faced by government employees. Projects seek to accommodate government attorneys by providing opportunities outside of working hours, providing a location to meet with clients, or finding an area of law – such as children’s SSI claims – that does not present a conflict of interest. Examples include:

- A Model Pro Bono Policy and Procedures for Government Attorneys adopted by the Minnesota State Bar Association;
- Projects initiated by the King County Bar Association through which state agency attorneys provide advice on wage claims through Casa Latina, a day laborers’ organization, and prosecutors provide pro bono assistance at homeless clinics and women’s shelters;
- A program under which Florida Rural Legal Services refers cases to the public defender, which then places the cases with private pro bono attorneys;
- An initiative developed by Legal Services of North Florida to involve government attorneys in its homeless project, night clinic program, senior citizen center intake and advice clinic, and telephone hotline; and
- A brochure for government attorneys published by the New York State Bar Association that responds to questions and concerns about pro bono participation.

A corollary to the myth that government attorneys cannot do pro bono work is the belief that there is a vast array of laws and ethical requirements that prevent any meaningful contribution by federal, state, territorial or local attorneys. In fact, while various restrictions do exist, they can generally be accommodated. They fall into four general categories: conflicts of interest, acting in one’s individual capacity, use of official time, and use of official resources.

1. Conflicts of interest. In addition to general rules concerning conflicts of interest, a number of statutes and regulations govern attorneys’ pro bono participation. Most notably, federal law prohibits federal employees from representing a party before an agency or court of the federal government, with or without compensation, on a matter in which the United States is a party or has a substantial interest. Many states have similar statutes that limit what pro bono work an attorney can perform.

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29 Many legal service providers also offer training, mentoring, and sample pleadings to assist the volunteers, which is particularly important to government lawyers who have minimal resources available to them through their employer.
30 www.abanet.org/legalservices/probono/msba_gov_attorneys_probono.pdf
31 www.nysba.org/Content/NavigationMenu/Attorney_Resources/Pro_Bono/GovtBrochure.pdf
32 The absence of malpractice insurance is sometimes cited as an obstacle to government pro bono work, but this is seldom a problem in practice. Many legal service providers or bar associations are able to cover government attorneys who work in their programs or clinics with their existing malpractice insurance.
To ensure that these statues are not violated, government and military law offices must have systems in place that allow for a thorough conflicts check to ensure that pro bono matters do not present a conflict with the attorney’s work for the government or the appearance of such a conflict. While it is important that such procedures be followed, government attorneys doing pro bono work generally find that most of their prospective clients have legal issues which seldom implicate any conflict of interest concerns.

2. Individual capacity. Government attorneys must assure that their pro bono clients understand that they are acting in their private capacity. For instance, federal attorneys must make clear to anyone involved in a pro bono matter that they are acting in their individual capacity and not as a representative of the government. The attorney may not use his or her official business cards, agency letterhead, or any other official paperwork which could give the appearance that he or she is acting on behalf of the government.

3. Use of official time. Federal attorneys must use vacation time, take leave without pay, or work out an arrangement with their supervisors for administrative leave or compensatory time when they must work on a pro bono matter during business hours. This rule may discourage some federal attorneys from taking on pro bono work, but there are many pro bono opportunities which do not require work during business hours and therefore may be especially suitable for government attorneys. In addition, administrative leave may be appropriate when the pro bono work provides experience, education, or knowledge relevant to the attorney’s daily work. Some state and local governments have comparable restrictions on the use of official time; others may not.

4. Use of official resources. Most government employees have restrictions on their use of office materials for other than official purposes, although many agencies have promulgated regulations which authorize employees to make local calls or use other office resources for personal purposes as long as the cost to the government is negligible. Similarly, although a government attorney cannot require his or her support staff to assist in pro bono efforts, government secretaries and paralegals frequently volunteer their own time and talents.

5. Bar membership. Some government attorneys encounter are not members of the bar in the jurisdiction in which they are engaged in their government practice. The District of Columbia Court of Appeals has adopted an unauthorized practice of law rule (Rule 49) which permits attorneys employed by the government who are not members of the District of Columbia Bar to provide pro bono services under appropriate supervision (and with a referral by a legal services provider). This Rule has dramatically assisted in the expansion of pro bono government service in the District of Columbia, while assuring quality representation.

34 5 C.F.R. 2635.802
35 5 C.F.R. 2635.702.
36 As pro bono work has become more mainstream in government offices, many government supervisors have been willing to work out special arrangements with attorneys doing pro bono work in order to make it easier for them to do so. For example, if the attorney needs to be in court one morning, he or she is often permitted to make up those hours on other days of that week.
37 5 C.F.R. 2635.704.
38 See, for example, 5 C.F.R. 3801.105 (Supplemental Standards of Ethical Conduct for Employees of the Department of Justice).
In summary, although government attorneys are subject to some special limitations, those limitations do not preclude them from engaging in pro bono work. Once they have determined that they are in compliance with agency policies, they can participate in a wide range of pro bono activities, from family law and housing cases to employment and probate matters that fit their interests and requirements. Some of the opportunities do not require any work during business hours, such as the clinics which operate during lunch or on weekends or matters which involve meeting with the client at a mutually convenient time.

**Conclusion**

The need for legal services for the poor continues to grow at a time when the ability of lawyers to respond is more and more constrained by the demands of modern legal practice. The profession must address this challenge—not only for the sake of those in need, but for the well-being and fulfillment of lawyers themselves.

To meet this challenge, law firms, corporate law departments and government offices must have the support and assistance of bar associations and legal services organizations. Such entities offer a range of services to enable attorneys to undertake and carry out pro bono projects, including training, mentoring, malpractice insurance, and referrals.

As Tanya Neiman, the late director of volunteer legal services for the Bar Association of San Francisco, wrote: “If the true power of pro bono were to be unleashed across the country, a potential army of advocates would be mobilized to not only help address the vast gap in unaddressed client need, but also to create a greater quality of life for everyone.”40

The solution must begin with the decision-makers in America’s law offices. Their leadership can usher in a true renaissance of idealism in the legal profession, in which lawyers are not only encouraged to volunteer their skills to those in need but are given the time and resources to do so.

Respectfully submitted,

Mark D. Agrast, Chair
Commission on the Renaissance of Idealism in the Legal Profession

August 2006

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39 Rules and policies associated with gaining approval, avoiding conflicts of interest, using government equipment, and complying with ethical standards of conduct can be found online at www.abaprobono.org and www.probono.net/dc among other sites.

40 *MIE Journal* (Spring 2005)
121A

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations

Submitting Entity: Commission on the Renaissance of Idealism in the Legal Profession

Submitted By: Mark D. Agrast

1. **Summary of Recommendation(s).**

   The recommendation urges solo and small firm attorneys, larger law firms, corporate law departments and government and military law offices to encourage their lawyers, partners as well as associates, to service their communities through pro bono and public service activities consistent with applicable state rules of professional conduct. 121A also encourages bar associations and legal services programs to develop and provide support and assistance to lawyers and to law offices with their pro bono efforts. It specifically urges larger law firms, larger corporate law departments and government and military law offices to adopt effective strategies to provide their lawyers with opportunities to do pro bono work and to adopt specific internal policies and procedures to support such work.

2. **Approval by Submitting Entity.**

   The Commission on the Renaissance of Idealism approved the recommendation in March 2006.

3. **Has this or a similar recommendation been submitted to the House or Board previously?**

   No.

4. **What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?**

   A resolution was adopted by the House of Delegates at the Annual Meeting in 1988 that recognized and supported the professional obligation of all attorneys to devote a reasonable amount of time, but in no event less than at least 50 hours per year, to pro bono and other public service activities. The resolution urged law firms and corporate employers to promote and support the involvement of associates and partners in pro bono and public service activities and urged law schools to adopt a policy under which they would request law firms recruiting on campus to provide a written statement of its policy, if any, concerning the involvement of its attorneys in such activities. Much of that resolution was supplanted by the House’s adoption of ABA Model Rule 6.1 in 1993 (with revisions in 2003). There is no ABA policy that speaks directly to the strategies government and military law offices should pursue to provide opportunities for lawyers to do pro bono work.
The present resolution is very specific and directive relating to the manner in which solo and small firm lawyers, larger law firms, corporate law departments and government and military law offices can and should participate in pro bono activities. It does not duplicate the 1988 resolution, Model Rule 6.1 or any other ABA policy.

5. **What urgency exists which requires action at this meeting of the House?**

The Commission on the Renaissance of Idealism in the Legal Profession was appointed to carry out one of ABA President Mike Greco’s initiatives during his term. The Commission is submitting this resolution and two others to the House of Delegates at the 2006 ABA Annual Meeting to build on, expand and fill in gaps in current ABA policy relating to legal employer and legal institution support for and commitment to pro bono.

6. **Status of Legislation.** (If applicable.)

Not applicable.

7. **Cost to the Association.** (Both direct and indirect costs.)

None.

8. **Disclosure of Interest.** (If applicable.)

Not applicable.

9. **Referrals.**

The ABA Standing Committee on Pro Bono and Public Service voted to co-sponsor this resolution at its April 2006 meeting.

Co-sponsorship has been sought from: General Practice Section, Litigation Section, Law Student Division, TTIPS, Senior Lawyers Division, Young Lawyers Division, SCLAID, Standing Committee on Delivery of Legal Services, Law Practice Management and, to date, SCLAID and the Senior Lawyers Division have also agreed to co-sponsor.

10. **Contact Person.** (Prior to the meeting.)

Mark D. Agrast  
Chair, Commission on the Renaissance of Idealism in the Legal Profession

Steven B. Scudder  
Counsel, Standing Committee on Pro Bono and Public Service
11. **Contact Person.** (Who will present the report to the House.)

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