Pro Bono Project Development: A Deskbook for Government & Public Sector Lawyers was published is 1998, therefore, it may contain some outdated information. We are in the process of updating and revising it and will publish the revised edition on this website in the near future.
Pro Bono Project Development:

A Deskbook for Government and Public Sector Lawyers

A JOINT PROJECT OF THE GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION AND THE STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE

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This manual has not been reviewed by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing policy of the American Bar Association.

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Pro Bono and Public Service
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Foreword

"Injustice anywhere is a threat to justice everywhere."
--Martin Luther King

The American Bar Association has committed itself as an institution to equal justice under law through Goal II of the Association: “To promote meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition.” In 1993, the American Bar Association adopted Model Rule of Professional Responsibility 6.1, which established for each attorney an aspirational goal of 50 hours of pro bono service a year to persons of limited means. Both the ABA’s Government and Public Sector Lawyers Division and the Standing Committee on Pro Bono and Public Service recognize the ongoing efforts of local, state and federal government employees who are working to develop opportunities for pro bono service for government attorneys so that all may fulfill their ethical responsibility.

This deskbook has been developed to assist government offices and pro bono programs that work with government offices to create effective pro bono policies and projects for government attorneys. The deskbook identifies the key issues involved in the development of a government attorney pro bono project and includes examples of federal, state, and local policies and procedures that address those issues and provides the foundations for successful projects.

Principal staff support for compiling this deskbook has been provided by Cassie Diaz-Bello, Assistant Staff Counsel for the Center for Pro Bono. Contributing authors include: Pamela M. Kane, Marjorie S. McCoy, Tamara L. Miller, Mary M. O’Lone, Cynthia Rapp, Gerald S. Schatz, and Nancy G. Miller. Substantive editorial assistance was provided by Cynthia Rapp, Vice-Chair of the Government and Public Sector Lawyers Division and Deputy-Chair of the Pro Bono Committee, Dan Collopy and David DeVries, Members of the Government and Public Sector Lawyers Division, Dick Lynch, Director, and Susan Kidd, Associate Director of the Government and Public Sector Lawyers Division, Robert N. Weiner, Scott Atlas and James Dimos, members of the Judiciary/Government Attorney Subcommittee of the Standing Committee on Pro Bono and Public Service, Nancy Miller, Member of the Center for Pro Bono Council, Steven Scudder, Committee Counsel to the Standing Committee on Pro Bono and Public Service, and Bonnie Allen, former Counsel to the Center for Pro Bono.

This deskbook is a joint project of two entities: the ABA’s Government and Public Sector Lawyers Division and the Standing Committee on Pro Bono and Public Service. We are pleased to present this deskbook and hope that it will help others develop pro bono policy, aid in the implementation of pro bono projects, and be a factor in the advancement of the national ideal for equal access to justice.

Honorable Judith M. Billings  
Chair, ABA Standing Committee on Pro Bono and Public Service  
Daniel L. Skoler  
Chair, ABA’s Government and Public Sector Lawyers Division
Definitions

"Meaning does not truly reside within the word but in the minds of those who hear or read it."
-- Webster’s Ninth New Collegiate Dictionary

Component
The term “component” describes different divisions, departments, or offices of the Justice Department, e.g. Office of Policy Development, Civil Division.

Government Attorney
The term “government attorney” describes any lawyer employed by local, state, or federal, offices or agencies including military and public defender offices.

Government Office
The term “government office” describes any local, state, or federal, lawyers, offices or agencies or other public law office such as a public defender or military law office.

Program
The term “program” describes an established bar association, legal services or independent pro bono program that provides intake, screening, and placement of pro bono cases in the community.

Project
The term “project” describes an attorney volunteer project that is set up within the government office. The project may or may not include organizing specific pro bono activities. Also referred to as an “in-house government attorney pro bono project.”
Introduction

"Happiness is the utilization of one's talents along lines of excellence."

-- Aristotle

The American people are showing renewed responsiveness to community needs and a willingness to share both their time and financial resources. A 1990 Gallup survey indicated that "Americans are showing a new spirit of caring, evidenced by sharp increases in giving and volunteering among most segments of society, a growing positive attitude toward community service, and a swelling majority of the baby boom generation giving time and money to charitable causes." Government and public sector offices have sought to promote and nurture this spirit of public service. For example, Attorney General Janet Reno's Department of Justice (DOJ) Policy Statement on Pro Bono Legal and Volunteer Services, adopted on March 6, 1996, pursuant to President Clinton's Executive Order 12988, encourages Department employees -- who already devote their professional lives to public service -- to set a personal goal of at least 50 hours per year of pro bono legal and volunteer service. President Clinton reiterated the government's commitment to service in a memorandum dated April 22, 1998 which directed Federal departments and agencies to explore additional ways to expand service opportunities for Federal employees. During this period of increased volunteerism, there are opportunities to develop pro bono service activities for government and public sector attorneys.

To assist in the development of pro bono service activities for government and public sector attorneys, the American Bar Association has compiled this deskbook. It is based on first-hand experiences and expertise of many who have created pro bono projects for government attorneys. The deskbook is a practical guide for establishing new projects, an additional aid and reference source for existing projects, and a basic overview for those whose projects are still in formation. It includes policies, ideas, examples and materials adaptable to the unique needs and resources of different government offices.


3 A complete copy of the DOJ policy can be found under tab 7.

4 President Clinton's Memorandum for the Heads of Executive Departments and Agencies can be found under tab 14.
What is pro bono legal service?

"Each time we ask more of ourselves than we think we can give ... and then give it ... we grow."

--Cicero

In 1993, the ABA House of Delegates adopted revisions to Model Rule of Professional Conduct 6.1. A central objective of the revised Model Rule 6.1 was to provide specific guidance to lawyers regarding the amount of pro bono service to which they should aspire annually. Another goal was to make clear that the principal obligation was to perform pro bono legal services for persons who cannot afford to pay for them. Work on law reform or legal services for worthwhile organizations that cannot afford to pay, while also important, received lower priority.

The ABA defines pro bono in Rule 6.1 of the Model Rules of Professional Conduct which states:

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
(2) delivery of legal services at a substantially reduced fee to persons of limited means; or
(3) participation in activities for improving the law, the legal system or the legal profession.5

The language of 6.1 is broad enough to include pro bono work that involves litigation and other forms of direct client representation, as well as the following: public education about legal rights; training new pro bono attorneys; mentoring those who represent persons of limited means; community law programs; assistance to legal aid agencies; mediation; assistance to civil rights and civil liberties organizations; law reform work; and, organized bar activities to improve the legal system.

At the time of publication, 13 states had adopted the revised version of Model Rule 6.1 and it was pending in two others. Two states have no rule, and in many other jurisdictions the rule concerning what constitutes pro bono is vague. As a result, there is no universal definition of pro bono. For this reason, many organizations including bar associations or government departments or offices have adopted their own policies defining pro bono. For example, the Department of Justice Policy Statement on Pro Bono contains a definition that encourages the provision of legal services to persons of limited means, but includes all legal services provided without compensation.6 On the other hand, the State of Florida Attorney General Policy defines two types of approved uncompensated legal representation. The first is pro bono legal services or activities that directly relate to the legal needs of the poor. The second involves uncompensated representation of private individuals, such as family members or friends or nonprofit organizations like neighborhood associations, or community educational or recreational organizations. Both policies are subject to prior approval from a supervisor and a conflicts check, and both must be performed on the attorney’s own time. Attorneys should check their state’s ethical rules on pro bono, the bar association’s stated policy, and the organization’s policy if one exists.

Why should government and public sector attorneys have pro bono projects?

There are many good reasons why government attorneys should perform pro bono work. First, the unmet legal needs of lower-income persons in this country continue to mushroom. Attorneys, including government lawyers, are the ones best suited to deal with this legal need. Second, even though government lawyers are already involved in public service broadly, they still have a specific pro bono responsibility to provide legal services to the poor, as do all other lawyers. Third, it is personally satisfying and professionally rewarding to help others in need. Pro bono cases often help government attorneys develop new skills. Because many government

5 For a copy of the Commentary to Model Rule 6.1 and the accompanying Report to the ABA House of Delegates, see tab 1.

6 See Department of Justice Policy at II(A) in Chapter 3.
attorneys generally do not represent individual clients, pro bono cases offer the opportunity to deal with individual problems and the kinds of legal issues that they otherwise might never see. Successful pro bono programs by a government office can increase the camaraderie of the attorneys and their pride in the agency as they achieve concrete results that help people in need.

The President of the United States has encouraged pro bono service by federal attorneys. Executive Order 12988, Section 2, issued on February 5, 1996, provides that "all Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer services by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline." In addition, President Clinton recently sent a memorandum to the Heads of Executive Departments and Agencies encouraging community service. Attorney General Reno has amplified the President’s commitment. She stated "[T]he Department further strives to increase access to justice for all and to strengthen our communities. To this end, I encourage all Department employees to join me in setting a voluntary, personal goal of at least 50 hours per year of pro bono legal and non-legal volunteer service." Other federal agencies have followed suit.

Several state attorneys general support pro bono participation. In Maryland, the Attorney General J. Joseph Curran, Jr. initiated the Pro Bono Representation Program ten years ago. In a memorandum announcing the program and policy guidelines, Attorney General Curran thanked attorneys for their support of his efforts to establish a pro bono program that permits attorneys to provide free legal assistance to the needy. He stated, "I believe our pro bono program is an exciting additional contribution [that] this office can make to our State, and I hope to see you at one of our upcoming information meetings." More recently, in 1997, the attorney general in New York, Dennis C. Vacco, finalized his office’s policy. He disseminated a copy of the new office pro bono policy with a letter strongly encouraging these activities:

Given the significant need for legal pro bono and other community services in New York State, and in furtherance of our shared ethical obligation to the community, I have asked the Attorney General’s Advisory Council to form an ad hoc pro bono committee to assist me by identifying, selecting, and implementing specific statewide pro bono programs. As the State’s chief legal officer, I encourage and support efforts by assistant attorneys general to provide pro bono legal and volunteer services that are consistent with applicable state statutes and regulations governing conflict of interest and outside activities.

7 The memorandum from President Clinton can be found under tab 14.

8 A complete copy of the Attorney General Janet Reno’s memorandum can be found under tab 7.

EXCEPT AS EXPLICITLY NOTED, THE VIEWS
EXPRESSED HEREIN HAVE NOT BEEN CONSIDERED BY
THE HOUSE OF DELEGATES OR THE BOARD OF
GOVERNORS OF THE AMERICAN BAR ASSOCIATION
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THE AMERICAN BAR ASSOCIATION

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON LAWYERS' PUBLIC SERVICE RESPONSIBILITY
SECTION OF LITIGATION
SECTION OF TORT AND INSURANCE PRACTICE
YOUNG LAWYERS DIVISION
STATE BAR OF CALIFORNIA
MINNESOTA STATE BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopt revisions to Model Rule of Professional Conduct 6.1 and its Comment to read as follows:

RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
   (1) persons of limited means or
   (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:
   (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public
rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment

Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government attorneys, even when restrictions exist on their engaging in the outside practice of law.

Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means.

Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the
meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b).

Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono attorney to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

Paragraph (b)(2) covers instances in which attorneys agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.
REPORT

I. Introduction

In 1991, the House of Delegates last considered and reaffirmed its 11 goals for the American Bar Association, the second of which is "promoting meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition." It is a noble goal and one the Association has espoused for many years, as evidenced in part by its numerous pronouncements on the responsibility of all lawyers to engage in pro bono service. One objective of the proposed revision to Rule 6.1 is to bring together the essence of those many Association pronouncements and incorporate them into the Model Rules of Professional Conduct. By doing so, the Association will provide more guidance to individual attorneys who turn to the Model Rules to determine the standard of conduct that is expected of them.

Another goal of the revision is to provide a meaningful response to the crisis that exists in the delivery of legal services to the poor. The enormous unmet need for legal services among the poor has been well documented in numerous legal needs studies conducted across the country. The studies illustrate that the failure to obtain counsel can have a devastating impact on the poor because their legal problems often involve basic human needs such as food, shelter, medical care and physical safety. The proposed revision's emphasis on service to persons of limited means represents a recognition of the seriousness of this problem and demonstrates the Committee's belief that the bar must play an active part in solving it.

II. Background

A. Previous ABA Pro Bono Pronouncements

The American Bar Association has long recognized the responsibility of lawyers to engage in pro bono activities. As early as 1908, Canon 4 of the ABA Canons of Professional Ethics was adopted which provided that "a lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason and should always exert his best efforts in his behalf."

In 1969, the Association adopted the Model Code of Professional Conduct which clearly articulated each lawyer's ethical responsibility to perform pro bono service. Specifically, EC2-25 stated that the "basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer... Every lawyer, regardless of professional prominence or professional work load, should find time to participate in serving the disadvantaged."

Six years later, the ABA House of Delegates further promoted pro bono service by passing a resolution that has become known as the "Montreal Resolution." It provided that "it is the basic professional responsibility of each lawyer engaged in the practice of law to provide public interest legal services." Furthermore, it defined public interest
legal services as "service provided without fee or at a substantially reduced fee, which falls into one or more of the following areas:

1. Poverty Law: Legal services in civil matters and criminal matters of importance to a client who does not have the financial resources to compensate counsel.

2. Civil Rights Law: Legal representation involving a right of an individual which society has a special interest in protecting.

3. Public Rights Law: Legal representation involving an important right belonging to a significant segment of the public.

4. Charitable Organization Representation: Legal service to charitable, religious, civic, governmental, and educational institutions in matters in furtherance of their organizational purposes, where the payment of customary legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.

5. Administration of Justice: Activity, whether under bar association auspices, or otherwise, which is designed to increase the availability of legal services, or otherwise improve the administration of justice."

The policy expressed in the Montreal Resolution was incorporated into the Model Rules of Professional Conduct which were adopted in 1983. Specifically, Rule 6.1 states in part that "a lawyer should render public interest legal service." However, Rule 6.1 does not define the term "public interest legal service" as explicitly as the Montreal Resolution does. Rather, some portions of that definition appear in the Rule, some in the Comment and some not at all. (See the Appendix for the complete text of Rule 6.1 and Comment.)

The most recent statement by the House of Delegates on pro bono service can be found in a resolution adopted in 1988 which is known as the "Toronto Resolution." It urges all lawyers "to devote a reasonable amount of time, but in no event less than 50 hours per year, to pro bono and other public service activities that serve those in need or improve the law, the legal system or the legal profession." Because this resolution was adopted five years after the adoption of Rule 6.1, the policy it sets forth is not reflected in any part of the present Rule.

In several states, amendments to the ethical rules or ethical codes have recently been adopted or proposed that incorporate the Toronto Resolution or variations of it. For example, in 1990, the Arizona Supreme Court amended its version of Rule 6.1 to include a 50 hour annual voluntary pro bono standard. In 1992, the Kentucky Supreme Court also incorporated into its Rule 6.1 a 50 hour annual voluntary standard, specifying that all 50 hours should be rendered in service to persons of limited means. The Supreme Courts of both Florida and Georgia are currently considering amendments to their ethical rules regarding pro bono service that would add an hourly annual voluntary standard and emphasize service to persons of limited means. In Florida, the Court has endorsed the concept of amending its rule to include a 20 hour annual voluntary
standard of pro bono service to the poor, although specific language has not yet been approved. In Georgia, the Court is considering a proposal by the State Bar of Georgia to amend EC-2-25 of the State Bar Rules, which addresses pro bono participation. The proposed amendment would add a 40 hour annual voluntary pro bono standard, with 20 of the 40 hours being devoted to work involving the direct provision of legal services to the poor, without an expectation of compensation.

Given the growing trend to quantify within the ethical rules the amount of annual pro bono service expected of lawyers, the Association should assume a leadership role on this issue. It can do so by incorporating into Model Rule 6.1 an annual hourly aspirational standard such as that set forth in the Toronto Resolution.

B. The Current Crisis In the Delivery of Legal Services To The Poor

As our society has become one in which rights and responsibilities are increasingly defined in legal terms, access to legal services has become of critical importance. This is true for all people, be they rich, poor or of moderate means. However, because the legal problems of the economically disadvantaged often involve areas of basic need such as minimum levels of income and entitlements, shelter, utilities and child support, their inability to obtain legal services can have dire consequences. For example, the failure of a poor person to have effective legal counsel in an eviction proceeding may well result in homelessness; the failure to have legal counsel present at a public aid hearing may result in the denial of essential food or medical benefits.

The inability of the poor to obtain needed legal services has been well documented: since 1983, when Rule 6.1 was adopted, at least one national and 13 statewide studies assessing the legal needs of the poor have been conducted.1/ Of those studies reporting unmet legal need, there has been a consistent finding that only about 15%-20% of the legal needs of the poor are being addressed.2/ The legal need studies also confirmed that unmet need exists in critical areas such as public benefits, utilities, shelter, medical benefits and family matters.3/

One consistent recommendation that is found in those legal need studies that include recommendations is that the private bar increase its level of pro bono service to help meet the need. For example, the Massachusetts study recommends that, "private attorneys and bar associations in Massachusetts should continue to expand their activities in support of the delivery of free civil legal services to low income persons."4/ And in Maryland, it was recommended that bar associations "in coordination with legal services programs and others, expand private attorney pro bono delivery of civil legal assistance to low income persons through direct services, participation with legal services programs, training, community legal education, legal counsel to organizations serving low-income persons, and other appropriate approaches."5/

The Committee firmly believes that the private bar alone cannot be expected to fill the gap for service that exists among the poor. Rather, the federal government, through adequate funding of the Legal Services Corporation (LSC), should bear the major responsibility for addressing the problem. Although the federal government has never provided sufficient funding for the LSC, during the past decade funding has fallen even further, causing the crisis of unmet legal needs among the poor to be exacerbated.
Specifically, in FY 1981, the annual budget for LSC was $321 million, while in FY 1991, the annual budget was only $328 million. Given the fact that the consumer price index increased by well over 50% from 1980 to 1990 and that during that same time period the poverty population is estimated to have increased by 15.4%, funding for LSC is clearly inadequate.

The Association has consistently called upon the President, the Legal Services Corporation and Congress to support substantially increased funding for LSC so that sufficient resources for high quality legal services programs are available. Although the response to those requests has been inadequate, the Committee urges the Association to continue its efforts. In addition, the Association must again turn to members of the private bar and call upon them to help ease the crisis that exists in the provision of legal services to the poor. The Committee believes that one effective means of doing this is by revising Model Rule 6.1 to reflect a new emphasis on service to the disadvantaged. In Kentucky, such an emphasis has already been added to that state's Rule 6.1. Similar revisions are being considered in both Florida and Georgia. The Association can do much to further this important and valuable development by adopting the Committee's proposed revisions to Rule 6.1.

III. Discussion Of The Proposed Revisions to Rule 6.1

The Committee distributed its first draft of revisions to Model Rule 6.1 in March 1992. Three hearings were held on the proposed revisions at which testimony was received from many individuals and entities. In addition, numerous written comments were sent to and reviewed by the Committee. In drafting its final version of proposed revisions to Model Rule 6.1, the Committee carefully considered all of the comments provided to it and amended portions of its first draft to address the major concerns raised by the commentators. Those concerns included the lack of a buy-out, the lack of a collective satisfaction provision and the lack of flexibility in determining the number of hours of pro bono service to be rendered annually. Each of the changes made to current Rule 6.1 is discussed in detail below.

In order to clarify that Rule 6.1 remains a voluntary aspirational standard, the words "aspire to" have been added to the first sentence of the Rule. The first sentence also contains one of the most notable changes proposed to Rule 6.1: the addition of language that specifies the minimum number of hours of activity on an annual basis that would be necessary to fulfill the pro bono responsibility. The House of Delegates previously addressed this issue when it adopted the "Toronto Resolution" which calls upon each lawyer to render a minimum of 50 hours of pro bono service annually. The proposed revision incorporates that standard into the Rule, but places the number "50" in parentheses to indicate that each state may determine the specific hourly standard to be adopted in its own version of Rule 6.1. The Committee believes that while 50 hours is a reasonable standard, each state should retain the flexibility to determine the standard that is best for it, based upon local needs and local conditions. While some states may adopt an annual standard that is lower than 50 hours, some states may decide on a higher number, as Oregon did in adopting a pro bono resolution calling upon all lawyers to render 80 hours of pro bono service annually.
To address the crisis in the delivery of legal services to the poor, the proposed revision provides that a substantial majority of the annual hours of pro bono legal services should be rendered at no cost to persons of limited means or to organizations in matters which are designed primarily to address the needs of persons of limited means. The Committee purposely chose the words "substantial majority" to make clear that a simple majority of the hours would not suffice. While the Committee recognizes the value and importance of other types of pro bono activity, it strongly believes that due to the enormity of the unmet need for legal services that exists among the disadvantaged, the provision of legal services to that group must be given priority over all other types of pro bono service.

The Comment clarifies that the term "legal services" encompasses a wide range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The Committee is acutely aware of the special concerns of certain types of attorneys, such as government attorneys and judges, who, because of statutory or other restrictions, are unable to represent individual clients. Nevertheless, given the broad definition of legal services contained in the Comment, such attorneys may be able to fulfill their pro bono responsibility in other ways, such as by providing training or mentoring to those who represent persons of limited means at no cost.

"Persons of limited means" are those who qualify for service under paragraphs (a)(1) and (2). This term was deliberately chosen to afford some flexibility to the individual attorney in determining who is eligible for assistance under this section. As the Comment makes clear, it includes more than those individuals whose incomes place them within the LSC guidelines. For those who have incomes slightly above the guidelines, it permits the individual attorney to consider factors such as the availability of legal services in the area, the available resources of the individual and the emergency nature of the problem. Thus, individuals who are facing eviction and the prospect of homelessness and who need most of their financial resources to pay their rent and so cannot afford to hire counsel, but do not fall within the strict financial guidelines of the LSC, would be eligible for service under paragraph (a)(1).

The Comment clarifies that if an attorney fails to collect an expected fee, the legal services rendered do not qualify as pro bono service under paragraphs (a)(1) or (2). This is the case because often in such situations, the "bad debt" client is not of limited means. But more importantly, the intent to provide free service is an essential element of pro bono work. For that reason, a lawyer who intends to render pro bono service, accepts a case on a pro bono basis and is awarded statutory attorneys fees, is still considered to have rendered pro bono service. Examples of these types of situations may include employment discrimination cases in which statutory fees are received and post-conviction death penalty appeals in which fees are awarded under the Criminal Justice Act. In such cases, the Comment suggests that an appropriate portion of the fee should be contributed to organizations or projects that benefit persons of limited means, assuming that the attorney retains control over those fees. The appropriate amount of the contribution is a matter of individual conscience, but factors to be considered in determining the amount include the out of pocket costs assumed by the individual attorney, his or her overhead and the size of the recovery.
Because the intent to render pro bono service is a critical element in determining if the services provided are pro bono under paragraphs (a)(1) and (2), it is vital that the attorney clearly communicate that intent to the client at the beginning of the attorney-client relationship. The Committee believes that the best way to accomplish this is by executing a written document and urges all lawyers to do so.

As the Comment makes clear, it is possible to fulfill the annual pro bono responsibility exclusively through the provision of free legal services to persons of limited means or organizations that serve them. To the extent the entire responsibility is not satisfied in this way, the proposed revisions to Rule 6.1 provide a variety of ways in which to complete the commitment, all of which are encompassed within the current Rule.

Paragraph (b)(1) provides for a wide range of issues that can be addressed and a variety of organizations that can be represented in pro bono activities. This section directly incorporates the definition of "public interest legal services" that was adopted by the House of Delegates in the 1975 Montreal Resolution, with three exceptions. First, that definition included "poverty law" but, because poverty law activities are included in paragraphs (a)(1) and (2), they are not included in this section. Second, "civil liberties" claims are added because now that term has a distinct meaning from "civil rights" claims that may not have been as clear in 1975 when the resolution was adopted. Specifically, civil liberties refer to claims involving issues such as free speech and the separation of church and state, whereas civil rights claims most often refer to those involving discrimination based upon a particular classification or characteristic. Finally, the term "community" is added to the list of organizations that can be represented because the Committee believes that such groups provide valuable services, often on very limited budgets, and therefore should be included.

The activities described in paragraphs (b)(2) and (3), service to persons of limited means at reduced fees and participating in activities for improving the law, the legal system or the profession, are ones that are included in current Rule 6.1. Specific examples of work that qualifies under each of these paragraphs are included in the Comment.

Both the current version of the Comment and the proposed revision recognize that the ethical responsibility set forth in Rule 6.1 is an individual responsibility, personal to each lawyer. Nevertheless, as the new Comment makes clear, there may be times when it is not feasible for a lawyer to render pro bono service. Such times may include when a lawyer is serving as a judge, is prohibited by statute or regulation from engaging in the outside practice of law, or is physically or mentally infirm. Under these and similar circumstances, a lawyer may fulfill his or her pro bono responsibility by providing financial support to organizations that provide free legal services to persons of limited means. The Comment specifies that the contribution made should be reasonably equivalent to the value of hours that would have otherwise been provided.

The Committee believes that there may be times when it is more feasible to satisfy the pro bono responsibility collectively and that view is reflected in the new Comment. Forms of collective satisfaction may include a law firm’s decision to permit a small group of attorneys to devote many hours of pro bono time to a class action or its
"lending" a member of the firm to a legal services program for a set period of time. In addition, it may consist of lawyers in a corporate or government law office or a group of otherwise unaffiliated attorneys who join together to satisfy their pro bono responsibility collectively.

In addition to voluntarily rendering pro bono service, the revised Rule 6.1 calls upon every lawyer to voluntarily make financial contributions to organizations providing legal services to persons of limited means. In those cases in which a lawyer determines that it is not feasible to render legal services and makes a financial contribution instead, he or she is expected to make an additional contribution pursuant to the last sentence of the new Rule. The Committee firmly believes that given the severe crisis that exists in the delivery of legal services to the poor, lawyers should not only provide pro bono services directly, but also should help to financially support the very important work that is carried out by legal services programs throughout the country.

It is the Committee's intent that the ethical responsibility set forth in Rule 6.1 apply to all lawyers and not just those currently engaged in the practice of law. Thus, any reference found to that status in the existing Comment has been eliminated in the revised one.

Although neither the Rule nor the Comment explicitly so states, it should be self evident that every lawyer is expected to provide the same quality of legal services to pro bono clients as he or she would provide to paying clients. Thus, the ethical standard set forth in Model Rule 1.1 that, "a lawyer shall provide competent representation to a client," applies whether that client pays a fee or is represented on a pro bono basis. Therefore, to the extent that an attorney is unfamiliar with a given area of the law, he or she is expected to seek advice or training in that area before advising a client, either for a fee or on a pro bono basis. Many pro bono programs provide free training on a wide range of topics to assist their volunteer attorneys in attaining competency to handle the cases referred to them. The Committee strongly endorses the provision of these training events and urges pro bono attorneys to take advantage of them whenever possible.

Consistent with present Rule 6.1, the Comment to the revised Rule explicitly states that the pro bono responsibility is not intended to be enforced through the disciplinary process. Thus as drafted, revised Rule 6.1 does not mandate pro bono. Although the Committee recognizes that since 1988, mandatory pro bono proposals have been considered in many states and remain under active consideration in several of them, it nevertheless believes that it is not practical nor feasible at this time to address the issue of mandatory pro bono on a national level. Rather, the Committee views the question of mandatory pro bono as an issue that needs to be examined by state and local bar associations. Some communities might find mandatory pro bono helpful; others may determine it to be counterproductive.

The reporting of pro bono service is another issue that the Committee believes must be left to local decision makers. Only in Florida has the supreme court indicated that it will implement a system of mandatory reporting. The Kentucky Supreme Court
simply encourages all lawyers to voluntarily report their pro bono service and the Arizona Supreme Court did not address the issue of reporting in its approved revisions to Rule 6.1.

**IV. Conclusion**

Lawyers can play a critical role in helping to alleviate the crisis that exists in the delivery of legal services to the poor by providing additional pro bono services. The Committee believes that revising Rule 6.1 to include an annual hourly standard and a new emphasis on service to persons of limited means would send a powerful message to lawyers regarding that role, resulting in increased provision of legal services to the poor. In addition, it would further the Association’s goal of promoting meaningful access to legal representation of all persons regardless of their economic or social condition. For these reasons, the Committee urges that the revisions be adopted.

Respectfully submitted,

Robert E. Hirshon, Chair  
Standing Committee on Lawyers’ Public Service Responsibility

Louise A. LaMothe, Chair  
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Robert A. Guzy, President  
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February 1993
ENDNOTES


5. Action Plan for Legal Services to Maryland’s Poor, p. 34.


7. Id. at pp. 1, 2.
TAB

2
ADVISORY OPINION NO. 96-18

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 2, 1996

PUBLIC SERVANT SEEKING OPINION

State Bar Representative

OPINION SOUGHT

Is it a violation of the Ethics Act for government attorneys to handle pro bono cases for low income citizens?

FACTS RELIED UPON BY THE COMMISSION

All attorneys who practice law in West Virginia must be members of the State Bar which, pursuant to WV Code 51-1-4a(d), is part of the Judicial branch of State government serving as an administrative agency for the Supreme Court of Appeals of West Virginia. Attorneys must also comply with the Rules of Professional Conduct promulgated by the Supreme Court.

One of those Rules requires that lawyers provide pro bono services. It states that:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or at a reduced fee to persons of limited means or to public service or charitable groups or organization, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means. Rule 6.1 Pro bono publico service.

The official comment to this Rule states that:

Every lawyer, regardless of professional prominence or professional work load, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services....Every lawyer should support all proper efforts to meet this need for legal services.
The State Bar, in cooperation with private legal services programs in West Virginia, initiated a Pro Bono Referral Project. This program requests that lawyers volunteer their time and efforts to assist low income citizens with their civil legal problems. Presently, over seven hundred (700) West Virginia lawyers have agreed to handle at least one (1) civil legal case per year on behalf of low income citizens on a pro bono basis.

A State Bar representative inquires whether the Ethics Act would prohibit government lawyers from giving their time and effort on a free basis to pro bono cases for low income persons.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code 6B-2-5(f) provides in pertinent part that: [n]o present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant, or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the governmental agency, without the consent of the governmental agency: Provided that this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which such professional employee represented the government agency, but was involved only as a member of a class...

West Virginia Code 6B-2-5(g)(1) provides in pertinent part that... No full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;
(B) To support or oppose a proposed regulation;
(C) To support or contest the issuance or denial of a license or permit;

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(D) A rate-making proceeding; and
(E) To influence the expenditure of public funds.

ADVISORY OPINION

The requester inquires whether government attorneys may spend time and effort providing pro bono representation to low income individuals. As described by the requester, attorneys would provide legal services and representation to low income individuals in this State on a pro bono basis. The attorneys would provide such services without remuneration or compensation.

Pursuant to the Ethics Act, at WV Code 6B-2-5(b)(1), a public servant may not "use his or her office...for his or her own private gain or that of another person." However, this section contains a proviso which affords that the "performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain." (Emphasis Added)

The pro bono referral project does not compensate participating attorneys and is intended to advance the goal of providing access to legal services to those who would otherwise be unable to afford representation. Therefore, such activities would not be considered a use of public office for the private gain of another as set forth above.

This determination is supported by the legislative rules implementing the provision of the Ethics Act on private gain. See 158 CSR Series 6. For example, 158 CSR 6-8 states only that public employees "may not receive private compensation for performing private work during public work hours." As proposed by the requester, the pro bono activity would not result in private compensation to the government attorneys.

Also, all lawyers must comply with the Rules of Professional Conduct, which are promulgated and adopted by the Supreme Court of Appeals. Rule 6.1 mandates that "a lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations." Consequently, compliance with Rule 6.1 involves the advancement of public policy. The Commission notes that although this Rule establishes and recommends the provision of pro bono legal services, the Rule itself it is not intended to be enforced through a disciplinary process.

Therefore, the Commission finds that any private gain that may accrue to the disadvantaged person represented by a government attorney acting under a State Bar sponsored pro bono project would not be the type of private gain prohibited by WV Code 6B-2-5(b)(1).

There are, of course, some limitations to the type of pro bono cases which the government attorneys may litigate. For example, West Virginia Code 6B-2-5(f) would prohibit a public employee from representing a client, even without compensation, in a particular matter in which
the public servant personally and substantially participated in a decision-making, advisory or staff support capacity on behalf of his employing State agency. Also, a staff attorney who has represented a governmental agency in a particular matter can not thereafter represent another client in the same or substantially related matter if that client's interests are materially adverse to the interests of the governmental agency.

Further, West Virginia Code 6B-2-5(g)(1) provides that during the duration of the public service or for a period of six months after the termination of public service, a full-time staff attorney may not appear in a representative capacity before the governmental entity which he served. This provision is applicable only to those governmental agencies which are authorized to hear contested cases or promulgate regulations.

Although any pro bono activities engaged in by government attorneys would support the provision of legal services to the disadvantaged and would serve to advance public policy goals, these activities may never interfere with government attorneys' timely completion of all government job responsibilities. The Commission finds that insuring that pro bono activity by government lawyers does not impede prompt attention to government work is not an ethical question but rather a matter for management supervision within the agency.

Further, attorneys may be required to make up the time spent on a pro bono case if the case required attention during regular work hours. Most attorneys are professional rather than hourly employees. As such, the flexibility in their work schedule may allow the attorney to compensate the public agency for any time spent on a pro bono case during the normal work day, provided the employing agency consents to this arrangement.

The Commission notes that agencies are free to impose stricter standards on employees than those contained in the Ethics Act. Government attorneys desiring to meet their professional responsibility to provide pro bono services must first check with the appropriate agency official to ensure that the proposed activity will not be contrary to any agency policy and that the activity is undertaken in a manner that complies with agency guidelines.

De minimis use of public resources for pro bono cases would not be considered a substantial, material violation of the Ethics Act. See 158 CSR 6-4 and 6-5.2. However, approval of any specific uses of these resources must be left to the policies of the specific agency involved. Each agency is free to determine, in light of its resources, priorities, and activities, what would constitute an improper use of its public resources.
A prosecutor may establish a pro bono legal services program for the lawyer employees of the prosecutor's office.

Before accepting a pro bono assignment, the lawyer must perform an independent evaluation of whether the interests of the pro bono client present conflicts of interest.

It is misleading, and therefore improper, for the services or appearances by counsel in the pro bono program to be designated as cases or clients of the "prosecutor's office" if the pro bono program is not in fact an authorized legal duty of the public office.

References: MRPC 1.7(b), 1.9(c), 1.11(c), 7.1; RI-152, RI-249; MCL 552.45.

A prosecutor has asked about the ethical propriety of an office pro bono program. The pro bono services are only available to non-custodial parents who meet each of the following criteria:

1. The non-custodial parent must be entitled to visitation under an existing order of visitation entered by the circuit court.

2. The non-custodial parent must have consistently been refused and denied meaningful visitation with the minor child by the custodial parent, for reasons which are inappropriate or unfair.

3. The non-custodial parent must show a "demonstrated need" for participation in the program, in one of the following ways:

   (1) denied requested legal assistance from the local legal aid office. It is noted that legal aid has recently suffered significant reductions in resources.

   (2) exhausted efforts to seek low-cost legal assistance from the private bar, including referrals from the prosecutor's staff.

4. The non-custodial parent must demonstrate that he/she has faithfully provided financial support to his/her child(ren), and will continue to do so.

The facts provided state that an individual will not be eligible to participate in the program if the individual was the party in a divorce and/or child custody matter in which the prosecutor or any assistant prosecutor in the office represented the opposing party while in private practice.

The facts state that only non-custodial parent-clients are eligible. The policy directive establishing the program and interoffice memoranda provided by the inquirer include the inquirer's own beliefs that:

- "[O]ne major reason for the rise in juvenile crime is the growing number of children being raised in broken homes, or without the
meaningful presence of either a father or mother figure."

- "[A] boy's relationship with his father is basic, and that the benefit of a strong, affirming bond with 'Dad' is very powerful."

- "The pain of a lost, or non-existent, relationship with a father can last a lifetime."

- "The other most commonly voiced complaint, by non-custodial fathers, is that some custodial mothers too often unfairly deny visitation to divorced, or non-custodial, fathers for reasons which are not in the best interests of the child."

- "[F]athers have much to offer their sons, and that 'although any man can be a father, it takes a real special guy to be a Dad."

- "[T]his program has stringent guidelines and is only available to fathers with 'demonstrated need,' and is not intended to, in any way, compete with or take legal business away from, the members of the local private Bar Association."

- "That pro bono program . . . is only applicable to fathers who have visitation rights specifically granted by the court, and whose rights are being unfairly infringed upon, and/or denied altogether, by the custodial parent, for improper reasons."

The inquirer's program must also be examined under ethical prohibitions regarding conflicts. According to the inquirer's program guidelines, a non-custodial parent cannot participate if that parent was a "party in a divorce and/or child custody matter in which the current prosecuting attorney, or any assistant prosecuting attorney in the office, represented the opposing party while in private practice." That particular criterion may eliminate certain conflicts of interest arising from prior representation of an opposing parent, but it is not sufficient. There are other conflicts questions which should be addressed by the lawyers in the program, but need not be set forth in the program itself.

MRPC 1.11(a), (b) and (c) state:

"(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public office or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, unless:

"(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

"(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

"(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in
which the information could be used to the materials disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

"(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

"(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter . . . ."

Thus the proper ethical standard is whether the lawyer "participated personally and substantially in the matter" while in private practice. See RI-152. Also, the prosecutor may not represent a parent if the prosecutor previously participated personally and substantially in the matter, e.g. represented the child, unless "the appropriate government agency" consents.

The application of MRPC 1.11 to public officers was discussed in RI-249. In that opinion a part-time Friend of the Court referee shared office space with a lawyer who regularly handled domestic relations matters and a third lawyer who has been appointed Friend of the Court. In sorting through the ethics duties of the various practitioners, the opinion reasoned, in part, that under MRPC 1.11(a), the Friend of the Court may not represent a "private client in connection with a matter in which the lawyer participated personally and substantially as [Friend of the Court] unless the government agency consents after consultation".

MRPC 1.11(c) was discussed in RI-152, addressing conflicts when a former defense lawyer becomes a prosecutor. The prosecutor was disqualified from participation in any matter in which the lawyer "participated personally and substantially" as private practitioner, including but not limited to those matters in which the lawyer served as defense counsel. For example, if the prosecutor served as a witness at a line-up, the prosecutor "participated personally and substantially" even if the eventual defendant hired other counsel.

MCL 552.45 requires the prosecutor's office to represent the interests of children in a marriage. When the prosecutor has a legal duty to represent the interest of the child in a divorce proceeding, some of the prospective pro bono assignments may have to be declined. See RI-183. A pro bono policy which allows the prosecutor to take sides between the parents at all may be at odds to the prosecutor's duty to represent the interests of the child. MRPC 1.7(b) would be triggered, and the prosecutor's duty to represent the interests of the children may materially limit the prosecutor's ability to diligently represent the interests of either parent.

There may also be circumstances in which the prosecuting attorney formerly represented the child or the interests of the child in the same or a substantially related matter, such as a prior divorce in which custody or visitation is being challenged some months or years later. There may be circumstances in which the prosecutor gained protected information which could be used to the disadvantage of a child not wanting the existing order of visitation challenged or enforced, as the case may be. In these situations MRPC 1.9(c) would prohibit the pro bono representation; the prosecutor would not be able to use the information to the disadvantage of the child, and to refrain from using it would not be in the best interests of the parent.
We also note that lawyers participating in the inquirer's program list their appearance as on behalf of the prosecutor's office. Although the program is a pro bono effort developed by the prosecutor and only staff lawyers participate, it is not a part of the official duty of the prosecutor's office as constituted under law. Thus, it would be misleading for the staff lawyers who participate to designate any appearance for the parent as an appearance by the office of the prosecuting attorney. MRPC 7.1. Use of such designation could also be perceived as an attempt to influence the tribunal by placing the weight of the prosecutor's office behind the private cause of the parent. MRPC 3.5(a) prohibits a lawyer from seeking to influence a judge, juror, prospective juror or other official by means prohibited by law, and MRPC 8.4(d) prohibits a lawyer from stating or implying an ability to influence improperly a government agency or official.
Relevant Legal Constraints, Barriers and Solutions

"The grandest of all laws is the law of progressive development. Under it, in the wide sweep of things, men grow wiser as they grow older, and societies better.”
--John Christian Bovee

Statutory and Regulatory Requirements

Government and public sector lawyers who want to do pro bono work will find that in most states, and in the federal government, statutes or regulations may limit, but not bar, pro bono activities. Federal, state, and local government employees’ activities are governed by a number of statutes and ethical rules. In some states, laws prohibit assistant attorneys general and other public attorneys from any legal practice beyond their assigned work for the state or local municipality. This chapter outlines various solutions to these legal constraints and barriers.

1. Title 18 U.S.C. § 205

Under Title 18 U.S.C. § 205, federal employees cannot engage in representation in matters where the United States is a party or has a direct or substantial interest. This statute precludes participation in a variety of pro bono service. A careful reading, however, reveals that the statute does not preclude government lawyers from doing most forms of pro bono work -- just those matters in which the government is a party or has a direct or substantial interest. Thus, for example, federal government attorneys are not barred from involvement in most family law, or landlord/tenant cases, although representing a client in an immigration proceeding or an SSI case would be prohibited.


The Office of Government Ethics regulations in 5 C.F.R. Part 2635 apply to federal employees. The relevant sections include:

- Section 2635.502 prohibits activity that appears to interfere with the employee’s ability to perform his or her duties in an impartial manner.
• Section 2635.702 prohibits use of a government title or position in any way that suggests that the government is sanctioning personal activities. Thus employees may not use agency letterhead or their government titles in connection with pro bono representation. Federal employees must make it clear to any pro bono client that they are acting in their private capacity, and not as representatives of their agency.

• Section 2635.704 prohibits the use of government property for other than authorized purposes. Government property includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles. Authorized purposes are those for which Government property is made available to the public or those authorized in accordance with law or regulation. Each agency determines what is authorized in that agency.

• Section 2635.801 prohibits, among other things, certain outside activities of employees of the executive branch. The provisions apply to uncompensated outside activities as well as compensated activities. Sections 2635.801(b)(1)(5) and (6) state in relevant part, an employee who wishes to engage in . . . other outside activities must comply with . . . the prohibition on . . . (1) outside activity that conflicts with the employee’s official duties; (5) participation in professional organizations; (6) paid or unpaid teaching, speaking, and writing.

• Section 2635.802 prohibits outside activity by federal employees that would require recusal from significant aspects of the employee’s official duties.

• Section 2635.803 requires executive branch employees to obtain prior approval before engaging in outside employment or activities where it is determined to be necessary or desirable for the purpose of administering the government’s ethics program.

There may be other agency-specific statutes, rules, or policies that relate to ethics and conflicts of interest. For example, the Department of Justice has adopted rules requiring advance approval of any outside practice of law, compensated or uncompensated.

3. Office of Personnel Management Guidance on Scheduling Work and Granting Time Off to Permit Federal Employees to Participate in Volunteer Activities

Government lawyers who wish to do pro bono work are not always able to do it during their regular work hours for various reasons including some policies which preclude use of the government attorney’s time except during leave or vacation. 10 The Office of Personnel Management (OPM) prepared a guidance memorandum in support of the efforts of federal

10 28 C.F.R. § 45.735-9(c)(1).
departments and agencies to encourage employee participation in volunteer activities. Each department and agency was given the flexibility to approve a variety of work arrangements for employees. The OPM guidance encourages senior officials to make appropriate use of the flexibility allowed in responding to employees' requests for scheduling changes to engage in volunteer activities including, annual leave, leave without pay, compensatory time off, flexible work schedules, or, in limited circumstances, excused absence.

Some federal agencies already have pro bono policies, or have internal agency guidelines that deal with restrictions. Among those agencies with policies or guidelines at the time of publication are the Justice Department, the National Labor Relations Board, the General Services Administration, the Equal Employment Opportunity Commission, National Aeronautics and Space Administration, and the Office of Government Ethics.

4. State Legislation

State employees must examine state law. Government lawyers should not automatically conclude that they cannot engage in pro bono work simply because a state statute either demands that state lawyers devote full time to official duties or prohibits the private practice of law. The interpretation of these provisions varies widely among the states. Connecticut, for example, has a statute requiring state lawyers to devote full time to their official duties. The statute has not prevented the Attorney General from adopting a pro bono project. The Connecticut Attorney General's office policy states that the project was initiated as a limited exception to the prohibition on the private practice of law. It also explains that due to insurmountable ethical and logistical problems, the representation of individual clients cannot be absorbed into the everyday practice of the Attorney General's office. Therefore, the policy authorized the following activities: (1) training programs for legal services and pro bono attorneys, (2) recruitment of attorneys for pro bono programs, (3) writing educational pamphlets on areas of poverty law, and (4) community legal education for low-income groups. Similarly, a Kentucky statute prohibits private practice by state attorneys, but it does not preclude the Attorney General's office policy encouraging assistant attorneys general to become involved in one of the legal services pro bono programs. For an interpretation of your state's statutory provisions in this regard, contact the state attorney general's office, or other appropriate agency for ethics enforcement.

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11 Office of Personnel Management Guidance on Scheduling Work and Granting Time Off to Permit Federal Employees to Participate in Volunteer Activities, April 1998 can be found under tab 3.


In some states or counties, laws prohibit government or other public attorneys from any legal practice beyond their assigned work for the state, county or local municipality. If a law of this type applies to the office in which an individual is trying to establish a pro bono program, that individual’s first task will be an effort to revise the law or seek an opinion or ruling interpreting the law to allow some pro bono. An example of this type of redefinition is encompassed in the Broward County resolution asserting that the provision of legal services for indigent persons is a public purpose.\footnote{A copy of the Broward County Resolution can be found under tab 9.}

A number of state legislatures have passed laws related to pro bono involvement by the attorney general’s office, which ease the way for pro bono work by government lawyers.\footnote{A list of state statutes pertaining to pro bono can be found at the end of chapter 2.} North Dakota was one of the ground breakers in changing the law to make it easier for government attorneys to provide pro bono services. In 1985, North Dakota adopted legislation that authorized government attorneys to volunteer for pro bono cases.\footnote{“A deputy attorney general or assistant attorney general with the permission of the attorney general may voluntarily represent indigent clients referred by an organized pro bono program in addition to the regular duties of his office; such representation must be at no cost to the state of North Dakota.” North Dakota Code § 27-14-02.} Michigan, Nevada, Oregon, South Carolina, Texas and Washington have also changed laws to alleviate obstacles.

In 1993, the Texas Legislature passed legislation that authorized pro bono participation by all district and county attorneys and their assistants. Section 41.014 of the Government Code provides that any prosecutor employed by a county attorney, district attorney, or criminal district attorney’s office may furnish pro bono legal services to the poor, provided that those services do not interfere with his or her official duties. In addition to authorizing pro bono, the legislation established that pro bono legal services to the poor provided under this section do not constitute the private practice of law.

The obstacles in establishing and administering a project are real but not insurmountable. For example, it took less than six months between the time the Maryland Attorney General proposed the idea of a pro bono project and the time the attorneys accepted their first cases.\footnote{For more information about Maryland’s project see “Jumping the Hurdles: Establishing Pro Bono Programs in Government Law Offices,” by John J. Capowski, Vol. 9, No. 2, Spring 1991, PBI Exchange. A copy of the policy can be found at tab 8.}

5. Advisory Ethics Opinions

Several states have issued advisory ethics opinions related to the handling of pro bono cases for low income citizens by government attorneys. For example, when the West Virginia State Bar initiated its Pro Bono Referral Project, they challenged all lawyers to volunteer for at least one civil legal pro bono case per year. In that regard the state bar sought the advisory opinion of the
West Virginia Ethics Commission as to whether the Ethics Act for government attorneys would prohibit government attorneys from handling pro bono cases for low income citizens.\footnote{The West Virginia advisory opinion can be found in full behind tab 2.} The West Virginia Ethics Commission interpreted the following sections of the West Virginia Code:

§ 6B-2-5(b)(1), which provides in relevant part that a public servant may not “use his or her office . . . for his or her own private gain or that of another person.” The section also provides that, “the performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent service, without compensation, does not constitute the use of prestige of office for private gain.”

§ 6B-2-5(f), which provides in relevant part that “[no] . . . public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case . . . or other particular matter involving a specific party which arose during his or her period of public service or employment . . . unless the appropriate government agency, after consultation, consents to such representation.

§ 6B-2-5(g)(1), which provides in relevant part “no full-time staff attorney . . . shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed.

The Commission stated that because the Pro Bono Referral Project “does not compensate participating attorneys and is intended to advance the goal of providing access to legal services to those who would otherwise be unable to afford representation,” such activities would not be considered a use of public office for the private gain of another.

In addition, a prosecutor asked the State Bar of Michigan Standing Committee on Professional and Judicial Ethics about the ethical propriety of an office pro bono project in which the prosecutor and staff lawyers participate.\footnote{Michigan advisory opinions can be found in full behind tab 2.} The pro bono services are only available to non-custodial parents who meet several requirements related to entitlement and need. In addition, in order to eliminate conflicts, a non-custodial parent cannot participate in the project if that parent was a “party in a divorce and/or child custody matter in which the current prosecuting attorney, or any assistant prosecuting attorney in the office, represented the opposing party while in private practice.” The Michigan Ethics Commission issued an opinion on November 1, 1996 which advised the prosecutor’s office that it could establish a pro bono legal services project for lawyer employees in the prosecutor’s office but should pay particular attention to conflict of interest rules contained in Model Rules of Professional Conduct 1.7 and 1.11\footnote{ABA Model Rules of Professional Conduct, Rule 1.7 Conflict of Interest: General Rule, and Rule 1.11 Successive Government and Private Employment, as amended February 17, 1987.}. It stated that “before accepting a pro bono assignment, the lawyer must independently evaluate whether...
representation of the pro bono client presents conflicts of interest.” Moreover, because it is misleading, and therefore improper, the services or appearances by counsel in the pro bono project should not be designated as cases or clients of the prosecutor’s office.

6. Judicial Branch Lawyers

Pro bono service by lawyers employed in the judicial branch of government (at the federal, state, or local level) raises particularly sensitive issues. To eliminate even the appearance of impropriety, many court systems prohibit private practice (including pro bono practice) by judicial branch lawyers. As noted by the Supreme Court of Florida, prohibitions against the private practice of law by judicial officers and their staff are designed “to prevent them from placing themselves in positions where their actions could directly or indirectly be influenced by matters that could come before them or could provide the appearance that certain parties might be favored over others.”21 However, in a memorandum dated January 13, 1994, the Florida Supreme Court “approved pro bono legal work by law clerks for everything other than direct representation of a client in court, with the proviso that law clerks may appear in court if they are serving as a guardian ad litem.”

In the limited experience of those who have studied or experimented with the issue thus far, many judicial branch attorneys are interested in performing some sort of pro bono service within the particular limits imposed by their employment. With careful planning and prudent execution, such service can be performed without compromising the integrity of the attorney, the employing court system, or the pro bono engagement itself. Several policies have been created for judicial branch lawyers and are covered in chapter 3.

Other Barriers to Pro Bono Service

Each agency or government office -- federal or state -- needs to remember the nature of its mission, its individual culture, and its entity-specific restrictions, if any. Additional considerations include: conflicts of interest, malpractice insurance coverage, skills training, costs associated with pro bono cases, and unauthorized practice of law issues for lawyers unlicensed in the jurisdiction in which they are working.

1. Conflicts of Interest Screening

Actual, potential, or apparent conflicts of interest are one of the biggest obstacles to the performance of pro bono services by government lawyers at all levels. The greater the breadth of an agency's operational reach, the greater the potential for a conflict. Consequently, proposed activities or cases should be carefully scrutinized to determine whether there is an actual, potential, or apparent conflict.

Federal lawyers, whether or not employed in attorney positions, are for the most part barred by 18 U.S.C. § 205 from litigating against the federal government except as official duty requires.

21 In re Amendments to Rules Regulating the Florida Bar 1-31 (a) and Rules of Judicial Administration -2.065 (Legal Aid), 630 So. 2d 501, 503-504 (Fla. 1993).
While there is some question as to how broadly this statute should be interpreted, it has not barred all pro bono service, as federal lawyers can work on non-federal cases.\textsuperscript{22}

Any conflict review should also evaluate whether the proposed pro bono legal work would place the lawyer in a positional conflict with the government. Due to the lawyer’s status as a government employee, this kind of conflict is inadvisable. For example, a Georgia advisory opinion states that the practice of law on behalf of public agencies is too varied and complex to warrant a per se rule of disqualification when a lawyer engages in simultaneous representation of county and private parties in matters adverse to county. At the same time, the potential for conflicts of interest are such that a purported waiver by a public agency may not be sufficient to eliminate questions of conflict.\textsuperscript{23} Moreover, a Kentucky advisory opinion cautioned that lawyers employed by the city may not represent criminal defendants on charges brought by the city’s police force, even though the city’s lawyers neither represented nor advised police and perform no prosecutorial functions.\textsuperscript{24}

An institutional screening mechanism should be established to guard against conflicts of interest. Several state pro bono projects have created committees that determine whether any conflicts exist. These committees often recommend the delivery of pro bono services that normally do not present conflicts, such as bankruptcies, consumer counseling, domestic violence cases and protective orders for battered persons, wills, powers of attorney, landlord-tenant cases, and mediation programs.

Another mechanism used to prevent conflicts is the pre-selection of certain approved areas of practice for a government office pro bono project. As an example, the Office of Legal Counsel for the Executive Office for U.S. Attorneys authorized Assistant U.S. Attorneys who are participating in the Allegheny Project Challenge in the Western District of Pennsylvania to accept pro bono cases in four areas: indigent divorce, child advocacy, projects to assist the homeless, and protection from abuse. The office conducts a conflicts check before any case is accepted.

To limit the chance for conflicts of interest, all cases should be screened by the referring entity. A successful example of such a screening process is the Department of Justice’s (DOJ) arrangement with the District of Columbia Bar’s Pro Bono Clinic. These two agencies agreed that when the clinic is staffed by DOJ attorneys, volunteers will receive only landlord-tenant, family law, and consumer disputes; cases involving federal benefits, such as SSI cases, are screened out. The case lists that DOJ circulates from other volunteer legal services organizations are screened to eliminate certain types of federal government benefits cases. Other groups will assign a non-government attorney to share intake sessions with a government attorney so that cases where a conflict is likely can be handled by the non-government attorney.


\textsuperscript{24} \textit{In re Advisory Opinion of Kentucky Bar Ass’n}, 847 S.W.2d 723 (Ky. 1993).
2. Malpractice Insurance

Almost universally, government and public sector lawyers are insured for services performed in their official capacities. However, no government attorney office provides malpractice insurance to its employees when they are undertaking pro bono activities. The possibility of being forced to defend such a claim makes the subject of malpractice insurance of paramount importance.

While some attorneys may be covered under their own policies or choose to work without coverage, government pro bono projects should identify pro bono legal services organizations that provide such insurance for volunteers and should consider it a prerequisite for working with the program. A majority of state and municipal pro bono programs can arrange for malpractice coverage through special programs and this kind of coverage is almost always at no cost to the individual volunteer lawyer. The D.C. Bar Association provides malpractice insurance for participants in its pro bono program. Government attorneys in some states (including Maryland, Montana, and South Carolina) use this type of arrangement. Other possibilities are to apply for a grant from a local foundation or other source or ask participating lawyers to contribute to a fund for malpractice insurance.

Standard 3.5-4 of the ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, states that “a pro bono program should obtain professional liability insurance coverage for itself, its staff and its volunteers.” Many pro bono programs, particularly those affiliated with bar associations or legal aid offices, furnish malpractice insurance coverage to volunteers. By providing malpractice coverage, pro bono programs overcome one barrier to government attorney participation.

Most pro bono program basic professional liability coverage is written for “damages resulting from negligent acts, errors or omissions in rendering legal services in professional capacity as a lawyer or notary public or under the direction of a lawyer while providing legal aid or defender services.” There are additional option coverages available for Injunctive Relief Defense, Criminal Defense, Contempt Defense, Private Bar Delivery, and Outside Practice of Law Endorsements. Government projects should check with the pro bono program from which they will receive cases for details regarding specific coverage.

If a public law office pro bono project is unable to obtain malpractice coverage through its state or other local volunteer lawyers’ program, two alternatives should be considered. First, the project, after checking applicable ethics limitations regulating the ability to accept such funds, might apply for a grant from a local foundation or other source to cover the cost of malpractice insurance, if that is permitted by governing state provisions regarding the ability of the agency to accept and solicit such gifts. Second, attorneys in the office, both those who plan to participate in the program as well as those who will not, could voluntarily donate towards the cost of

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25 ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, Standing Committee on Lawyers’ Public Service Responsibility (now known as the Standing Committee on Pro Bono and Public Service), February 1996, Standard 3.5-4 (Relations with Volunteers - Professional Liability Insurance)
malpractice coverage.  

3. Training

Because government attorneys generally cannot handle pro bono cases in the subject area in which they practice, the availability of training is particularly important. To represent their clients competently, volunteer attorneys and other professionals often need specific training and resource materials. Many pro bono programs will develop and implement training programs for a specific government office in a certain substantive area. For example, if the pro bono program serves a targeted population such as the homeless, immigrants, or persons with AIDS, substantive training is likely to be necessary due to the specialized legal problems that such clients face. In addition to training in substantive areas, attorneys might require training in practice before the local tribunals and in the use of alternative dispute resolution techniques or practice rules in a particular forum. Government attorneys should also take advantage of other available trainings sponsored by bar associations, legal services offices and continuing legal education organizations. The government attorney office’s pro bono coordinator or committee should disseminate regular notices of available trainings to all interested attorneys.

Government attorneys are very busy and the nature of their practice often does not facilitate their ability to use work time for training. For that reason, and to ensure that the most attorneys receive training efficiently and effectively, trainers could videotape the training session. This tape would then be available to other attorneys on their own time, or used in a more formalized subsequent training. Making the video available to individuals to use on their own time relieves the pressure to attend a scheduled training and shortens the preparation time needed for a volunteer commitment. Other means of supporting volunteers are providing a computer forms library, brief bank, sample pleadings, and manuals in various specialty areas.

Moreover, volunteer attorneys can fulfill their pro bono obligation by participating in many aspects of the training process as trainers, mentors, or video script writers and editors. For example, the Volunteer Legal Services Program of the Bar Association of San Francisco enlists volunteer attorneys to train other attorneys on a particular evening and to continue as a consultant or mentor to those attorneys. There is no reason why government attorneys who are long time veterans can’t do this type of training.

The main goal of a training program is to assist government attorneys in providing high-quality pro bono representation. Standard training programs, however, may not be able to handle all complex legal issues, nor are they always available to an attorney who has accepted a case in an unfamiliar area of law. For those situations, consultation with another attorney can be the best solution. For example, the San Francisco Volunteer Legal Services Program instituted two methods to connect volunteers to experts. First, their Lawyer Referral Service members who volunteer for low and no-fee panels and who are experts in a particular area of law are, with their consent, placed on a list that is made available to inexperienced attorneys who have questions.

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about their pro bono cases. Second, attorneys who feel that they are too busy to accept cases themselves are asked to be resource persons for these less experienced volunteers. The San Francisco Bar reports that most experienced attorneys called agree to assist in this capacity.

Government offices can also use existing bar association mentoring programs. Attorneys are often available for telephone consultations in a particular area of law or at a particular time for legal services or to assist volunteer attorneys with cases or questions outside of the lawyer's usual area of practice. These mentoring relationships allow the government lawyer to benefit from a private practitioner's experience in a specific area of law. Mentors can be found through local legal service providers, law school clinics, bar association pro bono projects and bar lawyer referral and information services. For example, the D.C. Bar's Public Service Activities Corporation offers three lawyer-mentors for the weekly pro bono clinic in the following subject matters: landlord and tenant; disability/public benefits; and family law. The mentors attend the clinic nights and answer questions the volunteer attorneys may have regarding the cases. A mentor list is distributed to each attorney listing names, addresses and telephone numbers of the mentors so that volunteer attorneys can take advantage of their expertise throughout the life of the case. Other sources for mentors are retired/inactive bar members, including judges, and other attorneys skilled in specific legal areas.

4. Costs

Certain expenses associated with representation of clients such as filing fees and litigation costs are often waived by a court due to a client's limited income. Generally, pro bono programs provide volunteer lawyers with the necessary forms and instructions for obtaining these waivers. If, however, a client is not eligible for a waiver, these costs associated may be paid by the pro bono organizations with which government attorneys work. When screening pro bono programs to work with government offices, it is a worthwhile to determine whether mechanisms can be provided for coverage of such costs by government volunteers. Volunteers should be urged to maintain complete records of all costs incurred and to seek and enforce orders awarding them such costs, whenever reasonable and possible.

The Maryland Office of the Attorney General handles costs creatively. It uses a grant from the Maryland Legal Services Corporation to cover expenses such as stationery, travel costs, and postage. In addition, to expand this fund, attorneys in the office are given an opportunity to contribute.

5. De Minimis Use of Office Resources

Many government agencies or offices have policies prohibiting the use of office resources such as offices, personnel, and equipment for any outside purpose. This policy is particular to each group and may have its source in federal, state, or local law. Seeking clarification or modification of these policies to allow de minimis use of office resources for pro bono matters should be considered.

27 For further discussion regarding de minimis use of office resources see chapter 3. The DOJ policy on the use of office and library equipment and facilities is under tab 3.
6. Unauthorized Practice of Law

Federal government lawyers are not required to be members of the bar in the state in which they are working, although they are required to be a member in good standing of a bar in at least one state or the District of Columbia. Federal government lawyers, therefore, may not be licensed in the state in which they are employed. While this lack of local licensing does not interfere with the performance of their official duties, it may prevent their undertaking pro bono activities. Such activities might be construed as the unauthorized practice of law in the local jurisdiction.

To overcome this barrier to pro bono participation among its lawyers, the Department of Justice worked with bar and court officials in the District of Columbia to amend the D.C. rule on unauthorized practice of law so that federal government employees who are members of a bar other than the D.C. Bar may engage in pro bono activity. A copy of that rule, Rule 49(c)(9), can be found under tab 5, along with a recent opinion issued by the D.C. Court of Appeals Committee on the Unauthorized Practice of Law, which clarifies the procedures for invoking the exemption. Rule 49(c)(9)(C) allows a federal government lawyer to provide legal counsel in a pro bono matter if the matter is referred by an organization that provides legal services to the public without fee and if the attorney is supervised by an active member of the D.C. Bar. General supervision by a staff member of the legal services organization is usually sufficient.
TAB

3
Guidance on Scheduling Work and Granting Time Off to Permit Federal Employees to Participate in Volunteer Activities

The Office of Personnel Management (OPM) has prepared the following guidance to support the efforts of departments and agencies to encourage employee participation in volunteer activities. Departments and agencies should also review any applicable regulations or policies and collective bargaining agreements before making determinations on these matters.

A. SCHEDULING WORK AND TIME OFF

(1) GENERAL. The Federal personnel system provides departments and agencies with considerable flexibility in scheduling hours of work and time off. Departments and agencies are encouraged to make appropriate use of this flexibility in responding to requests for changes in work schedules or time off to allow employees to engage in volunteer activities, while giving due consideration to the effect of the employee's absence or change in duty schedule on work operations and productivity.

(2) ALTERNATIVE WORK SCHEDULES. Departments and agencies have the flexibility to approve a variety of work arrangements for employees seeking to engage in volunteer activities during normal work hours.

Alternative Work Schedules (AWS) — Flexible or compressed work schedules may be established for employees who wish to engage in volunteer activities during normal working hours. Employees represented by an exclusively-recognized union may participate in a flexible or compressed work schedule "only to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative." (See 5 U.S.C. 6130(a)(2).) To review the extent to which AWS programs have already been applied, departments and agencies should review their internal AWS policies and practices and collective bargaining agreements. To determine how additional AWS flexibilities may be implemented, departments and agencies may also consult subchapter II of chapter 51 of title 5, United States Code; regulations in 5 C.F.R. part 610, subpart D, Flexible and Compressed Work Schedules; and the Handbook on Alternative Work Schedules (available on OPM's web site at http://www.opm.gov/oca/aws and via modem on OPM's electronic bulletin board system (OPM ONLINE) by dialing (202) 606-4800 (Compensation Administration Forum) and OPM's Labor-Management Relations Guidance Bulletin: Negotiating Flexible and Compressed Work Schedules (available on OPM ONLINE).

Credit Hours — Credit hours are those hours within a flexible work schedule that an employee elects to work in excess of his or her basic work requirement (e.g., 80 hours in a pay period for a full-time employee) so as to vary the length of a workweek or workday. Employees may use credit hours to fulfill their basic work requirement, thereby gaining time off from work to pursue volunteer activities and for other purposes. If a department

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or agency authorizes credit hours under its flexible work schedules program, the maximum amount of credit hours that may be carried over from one pay period to another is 24 hours.

(3) SCHEDULING TIME OFF FROM WORK. Employees seeking to participate in volunteer activities during basic working hours may be granted annual leave, leave without pay, compensatory time off, or, in very limited and unique circumstances, excused absence, as discussed below. (Employees may also be permitted to use accumulated credit hours under flexible work schedules, as discussed above.)

Annual Leave — When employees request annual leave to perform volunteer service, departments and agencies should be as accommodating as possible in reviewing and approving such requests consistent with regulations in 5 CFR part 630, subpart C, Annual Leave, and applicable collective bargaining agreements.

Leave Without Pay — At the discretion of the agency, leave without pay (LWOP) may be granted to employees who wish to engage in volunteer activities during normal working hours. As with annual leave, OPM encourages departments and agencies, whenever possible, to act favorably upon requests by employees for LWOP to perform volunteer services. However, LWOP is appropriate for extended periods only if the employee is expected to return to his or her job at the end of the LWOP. Agencies should review their internal policies on LWOP and applicable collective bargaining agreements.

Compensatory Time Off — Departments and agencies may approve requests from employees for compensatory time off in exchange for performing an equal amount of time in irregular or occasional overtime work. For employees under flexible work schedules, departments and agencies may approve employee requests for compensatory time off for both regularly scheduled and irregular or occasional overtime work.

Excused Absence (administrative leave) — Each department or agency has discretion to excuse employees from their duties without loss of pay or charge to leave. OPM advises that the granting of excused absence for volunteer activities should be limited to those situations in which the employee's absence, in the department's or agency's determination, is not specifically prohibited by law and satisfies one or more of the following criteria: (1) the absence is directly related to the department or agency's mission; (2) the absence is officially sponsored or sanctioned by the head of the department or agency; (3) the absence will clearly enhance the professional development or skills of the employee in his or her current position; or (4) the absence is brief and is determined to be in the interest of the agency. Ultimately, it is the responsibility of each department or agency head to balance support for employees' volunteer activities with the need to ensure that employees' work requirements are fulfilled and that agency operations are conducted efficiently and effectively. Agencies should review their internal guidance on excused absence and applicable collective bargaining agreements.

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(4) **PART-TIME EMPLOYMENT AND JOB SHARING.** Part-time employment or job-sharing may also be appropriate for employees who request such arrangements in connection with performing volunteer service. Regulations in 5 CFR part 340 provide additional information on part-time employment and job-sharing.

**B. LABOR-MANAGEMENT RELATIONS**

Agency officials are reminded that conditions of employment (such as work schedules) of bargaining unit employees may not be changed without notifying the exclusive representative and bargaining unit on the matter to the extent required and/or permitted by laws, regulations, and collective bargaining agreements. Moreover, bargaining unit employees may participate in flexible or compressed work schedules “only to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.” (See 5 U.S.C. 6103(a)(2).) For further information on an agency’s collective bargaining obligations, agency officials should consult with their labor relations officers. Departments and agencies should also consult OPM’s Labor-Management Relations Guidance Bulletin: Negotiating Flexible and Compressed Work Schedules. It is available on OPM ONLINE and by contacting OPM’s Center for Partnership and Labor-Management Relations at (202) 606-2930 or email cplmr@opm.gov. FAX requests for this document to (202) 606-2613.

**C. PROHIBITION OF COERCION**

While managers, supervisors, and other agency officials may encourage employees to become more involved in volunteer activities, 5 U.S.C. 6132 provides that employees may not be coerced for the purpose of interfering with their legal rights under flexible and compressed work schedules. (Also see 5 U.S.C. 2302, Prohibited Personnel Practices.)

**D. CONFLICT OF INTEREST AND HATCH ACT RESTRICTIONS**

Departments, agencies, and employees are reminded that conflict of interest laws and related regulations governing outside employment for compensation also apply to Federal employees who engage in volunteer activities. Hatch Act restrictions apply to employees who are on duty, as well as to those on paid or unpaid leave.

**E. USE OF GOVERNMENT FACILITIES AND EQUIPMENT**

Employees may not use Government facilities and equipment for other than authorized purposes. (See 5 CFR 2635.704.) Employees may consult their agency ethics officials or Office of General Counsel for information about what may be authorized by their agency or department.

**F. LIABILITY FOR WORK-RELATED INJURIES**

Departments and agencies need to be aware of liability issues related to employee participation in volunteer activities. The Department of Labor advises that, in most
instances, employees who perform mission-related agency sponsored/sanctioned, or skills-enhancing volunteer activities while they are on excused absence are covered by 5 U.S.C. chapter 81, Compensation for Work Injuries. Other kinds of absences would most likely not be covered.

G. AWARDS FOR VOLUNTEERISM

Departments and agencies are encouraged to recognize their employees who volunteer their skills to help others. However, providing cash or paid time off undermines the volunteer spirit in which these individuals donate their personal time and efforts for the benefit of others. Nevertheless, granting appropriate citations and letters of appreciation, or small mementos such as a "You Make a Difference" pin or mug, would demonstrate the agency’s pride in the various beneficial services its employees render to the community. In addition, departments and agencies can publicize employee volunteer activities in internal publications, such as newsletters, bulletins, and magazines. Departments and agencies should make the effort to acknowledge and say “Thank You” to those whose personal efforts make their communities a better place to live and work and who contribute something extra to the well-being of others.

H. AGENCY REPORTS

As directed by the President, each department and agency must report to the Office of Personnel Management (OPM) within 90 days after the date of the President’s memorandum (i.e., by July 21, 1998) on the extent to which the department or agency has explored additional measures to expand community service opportunities for Federal employees. OPM requests that each department and agency report on the initiatives that the department or agency has implemented in response to the President’s memorandum to allow Federal employees to plan and take time off from work to perform community service.

Agency reports should be mailed or delivered or sent by FAX or email to:

Donald J. Winstead
Assistant Director for Compensation Administration
Workforce Compensation and Performance Service
Office of Personnel Management
1900 E Street NW, Room 7H31
Washington, DC 20415-0001
FAX: (202) 606-0824; email: payleave@opm.gov

In addition, questions on the report may be addressed to the Pay and Leave Administration Division on (202) 606-2858, FAX (202) 606-0824, or email at payleave@opm.gov.
Memorandum

Subject: Use of Office and Library Equipment and Facilities

Date: APR 21 1995

To: Heads of Department Components

From: Stephen R. Colgate
Assistant Attorney General for Administration

After review and consideration of your comments, I have issued the attached policy on personal use of Departmental office and library equipment and facilities as a new section of the Justice Property Management Regulations, 41 C.F.R. (JPMR) pt. 128. The policy codifies what has been the Department's practice since 1989. Please circulate it to all of your employees.

The policy permits personal use of equipment and facilities only if it involves negligible additional expense to the government -- such as electricity, ink, small amounts of paper, and ordinary wear-and-tear. When office computers, printers and copiers are used in moderation, there is only negligible additional expense to the government for electricity, ink and wear-and-tear. Such use is authorized as long as only small amounts of paper are involved and as long as the use does not interfere with official business. Employees wishing to use more than a small amount of paper must provide their own or pay for its cost. Employees should contact their supervisor if there is any question whether an intended use involves "negligible" expense or "small amounts" of paper.

This policy would not authorize the personal use of commercial electronic databases when there is, as is usual, an extra cost to the government. On the other hand, research using the library's books or microfiche would be authorized, as it involves only negligible additional expense to the United States.

The policy also authorizes limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-government accounts (e.g., personal telephone credit cards). Again, such use must not interfere with official business, and supervisors should be consulted if there is any question over whether such use is in fact "limited."
The attached policy does not override statutes, rules or regulations governing the use of specific types of government property, such as electronic mail. It may be revoked or limited at any time by any supervisor or component for any business reason.

Attachment
§ 128-1.5006-4 Personal Use of Government Property.

(a) Employees may use government property only for official business or as authorized by the government. See 5 CFR 2635.101(b)(9), .704(a). The following uses of government office and library equipment and facilities are hereby authorized:

(1) personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and

(2) limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-government accounts.

(b) The foregoing authorization does not override any statutes, rules, or regulations governing the use of specific types of government property (e.g., internal Departmental policies governing the use of electronic mail; and 41 CFR (FPMR) 201-21.601, governing the ordinary use of long-distance telephone services), and may be revoked or limited at any time by any supervisor or component for any business reason.

(c) In using government property, employees should be mindful of their responsibility to protect and conserve such property and to use official time in an honest effort to perform official duties. See 5 CFR 2635.101(b)(9), .704(a), .705(a).
TAB

4
STATE STATUTES

ATTORNEY GENERAL PRO BONO INVOLVEMENT*
As of April, 1998

Alabama
Private practice prohibited.
Ala. Code §36-15-9: "All Assistant Attorneys General of the state of
Alabama are ...hereby prohibited from engaging in the private practice of
law during the time that they are such Assistant Attorneys General."

Alaska
No statute.

Arizona
Private practice prohibited, but pro bono permitted.
shall devote full-time to the duties of the office and shall not directly or
indirectly engage in the private practice of law or in an occupation
conflicting with such duties, except Assistant Attorney General may, but
in no circumstances shall be required to, represent private clients in pro
bono, private civil matters under the following circumstances." (List of 11
circumstances follows including representation must be conducted
exclusively during off hours, must not interfere with performance of official
duties and must not utilize resources that will result in cost to the state.
See statute for complete listing.)

Arkansas
Private practice prohibited.
Arkansas shall not engage in the private practice of law."

California
Private practice prohibited.
in the private practice of law...but instead he shall devote his entire time to
the service of the state."

Colorado
No statute.

Connecticut
Full-time required.
to the duties of the office."

* The fact that an attorney general in a given state must devote full-time to his/her duties or is
prohibited from the private practice of law does not necessarily mean that s/he cannot engage
in pro bono work; the interpretation of these types of statutory provisions varies widely among
the states. The best way to determine the interpretation of the provision in a given state at a
given time is to contact the attorney general's office. Most often, there exists some policy (either
written or unwritten) on the issue of pro bono involvement by members of the staff.
Delaware
Private practice prohibited.
time to the office and shall not practice law for the term to which he is
elected. He shall determine whether any of his assistants, other than those
designated as full time...shall be excluded from the practice of law."

Florida
No statute.

Georgia
Private practice prohibited.
Ga. Code Ann. §40-1612: "Neither the Attorney General nor any other
attorney at law employed full time by the Department of Law shall engage
in the private practice of law during his term of appointment."

Hawaii
Private practice prohibited.
Haw. Rev. Stat. §4-28-10: "The Attorney General, the Attorney General's
first deputy, and other deputies shall devote their entire time and attention
to the duties of their respective offices. They shall not engage in the private
practice of law."

Idaho
No statute.

Illinois
No statute.

Indiana
Full-time requirement.
Ind. Code Ann. §4-6-2-3: "The attorney-general shall reside at
Indianapolis, and he shall keep his office in the statehouse; and he shall, on
all business days, during business hours, be at said office, in person or by
deputy, unless engaged in court or elsewhere in the service of the state."

Iowa
Full-time requirement.
Iowa Code Ann. §13.4: Assistant Attorneys General "shall devote their
entire time to the duties of their position."

Kansas
No statute.

Kentucky
Private practice prohibited.
the private practice of law during his term in office."

Louisiana
No statute.

Maine
Private practice prohibited.
time to his duties and shall not engage in the private practice of law during
his term of office."
<table>
<thead>
<tr>
<th>State</th>
<th>Law Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maryland</td>
<td>No statute.</td>
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<tr>
<td>Massachusetts</td>
<td>No statute.</td>
</tr>
<tr>
<td>Michigan</td>
<td>No statute.</td>
</tr>
<tr>
<td>Minnesota</td>
<td>No statute.</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Full-time requirement. Miss. Code Ann. §7-5-17: The Attorney General must be full time &quot;open Monday through Friday for not less than eight hours each day.&quot;</td>
</tr>
<tr>
<td>Missouri</td>
<td>Private practice prohibited. Mo. Ann. Stat. §27.010: &quot;The Attorney General shall devote his full time to the office and...shall not engage in the private practice of law.&quot;</td>
</tr>
<tr>
<td>Montana</td>
<td>No statute.</td>
</tr>
<tr>
<td>Nevada</td>
<td>Private practice prohibited, but pro bono permitted. Nev. Rev. Stats. §228.070(2): &quot;Except as otherwise provided in NRS 7.065, the attorney general shall not engage in the private practice of law.&quot; Nev. Rev. Stat. §7.065: &quot;Except as otherwise provided by a specific statute, any attorney employed by the State of Nevada .. may represent an indigent person in any proceeding if: 1. The attorney first receives the permission of his supervisor .. 2. The interests of the indigent person in that proceeding do not conflict with the interests of the state .. 3. The representation is provided through or in association with an organization that provides free legal assistance to indigent persons; and 4. The attorney receives no compensation for representation.&quot;</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Private practice prohibited. N.H. Rev. Stat. Ann. §7:6-d: &quot;The attorney general, deputy attorney general, assistant attorneys general and all attorneys employed by the Department of Justice shall not directly or indirectly engage in the private practice of law.&quot;</td>
</tr>
<tr>
<td>New Mexico</td>
<td>No statute.</td>
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<tr>
<td>State</td>
<td>Law</td>
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<tr>
<td>New York</td>
<td>No statute.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Private practice prohibited.</td>
</tr>
<tr>
<td></td>
<td>N.C. Gen. Stat. §114-3: &quot;The Attorney General shall devote his whole time to the duties of his office and shall not engage in the private practice of law.&quot;</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Pro bono permitted.</td>
</tr>
<tr>
<td></td>
<td>N.D. Cent. Code §27-14-02: &quot;An attorney general or assistant attorney general with the permission of the attorney general may voluntarily represent indigent clients referred by an organized pro bono program in addition to the regular duties of the office; at no cost to the state of North Dakota.&quot;</td>
</tr>
<tr>
<td>Ohio</td>
<td>No statute.</td>
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<tr>
<td>Oklahoma</td>
<td>No statute.</td>
</tr>
<tr>
<td>Oregon</td>
<td>Pro bono permitted.</td>
</tr>
<tr>
<td></td>
<td>Or. Rev. Stat. 180.140(6): &quot;None of the provisions of ORS 180 prohibit the Attorney General or any of the Attorney General's full-time deputies or assistants from voluntarily representing, without compensation or expenditure of state resources, indigent clients referred by a nonprofit civil legal aid office or pro bono program.&quot;</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>No statute.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>No statute.</td>
</tr>
<tr>
<td>South Carolina</td>
<td>Pro bono permitted.</td>
</tr>
<tr>
<td></td>
<td>S.C. Code Ann. §40-5-380: &quot;An attorney employed by any executive agency of the state may, with the permission of his agency head, represent without fees indigent clients referred by a pro bono program organized, sponsored, or endorsed by the South Carolina Bar. The pro bono service must be at no cost to the state, and may not conflict with the attorney's official duties or the interests of the State. The attorney shall use compensatory or annual leave for pro bono service performed during normal working hours ...&quot;</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Private practice prohibited.</td>
</tr>
<tr>
<td></td>
<td>S.D. Codified Laws Ann. §1-11-1.1: &quot;The Attorney General shall serve on a full-time basis and shall not actively engage in the private practice of law.&quot;</td>
</tr>
<tr>
<td>State</td>
<td>Statute Information</td>
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<td>-----------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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<tr>
<td>Tennessee</td>
<td>Private practice prohibited. P&lt;sub&gt;n&lt;/sub&gt;. C&lt;sub&gt;e&lt;/sub&gt; A&lt;sub&gt;n&lt;/sub&gt;. §8-7-104: &quot;District attorneys general shall be prohibited from engaging in the practice of law.&quot; P&lt;sub&gt;n&lt;/sub&gt;. C&lt;sub&gt;e&lt;/sub&gt; A&lt;sub&gt;n&lt;/sub&gt;. §8-6-107: &quot;Attorney general and reporter and his assistants shall be under the...restrictions...of the district attorneys general.&quot;</td>
</tr>
<tr>
<td>Texas</td>
<td>Pro Bono permitted. T&lt;sub&gt;n&lt;/sub&gt;. R&lt;sub&gt;e&lt;/sub&gt; C&lt;sub&gt;i&lt;/sub&gt; S&lt;sub&gt;t&lt;/sub&gt;. A&lt;sub&gt;n&lt;/sub&gt;. §6552-9b. Pro Bono participation must not be in substantial conflict with the proper discharge of the duties to the public interest of the attorney. The use of staff time and agency resources for pro bono work is prohibited. T&lt;sub&gt;n&lt;/sub&gt;. R&lt;sub&gt;e&lt;/sub&gt; C&lt;sub&gt;i&lt;/sub&gt; S&lt;sub&gt;t&lt;/sub&gt;. A&lt;sub&gt;n&lt;/sub&gt;. §41.014. Any prosecutor employed by a county attorney, district attorney, or criminal district attorney’s office may furnish pro bono legal services to the poor, provided that those services do not interfere with his or her official duties. Pro Bono Legal services to the poor provided under this section do no constitute the private practice of law.</td>
</tr>
<tr>
<td>Utah</td>
<td>Private practice prohibited. U&lt;sub&gt;a&lt;/sub&gt; C&lt;sub&gt;t&lt;/sub&gt; A&lt;sub&gt;n&lt;/sub&gt;. §67-5-10: &quot;Attorneys in career status shall be full-time employees and shall not engage in the private practice of law.&quot;</td>
</tr>
<tr>
<td>Vermont</td>
<td>No statute.</td>
</tr>
<tr>
<td>Virginia</td>
<td>No statute.</td>
</tr>
<tr>
<td>Washington</td>
<td>Private practice prohibited, but pro bono permitted. W&lt;sub&gt;a&lt;/sub&gt; R&lt;sub&gt;e&lt;/sub&gt; C&lt;sub&gt;a&lt;/sub&gt; A&lt;sub&gt;n&lt;/sub&gt;. §43.10.115: &quot;The attorney general shall not practice law for remuneration in his private capacity.&quot; (W&lt;sub&gt;a&lt;/sub&gt; R&lt;sub&gt;e&lt;/sub&gt; C&lt;sub&gt;a&lt;/sub&gt; A&lt;sub&gt;n&lt;/sub&gt;. §43.10.120 for assistants) W&lt;sub&gt;a&lt;/sub&gt; R&lt;sub&gt;e&lt;/sub&gt; C&lt;sub&gt;a&lt;/sub&gt; A&lt;sub&gt;n&lt;/sub&gt;. §43.10.130: &quot;None of the provisions of RCW 43.10.010 and 43.10.115 through 43.10.125 shall be construed as prohibiting the attorney general or any of his full-time deputies or assistants from: (2) Performing legal services of a charitable nature.&quot;</td>
</tr>
<tr>
<td>West Virginia</td>
<td>No statute.</td>
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<tr>
<td>Wisconsin</td>
<td>No statute.</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Private practice prohibited. W&lt;sub&gt;yo&lt;/sub&gt;. S&lt;sub&gt;a&lt;/sub&gt; T&lt;sub&gt;a&lt;/sub&gt;. §9-1-604: &quot;The Attorney General...shall not engage in any private practice.&quot;</td>
</tr>
</tbody>
</table>

Legislation specifically authorizing pro bono participation by all district and county attorneys and their assistants was passed by the Texas Legislature during the 1993 session. House Bill 1498 — sponsored by Rep. Elliot Naissant and Sen. Gonzalo Barrientos in the Senate — added Section 41.014 to the Government Code to provide that any prosecutor employed by a county attorney, district attorney, or criminal district attorney’s office may furnish pro bono legal services to the poor, provided that those services do not interfere with his or her official duties.

In addition to specifically authorizing pro bono, the new legislation established that pro bono legal services to the poor provided under section 41.014 does not constitute the private practice of law.

The State Bar of Texas initiated this legislation, along with two other bills, to help address the vast unmet need for legal services by the poor in Texas. The Bar was assisted in its efforts by Tom Krampitz of the Texas District and County Attorneys Association.

Previously, some prosecutors were statutorily prohibited from any private practice of law, making it impossible — or at least very difficult — for them to meet the State Bar’s aspirational goal of 50 hours of pro bono legal services to the poor each year by each Texas attorney.

Despite the ban which had prevented pro bono contributions by some prosecutors, a number of non-affected prosecutors have been participating in pro bono activities for some time. For example, three-quarters of the attorneys in the Cameron County District Attorney’s Office, including District Attorney Luis Saenz, are active with the Cameron County Bar Association Pro Bono Project. They provide legal assistance in landlord/tenant, estate planning, bankruptcy, and consumer matters. Secretarial support is made available to the prosecutors by several local law firms. Cases are carefully screened to assure no conflict.

The Travis County Attorney’s Office currently is working on a pro bono policy which will set general guidelines for interested assistants to follow in deciding how to participate in pro bono services. This policy will be available as a model for other district and county attorneys’ offices that want to establish guidelines.

Fulfilling one’s ethical obligation is not the only reason that a number of prosecutors are participating in pro bono. Such service to the community can help improve the image of the legal profession in general and of the prosecutor’s office specifically. Prosecutors, more than most, are familiar with the needs of low-income persons. Assisting these clients with civil matters enables a prosecutor to positively affect clients’ lives in a way that criminal prosecution does not. It also gives the prosecutor an opportunity to experience legal practice beyond criminal prosecution. Participating with an organized pro bono program often gives the prosecutor access to free MCLE accredited training, mentors, and other skill-enhancing opportunities.

Across Texas there are almost 100 pro bono programs, some providing general legal services to the poor and some providing very specific services or services to a specific client population. Most are able to accommodate the specific needs of prosecutors such as secretarial assistance, access to office and computer facilities, training, and other support. Additionally, most programs provide malpractice liability insurance coverage to volunteers for their pro bono cases.

Whatever a prosecutor’s needs or interests, there is probably a program which meets them. If not, prosecutors can develop their own pro bono opportunities. Texas Lawyers Care, the pro bono activation and support project of the State Bar, can help identify an appropriate program or develop a special pro bono project for a prosecutor’s office.

For assistance, a copy of the Travis County Attorney’s Office pro bono policy, or answers to questions about the new law, please contact Julie Oliver, executive director of Texas Lawyers Care, at 1-800/204-2222, ext. 2155.
TAB

5
District of Columbia Court of Appeals
Rule 49

[49] (c) The following activity in the District of Columbia is excepted from the prohibitions of section (a) of this Rule, provided the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia:

* * *

(9) Pro Bono Legal Services: Providing legal services pro bono publico in the following circumstances:

(A) Where the person is an enrolled, inactive member of the District of Columbia Bar who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee; provided that, if the matter requires the attorney to appear in court, the attorney shall file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in that particular case without compensation.

(B) Where the person is a member in good standing of the highest court of any state, and is employed by the Public Defender Service, or is employed by or affiliated with a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee; provided that the person has submitted an application for admission to the District of Columbia Bar within ninety (90) days after commencing the practice of law in the District of Columbia, and that such attorney is supervised by an enrolled, active member of the Bar who is employed by or affiliated with the Public Defender Service or the non-profit organization.

(C) Where the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, and is assigned or referred by an organization that provides legal services to the public without fee; provided that the person is supervised by an enrolled, active member of the District of Columbia Bar.

An attorney practicing under this section (c)(9) shall be subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the District of Columbia Bar.

An attorney may practice under part (B) of this section (c)(9) for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the Bar, whichever first shall occur.
OPINION 3 - 98

OF THE DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW

Issued March 3, 1998

Pursuant to District of Columbia Court of Appeals Rule 49 (the "Rule"). section 49(d)(3)(G), the Committee on the Unauthorized Practice of Law (the "Committee"), by a majority vote of a quorum of its members then present, approved the following opinion, at its meeting on February 27, 1998:

Procedure For Practice Pro Bono Publico Under Exception 49(c)(9)

Effective February 1, 1998, section 49(c)(9) of the Rule provides as follows concerning practice in the District of Columbia pro bono publico:

[49] (c) The following activity in the District of Columbia is excepted from the prohibitions of section (a) of this Rule, provided the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the District of Columbia:

* * *

(9) Pro Bono Legal Services: Providing legal services pro bono publico in the following circumstances:

(A) Where the person is an enrolled, inactive member of the District of Columbia Bar who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee; provided that, if the matter requires the attorney to appear in court, the attorney shall file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in that particular case without compensation.

(B) Where the person is a member in good standing of the highest court of any state, and is employed by the Public Defender Service, or is employed by or affiliated with a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee; provided that the person has submitted an
application for admission to the District of Columbia Bar within ninety (90) days after commencing the practice of law in the District of Columbia, and that such attorney is supervised by an enrolled, active member of the Bar who is employed by or affiliated with the Public Defender Service or the non-profit organization.

(C) Where the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, and is assigned or referred by an organization that provides legal services to the public without fee; provided that the person is supervised by an enrolled, active member of the District of Columbia Bar.

An attorney practicing under this section (c)(9) shall be subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the District of Columbia Bar.

An attorney may practice under part (B) of this section (c)(9) for no longer than 360 days from the date of employment by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the Bar, whichever first shall occur.

The purpose of the exception set forth in 49(c)(9) is to provide the broadest access to pro bono legal services, while serving the purposes of Rule 49 to protect the public from unlicensed legal practitioners. For this reason, entitlement to practice under the exception requires only the completion of a certificate that a person satisfies the requirements to practice under section 49(c)(9); neither an application nor a motion to appear pro hac vice in litigation is required. The certificate, a copy of which is appended to the Rule and attached hereto, is adequate to authorize practice under the pro bono exception both inside and outside of litigation.

Of course, any judge of the Superior Court or the Court of Appeals may require additional filings for participation in any particular case. In such a circumstance, the limitation on the number of pro hac vice applications would not apply.

...
This staff of the Committee shall cause this opinion to be submitted for publication in the same manner as the opinions rendered under the Rules of Professional Conduct.

Done this 3rd day of March, 1998.

______________________________
Chair
District of Columbia Court of Appeals
Committee on the Unauthorized Practice of Law
FORM FOR CERTIFICATION
OF PRACTICE PRO BONO PUBLICO
UNDER D.C.C.A. RULE 49(c)(9)

DISTRICT OF COLUMBIA
COURT OF APPEALS
[or]
SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA

Plaintiff/Appellant,

Defendant/Appellee.

CERTIFICATION OF PRACTICE
PRO BONO PUBLICO

I certify under District of Columbia Court of Appeals Rule 49 (c)(9):

1. That I am a member in good standing of the bar(s) of

2. That:

   [ ] (a) Under Rule 49 (c)(9)(A), I am employed by or affiliated with a
   legal services or referral program and I am providing representation in this case
   without compensation; or
(b) Under Rule 49 (c)(9)(B), I am employed by or affiliated with the Public Defender Service, or a non-profit organization located in the District of Columbia proving services without fee or for a nominal processing fee; I submitted an application for admission to the District of Columbia Bar within ninety (90) days of commencing the practice of law in the District of Columbia; and I am practicing for a limited period under the supervision of an enrolled, active member of the D.C. Bar who is employed by or affiliated with the Public Defender Service or the non-profit organization; or

(c) Under Rule 49 (c)(9)(C), I am an officer or employee of the United States government, a member in good standing of the bars named above, and affiliated with an organization proving legal services without fee; and I am supervised by an enrolled, active member of the D.C. Bar who is employed by or affiliated with that organization; or

I understand, under Rule 49 (c)(9), that I am subject to the District of Columbia Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if I were
an enrolled, active member of the District of Columbia Bar. I further understand that my conduct is subject to all authority of the courts in which I practice.

<table>
<thead>
<tr>
<th>Signature of Certifier</th>
<th>Print Name</th>
<th>Date</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Signature of Bar Member under Rule 49 (c)(9)</th>
<th>Print Name</th>
<th>Bar Number</th>
</tr>
</thead>
</table>
Developing a Policy on Pro Bono

"Begin with the end in mind."
--Stephen R. Covey

Analysis of Key Policy Issues

We have already discussed why government attorneys should do pro bono work. There are several reasons why an agency’s commitment to pro bono should be embodied in a written policy. First, a policy will encourage staff lawyers to do pro bono work and is a relatively simple way to highlight the government office’s recognition of the importance of pro bono service. Second, a policy reflects support for the program from the top and thereby gives the program crucial credibility, which is an effective step in developing a pro bono culture within the office. Third, it will enhance the office’s public service mission and improve its public image. Since 1988, the Attorney General offices of California, Connecticut, Florida, Minnesota, New York, Oregon, Pennsylvania, South Carolina, and Washington have adopted pro bono policies.

In addition, for federal agency lawyers, a policy is an effective way to implement Executive Order 12988, Section 2, issued on February 5, 1996, which provides that “all Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer services by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline.” The resulting Department of Justice Policy Statement can be found at the end of this chapter under tab 7.

Contents of an Effective Policy

A pro bono policy should provide a definition of pro bono, specify operational procedures including approval and conflicts check procedures, and discuss the permissible (that is de minimis or negligible) use of office resources. Policies can cover the issue of providing service

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28 See also the April 22, 1998 memorandum from President Clinton’s written to the Heads of Executive Departments and Agencies under tab 14.
during office hours, the use of vacation or compensatory time, the number of suggested hours of service, the types of cases that can be handled, the structure of the project, attorneys’ fees, retainer agreements and review or evaluation procedures.

Pro bono policies carry more weight when signed by the most senior official in the office. However, the politics, values and motivations of the persons heading the office will vary and the culture of the individual office should guide this decision. Think strategically in building support for the project in the office.

1. Definition of Pro Bono

A clear definition of what constitutes pro bono service for the agency is very important. A starting point is the ABA Model Rule 6.1 and the corresponding state ethics rule.

2. Case Approval and Conflicts Check Procedures

One method of screening is to create a list of approved areas of law (where conflicts are unlikely to arise) in which a government attorney may take a pro bono case. An internal approval process is another method used to minimize the risk of conflicts. Approval procedures allow supervisors and senior officials to control the implementation of the policy. Approval often rests in part on the recommendation of the relevant ethics advisor, an attorney designated to review individual cases for conflicts.

The Department of Justice, for example, requires that the head of the employee’s component approve the outside uncompensated practice of law. The DOJ policy also suggests that each component preliminarily approve the pro bono programs with which DOJ employees regularly work. These programs generally provide malpractice insurance, are willing to help screen cases, and provide training or other back-up support services. An employee need only check with his or her supervisor and the ethics advisor to accept a case from the approved program. Preliminary approval of a program reflects the component head’s view, based in part on the recommendation of the relevant ethics official, that participation in cases from that pro bono program is unlikely to create conflicts or other ethical problems. For pro bono cases referred by sources other than preliminarily-approved programs, the employee must obtain individual clearance from the head of the component after consultation with the supervisor and the ethics official.

Another important step in establishing a policy is to determine the types of matters which will be accepted. This acceptance policy should be outlined in the pro bono policy manual. The following factors should be taken into consideration when creating an acceptance policy:

- the relationship of the issues presented to established project priorities,
- the impact on the client’s life if the matter is accepted or rejected,
- other legal resources available in the community to assist the client in resolving the problem;
- other factors that may make it difficult to provide service, such as the posture of the case, if the matter requires litigation,
- the resources available for training volunteers to handle such cases, and
- and the willingness of volunteers to be trained in these matters.
The Maryland Attorney General’s policy manual, for example, created its lists of the types of cases in which attorneys could provide representation by meeting with individual pro bono programs to explore the types of cases that might be handled while avoiding conflicts. They decided to focus on divorces involving no custody disputes, general wills, advance directives, powers of attorney, private guardianships not involving any state agency, landlord/tenant cases not involving the application of the Maryland Consumer Protection Act, counseling and other legal assistance, veterans benefit appeals, and Chapter 7 personal bankruptcy.²⁹

The Attorney General’s office in Minnesota has delineated four areas of approved participation including: consumer law, landlord/tenant, housing matters involving eviction, and refugee and asylum cases.³⁰ The Office of Attorney General for the Commonwealth of Pennsylvania approved pro bono participation in several areas including orders of protection in domestic relations cases, landlord/tenant cases, consumer protection cases, service as a guardian ad litem, wills, living wills, powers of attorney and guardianships, mediation or arbitration, non-profit representation to address the needs of persons of limited means, education activities and bar activities related to the delivery of pro bono services.³¹

3. De Minimis Use of Office Resources

Because federal, state, or local law may prohibit the use of government offices, personnel, and equipment for outside purposes, each government office should determine whether a de minimis exception exists. If so, a statement clarifying de minimis use should be contained in the policy. For example, the Department of Justice Pro Bono policy and the Office of Government Ethics’ policy both authorize the use of government office and library equipment and facilities if the use involves negligible expense defined as “electricity, ink, small amounts of paper, and ordinary wear and tear,” and allows limited personal telephone/fax calls to locations within the office’s commuting area.³² The Connecticut Attorney General’s Office allows “very limited use of telephones to place local calls and the use of the office library for legal research.” The Minnesota Attorney General’s pro bono policy authorizes local telephone calls, use of individual office, library research, word processing and dictation equipment and a limited amount of office supplies, photocopying, and non-long distance faxes. It excludes multi-page brief or memoranda copying, use of clerical support, computer research, and long distance telephone calls.³³

One strategy to avoid overuse of office resources is for attorneys to use the offices and supplies of the outside pro bono program assigning the case. If minimal photocopying or the assistance of

²⁹ Maryland’s policy can be found at the end of this Chapter under tab 8.

³⁰ Minnesota’s policy can be found at the end of this Chapter under tab 8.

³¹ Pennsylvania’s policy can be found at the end of this Chapter under tab 8.

³² DOJ - 41 CFR (JPMR) § 128-1.5006.4 Personal Use of Government Property. This regulation and the attendant memoranda are found under tab 3.

³³ A copy of the Minnesota policy can be found at tab 8.
a secretary is allowed, the policy should so state. Those offices that do allow a set amount of
government time and facilities to be used typically justify their decision by stating that
supporting outside public service is part of government service. For example, the State of Idaho
allows its attorneys to use a “reasonable” amount of agency-approved time and facilities to
participate in a mediation program. The rationale is that the skills the attorneys will acquire in
the process help agency clients. To enable the Broward County Florida Attorney’s Office and
other county staff lawyers to participate in the Broward Lawyers Care program, the Broward
County Commissioners declared, by resolution, that the provision of legal services to indigent
residents of Broward County was a public purpose. The resolution also allowed the attorneys
to use support staff.

4. Judicial and Court Staff Policies

The Council of Appellate Staff Attorneys (CASA), a professional organization for appellate
court attorneys employed in state court systems and operating under the auspices of the
Appellate Judges Conference of the ABA, has developed a model policy for appellate court staff
attorneys on pro bono legal services. The model policy addresses many of the concerns voiced
about such involvement, such as use of court resources, malpractice insurance, court system
liability for malpractice, conflicts of interest, and appearances of improper influence. The policy
also suggests a procedure for screening and approving requests by court attorneys to provide pro
bono services. In defining permissible pro bono service, the model policy generally tracks
Model Rule 6.1 but deletes language approving services to “individuals, groups, or organizations
seeking to secure or protect civil rights, civil liberties, or public rights” because representation is
almost always likely to create an actual or perceived conflict of interest.

In February 1994, the Executive Committee of the ABA’s Appellate Judges Conference agreed
that the provision of pro bono service by appellate staff attorneys should be encouraged to the
extent permitted by the attorneys’ individual courts. The Executive Committee endorsed the
draft CASA policy as one model for consideration by federal and state appellate courts.

The Committee on Codes of Conduct of the Judicial Conference of the United States approved a
new Canon 4(D), Codes of Conduct for Judicial Employees, effective January 1, 1996. It
permits pro bono legal services in civil matters as long as such work does not present an
appearance of impropriety, does not occur in the workplace on judicial time, and does not
interfere with primary responsibilities to the office.

At least two state court systems have promulgated rules that allow some form of pro bono
involvement by judicial branch lawyers. Since 1991, the Unified Court System of New York
State has allowed judicial branch lawyers to provide “pro bono legal services, which do not
interfere with the performance of their jobs, in contested or uncontested matters, except those

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34 A copy of the Broward County resolution can be found at tab 8.

35 A copy of the CASA policy can be found under tab 9.

36 A copy of Canon 4(D) can be found under tab 9
brought in the courts of their own employment [which are completely prohibited]." The New York rule covers the mechanism for obtaining approval for pro bono representation, reporting requirements, and the conditions and limitations on such engagements. Thus, attorneys employed by the New York Court of Appeals have represented indigents referred by the local legal services agency in simple, uncontested bankruptcies in federal court. One Court of Appeals lawyer provided mediation services through a local dispute resolution center; another serves on the board of directors of a not-for-profit affordable housing corporation and advises the board on certain legal issues concerning fundraising, conflicts of interest, and compliance with federal and state laws. No problems or conflicts have been reported as a result of the Unified Court System's authorization of pro bono service by its lawyer employees.

In October 1993, the Connecticut Judicial Branch promulgated an interim policy on pro bono involvement by judicial branch employees that "recognizes that the administration of justice is enhanced by the service of attorneys who offer their services for pro bono legal-service projects." The Connecticut policy allows judicial branch lawyers to engage in law-related education and "other pro bono activities that would not pose an obvious ethical conflict because the matters are not likely to come before the Connecticut courts." The policy allows lawyers to serve on bar association committees and on boards of pro bono or legal services programs and to engage in activities such as "federal bankruptcy proceedings, preparation of wills and living wills, federal tax proceedings, the preparation of tax returns, and research and writing of briefs in federal litigation." The policy suggests that judicial branch attorneys consider working under the auspices of legal services agencies, which can provide pro bono legal work, malpractice insurance, and necessary support resources.

In addition to covering issues such as use of state resources and state liability for malpractice or occupational taxes, the Connecticut policy provides an excellent list of factors that judicial branch attorneys should consider in determining whether to undertake a specific pro bono assignment:

- the likelihood that the contemplated legal service will come before the Judicial division for which the employee works;
- the likelihood that the contemplated legal service will require or involve the identification of the attorney as a Judicial Branch employee;
- the likelihood that the contemplated legal service will result in an appearance of impropriety in light of the attorney's responsibilities as a Judicial Branch employee; and
- the expertise of the attorney to render the contemplated legal service.

5. Attorneys' Fees Policy

For those government pro bono projects that plan to work with outside pro bono programs, it is necessary to determine whether the outside program has a policy on attorneys' fees and, if so, what the policy states. Because pro bono programs are organized for the purpose of providing quality legal services at no cost to persons of limited means, this issue will not often arise.

37 22 N.Y.C.R.R. 25.40(c).

However, volunteers are usually encouraged to seek statutory attorneys’ fees when the source of those fees is other than the client’s award. A clear policy will avoid any misunderstanding about whether the attorney is expected to turn over all or part of the award to the program. The ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, Standard 3.5-6 states, “a pro bono program should establish and communicate to clients and volunteers a policy regarding the receipt of attorneys’ fees by program volunteers.” The Commentary encourages pro bono programs to issue the policy in writing to both volunteers and clients.

Model Rule of Professional Conduct 6.1 sets forth a standard for pro bono service that permits attorneys to retain statutory attorneys’ fees in cases originally accepted as pro bono, but encourages the volunteer “to contribute an appropriate portion of the fees to organizations or projects that benefit persons of limited means.” Whether an attorney may sign an agreement to turn over part or all of court-awarded attorneys fees to a public interest organization without violating the ethical rule prohibiting fee sharing with non-attorneys has been addressed in several jurisdictions. In addition, an ABA Formal Opinion has stated that such agreements between a program and a volunteer attorney do not violate ethical rules. However, because the opinions in the states have varied, each attorney should do research for guidance in their individual jurisdiction. The DOJ policy prohibits seeking attorneys’ fees.

6. Retainer Agreements

While the ABA Rules of Professional Conduct do not require written retainer agreements, many individual states do have such requirements. For example, both New Jersey and the District of Columbia, among others, require a written fee agreement for clients not regularly represented by the lawyer. It is wise to check the applicable state ethics rules or ethics opinions for guidance.

39 ABA Standards at Standard 3.5-6 (Relations with Volunteers-Attorneys’ Fees Policy)

Commentary to ABA Model Rule of Professional Conduct 6.1, 1993 can be found under tab 1.

Examples of state opinions include: Maine Committee on Professional Ethics, Opinion 69 (3/17/86) (stating that pro bono attorney’s agreement to turn over a specified percentage of the fees to the ACLU affiliate was a violation of the fee-sharing rule); Bar Association of Greater Cleveland, Professional Ethics Committee, Opinion 141 (6/21/79) (opining that staff attorneys and pro bono attorneys could ethically agree to remit to the organization all statutory fees awarded); and Letter of 1/19/89 from Patricia Allen, Ethics Counsel, The Florida Bar, to ACLU of Florida (reporting that the Bar’s Professional Ethics Committee voted that the ACLU’s policies regarding fees awarded to cooperating and do not involve fee-splitting).

42 ABA Formal Opinion 93-374.

43 DC RPC Rule 1.5(b) Fees (amendments through 1998), and NJ RPC Rule 1.5(b) Fees (amendments through 1995).

44 Sample retainer agreements can be found under tab 13.
TAB 6
Office of the Attorney General  
Washington, D.C. 20530

March 6, 1996

DEPARTMENT OF JUSTICE POLICY STATEMENT  
ON PRO BONO LEGAL AND VOLUNTEER SERVICES

I. DEPARTMENT OF JUSTICE PRO BONO LEGAL AND VOLUNTEER POLICY

The Policy. Given the significant unmet need for legal and other community services in the nation, it is the policy of the Department of Justice to encourage and support efforts by Department employees to provide pro bono legal and volunteer services within their communities that are consistent with applicable federal statutes and regulations governing conflicts-of-interest and outside activities. While service in the Department of Justice is itself one of the highest forms of public service, the Department further strives to increase access to justice for all and to strengthen our communities. To this end, the Attorney General encourages Department employees to set a personal goal of at least 50 hours per year of pro bono legal and volunteer service.

COMMENT:

Scope of the Program. The Department’s Policy Statement on Pro Bono Legal and Volunteer Services (the "Policy Statement") will extend to all Department employees and encourage all volunteer work, legal or non-legal. This inclusive structure best reflects the Department’s commitment to developing a sense of community responsibility, not only among lawyers but among all citizens.

The 50-hour goal. The Department of Justice has adopted a 50-hour aspirational goal. In the context of pro bono legal services, the 50-hour aspirational goal is in accord with the American Bar Association’s Model Rule 6.1, and falls within the range adopted by other state bar associations.
II. DEFINITION OF PRO BONO LEGAL AND VOLUNTEER SERVICES

Definition. Pro bono legal work and volunteer services are broadly defined to include many different types of activities, performed without compensation.

A. Pro bono legal services. Pro bono legal services are those legal services performed without compensation and include, but are not limited to, the provision of legal services to:

1. persons of limited means or other disadvantaged persons;

2. charitable, religious, civic, community, governmental, health and educational organizations in matters which are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose;

3. individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or

4. activities for improving the law, the legal system, or the legal profession.

COMMENT: This definition is based on Rule 6.1 of the ABA Model Rules of Professional Conduct, with some modifications that, among other things, make clear that the legal services must be provided without fee. This definition of pro bono legal services includes a broad range of activities; the listed activities are intended as examples only. The Department recognizes, however, that statutory or regulatory restrictions may prohibit government lawyers from performing certain pro bono services. See Section III.

B. Volunteer services. Volunteer services are those activities, other than the practice of law, performed without compensation. They include, but are not limited to, the provision of services to:

1. persons of limited means or other disadvantaged persons; or

2. charitable, religious, civic, community, governmental, health and educational organizations in matters which are designed primarily to address the needs of persons of limited means or other disadvantaged persons.

COMMENT: The Department does not seek to restrict the type of volunteer activities in which employees may engage in their free time, provided that the activities do not violate any statutory or regulatory restrictions. See Section III.
The Attorney General encourages Department employees to participate in the Department-sponsored mentoring programs and volunteer activities that further the Department's program priorities. For example, the strong leadership skills of many Department employees could be put to good use helping at-risk youth in classrooms, youth clubs, shelters, and midnight basketball programs. The Volunteer Services Program Coordinator, see Section VI, will have information regarding such programs.

III. LIMITATIONS ON PRO BONO LEGAL AND VOLUNTEER SERVICES

A. Prior Approval.

1. **Pro Bono Legal Services.** An employee seeking to engage in any pro bono legal work must follow agency procedures for outside activities, and must consult with his or her Deputy Designated Agency Ethics Official regarding prior approval requirements. See 5 C.F.R. § 2635.803 and note thereto.

   Component heads are encouraged to designate some pro bono legal activities as preapproved such that the employee need only give advance notice to a designated supervisor before undertaking the outside activity.

   a. In general, approval of an employee's request to engage in pro bono legal work shall be granted if the work would not:

      (1) violate any federal statute, rule or regulation, including, for example, 18 U.S.C. § 201 et seq. and 5 C.F.R. Pt. 2635;

      (2) interfere with the proper and effective performance of the employee's official duties (including time and availability requirements of his or her position), see 5 C.F.R. § 2635.705;

      (3) create or appear to create a conflict of interest, see Section III.B. below; or

      (4) cause a reasonable person to question the integrity of the Department's programs or operations.

   b. Where an employee has been denied approval by a component head's designee to perform pro bono legal work, the decision will be appealed automatically to the component head.

2. **Volunteer Services.** An employee seeking to engage in volunteer activities must follow agency procedures for outside activities, and must consult with his or her Deputy Designated Agency Ethics Official regarding prior approval requirements. See 5 C.F.R. § 2635.803 and note thereto.
The standards for granting approval for volunteer services are the same as those set forth above for volunteer legal services. See Section III.A.1.a.

COMMENT: Offices may choose to institute their own pro bono or volunteer service programs in which certain activities are pre-approved. For example, the U.S. Attorney's Office in the Southern District of Florida has received permission from the Executive Office for U.S. Attorneys to run a pro bono program in conjunction with the Dade County Bar. Under this program, Assistant United States Attorneys in the Southern District have the opportunity and necessary approval to provide volunteer legal representation in select domestic violence, child advocacy, divorce, and small claims cases. The Attorney General urges all components to consult with the Pro Bono and Volunteer Services Committee, see Section VI.A., and the Department's Designated Ethics Official to determine which outside activities it may want to designate as preapproved.

B. Conflicts of Interest.

1. General Standard. Department employees may not engage in pro bono legal or volunteer services that create or appear to create a conflict of interest with their work for the Department. Under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635, a conflict of interest generally exists where the services would:

   a. require the recusal of the employee from significant aspects of the employee's official duties, see 5 C.F.R. § 2635.802(b);

   b. create an appearance that the employee's official duties were performed in a biased or less than impartial manner, see 5 C.F.R. § 2635.502; or

   c. create an appearance of official sanction or endorsement, see 5 C.F.R. § 2635.702(b).


3. Criminal Representation. Department of Justice attorneys are prohibited by statute from providing pro bono legal assistance in any case in which the United States is a party or has a direct and substantial interest -- which includes criminal defense representation in federal court, see 18 U.S.C. § 205. In the past, full-time Department employees have also been prohibited by regulation from providing outside professional services (including, for example, services as a lawyer, paralegal, investigator, secretary, economist or
physician) in criminal or habeas-corpus matters in any court. It is the Department's intention to continue that prohibition.

4. Responsibility for Conflicts Check.

a. The component head or the component head's designee will be responsible for completing the conflicts check for pro bono legal activities prior to approving such activities.

b. The Department employee will be responsible for ensuring that his or her volunteer services do not present a conflict of interest, and do not otherwise violate any applicable statute or regulation.

COMMENT: The issue of conflicts should be determined by reference to the government-wide standards of conduct, 5 C.F.R. § 2635 (particularly §§ 2635.801 - .802), and any subsequently published Department of Justice supplemental regulations.

Application of these standards of conduct necessarily will involve the exercise of judgment. These judgments likely will differ from one component and situation to another. For this reason, each component will be asked to work with the Pro Bono and Volunteer Services Committee, see Section VI, and the Department's Designated Ethics Official in setting its own component-specific conflict standard. Deputy Designated Agency Ethics Officials (DAEOs) in each component are available for consultation on conflicts questions, as is the Pro Bono Program Manager. See Section VI.B.

Hatch Act Policy: Outside activity by Department employees must comport with the regulations implementing the Hatch Act Reform Amendments of 1993, 5 C.F.R. Pt. 734, and with the February 27, 1996 Attorney General memorandum delineating the Department's policy concerning political activities by employees. Department policy holds all political appointees to the restrictions of 5 C.F.R. Pt. 734, subpt. D.

Non-Representational Assistance: Department employees may provide non-representational assistance without compensation, such as assistance in the filling out of forms for persons seeking government benefits, and may assist in the preparation of tax returns without compensation (e.g., through the Voluntary Income Tax Program), provided that the services satisfy the prior approval requirements of Section III.A of this Policy Statement, and do not present a conflict of interest as addressed in Section III.B.
C. Additional Considerations.

1. Retainer Agreement. The Pro Bono Program Manager, see Section VI.B., will have available a model retainer letter making explicit to a pro bono legal client that the attorney is acting in his or her own individual capacity and not on behalf of the Department. The client must countersign a retainer letter in acknowledgment of this fact.

2. Malpractice Coverage. Before agreeing to meet with or accept a pro bono legal client, a Department attorney should determine whether the referring pro bono program or organization has a malpractice insurance policy which covers volunteer attorneys. The Department of Justice does not provide malpractice coverage for pro bono work.

   COMMENT: Generally, volunteer programs organized by the local bar or the more established referral programs do provide malpractice coverage. The Pro Bono Program Manager will have information regarding which programs provide malpractice insurance coverage for volunteer attorneys. Attorneys who choose to provide legal services without malpractice insurance coverage are acting at their own risk.

3. The District of Columbia Professional Licensing Fee. The D.C. Code has been amended to provide that members of the District of Columbia bar "engaged in the provision of legal services, on a pro bono basis solely or in combination with government service," an exemption from the requirement to pay the District of Columbia professional licensing fee of $250. D.C. Act 10-304.

4. Restrictions on the Unauthorized Practice of Law. Attorneys not licensed in the District of Columbia do not need to pay the District of Columbia licensing fee, but may only practice subject to the constraints of the District of Columbia’s local rule regarding the unauthorized practice of law. D.C. Court of Appeals Rule 49.

   COMMENT: D.C. Court of Appeals Rule 49 currently prohibits Department attorneys who are not members of the D.C. Bar from taking on pro bono representational work. The D.C. Bar is currently considering a revised Rule 49 which would exempt federal government attorneys who are members in good standing of another state bar and who accept pro bono cases under the supervision of a D.C. Bar member employed by or affiliated with a legal services or referral program, or other non-profit organization in D.C. The Pro Bono Program Manager will have information regarding the revision of Rule 49 for Department attorneys who are not members of the D.C. Bar but who wish to accept pro bono cases.
Department attorneys in other jurisdictions are advised to consult their local rules and regulations regarding any professional fees and practice restrictions that may exist.

IV. USE OF OFFICIAL POSITION OR PUBLIC OFFICE

The Policy. Department of Justice employees who provide pro bono legal services or who participate in volunteer activities may not indicate or represent in any way that they are acting on behalf of the Department, or in their official capacity. The incidental identification of an employee’s position or office — for example, when an office number and street address are not sufficient to ensure mail delivery or when receiving a telephone call — is not prohibited.

A. A Department of Justice employee may not use office letterhead, agency or office business cards, or otherwise identify himself or herself as a Department employee in any communication, correspondence, or pleading connected with pro bono legal activities or other volunteer services.

B. A Department of Justice attorney is responsible for making it clear to the client, any opposing parties, or others involved in a pro bono case, that the attorney is acting in his or her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of, the Department.

V. USE OF AGENCY RESOURCES

A. Hours of Work. Department employees are encouraged to seek volunteer and pro bono legal opportunities that can be accomplished outside their scheduled working hours. However, pro bono legal or volunteer activities may sometimes occur during work hours. Supervisors are urged to be flexible and to accommodate, where feasible, the efforts of their employees to do pro bono legal or volunteer work. Employees seeking to participate in pro bono legal or volunteer activities during work hours may also be granted leave without pay, annual leave, or, in very limited circumstances, administrative leave, as explained in the comment.

When considering employee requests for leave to engage in pro bono legal or volunteer activities, supervisors should give due attention to the effect of the employee’s absence on office operations.

The decision to grant an employee’s request to engage in pro bono legal or volunteer activities during hours of work may not be affected by a supervisor’s personal views regarding the substance of the pro bono activity.

COMMENT: The Attorney General recognizes the serious budgetary constraints and
heavy workloads faced by each of the components. Therefore, while this Policy Statement asks supervisors to be flexible in dealing with employees seeking to engage in pro bono legal or volunteer activities, it also recognizes that supervisors must be able to judge whether such accommodations would interfere with the operation of the office.

Administrative Leave. As a general rule, it is inappropriate to pay an employee for time engaged in pro bono legal or volunteer services. However, in limited circumstances, it may be appropriate to excuse an employee from duty for brief periods of time without loss of pay or charge to leave to participate in volunteer activities. See Federal Personnel Manual System, FPM Letter 992-1 (April 19, 1991). Excused absence should be limited to those situations in which the employee’s volunteer service meets one or more of the following criteria: is directly related to the Department’s mission; is officially sponsored or sanctioned by the Attorney General; or will enhance the professional development or skills of the employee in his or her current position. Id.

Prior Department of Justice ethics regulations have permitted supervisors to grant leave “for court appearances or other necessary incidents of representation.” See United States Attorneys’ Manual I-4.350. Also, past Attorneys General and this Attorney General have authorized the granting of administrative leave to encourage participation in a project such as the mentoring program sponsored by the Department.

Administrative leave should not be granted for volunteer or pro bono legal activities that directly benefit an employee or those with whom an employee has a personal relationship.

B. Use of Office Equipment. As a general rule, employees may use government property only for official business or as authorized by the government. See 5 C.F.R. § 2635.101(b)(9), .704(a). Department policy authorizes the following personal uses of government office and library equipment and facilities:

1. personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and

2. limited personal telephone/fax calls to locations within the office’s commuting area, or that are charged to non-government accounts.

This Department policy permits personal use of equipment and facilities only if it involves negligible additional expense to the government — such as electricity, ink, small amounts of paper, and ordinary wear-and-tear. When office computers, printers and copiers are used in moderation, there is only negligible additional expense to the government for electricity, ink and wear-and-tear. Such use, therefore, is authorized
as long as only small amounts of paper are involved and as long as the use does not interfere with official business. Employees wishing to use more than a small amount of paper must provide their own or pay for its cost. Employees should contact their supervisor if there is any question whether an intended use involves "negligible" expense or "small amounts" of paper.

This policy does not authorize the personal use of commercial electronic databases when there is an extra cost to the government. On the other hand, research using the library’s books or microfiche would be authorized, as it involves only negligible additional expense to the United States.

The policy also authorizes limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-government accounts (e.g., personal telephone credit cards). Again, such use must not interfere with official business, and supervisors should be consulted if there is any question over whether such use is in fact "limited."

The policy does not override statutes, rules or regulations governing the use of specific types of government property, such as electronic mail, and 41 C.F.R. (FPMR) § 201-21.601 (governing the ordinary use of long-distance telephone services). It may be revoked or limited at any time by any supervisor or component for any business reason. Any employee who has questions about the application of this section to any particular situation should consult his or her supervisor.

In using government property, employees must be mindful of their responsibility to protect and conserve such property and to use official time in an honest effort to perform official duties. See 5 C.F.R § 2635.101(b)(9), .704(a), .705(a).

COMMENT: The above policy has been the Department’s practice since 1989. It was codified as a section of the Justice Property Management Regulations, 41 .C.F.R. (JPMR) § 128-1.5006-4, in April 1995.

C. Clerical Support. Pro bono legal and volunteer work are not official duties, and may not be assigned to or otherwise required of support staff.

COMMENT: It may be coercive to ask subordinate employees if they will volunteer to help perform pro bono legal or volunteer services, i.e., the typing of briefs or documents. See 5 C.F.R. § 2635.705. On the other hand, support staff may wish to volunteer their services. The Pro Bono Program Manager and Volunteer Services Program Coordinator will develop a central pool of support staff who are willing to volunteer to support pro bono legal or volunteer projects. See Section VI.B.
VI. ADMINISTRATION OF PRO BONO AND VOLUNTEER SERVICES PROGRAM

A. Pro Bono and Volunteer Services Committee. A Pro Bono and Volunteer Services Committee will be established to oversee the implementation of the Department's Policy Statement. The Committee will be chaired by the Pro Bono Program Manager, see Section VI.B., and include representatives from law enforcement, the Attorney General's Advisory Committee, litigating and non-litigating components, and the Volunteer Services Program Coordinator, see VI.C.

COMMENT: The Department recognizes that further refinements of its Policy Statement will be necessary. Specifically, the implementation of the Policy Statement in law enforcement agencies and United States Attorney's Offices will need further examination. In addition, the approval process outlined in Section III.A. will need to be monitored closely.

B. Pro Bono Program Manager. The Pro Bono Program Manager will develop and publicize pro bono legal opportunities in order to facilitate an increase in such activities throughout the Department of Justice. The position will be located in the Office of Policy Development. The Program Manager will work with United States Attorney's Offices in the development of office-specific pro bono programs.

COMMENT: It is anticipated that each component and United States Attorney's Office will appoint an individual to publicize and coordinate pro bono activities within the component and office and to refer persons to the component's Deputy Designated Agency Ethics Officer (DAEO) for conflict screening.

C. Volunteer Services Program Coordinator. The Volunteer Services Program Coordinator publicizes the volunteer services opportunities throughout the Department of Justice. The position is located in the Justice Management Division, Personnel Staff. The Coordinator refers employees to volunteer clearinghouses in their communities, assists employees in establishing and participating in Partners in Education programs, and organizes National Volunteer Week activities.

COMMENT: The position of Volunteer Services Program Coordinator already exists and works with contact persons in every component. This policy does not anticipate any change in the administration of the volunteer services program other than the involvement of the Coordinator in the Pro Bono and Volunteer Services Committee.

VII. DISCLAIMER

The Policy Statement is intended only to encourage increased pro bono legal and volunteer activities by Department employees, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.
The United States and the Department of Justice will not be responsible in any manner or to any extent for any negligent or otherwise tortious acts or omissions on the part of any Department employee engaged in any pro bono or volunteer activity. While the Department encourages pro bono and volunteer activities by its employees, the Department exercises no control over the services and activities of employees engaged in pro bono or volunteer activities nor does it control the time or location of any pro bono or volunteer activity. Each employee is acting outside the scope of his or her employment whenever the employee participates, supports or joins in any pro bono or volunteer activity.

APPROVED: [Signature] DATE: 2/16/96
MEMORANDUM

TO: All OGE Employees

FROM: Stephen D. Potts
Director

SUBJECT: OGE Policy on Volunteer and Pro Bono Activities by OGE Employees

June 12, 1997

I am pleased to announce the institution of a new policy here at the Office of Government Ethics (OGE) concerning volunteer and pro bono activities by OGE employees. In keeping with the goals of Executive Orders 12820 and 12988, OGE encourages employees to participate voluntarily in direct and consequential community service. These services include pro bono legal and other volunteer activities to be performed by employees on their own time, in accordance with applicable statutes, regulations and rules of conduct. For those of you who are interested in becoming involved in volunteer activities, but are uncertain of an outlet, the Office of Administration (OA) will retain lists of organizations that employees may use as a starting point. The lists were provided by Greater D.C. Cares and the Points of Light Foundation; they include lists of volunteer centers that employees may contact to find volunteer opportunities in Washington, DC or in their home area. OA will also retain a list of organizations that the Department of Justice provides to its employees seeking opportunities to engage in pro bono service. Employees should not feel that their potential volunteer or pro bono opportunities are limited to those organizations and activities on these lists; however, they should feel free to explore other options if so desired. OGE does not seek to restrict the types of volunteer activities in which employees may engage in their free time, provided that the activities do not violate any statutory or regulatory restrictions.

Definitions

Volunteer Activities are those activities, other than the practice of law, performed without compensation. They include, but are not limited to, the provision of services to:

1. persons of limited means or other disadvantaged persons;
2. charitable, religious, civic community, governmental, health and educational organizations in matters which are designated primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose; or

3. individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights.

Pro Bono Activities are those legal services performed without compensation and include, but are not limited to, the three categories listed above for volunteer services. They may also include legal services performed without compensation to activities for improving the law, the legal system, or the legal profession.

Limitations on Volunteer Activities

As you all know, there are certain restrictions that apply to outside activities by executive branch employees. These restrictions continue to apply even if the activity is a voluntary and/or charitable one. OGE employees therefore may not engage in volunteer or pro bono activities that create or appear to create a conflict of interest with their work here at OGE. Under the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), 5 C.F.R. part 2635, employees are prohibited from engaging in activities that would:

1. require the recusal of the employee from significant aspects of the employee’s official duties (§ 2635.803(b));

2. create an appearance of official sanction or endorsement (§ 2635.702(b)); or

3. violate any other conflict of interest statute or regulation, such as the restriction of 18 U.S.C. § 205 that generally bars employees from representing third parties before the Federal Government.

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Employees should also bear in mind that participation in an outside organization could give rise to a covered relationship under 5 C.F.R. § 2635.502(b)(1)(v). Employees should remain conscious of potential appearance problems and use the process described at § 2635.502 of the Standards to determine whether an outside activity would require them to recuse from aspects of their official duties.
All OGE Employees

Page 3

If you are unsure about the application of these restrictions to a proposed volunteer or pro bono activity, you should consult with OGE's Designated Agency Ethics Official (the Deputy Director).

Use of Official Property

Under the Standards, an employee may only use Government property for official business or as authorized. 5 C.F.R. § 2635.704. OGE employees are hereby authorized to use OGE equipment and facilities in connection with their volunteer and pro bono activities, if the use does not interfere with the regular business of the Office and incurs negligible additional expense to the Government. This would include such things as electricity, ink, very small amounts of paper, and ordinary wear and tear. Employees wishing to use more than a small amount of paper must provide their own or pay its cost. Limited local phone and FAX calls are also permitted, subject to the same considerations. Legal research conducted through publications in the OGE library on an employee's own time, for example, would involve negligible expense to the Government. Use of the LEXIS legal research database, however, would not be permitted as such use would incur costs to the Government each time it is used. If there is any question as to whether a particular use would be considered "negligible," you should contact your supervisor. Use of E-mail and the Internet in connection with volunteer activities must be consistent with OGE's policy on use of these technologies. That policy will be issued separately.

Use of Official Position

Any volunteer activity in which an employee participates would be in his individual capacity. It is therefore prohibited to indicate or represent in any way that such activity is on behalf of the Government, or in the employee's official capacity. Employees cannot use OGE letterhead or business cards that identify them as OGE employees, nor can they identify themselves as OGE employees in communication or correspondence undertaken in connection with their chosen volunteer activity. Incidental identification of an employee's official position or office, such as providing the employee's office phone number when necessary to receive a telephone call, is not prohibited.

Scheduling Volunteer Activities

Because any volunteer or pro bono activities are individual activities of the employee and not on behalf of OGE, employees are encouraged to seek volunteer opportunities that can be accomplished outside of work hours on their own personal time. Although an employee's official OGE assignments must of course be given priority over any outside activities, on rare occasions overlap of the outside activities into an employee's workday may be
unavoidable. In such instances the employee may request annual leave or leave without pay. Another possibility would be for the employee to seek to adjust his work schedule on a one-time or limited basis to accommodate those infrequent occasions when his volunteer activities require time that would ordinarily fall within his official duty hours. Employees may therefore request to report for duty earlier or later than the regularly scheduled arrival time, in order to meet the needs of their volunteer activities. Requests for such temporary schedule changes must be made at least one day before the first day on which the change is requested, and if at all possible the requested changes in the schedule should occur within a single pay period. In any event, a requested change is not effective unless approved by the supervisor. Supervisors will inform the employee of their approval or disapproval of the request, and (if approved) will also inform the appropriate T&A clerk either orally, by written note or by E-mail.

Special Issues for Attorneys

While attorneys are, of course, free to participate in volunteer activities in accordance with this policy just as any other OGE employee, their particular expertise gives them the opportunity to provide unique assistance to the disadvantaged in our society. There is a fine tradition in the law for providing services pro bono publico, and OGE attorneys are encouraged to follow this tradition and help meet this societal need. OGE attorneys examining pro bono opportunities should be aware of certain issues that may affect the decisions that they make regarding pro bono service. These include the following:

Malpractice Insurance. Before agreeing to meet with or accept a pro bono legal client, an OGE attorney should determine whether the referring pro bono program or organization has a malpractice insurance policy which covers volunteer attorneys. OGE does not provide malpractice coverage for pro bono work.

D.C. Licensing Fee. The D.C. Code has been recently amended to provide that members of the District of Columbia bar "engaged in the provision of legal services, on a pro bono basis solely or in combination with government service" are exempt from the requirement to pay the D.C. professional licensing fee of $250. D.C. Act 10-304.

Restrictions on Unauthorized Practice of Law. D.C. Court of Appeals Rule 49 was recently amended to permit Federal Government attorneys who are members in good standing of another state bar to accept pro bono cases under the supervision of a D.C. Bar member employed by or affiliated with a legal service or referral program, or other nonprofit organization in the District. Such representation is therefore not considered to violate the D.C. Bar restrictions prohibiting the unauthorized practice of law in the District.
GENERAL SERVICES ADMINISTRATION
OFFICE OF GENERAL COUNSEL POLICY STATEMENT
ON PRO BONO LEGAL AND VOLUNTEER SERVICES

I. POLICY

Executive Order 12988, issued by the President on February 5, 1996, provides that "all federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by Government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline." Given the significant unmet need for legal and other community services in the nation, it is the policy of the General Services Administration's (GSA) Office of General Counsel (OGC) to encourage and support efforts by OGC employees to provide pro bono legal and volunteer services within their communities that are consistent with applicable federal statutes and regulations governing conflicts of interest and outside activities. While working for GSA is itself public service, GSA supports increased access to justice for all and other services to strengthen our communities. This policy statement encourages OGC employees to provide pro bono legal and other volunteer services to persons of limited means or other disadvantaged persons, so long as such service is consistent with applicable laws and regulations and the OGC employee's obligation to the agency.

OGC employees who perform pro bono legal and volunteer services are subject to the same ethics laws and regulations as all other GSA employees. These include the criminal conflicts of interest laws which prohibit an employee from representing any party before the U.S. Government, with or without compensation, as well as the Office of Government Ethics (OGE) standards of ethical conduct regulations which prohibit the misuse of position, title, time and Government property. See III.B below. In addition, OGC attorneys are subject to the codes of ethical conduct imposed by the various state bar associations of which they are members. The scope of the OGC pro bono legal and volunteer services program extends to all OGC employees and encourages all volunteer work, legal or non-legal. This inclusive structure best reflects OGC's commitment to developing a sense of community responsibility, not only among lawyers but among all citizens.

To this end, the Office of General Counsel encourages OGC employees to set a goal of at least 50 hours per year of pro bono
legal and volunteer services. In the context of pro bono legal services, the 50-hour aspirational goal is in accord with the American Bar Association's (ABA) Model Rule 6.1, and falls within the range adopted by several state bar associations.

II. DEFINITION OF PRO BONO LEGAL AND VOLUNTEER SERVICES

Definition. Pro bono legal and volunteer services are broadly defined to include many different types of activities performed without compensation.

A. Pro Bono Legal Services. Pro bono legal services are those legal services performed without compensation and include, but are not limited to, the provision of legal services to:

1. persons of limited means or other disadvantaged persons;

2. charitable, religious, civic, community, governmental, health and educational (collectively, "charitable") organizations in matters which are designed primarily to address the needs of persons of limited means or other disadvantaged persons or to further charitable organizational purposes;

3. individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or

4. activities for improving the law, the legal system, or the legal profession.

COMMENT: This definition is based on Rule 6.1 of the ABA Model Rules of Professional Conduct, with some modifications that, among other things, make clear that pro bono legal services must be provided without fee. This definition of pro bono legal services includes a broad range of activities, the listed activities are intended as examples only. OGC recognizes, however, that statutory or regulatory restrictions may prohibit Government lawyers from performing certain pro bono legal services. See Section III below.
B. Volunteer Services. Volunteer services are those activities, other than the practice of law, performed without compensation. They include, but are not limited to, the provision of services to:

1. persons of limited means or other disadvantaged persons; or

2. charitable organizations in matters which are designed primarily to address the needs of persons of limited means or other disadvantaged persons.

COMMENT: OGC does not seek to restrict the type of volunteer activities in which employees may engage in their free time, provided that the activities do not violate any statutory or regulatory restrictions. See Section III below. The General Counsel encourages OGC employees to participate in the GSA-sponsored mentoring programs and volunteer activities. For example, the strong leadership skills of many OGC employees would be valuable in helping at-risk youths in classrooms, youth clubs, shelters, and sports programs.

III. LIMITATIONS ON PRO BONO LEGAL AND VOLUNTEER SERVICES

A. Prior Approval.

Employees seeking to engage in any pro bono legal work or provide volunteer services must follow government-wide procedures under subpart H of the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635) and the agency procedures for outside activities under the Supplemental Standards of Conduct for Employees of the General Services Administration (5 C.F.R. 6701.106), and should consult with their Deputy Standards of Conduct Counsellor regarding prior approval requirements. In general, an employee shall ensure that his or her pro bono legal and volunteer services do not:

1. violate any Federal statute, rule or regulation, including, for example, 18 U.S.C. §§ 201 et seq., 5 C.F.R. Part 2635, and 5 C.F.R. Part 6701;
2. interfere or conflict with the proper and effective performance of their official duties (including time and availability requirements of their position) (see 5 C.F.R. § 2635.705);

3. create or appear to create a conflict of interest (see Section III.B. below); or

4. cause a reasonable person to question the integrity of GSA's programs or operations.

B. Conflicts of Interest

1. Statutory Restrictions. Under 18 U.S.C. § 205 Federal employees are prohibited from engaging in representations before the U.S. in matters in which the U.S. is a party or has a direct and substantial interest. In particular, OGC attorneys are prohibited from providing pro bono legal assistance in any case in which the U.S. is a party or has a direct and substantial interest if the legal assistance requires representation before the U.S. This would include criminal defense representation in Federal court.

Section 205 does not preclude employees from representing: (1) their immediate family (spouse, child, parents or any person for whom, or for any estate for which, they are serving as a guardian, executor, administrator, or trustee subject to the limitations identified under 18 U.S.C. § 205(e)); and (2) any person who is a subject of disciplinary, loyalty and other personnel administration proceedings, so long as the representation is not inconsistent with the faithful performance of the employee’s duties in connection with those proceeding. See 18 U.S.C. 205(d).

Also, outside activity by OGC employees must comply with the regulations implementing the Hatch Act Reform Amendments of 1993 and 5 C.F.R. Part 734.
2. Regulatory Restrictions. OGC employees may not engage in pro bono legal or volunteer services that create or appear to create a conflict of interest with their official duties at GSA. Under the Standards of Ethical Conduct, a conflict of interest generally exists where the services would:

a. require the recusal (disqualification) of a employee from significant aspects of the employee's official duties that the employee’s ability to perform the duties of his or her position would be materially impaired (see 5 C.F.R. § 2635.802(b));

b. create an appearance that the employee's official duties were performed in a biased or less than impartial manner (see 5 C.F.R. § 2635.502); or

c. create an appearance of official sanction or endorsement (see 5 C.F.R. § 2635.702(b) and (c)).

3. Non-representational Assistance. OGC employees may provide non-representational assistance without compensation, such as assistance in the filling out of forms for persons seeking Government benefits, and may assist in the preparation of tax returns without compensation (i.e., through the Voluntary Income Tax Program), provided that the services do not present a conflict of interest as described in this section.

4. Local Bar and Licensing Rules may also apply.

C. Additional Considerations.

1. Retainer Agreement. In connection with each pro bono legal representation, an OGC attorney shall provide his or her clients with a retainer letter making explicit that the attorney is acting in his or her own individual capacity and not on behalf of GSA. The client must countersign a retainer letter
in acknowledgment of this fact. A model retainer agreement is attached and should be adapted as appropriate.

2. **Malpractice Coverage.** Before agreeing to meet with or accept a pro bono legal client, OGC attorneys should determine whether the referring pro bono program or organization has a malpractice insurance policy which covers volunteer attorneys. GSA does not provide malpractice coverage for pro bono legal work. Generally, volunteer programs organized by the local bar or established referral programs do provide malpractice coverage. OGC attorneys who choose to provide legal services without malpractice insurance coverage are acting at their own risk.

3. **Costs.** There may be costs associated with handling a pro bono case, such as filing fees and other litigation costs. Some organizations have established mechanisms to provide for coverage of such costs in the case of Federal Government volunteers.

4. **The District of Columbia Professional Licensing Fee.** The D.C. Code has been amended to provide that members of the District of Columbia Bar "engaged in the provision of legal services, on a pro bono basis solely or in combination with Government service," are exempted from the requirement to pay the District of Columbia professional licensing fee of $250. D.C. Act 10-304.

5. **Restrictions on the Unauthorized Practice of Law.** OGC attorneys not licensed in the District of Columbia do not need to pay the District of Columbia licensing fee, but may only practice subject to the constraints of the District of Columbia's local rule regarding the unauthorized practice of law. D.C. Court of Appeals Rule 49. Rule 49 permits Federal Government attorneys to provide pro bono legal services in the District of Columbia so long as they are members in good standing of a bar association of some state, get the cases in referral from an
organization providing pro bono legal services, and are supervised by an active member of the D.C. Bar. See D.C. Court of Appeals Rule 49(c).

OGC attorneys in other jurisdictions are advised to consult their local rules and regulations regarding professional fees and practice restrictions that may exist.

IV. USE OF OFFICIAL POSITION OR PUBLIC OFFICE

OGC employees who provide pro bono legal services or who participate in volunteer activities may not indicate or represent in any way that they are acting on behalf of GSA, or in their official capacity.

Without limiting the generality of the preceding sentence, OGC employees may not use office letterhead, agency or office business cards (whether or not purchased with appropriated funds), or otherwise identify themselves as GSA employees in any communication, correspondence, or pleading connected with any pro bono legal or volunteer services. In addition, OGC attorneys are responsible for making it clear to their clients, opposing parties, or others involved in a pro bono case, that they are acting in their individual capacities as volunteers, and are not acting as representatives of, or on behalf of, GSA.

V. USE OF AGENCY RESOURCES

A. Hours of Work. OGC employees are encouraged to seek pro bono legal and volunteer service opportunities that can be accomplished outside their scheduled working hours. Such projects are intended to be performed on employees' own time. However, pro bono legal or volunteer activities may sometimes occur during work hours, i.e., court appearances. Supervisors are urged to be flexible and to accommodate, where feasible, the efforts of their employees to do pro bono legal or volunteer work. Employees seeking to participate in pro bono legal or volunteer activities during work hours may also be granted leave without pay, annual leave, or, in very limited circumstances, administrative leave. As a general rule, it is inappropriate to pay an employee for
time engaged in pro bono legal or volunteer services. However, in limited circumstances, it may be appropriate to excuse an employee from duty for brief periods of time without loss of pay or charge to leave to participate in volunteer activities. See (for guidance only) Federal Personnel Manual System, FPM Letter 992-1 (April 19, 1991). Excused absence should be limited to those situations in which the employee's volunteer service meets one or more of the following criteria: is directly related to GSA's mission; is officially sponsored or sanctioned by the Administrator; or will enhance the professional development or skills of the employee in his or her current position. Id.

Administrative leave should not be granted for pro bono legal or volunteer activities that directly benefit an employee or those with whom an employee has a personal relationship.

When considering requests for leave to engage in pro bono legal or volunteer activities, supervisors should give due attention to the effect of the employee's absence on office operations.

The decision to grant an employee's request to engage in pro bono legal or volunteer services during hours of work may not be affected by a supervisor's personal views regarding the substance of the pro bono legal activity.

**COMMENT:** The General Counsel recognizes the serious budgetary constraints and heavy workloads that can be placed on the office. Therefore, while this Policy Statement asks supervisors to be flexible in dealing with employees seeking to engage in pro bono legal or volunteer services, it also recognizes that supervisors are entitled to exercise their discretion and judgment in determining whether any such accommodation would interfere with the operation of the office.

**B. Clerical Support.** Pro bono legal and volunteer work are not official duties and may not be assigned to or otherwise required to be performed by support staff.
In addition, it may be coercive to ask subordinate employees if they will volunteer to help perform pro bono legal or volunteer services, i.e., the typing of briefs or documents. See 5 C.F.R. § 2635.705. On the other hand, support staff may wish to volunteer their services. LA will maintain a list of support staff, if any, who are willing to volunteer to support pro bono legal or volunteer projects.

C. Use of Office Equipment. As a general rule, employees may use Government property only for official business or as authorized by the Government. See 5 C.F.R. § 2635.101(b)(9), 2635.704(a). GSA Order ADM 7800 (Personal Use of Agency Office Equipment) authorizes the personal use of agency office equipment (such as office supplies, telephones and other telecommunications equipment, computers and reproduction machines) by GSA employees in the office or official duty station on an occasional basis provided that the use involves minimal additional expense to the Government (such as electricity, ink, small amounts of paper, and ordinary wear and tear) and does not interfere with official business. The personal use of agency office equipment shall normally take place on the employees’ personal time.

The personal use of agency office equipment may be revoked or limited at any time by the General Counsel or the appropriate Associate General Counsel or Regional Counsel for any legitimate business reason.

VI. ADMINISTRATION OF PRO BONO LEGAL AND VOLUNTEER SERVICES PROGRAM

Any management activities required to support pro bono legal and volunteer services within OGC shall be carried out as directed from time to time by the General Counsel.
VII. DISCLAIMER

The Policy Statement is intended only to encourage increased pro bono legal and volunteer activities by OGC employees and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

The United States and GSA will not be responsible in any manner or to any extent for any negligent or otherwise tortuous acts or omissions on the part of any OGC employee engaged in any pro bono legal or volunteer activity. While GSA encourages pro bono legal and volunteer activities by its employees, GSA exercises no control over the services and activities of employees engaged in pro bono legal or volunteer activities nor does it control the time or location of any pro bono legal or volunteer activity. Each employee is acting outside the scope of his or her employment whenever the employee participates, supports or joins in any pro bono legal or volunteer activity.

Emily C. Hewitt
General Counsel
GC Memo 97-01

TO: Distribution

FROM: G/General Counsel

SUBJECT: Policy on Pro Bono Legal Service by NASA Attorneys

Executive Order 12988, issued by the President on February 5, 1996, provides that “all Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline.” In response to this provision, this memo sets forth NASA policy on pro bono work by NASA attorneys.

A paradox of practicing as a Federal attorney is that while each of our jobs is dedicated to serving the public through the governmental functions we perform, we are constrained in many ways from engaging in pro bono legal services. As a practical matter, conflicts of interest and the provisions of 18 U.S.C. § 205 often prevent us from practicing pro bono work in our areas of specialty. Also, unlike many private sector legal employers, the Government cannot provide malpractice insurance, and there are significant limits on the use of official time and Government property for pro bono activities.

Despite these restrictions, I fully support the voluntary efforts of any NASA attorney who seeks to engage in pro bono practice. Enclosed is an outline prepared by the Department of Justice summarizing the Department’s experience in setting up a pro bono program. This is a useful summary which should be used as guidance when issues in this area arise. Approval of pro bono practice should be handled in accordance with NASA’s regulations at 5 CFR § 6901.103 for obtaining approval of outside employment.

Once pro bono representation is approved, it is inevitable that some legal services will need to be provided during the normal work week and that some use of Government equipment and materials will be implicated. As noted in section IX of the Justice outline, de minimus use of both time and materials is permitted under the Justice program and is a policy issue to be addressed by each agency. After discussion with the Inspector General, I have decided that it shall be NASA policy to permit, once pro bono legal services have been approved, an attorney’s supervisor to authorize reasonably necessary use of official time (for telephone conferences, filing of papers and the like) and of Government property (computers, copiers, fax machines and etc.) as described in section IX of the Justice outline.

Participation in pro bono legal services is an important way we can help meet unmet needs in our communities. Although the barriers for us to contribute directly to these problems as lawyers are significant, I do not wish to discourage any NASA attorney from trying to overcome them. Of course there are kinds of community assistance other than the practice of law, and I wholeheartedly encourage
this kind of participation as well. In any event, the decision to participate in pro bono or other community services is a decision personal to each attorney. Whatever decision is made must remain personal and must not become a factor in any official action taken or decision made concerning the individual attorney involved. In short, an attorney’s decision to engage in pro bono activities should be driven by a desire to do good, not a desire to advance or promote his/her Government career. Each one of us, in our own separate way, needs to relate to his/her community in the way he/she feels best. Managers need to avoid erecting unnecessary barriers to efforts to help those who are less fortunate than we, but also must avoid putting any official stamp of approval on any one type of activity to the detriment of others.

Should you have any questions concerning the policy outlined above, please feel free to contact me on (202) 358-2450 or Adam Greenstone on (202) 358-2084.

Edward A. Frankle

Enclosure
NATIONAL LABOR RELATIONS BOARD POLICY STATEMENT
ON PRO BONO LEGAL AND VOLUNTEER SERVICES
(for all Headquarters Employees except NLRBU Represented Employees)

I. NATIONAL LABOR RELATIONS BOARD PRO BONO LEGAL AND VOLUNTEER POLICY

The Policy. Given the significant unmet need for legal and other community services in the nation, it is the policy of the Agency to encourage and support efforts by Agency employees to provide pro bono legal and volunteer services within their communities that are consistent with applicable federal statutes and regulations governing conflicts-of-interest and outside activities. While service in the Agency is itself one of the highest forms of public service, the Agency further strives to increase access to justice for all and to strengthen our communities. To this end, the Chairman and the General Counsel encourage Agency employees to set a personal goal of at least 50 hours per year of pro bono legal and volunteer service.

COMMENT:

Scope of the Program. The Agency’s Policy Statement on Pro Bono Legal and Volunteer Services (the “Policy Statement”) will extend to all Agency employees and encourage all volunteer work, legal or non-legal. This inclusive structure best reflects the Agency’s commitment to developing a sense of community responsibility, not only among lawyers but among all citizens.

The 50-hour goal. The Agency has adopted a 50-hour aspirational goal. In the context of pro bono legal services, the 50-hour aspirational goal is in accord with the American Bar Association’s Model Rule 6.1, and falls within the range adopted by other state bar associations.

II. DEFINITION OF PRO BONO LEGAL AND VOLUNTEER SERVICES

Definition. Pro bono legal work and volunteer services are broadly defined to include many different types of activities, performed without compensation.

A. Pro Bono Legal Services. Pro bono legal services are those legal services performed without compensation and include, but are not limited to, the provision of legal services to:

1. persons of limited means or other disadvantaged persons;

2. charitable, religious, civic, community, governmental, health and educational organizations in matters which are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose;
3. individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or

4. activities for improving the law, the legal system, or the legal profession.

COMMENT: This definition is based on Rule 6.1 of the ABA Model Rules of Professional Conduct, with some modifications that, among other things, make clear that the legal services must be provided without fee. This definition of pro bono legal services includes a broad range of activities; the listed activities are intended as examples only. The Agency recognizes, however, that statutory or regulatory restrictions may prohibit government lawyers from performing certain pro bono services. See Section III.

B. Volunteer Services. Volunteer services are those activities, other than the practice of law, performed without compensation. They include, but are not limited to, the provision of services to:

1. persons of limited means or other disadvantaged persons; or

2. charitable, religious, civic, community, governmental, health and educational organizations in matters which are designed primarily to address the needs of persons of limited means or other disadvantaged persons.

COMMENT: The Agency does not seek to restrict the type of volunteer activities in which employees may engage in their free time, provided that the activities do not violate any statutory or regulatory restrictions. See Section III.

The Chairman and the General Counsel encourage Agency employees to participate in the Agency-sponsored tutoring programs and volunteer activities that further the Agency's program priorities. For example, the strong leadership skills of many Agency employees could be put to good use helping at-risk youth in classrooms, youth clubs, shelters, and midnight basketball programs. The Volunteer Services Program Coordinator, see Section VI, will have information regarding such programs.

III. LIMITATIONS ON PRO BONO LEGAL AND VOLUNTEER SERVICES

A. Prior Approval.

1. Pro Bono Legal Services. An employee seeking to engage in any pro bono legal work must follow agency procedures for outside activities, and must consult with his or her Designated Agency Ethics Official regarding prior approval requirements. See 5 C.F.R. § 2635.803 and note thereto.

Office heads are encouraged to designate some pro bono legal activities
as preapproved such that the employee need only give advance notice to a designated supervisor before undertaking the outside activity.

a. In general, approval of an employee's request to engage in pro bono legal work shall be granted if the work would not:

(1) violate any federal statute, rule or regulation, including, for example, 18 U.S.C. § 201 et seq. and 5 C.F.R. Pt. 2635;

(2) interfere with the proper and effective performance of the employee's official duties (including time and availability requirements of his or her position), see 5 C.F.R. § 2635.705;

(3) create or appear to create a conflict of interest, see Section III.B. below; or

(4) cause a reasonable person to question the integrity of the Agency's programs or operations.

b. Where an employee has been denied approval by an office head's designee to perform pro bono legal work, the decision will be appealed automatically to the office head.

2. Volunteer Services.—An employee seeking to engage in volunteer activities must follow agency procedures for outside activities, and must consult with his or her Designated Agency Ethics Official regarding prior approval requirements. See 5 C.F.R. § 2635.803 and note thereto.

The standards for granting approval for volunteer services are the same as those set forth above for volunteer legal services. See Section III.A.1.a.

COMMENT: Offices may choose to institute their own pro bono or volunteer service program in which certain activities are pre-approved. The Chairman and the General Counsel urge all offices to consult with the Pro Bono and Volunteer Services Committee, see Section VI.A., and the Agency's Designated Ethics Official to determine which outside activities it may want to designate as preapproved.

B. Conflicts of Interest.

1. General Standard. Agency employees may not engage in pro bono legal or volunteer services that create or appear to create a conflict of interest with their work for the Agency. Under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635, a conflict of interest generally exists where the services would:
a. require the recusal of the employee from significant aspects of the employee's official duties, see 5 C.F.R. § 2635.802(b);

b. create an appearance that the employee's official duties were performed in a biased or less than impartial manner, see 5 C.F.R. § 2635.502; or

c. create an appearance of official sanction or endorsement, see 5 C.F.R. § 2635.702(b).

2 18 U.S.C. § 205. With limited exceptions, outside activities may not include the representation of third parties before the federal government, see 18 U.S.C. § 205.

3. Criminal Representation. Agency attorneys are prohibited by statute from providing pro bono legal assistance in any case in which the United States is a party or has a direct and substantial interest — which includes criminal defense representation in federal court, see 18 U.S.C. § 205.

4. Responsibility for Conflicts Check.

a. The office head or the office head's designee will be responsible for completing the conflicts check for pro bono legal activities prior to approving such activities.

b. The Agency employee will be responsible for ensuring that his or her volunteer services do not present a conflict of interest, and do not otherwise violate any applicable statute or regulation.

COMMENT: The issue of conflicts should be determined by reference to the government-wide standards of conduct, 5 C.F.R. § 2635 (particularly §§ 2635.801 - .802), and any subsequently published Agency supplemental regulations.

Application of these standards of conduct necessarily will involve the exercise of judgment. These judgments likely will differ from one office and situation to another. For this reason, each office will be asked to work with the Pro Bono and Volunteer Services Committee, see Section VI, and the Agency's Designated Ethics Official in setting its own office-specific conflict standard. The Designated Agency Ethics Official is available for consultation on conflicts questions, as is the Pro Bono Program Manager. See Section VI.B.

Hatch Act Policy: Outside activity by Agency employees must comport with the regulations implementing the Hatch Act Reform Amendments of 1993, 5 C.F.R. Pt. 734, and with all memoranda delineating the Agency policy concerning political
activities by employees. Agency policy holds all political appointees to the restrictions of 5 C.F.R. Pt. 734, subpt. D.

Non-Representational Assistance: Agency employees may provide nonrepresentational assistance without compensation, such as assistance in the filling out of forms for persons seeking government benefits, and may assist in the preparation of tax returns without compensation (e.g., through the Voluntary Income Tax Program), provided that the services satisfy the prior approval requirements of Section III.A of this Policy Statement, and do not present a conflict of interest as addressed in Section III.B.

C. Additional Considerations.

1. **Retainer Agreement.** The Pro Bono Program Manager, see Section VI.B., will have available a model retainer letter making explicit to a pro bono legal client that the attorney is acting in his or her own individual capacity and not on behalf of the Agency. The client must countersign a retainer letter in acknowledgment of this fact.

2. **Malpractice Coverage.** Before agreeing to meet with or accept a pro bono legal client, an Agency attorney should determine whether the referring pro bono program or organization has a malpractice insurance policy which covers volunteer attorneys. The Agency does not provide malpractice coverage for pro bono work.

   **COMMENT:** Generally, volunteer programs organized by the local bar or the more established referral programs do provide malpractice coverage. The Pro Bono Program Manager will have information regarding which programs provide malpractice insurance coverage for volunteer attorneys. Attorneys who choose to provide legal services without malpractice insurance coverage are acting at their own risk.

3. **The District of Columbia Professional Licensing Fee.** The D.C. Code has been amended to provide members of the District of Columbia bar "engaged in the provision of legal services, on a pro bono basis solely or in combination with government service," an exemption from the requirement to pay the District of Columbia professional licensing fee of $250. D.C. Code § 47-1814.1a(b)(3).

4. **Restrictions on the Unauthorized Practice of Law.** Attorneys not licensed in the District of Columbia do not need to pay the District of Columbia licensing fee, but may only practice subject to the constraints of the District of Columbia's
local rule regarding the unauthorized practice of law. D.C. Court of Appeals Rule 49.

**COMMENT:** D.C. Court of Appeals Rule 49 currently exempts federal government attorneys who are members in good standing of another state bar and who accept *pro bono* cases assigned or referred by an organization that provides legal services to the public without fee, provided that the attorney is supervised by an enrolled, active member of the D.C. Bar. If the matter requires a court appearance, such an attorney shall file with the court having jurisdiction over the matter, and with the D.C. Court of Appeals Committee on Unauthorized Practice, a certificate that the attorney is providing representation in that particular case without compensation. The *Pro Bono* Program Manager will have information regarding the revision of Rule 49 for Agency attorneys who are not members of the D.C. Bar but who wish to accept *pro bono* cases.

Agency attorneys in other jurisdictions are advised to consult their local rules and regulations regarding any professional fees and practice restrictions that may exist.

IV. USE OF OFFICIAL POSITION OR PUBLIC OFFICE

**The Policy.** Agency employees who provide *pro bono* legal services or who participate in volunteer activities may not indicate or represent in any way that they are acting on behalf of the Agency, or in their official capacity. The incidental identification of an employee's position or office—for example, when an office number and street address are not sufficient to ensure mail delivery or when receiving a telephone call—is not prohibited.

A. An Agency employee may not use office letterhead, agency or office business cards, or otherwise identify himself or herself as a Agency employee in any communication, correspondence, or pleading connected with *pro bono* legal activities or other volunteer services.

B. An Agency attorney is responsible for making it clear to the client, any opposing parties, or others involved in a *pro bono* case, that the attorney is acting in his or her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of, the Agency.

V. USE OF AGENCY RESOURCES

A. **Hours of Work.** Agency employees are encouraged to seek volunteer and *pro bono* legal opportunities that can be accomplished outside their scheduled working hours. *See Federal Personnel Manual System, FPM Letter 992-1 (April 19, 1991)*

B. **Use of Office Equipment.** As a general rule, employees may use government
property only for official business as authorized by the government. See 5 C.F.R. §§ 2635.101(b)(9), 704(a), 705(a); 41 C.F.R. § 101-35.201.

C. Clerical Support. Pro bono legal and volunteer work are not official duties, and may not be assigned to or otherwise required of support staff.

COMMENT: It may be coercive to ask subordinate employees if they will volunteer to help perform pro bono legal or volunteer services, i.e., the typing of briefs or documents. See 5 C.F.R. § 2635.705. On the other hand, support staff may wish to volunteer their services. The Pro Bono Program Manager and Volunteer Services Program Coordinator will develop a central pool of support staff who are willing to volunteer to support pro bono legal or volunteer projects on their own time. See Section VI.B.

VI. ADMINISTRATION OF PRO BONO AND VOLUNTEER SERVICES PROGRAMS

A. Pro Bono and Volunteer Services Committee. A Pro Bono and Volunteer Services Committee will be established to oversee the implementation of the Agency's Policy Statement. The Committee will be chaired by the Pro Bono Program Manager, see Section VI.B., and include representatives of various Agency offices and the Volunteer Services Program Coordinator, see VI.C.

COMMENT: The Agency recognizes that further refinements of its Policy Statement will be necessary. Specifically, the implementation of the Policy Statement in the Agency's Regional Offices will need further examination. In addition, the approval process outlined in Section III.A. will need to be monitored closely.

B. Pro Bono Program Manager. The Pro Bono Program Manager will develop and publicize pro bono legal opportunities in order to facilitate an increase in such activities throughout the Agency. The position will initially be located in the Contempt Litigation and Compliance Branch. The Program Manager will work with Agency offices in the development of office-specific pro bono programs.

COMMENT: It is anticipated that each Agency office will appoint an individual to publicize and coordinate pro bono activities within the office and to refer persons to the Designated Agency Ethics Officer for conflicts screening.

C. Volunteer Services Program Coordinator. The Volunteer Services Program Coordinator publicizes the volunteer services opportunities throughout the Agency. The position is located in the Division of Administration. The Coordinator refers employees to volunteer clearinghouses in their communities, assists employees in establishing and participating in Partners in Education programs, organizes National Volunteer Week activities, and promotes other
 VII. DISCLAIMER

The Policy Statement is intended only to encourage increased *pro bono* legal and volunteer activities by Agency employees, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

The United States and the Agency will not be responsible in any manner or to any extent for any negligent or otherwise tortuous acts or omissions on the part of any Agency employee engaged in any *pro bono* or volunteer activity. While the Agency encourages *pro bono* and volunteer activities by its employees, the Agency exercises no control over the services and activities of employees engaged in *pro bono* or volunteer activities nor does it control the time or location of any *pro bono* or volunteer activity. Each employee is acting outside the scope of his or her employment whenever the employee participates, supports or joins in any *pro bono* or volunteer activity.

APPROVED: William B. Gould IV, Chairman

DATE: 4/24/97

APPROVED: Fred Feinstein, General Counsel

DATE: 4/24/97

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TAB

7
MEMORANDUM TO ALL DEPARTMENT EMPLOYEES
FROM THE ATTORNEY GENERAL

SUBJECT: Department of Justice Pro Bono and Volunteer Services Policy

In compliance with President Clinton’s Executive Order on civil justice reform,¹ I have today signed the Department of Justice Policy Statement on Pro Bono Legal and Volunteer Services. A copy of this Policy Statement is attached. I urge everyone to read it carefully.

Given the significant unmet need for legal and other community services in the nation, this policy is being issued to encourage and support efforts by Department of Justice employees to provide pro bono legal and volunteer services within their communities that are consistent with applicable federal statutes and regulations governing conflicts-of-interest and outside activities. While service in the Department of Justice is itself one of the highest forms of public service, the Department further strives to increase access to justice for all and to strengthen our communities. To this end, I encourage all Department employees to join me in setting a voluntary, personal goal of at least 50 hours per year of pro bono legal and non-legal volunteer service.

Pro bono legal work and volunteer services are broadly defined to include many different types of activities, performed without compensation. Examples of such legal services and volunteer work are assistance to persons of limited means or other disadvantaged persons, as well as assistance to charitable, religious, civic, community, governmental, health and educational organizations. The Department does not seek to restrict the type of pro bono or volunteer activities in which employees engage, provided that such activities do not violate any statutory or regulatory restrictions as outlined in the Policy Statement.

All pro bono and volunteer service is subject to limitations, including certain prior approval requirements, compliance with all conflict of interest statutes and regulations, and compliance with all local unauthorized practice of law statutes and fee requirements. These and other restrictions on the use of one’s official position and use of agency resources are set forth in more detail in the Policy Statement. The Department Ethics Office and the Deputy Designated Agency Ethics Officer in each component will provide guidance to employees in compliance with all statutes and regulations in order to facilitate pro bono and volunteer service to the maximum extent possible consistent with the law.

¹Executive Order 12988, Section 2 which provides that “All Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees, to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule of guideline.”
Department employees are encouraged to participate in volunteer and pro bono legal opportunities that can be accomplished outside their scheduled working hours. However, pro bono legal or volunteer activities may sometimes occur during work hours. Supervisors are urged to be flexible and to accommodate, where feasible, the efforts of their employees to do pro bono legal or volunteer work.

I have asked the Office of Policy Development to provide the administrative structure and support for the pro bono program. The volunteer services program will continue to be operated out of JMD. A Pro Bono Program Manager in OPD will be responsible for developing additional pro bono opportunities for Departmental employees, publicizing those opportunities, arranging training for employees participating in pro bono work, and coordinating that work with the existing Volunteer Services Program.

I am asking each component to appoint a representative to the Pro Bono and Volunteer Services Committee, which will oversee implementation of our pro bono policy. It will be chaired by the Pro Bono Program Manager. Those representatives will publicize and coordinate pro bono work within their components. It will be the responsibility of the Deputy Designated Agency Ethics Officer in each component to conduct conflicts checks as necessary.

I know that many of you already are involved in volunteer services in your community or through programs here at the Department. Some of you already are providing much needed pro bono legal work. I hope that our policy encourages many more employees to participate.
TAB

8
OFFICE OF THE ATTORNEY GENERAL PRO BONO POLICY

Introduction

There are two types of pro bono services discussed in this policy: pro bono service for the poor and pro bono service for private individuals, such as friends or family members. Each type of service is discussed separately. Prior approval as provided in this policy and completion of the attached form(s) are required before commencing any pro bono service.

I. Pro Bono Legal Services to the Poor

The Florida Bar Rules of Professional Conduct state that "[e]ach member of The Florida Bar in good standing, as part of that member's professional responsibility, should (1) render pro bono legal services to the poor or (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor." Rule 4-6.1 (a), Florida Bar Rules of Professional Conduct. Accordingly, attorneys in the Department are encouraged to meet their professional responsibilities by providing pro bono legal services to the poor, subject to the following conditions:

1) prior written approval must be obtained from the attorney's supervisor, division director and the Deputy Attorney General; and

2) the service must not involve a conflict of interest or the appearance of a conflict of interest; and

3) the service, and any training or preparation therefor, must be performed on the attorney's own time; and

4) the attorney shall state, whenever appropriate, that he or she is not acting in any official capacity or representing the State, the Attorney General or the Department; and

5) the service shall not include representation before the Legislature, any state administrative tribunal where the State is a party, or any advice or representation on criminal charges; and
6) except as authorized in the *Statement of Policy -- Use of State Agency Equipment While Performing Pro Bono Legal Services for the Poor*, an employee may not use resources or supplies of the Office of the Attorney General for pro bono service. Administrative and clerical personnel of the Office may not be used in the provision of pro bono service under any circumstances.

Attorneys are encouraged to consult The Florida Bar Journal for a listing of the legal aid programs available in their area. Such programs can, in some instances, provide administrative support (personnel and equipment) as well as malpractice protection for government lawyers who handle pro bono cases.

II. **Pro Bono Service for Other Private Individuals or Organizations**

Attorneys may provide uncompensated legal advice or representation to private individuals or nonprofit organizations provided that the conditions set forth in (1) through (6) above are met, and the service is limited to one of the following categories:

(1) service to a friend, family member or a family member's estate; or

(2) service to the attorney's nonprofit neighborhood association or similar organization; or

(3) service to a bona fide nonprofit charitable, educational or recreational organization or similar community activity.

III. **Government Attorneys - Use of State Agency Equipment while Performing Pro Bono Legal Services for the Poor**

A. **Statement of Policy Text**

The Supreme Court of Florida has recognized that access to legal services for all citizens is an issue of critical concern. The inability of the underprivileged to obtain legal services in many cases may prevent them from acquiring basic needs or attending to the most routine legal issues. Acknowledging this vast unmet legal need, the Supreme Court has stated that it is the obligation of each member of The Florida Bar to provide pro bono legal services to the underprivileged in Florida. The Court’s recognition of each attorney’s pro bono obligation reflects the overall public purpose served.
Thus, the Florida Supreme Court has declared that service by individual attorneys in a pro bono capacity is a professional duty of Bar membership and serves a public purpose and need. Therefore, the provision of such services by government attorneys, although incidentally benefiting the individual in satisfying a professional responsibility, primarily serves an overall public purpose.\(^2\) While public equipment may not be used by public employees to serve purely personal objectives, where the primary purpose served is overall a public one, the use of public equipment is permissible.\(^3\)

The Attorney General strongly encourages each government attorney to fulfill this obligation to the community and public at large. Accordingly, subject to the approval of the agency head, a government attorney may utilize the agency’s equipment in providing pro bono legal services to the poor. However, in order to avoid conflict with the employee’s duties within the agency, the employee should not provide pro bono service while on official duty or within any period of time during which the employee is expected to perform services for which compensation is received from the governmental entity.

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1 Rule 4-6.1, Rules of Professional Conduct.

2 \textit{Cf.}, 16 Ch. 95-429, Laws of Florida, the 1995-1996 General Appropriations Act, authorizing the expenditure of public funds for Florida Bar dues and for legal education courses (which is a requirement for continued membership in The Florida Bar), thus acknowledging that membership in The Florida Bar by government attorneys serves a public purpose.

3 \textit{See e.g.}, Ops. Att’y Gen. Fla. 74-295 and 74-384(1974). Op. Att’y Gen. Fla. 90-61 (1990). Certain state agency policies for off-duty employment of law enforcement officers contemplate the use of vehicles and equipment during off duty employment under certain conditions and with prior approval of the law enforcement agency. \textit{See e.g.} Florida Game and Fresh Water Fish Commission; Division of Law Enforcement, s. 6.6.4, Division Directive 52-1, allowing off-duty law enforcement employment and use of its uniforms and patrol vehicles with commission approval; and Department of Highway Safety and Motor Vehicles, Florida Highway Patrol, s. 5.19.00, Policy No. 89-018, allowing outside employment and use of uniforms, personal equipment and the vehicle assigned to the individual with permission.
B. Determination of "legal services to the poor."

For purposes of determining whether pro bono services are considered to be "legal services" to the "poor" for purposes of the above policy, the commentary to the Rule 4-6.1 states:

Pro bono legal service to the poor is to be provided not only to those persons whose household incomes are below the federal poverty standard but also to those persons frequently referred to as the "working poor." Lawyers providing pro bono legal service on their own, need not undertake an investigation to determine if client eligibility is sufficient. Pro bono legal service to the poor need not be provided only through free legal services to individuals; it can also be provided through free legal services to charitable, religious, or educational organizations whose overall mission and activities are designed predominately to address the needs of the poor. For example, free legal service to organizations such as a church, civic, or community service organization relating to a project seeking to address the problems of the poor would qualify.

IV. Miscellaneous Provisions

Violation Of Pro Bono Rules

Violations of pro bono rules by assistant attorneys general shall be subject to appropriate discipline or other agency action consistent with the employee's position in the selected exempt service category. Additionally, when appropriate, the matter may be referred to The Florida Bar or appropriate court for further professional disciplinary action.

Private Practice Of Law

The duties of the State Attorney General and his assistants are outlined in Section 16.01, et seq., Florida Statutes. The unauthorized practice of law or representations indicating the employee is engaged or attempting to be engaged in unauthorized outside legal practices will not be tolerated.
Conduct Of SES Members

All members employed by the Department of Legal Affairs are required to maintain the highest standards of professional and ethical conduct as legal representatives and employees of the State of Florida. Such standards include, but are not limited to, these standards generally required of state employees and members of The Bar. They also include absolute standards of integrity, diligence and decorum.
V. PRO BONO REQUEST FORMS

A. REQUEST TO PROVIDE PRO BONO SERVICES

(REQUIRED FOR ALL PRO BONO SERVICE)

Attorney Requesting Approval:

Pro Bono Services will be provided to:

Name & Address of Opposing Counsel (if any) and Opposing Party (if any):

Type of Pro Bono Services (BE SPECIFIC):

Amount of time pro bono is estimated to take per week:

(SUPERVISOR MUST BE NOTIFIED IF TIME ACTUALLY EXPENDED IS HIGHER THAN ESTIMATED)
If pro bono services are being provided to a nonprofit organization, describe the purposes/functions of said organization:


CONFLICT OF INTEREST WITH STATE EMPLOYMENT:  YES  NO

I HEREBY CERTIFY THAT I HAVE REVIEWED AND WILL COMPLY WITH THE OFFICE PRO BONO RULE FOUND IN THE SES SECTION OF THE PERSONNEL RULES, REGULATIONS AND POLICIES OF THE OFFICE OF THE ATTORNEY GENERAL (ACCESSIBLE VIA DEPARTMENTAL LOTUS NOTES) AND THAT EXCEPT FOR AGENCY EQUIPMENT USED TO PROVIDE LEGAL SERVICES TO THE POOR AS AUTHORIZED IN THE STATEMENT OF POLICY – USE OF STATE AGENCY EQUIPMENT FOR PRO BONO LEGAL SERVICES FOR THE POOR, NO RESOURCES, SUPPLIES OR PERSONNEL OF THE OFFICE OF THE ATTORNEY GENERAL WILL BE USED FOR THIS PRO BONO SERVICE.

________________________________________
Assistant Attorney General

APPROVAL GRANTED:

________________________________________  _______________________________________
Section Chief  General Counsel

________________________________________  _______________________________________
Assistant Deputy Attorney General  Deputy Attorney General
B. REQUEST FOR APPROVAL TO USE AGENCY EQUIPMENT IN PROVIDING LEGAL SERVICES TO THE POOR

(REQUIRED IF USE OF AGENCY EQUIPMENT IS REQUESTED)

I hereby certify that I have reviewed the Statement of Policy – Use of State Agency Equipment While Performing Pro Bono Legal Services for the Poor and that agency equipment will be used only in accordance with the provisions of that policy.

__________________________
Assistant Attorney General

Approval Granted:

__________________________  __________________________
General Counsel            Section Chief

__________________________  __________________________
Assistant Deputy Attorney General            Deputy Attorney General
FLORIDA BAR PRO BONO RULE

4-6. PUBLIC SERVICE

RULE 4-6.1 PRO BONO PUBLIC SERVICE

(a) Professional Responsibility. Each member of The Florida Bar in good standing, as part of that member’s professional responsibility, should (1) render pro bono legal services to the poor or (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor. This professional responsibility does not apply to members of the judiciary or their staffs or to government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions. Neither does this professional responsibility apply to those members of the bar who are retired, inactive, or suspended, or who have been placed on the inactive list for incapacity not related to discipline.

(b) Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor. The professional responsibility to provide pro bono legal services as established under this rule is aspirational rather than mandatory in nature. The failure to fulfill one’s professional responsibility under this rule will not subject a lawyer to discipline. The professional responsibility to provide pro bono legal service to the poor may be discharged by: (1) annually providing at least 20 hours of pro bono legal service to the poor; or (2) making an annual contribution of at least $350 to a legal aid organization.

(c) Collective Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor. Each member of the bar should strive to individually satisfy the member’s professional responsibility to provide pro bono legal service to the poor. Collective satisfaction of this professional responsibility is permitted by law firms only under a collective satisfaction plan that has been filed previously with the circuit pro bono committee and only when providing pro bono legal service to the poor:

(1) in a major case or matter involving a substantial expenditure of time and resources; or

(2) through a full-time community or public service staff; or

(3) in any other manner that has been approved by the circuit pro bono committee in the circuit in which the firm practices.
(d) **Reporting Requirement.** Each member of the bar shall annually report whether the member has satisfied the member’s professional responsibility to provide pro bono legal services to the poor. Each member shall report this information through a simplified reporting form that is made a part of the member’s annual dues statement. The form will contain the following categories from which each member will be allowed to choose in reporting whether the member has provided pro bono legal services to the poor:

1. I have personally provided ____ hours of pro bono legal services;
2. I have provided pro bono legal services collectively by: (indicate type of case and manner in which service was provided);
3. I have contributed $________ to: (indicate organization to which funds were provided);
4. I have provided legal services to the poor in the following special manner: (indicate manner in which services were provided); or
5. I have been unable to provide pro bono legal services to the poor this year; or
6. I am deferred from the provision of pro bono legal services to the poor because I am: (indicate whether lawyer is: a member of the judiciary or judicial staff; a government lawyer prohibited by statute, rule, or regulation from providing services; retired; or inactive). The failure to report this information shall constitute a disciplinary offense under these rules.

(e) **Credit Toward Professional Responsibility in Future Years.** In the event that more than 20 hours of pro bono legal service to the poor are provided and reported in any 1 year, the hours in excess of 20 hours may be carried forward and reported as such for up to 2 succeeding years for the purpose of determining whether a lawyer has fulfilled the professional responsibility to provide pro bono legal service to the poor in those succeeding years.

(f) **Out-of-State Members of the Bar.** Out-of-state members of the bar may fulfill their professional responsibility in the states in which they practice or reside.
10.0 PRIVATE PRACTICE OF LAW AND PRO BONO REPRESENTATION

10.1 PRIVATE PRACTICE OF LAW

The private practice policy is as follows:

1. Unless specifically permitted by this memorandum, no Assistant Attorney General, except those referred to in item 2 below, may engage in any activities which constitute the practice of law other than on behalf of the State or its officials and agencies. This prohibition applies regardless of whether or not compensation is expected or received.

2. Those Special Assistant Attorneys General who are employed by the State Highway Administration and handle condemnation cases for the State from their private law offices are subject to special salary arrangements and are exempt from the ban so long as their private practice does not put them in conflict with the State, its officials or agencies. More detailed guidance for these attorneys will be provided by the supervising attorney of the State Highway Administration.

3. This policy also applies to all full-time Staff Attorneys and Legal Assistants.

4. Assistant Attorneys General should avoid in every way creating the appearance that they are engaging in the practice of law other than for the State, even when what they are doing may not actually constitute the practice of law. By way of example, if you choose to help a friend or relative by calling an irate creditor to see if an extended payment plan can be worked out, do not identify yourself as an attorney. Similarly, if you are an active principal or investor in a business venture, avoid reminding those with whom you deal that you are an attorney.

5. Active involvement in business ventures or commercial activities should be avoided whenever: there is a risk of possible conflict with the interests of the State; the time required will interfere with your ability to fully and effectively represent the State; or there is a significant danger that your role will be perceived as that of a lawyer rather than a principal or investor.

6. Certain limited categories of outside activities related to the conduct of legal proceedings and to the practice of law may be authorized by the Attorney General from time to time. At the present time, such expressly permitted activities include:
a. Cases and matters referred through the pro bono program of the Office of the Attorney General.

b. Teaching or speaking at law, pre-law or paralegal courses, seminars or programs, whether or not for compensation. Note that if the teaching or speaking opportunity comes your way because of your State position, compensation or honoraria received may be limited by the Public Ethics Law.

c. Serving as an arbitrator on Health Claims Arbitration panels with the permission of a supervising attorney where such service does not interfere with the State's business. Serving in a similar quasi-judicial role in similar proceedings may also be approved, but requires authorization from the Attorney General or the appropriate Deputy Attorney General.

d. Providing general advice or consultation to other attorneys in connection with pro bono legal work done by them, provided that: you receive no compensation; there is no contact between you and a client, an adverse party or any person other than the attorney seeking your advice; you are not identified to any person as representing a client or handling the matter; and there is no possibility of a conflict with the interests of the State or any of its agencies. An example of this activity would be serving as a volunteer consulting attorney in the Maryland State Bar Association's Maryland Volunteer Lawyers Services program.

In no way should the time commitment required for these activities interfere with your ability to fully and effectively represent the State.

7. In extremely unusual cases a lawyer just hired by the office may be permitted to conclude a particular matter after starting work with us. Explicit written permission must be obtained in any such case from either the Attorney General or the appropriate Deputy Attorney General.

8. In limited and special circumstances an Assistant Attorney General may be specifically permitted to handle a particular legal matter if it is handled without compensation. Such matters would be limited to furnishing legal assistance to close friends, relatives or non-profit organizations with which you are affiliated and would not include participation in adversary proceedings. Prior permission need not be obtained when the free legal assistance is given to a member of your "immediate family" (spouse or comparable domestic partner, child, parent, grandparent, mother- or father-
in-law, brother or sister), you do not participate in any adversary proceedings, and there is no real or apparent conflict of interest. In addition, prior permission need not be given where you are furnishing internal legal advice to a non-profit organization with which you are affiliated, you are not compensated, you do not participate in any adversary proceedings, and there is no real or apparent conflict of interest. In all other cases, prior permission must be obtained from either the Attorney General or the appropriate Deputy Attorney General.

9. If you are in doubt as to whether a particular outside activity constitutes the practice of law and thus is prohibited or otherwise barred by these guidelines, or can be undertaken without specific case-by-case approval, consult with the appropriate Deputy Attorney General.

If you have any questions about the scope or meaning of these guidelines, or any suggestions for future modification, please contact the appropriate Deputy Attorney General.
10.2  PRO BONO REPRESENTATION PROGRAM

I. Summary of Program

The Attorney General's pro bono Representation Program has been initiated as an exception to the ban on private practice currently in effect. This program is voluntary and attorneys will engage in pro bono activity in addition to their official duties. Each attorney will take all necessary steps to differentiate his or her pro bono representation from the work of the office.

In light of the public interest underlying the pro bono program, as reflected in Rules of Professional Conduct 6.1, and the program's direct benefits in terms of broadened experience for our attorneys, the office will support the program in several ways. First, cases will be referred to our pro bono Coordinating Committee (the "Committee") from the Maryland Volunteer Lawyer Service, Inc., ("MVLS") and other approved referral sources. This Committee will then refer the cases to volunteer attorneys.

The office will provide reasonable secretarial support, so long as the time commitment of the support staff is limited and does not interfere with the performance of primary responsibilities to this office or to client agencies. The office will provide centralized coordination for the program, especially to screen potential conflicts of interest. The office will also sponsor training programs for volunteer attorneys in the areas of representation. Finally, the office will adjust its policy for the use of earned compensatory time to allow this form of leave to be taken by lawyers when they engage in pro bono representation.

II. Pro Bono Coordinating Committee

The Committee, chaired by a Deputy Attorney General, consists of attorneys from units throughout the office. (See Appendix A). the Committee will serve as the liaison between the organizations that refer cases to the OAG and the volunteer attorneys. The Committee is available to assist volunteer attorneys with questions concerning conflicts of interest and will provide procedural and substantive advice on issues that arise as attorneys undertake pro bono services.

III. Process

The referring organizations will refer a case or matter directly to the Committee after screening the prospective client for financial eligibility. Assuming that no conflict of interest is apparent, the program's administrative assistant will contact an
attorney who has indicated a willingness to participate in the program.\textsuperscript{1} The attorney should consult the Rules of Profession Conduct, in particular Rules 1.7 and 1.10, to ensure that he or she sees no conflict of interest before proceeding with the case. The volunteer attorney should contact the Committee member listed in Appendix A, #1 if questions concerning conflicts of interest arise.\textsuperscript{2} The referring organization and the Committee will periodically request information from the volunteer attorney concerning the status of the case or matter being handled. When a case has been completed, the volunteer attorney should notify the Committee. If the attorney leaves the OAG after completion of the case, the case file should be forwarded to the Committee. Of course, if the volunteer attorney should leave the OAG during the pendency of the case, the attorney-client relationship should continue.

IV. Cases

Attorneys involved in the pro bono program will provide representation and services in the following areas only:

(A) Divorces involving no custody disputes;

(B) General wills, advance directives, powers of attorney, private guardianships not involving any State agency, name changes;

(C) Landlord/tenant cases not involving the application of the Consumer Protection Act;

(D) Counseling and other legal assistance, through the Lawyers Clearinghouse Project to nonprofit organizations that serve low-income people (except for work related to development projects for which State aid might be sought);

(E) Veterans benefit appeals; and

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\textsuperscript{1} No attorney will be asked to handle more than one case or matter at a time.

\textsuperscript{2} If an unanticipated conflict of interest later arises that makes further representation or work impossible, the Committee will refer the case or matter back to the referring organization.
(F) Personal bankruptcy – cases to be accepted on a limited basis only while the Pro Bono Committee assesses potential conflict problems.³

The office will sponsor training programs in these areas. In addition, reference materials in these areas are available in the library. The Committee will periodically review the categories of cases encompassed within the program and decide whether changes should be made.

This program has adopted a Retainer Agreement that should be signed by each client. A copy of this agreement will be sent to each volunteer attorney when a case is accepted. Each volunteer attorney will also be send a proposed Motion and Order for Waiver of Court Costs that can be tailored to the particular client.

The Coordinating Committee also has sample pleadings available for use by volunteer attorneys.

V. **Lawyers’ Time**

Volunteer attorneys shall carry out their pro bono responsibilities on their own time; however, as more fully described below, attorneys may use their currently unusable compensatory time for pro bono work. This does not mean that the lawyers may not do pro bono activities during normal working hours. Rather, lawyers must continue to account for at least 40 hours of professional services each week, plus whatever additional time is needed for the lawyer to provide the kind of lawyering that this office expects. pro bono representation is to be undertaken in addition to, not in lieu of, these core responsibilities.

A lawyer must continue to certify that the required 40 hours per week were devoted to State activities. If the lawyer worked less than 40 hours in a week for the State as a result of pro bono representation, the lawyer is required to take leave to account for the 40 hour minimum. Although a lawyer need not take leave for small amounts of pro bono time during the work day, significant blocks of time, *i.e.*, in excess of one hour spent exclusively on a pro bono matter, should be recorded as leave. That leave can be of any type, including excess compensatory leave, *i.e.*, accumulated leave beyond that which is currently usable.⁴

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³ This list should not be construed as limiting activities previously permitted by an exception to the ban on private practice. *See* Policy on Private Practice of Law, §10.1.

⁴ Both for statistical purposes and OAG personnel requirements, the volunteer attorney must record (continued...)

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OAG Policies & Procedures - Private Practice & Pro Bono

January 6, 1995

§10.2

3
VI. **Support Staff Time**

Support staff may assist volunteer attorneys within carefully observed limits. Ordinary agency tasks have priority, but limited typing of short letters or pleadings may be done. More extensive typing that poses the risk of material interference with agency activities should be done only with the express approval of the lawyer's division chief. If a volunteer attorney requires the assistance of additional support, he or she should contact the Committee members listed in Appendix A, #6 who will arrange for such assistance.

VII. **Identification**

Lawyers participating in the pro bono program should make clear to third parties that they are participating in this program and not acting in an official capacity. The attorney should in no way give the impression that the OAG is providing the representation. Volunteer attorneys should make every possible attempt to meet with opposing counsel and clients outside the office. A list of available locations is listed in Appendix B. If the volunteer attorney cannot locate available meeting space, he or she should contact the members of the Committee listed in Appendix A, #3 for assistance.

Volunteer attorneys should write all correspondence on the official pro bono program letterhead, which will be sent to all participating attorneys. Volunteer attorneys should use either their home address or the address listed in Appendix A. Attorneys may place and receive telephone calls from their State offices concerning *pro bono* activities.

VIII. **Insurance**

All OAG attorneys participating in the OAG pro bono program will be covered by malpractice insurance carried by the Maryland Volunteer Lawyers Service or another referral source. You may contact the Committee member listed in Appendix A, #3 for additional information concerning insurance coverage.

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*(…continued)*

the type of leave taken for time devoted to pro bono activity.
IX. Expenses

1. Financial Details

Expenses of the pro bono program will be paid through the Public Lawyers Legal Services Program, Inc., a §501(c)(3) corporation organized for that purpose. The Committee expects that expenses will be of two types, direct and indirect.

Direct expense would be such items as court costs, filing fees, transcripts and so forth. Participating attorneys should apply to the Fiscal Division of the Office of the Attorney General, (see Appendix A for address) for the necessary check, or may pay such amounts directly and then apply for reimbursement. Funding is limited, so please consult the member of the Coordinating Committee listed in Appendix A, #5 in advance before incurring expenses in excess of $150.

Indirect expense would include items that inherently must be supplied by the State, but which will be for the benefit of non-state private pro bono representation. This would include such items as paper, postage, Xerography and long-distance telephone usage.

There is no need (unless specifically requested by the agency) to account for minor amounts of these indirect costs on an immediate basis. It is expected that most files or cases will breed relatively little expense, and the reimbursement mechanism for such small items (3 to 4 letters - 10-20 pages of copying) will be set after a review of ongoing operations. It is very possible that the agencies will forgo such minor reimbursements, because the cost to the agency may be less than the cost of processing the reimbursement. The final decision on whether reimbursement is required should be left to the agency whose resources are used; if reimbursement (or immediate reimbursement) is requested, the request should be honored.

Larger amounts (the rare 50 page enclosure to 10 people) should be reimbursed immediately at the attorney's own initiative; send in the form and a check will be issued promptly. It should also be noted that an agency should never pay direct expenses such as court costs.

Mileage and parking are not reimbursable expenses at this juncture. Attorneys desiring a special exception to this rule should contact the Committee member listed in Appendix A, #4 to discuss the exigencies of their particular case.

Finally, attorneys should note that the form does not absolutely require a receipt for reimbursement to occur. Attorneys should make their best effort to procure and forward such receipts; their signature on the form constitutes their certification that the expense was actually incurred.
2. **Trust Account Transactions**

If an attorney needs to deposit client funds in a trust account, contact the Committee member listed in Appendix A.

3. **Delivery**

Checks will be sent to the attorney requesting same. If special arrangements are desired (pick-up, etc.) please call the Fiscal Division of the Office of the Attorney General in advance, and/or make a notation on the form.

X. **Closing A Case**

Once an attorney has completed his or her representation, a brief letter should be sent to the referring organization stating that the case has been completed and what was accomplished. A copy of this letter should also be sent to Kathleen Izdebski, Opinions and Advice.

The attorney should maintain the case file as long as he or she remains within the Office of the Attorney General. If the attorney leaves the office, the file should be sent to a member of the Pro Bono Coordinating Committee.

XI. **Computer Research**

Computer research (*i.e.*, Westlaw, Lexis) may only be done with the approval of a member of the Coordinating Committee.

XII. **Evaluation**

The program will be reviewed and modified as need be on a yearly basis.

Policy initially issued on: October 21, 1988

Policy revised on: October 14, 1997
**APPENDIX A**

Volunteer attorneys may contact the following people for assistance:

**PRO BONO COORDINATING COMMITTEE**

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carmen Shepard, Chairperson</td>
<td>576-7291</td>
</tr>
<tr>
<td>John Barry</td>
<td>974-2808</td>
</tr>
<tr>
<td>Sharon Krevor-Weisbaum</td>
<td>225-1855</td>
</tr>
<tr>
<td>Jeff Myers</td>
<td>225-1074</td>
</tr>
<tr>
<td>Jane Pilliod</td>
<td>225-1870</td>
</tr>
<tr>
<td>Carolyn Quattrocki</td>
<td>576-7299</td>
</tr>
<tr>
<td>Jack Schwartz</td>
<td>576-6344</td>
</tr>
<tr>
<td>Marlene Trestman</td>
<td>576-6321</td>
</tr>
<tr>
<td>Kathy Izdebski</td>
<td>576-6327</td>
</tr>
</tbody>
</table>

Address: Public Lawyers Legal Services Program  
200 Saint Paul Place  
Baltimore, Maryland 21202

1. Conflicts of Interest     Jack Schwartz
2. Malpractice Insurance     John Barry
3. Meeting Arrangements      Sharon Krevor-Weisbaum  
                              Carolyn Quattrocki
4. Mileage/Parking Exemptions John Barry
5. Reimbursements            Office of the Attorney General  
                              Fiscal Division  
                              Attn: Bev Pivec  
                              200 Saint Paul Place  
                              Baltimore, Maryland 21202  
                              (410) 576-6442
6. Support Staff             Sharon Krevor-Weisbaum  
                              Carolyn Quattrocki
7. Training/Manuals          Marlene Trestman
8. Trust Account Transaction John Barry (backup)
STATE OF MINNESOTA
Office of the Attorney General

PRO BONO POLICY

I. POLICY.

This office is committed to legal service in the public interest. It seeks to hire and retain staff members who share that commitment. The office recognizes that, in addition to the significant public interest work performed by staff as part of their employment with the state, individual staff members may also desire to provide legal assistance to the disadvantaged without charge. It is the policy of this office to allow and support such activity.

There is a serious unmet need for legal services for persons of limited means as documented in numerous studies in Minnesota and across the nation. The shortage in such services prompted the Minnesota State Bar Association several years ago to adopt an aspirational standard which encourages attorneys to provide pro bono legal services of 50 hours per year with at least 25 hours devoted to direct legal services to low income persons. The American Bar Association has adopted a similar standard. Given the unmet need and the Minnesota State Bar Association's aspirational standard, the office has determined that the provision of pro bono services, including a limited use of state resources as outlined below, is consistent with and furthers the state's interests. Each attorney must make his or her own decision about participation in pro bono activities, depending on other professional and personal commitments. Nevertheless, the Office encourages each staff member to consider ways to engage in pro bono activities.

II. PRO BONO SERVICES.

A. Pro bono services include both the pro bono representation of clients and non-litigation volunteer activities. As used in this policy, "pro bono services" means:

1. Providing legal services without remuneration to:

   a. Persons of limited means; or

   b. Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
2. Providing additional law related services without remuneration through:

a. The delivery of legal services to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate; or

b. Participation in activities for improving the law, the legal system or the legal profession.¹

B. Examples of pro bono activities which may be approved include, but are not limited to:

1. Representation of individual clients;

2. Serving as a guardian ad litem;

3. Providing representation to nonprofit organizations;

4. Providing advice as part of a Legal Services Corporation program:
   a. In landlord/tenant or consumer matters;
   b. On wills, powers of attorney, and private guardianship;

5. Performing research for or rendering expert advice to providers of legal services to the low income and disadvantaged;

6. Participating on the board of a legal services organization;

7. Providing training or preparing materials for seminars or other educational activities involving poverty law issues;

8. Participating on Bar committees and projects relating to the delivery of legal services and pro bono legal services.

¹ This policy is not intended to affect any other policies of the Attorney General's Office regarding participation in Bar activities.
III. PROCEDURES.

A. Approval.

Participation in pro bono activities must be approved in advance by the Division Manager. In order to identify pro bono opportunities generally available to staff, the Pro Bono Committee will review major referring programs identified by staff or others, and upon approval by the Chief Deputy, will notify staff of programs which meet office criteria.

The following criteria will be used by the division manager when approving a staff member's participation in a particular activity, and by the Pro Bono Committee when reviewing programs for general approval:

1. Whether the request is consistent with the terms and purpose of this policy.

2. Whether a conflict of interest exists under the Rules of Professional Responsibility.  

3. Whether malpractice coverage exists.

4. Whether the high profile or controversial nature of the subject matter may lead to an unacceptable public perception that the Attorney General’s Office is participating in the activity. Participation in a pro bono activity opposing a State agency is discouraged and must be approved by the Chief Deputy.

5. Whether the amount of time necessary to perform the activity would adversely affect the staff member's ability to discharge his or her office responsibilities.

6. Whether the case would require establishment of a trust account by the staff member. Staff will not be permitted to handle such cases. Trust accounts, where necessary, must be established and maintained by referring programs.

7. In matters involving legal representation of a nonprofit organization, whether the representation may involve issues subject to regulation by the Attorney General pursuant to chapters 309, 317A and 501B of Minnesota Statutes. Staff should not provide legal representation

2. The Comments of the Office of the Attorney General on the Minnesota Rules of Professional Conduct should be consulted in determining whether a conflict of interest exists.
concerning such issues as governance disputes, formation or dissolution of an organization, IRS matters, accounting practices, charitable solicitations, conflicts of interest or the use or proposed use of assets held for charitable purposes. To the extent that staff members who are directors of nonprofit organizations become involved in such issues, they should clarify they are doing so as directors of the organization, not as lawyers for the organization.  

B. Staff members should obtain approval from the Division Manager for each new pro bono client, should continue to comply with these criteria, and should consult with the Division Manager or Committee if he or she has questions.

C. Continuing participation.

If, after approval for a pro bono project, the circumstances related to the representation change in a manner that significantly impact one or more of the factors referenced in Section III.A. above, the staff member must consult with the Division Manager to discuss the change in circumstances and continued participation of the staff member in the activity.

Similarly, the staff member's manager must be contacted if it appears that the matter will be more time consuming or complex than originally contemplated.

D. Representation of pro bono clients.

1. The potential client must be informed that a conflicts check must be made before acceptance of the case. No discussion with the prospective client should take place if it is immediately apparent that a conflict exists. After the first meeting with the client, the staff member is responsible for determining whether any potential conflicts exist. The Pro Bono Committee shall develop a check list to assist in this determination. The division manager must maintain a list of pro bono activities in which division members are engaged in order to assist with the evaluation of possible conflicts.

3. The office policy permits staff members to serve as directors of nonprofit organizations. However, staff members who become directors of nonprofits must notify the Chief Deputy and the manager of the Charities Division.
2. Before agreeing to accept a pro bono client the attorney should determine whether the referring program or organization has a malpractice insurance policy which covers volunteer attorneys. This office does not provide malpractice coverage for pro bono work. A staff member's pro bono work is not within the scope of his or her employment with the State; the State does not assume any liability for this work.

3. Accepting a pro bono case.
   a. Following approval of pro bono activity, a retainer letter, specifically confirming the scope of the representation, and outlining the client's obligations and responsibilities, should be sent to the client. (The Pro Bono Committee will make available a model letter.) A copy must be maintained in the attorney's file. The staff member is responsible for making it clear to the client, any opposing parties, or others involved in a pro bono case or activity, that the staff member is acting in his or her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of the office.
   b. The client should be informed how, when, and where to contact the attorney by telephone or letter.

4. Case file responsibility.

   An attorney participating in a pro bono project or matter is personally responsible for his or her pro bono files.

IV. IDENTIFICATION WITH THE OFFICE.

Staff members who participate in pro bono activities or in providing pro bono services may not indicate or represent in any way that they are acting on behalf of the office or in their official capacity. If a staff member has any reason to believe that those receiving service, opposing counsel, or the courts mistakenly believe that a staff member is acting in an official role, staff must make a clear disclaimer that they are not acting on behalf of the officer or in their official capacity. For example, if a staff member is known to opposing counsel or the court as a member of the Attorney General's staff, a disclaimer must be made.
A. The staff member may not use office business cards or otherwise identify himself or herself as a government attorney in any communication, correspondence or pleading connected with pro bono activities. It is PREFERRED that correspondence be handled through the coordinating legal services organization or received at the staff member's home address. However, if this would present an undue hardship, the office address may be used if the address does not include the office name or indicate the nature of the office.

B. The general office telephone number may not be used for pro bono activities. Phone calls may be received either on the staff member's individual line, through the referring program or organization, or at the staff member's home.

C. The office may not be used for meetings with clients or opposing counsel in a pro bono case.

V. USE OF OFFICE RESOURCES.

A. Hours of work.

When performance of pro bono work is required during regular work hours, the staff member may request that his or her manager approve a flexible work schedule, in accordance with section III of the Office Manual, to accommodate the time needed for pro bono work or vacation leave may be used. In unusual circumstances, and with prior approval, the staff member may take leave without pay.

B. Telephone calls.

Local telephone calls may be made from the staff member's individual line. Long distance telephone calls may not be charged to the office.

C. Offices/Library.

Staff members may use their individual offices to do research and to draft pleadings, briefs, letters or other written materials. The library may also be used for doing research related to pro bono projects. Such work must be done in a manner which does not interfere with the performance of the office's or staff member's regular functions or duties and responsibilities. Office computer research facilities (e.g., Lexis or Westlaw) may not be used to do pro bono research.
D. Clerical support.

Clerical services should be obtained from the coordinating agency when available. This office will explore the possibility of making clerical support available, consistent with state law and union work rules.

E. Supplies and equipment.

1. **Staff members may use word processing and dictation equipment so long as such use does not interfere with the performance of the office’s or the staff member’s regular functions or duties and responsibilities.**

2. **A limited amount of office supplies (not including stamps), photocopying, and non-long distance fax use is available to staff members performing pro bono work consistent with other provisions of this policy. Multi-paged memoranda and briefs should be copied at referring agencies.**
ADMINISTRATIVE POLICY
OFFICE OF ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA

Subject: Pro Bono Publico Legal Services

By Direction Of:
Thomas W. Corbett, Jr., Attorney General

Date: November 27, 1996
Policy No.: 2.13

PURPOSE

To establish policy and procedures for the participation by Office of Attorney General attorneys in pro bono legal services, programs and activities.

I. General Policy

The Attorney General encourages attorneys to participate in volunteer programs for community service. The Pennsylvania Supreme Court has adopted Rule 6.1 which provides that a lawyer should render public interest legal service. The American Bar Association has adopted aspirational goals for attorneys to provide pro bono services to persons of limited means. To support attorneys in this Office in attaining these goals, this Policy is established as an exception to the limitations on the private practice of law set forth in Office of Attorney General Administrative Policies 2.10 and 2.11.

II. General Provisions

A. Attorneys appointed by the Attorney General may participate in pro bono publico activities only in accordance with the requirements and procedures set forth in this Policy.

B. Attorneys may participate in Office, County or State Bar Association or referral agency programs including but not limited to the Dauphin County Bar Association/Central Pennsylvania Legal Services Pro Bono Program.

C. Attorneys who elect not to participate directly in pro bono programs are encouraged to participate in such charitable, religious, governmental, educational or other community activities as their interests may direct.

III. Definitions

A. Pro Bono Services

Legal services provided in civil matters without remuneration to:

1. Persons of limited financial means; or

2. Charitable, religious, civic, community, governmental and educational organizations in matters designed primarily to address the needs of persons of limited means.

B. Conflict of Interest

Participation by an attorney in:

1. Any matter in which the Commonwealth of Pennsylvania or any of its agencies have an interest even if that agency has no connection to the attorney’s normal duties;

2. Any matter which would require representation before a Commonwealth agency;

3. Any matter in which a challenge to the constitutionality of a State statute is the indicated course of action;

4. Any matter in which participation would create an appearance of a conflict of interest;

5. Any matter that would interfere unduly with the attorney’s abilities to perform his/her regular duties; or
6. Any matter which would constitute a conflict as provided in Pa. Rules of Professional Conduct 1.7, 1.9, 1.10 or 1.11.

C. Referral Agency

A program providing legal services to persons of limited means, bar association pro bono program or other agency providing services to persons of limited means which has a program to refer pro bono matters to attorneys.

IV. Pro Bono Coordinating Committee

A. The Pro Bono Coordinating Committee is hereby established. The Committee shall have up to five members, appointed by the Attorney General.

B. The Committee shall have general responsibility for the operation of the pro bono program.

C. The Committee shall review and approve or disapprove acceptance of pro bono matters by Office attorneys.

D. The Committee shall serve as the liaison with organizations referring cases to volunteer attorneys. The Committee shall assist volunteer attorneys with conflict of interest questions and shall provide advice on any issues which arise from the pro bono program.

V. Matters

Attorneys may accept pro bono assignments approved by the Pro Bono Coordinating Committee in the following areas of practice:

1. Domestic relations cases in which an order of protection is the only relief sought;

2. Landlord/tenant cases;

3. Consumer protection cases;

4. Service as a guardian ad litem;

5. Wills, living wills, powers of attorney, durable powers of attorney and guardianships;

6. Participation in dispute arbitration, mediation or resolution services;

7. Legal work for a non-profit organization in matters designed primarily to address the needs of persons of limited means;

8. Participation in bar association committees or activities related to the delivery of pro bono services;

9. Educational activities, training and teaching designed to improve law, the legal system, the legal profession or community understanding of the law and the legal profession;

10. Literacy, tutoring or mentoring programs for youth, offenders or persons of limited means; and

11. Other areas authorized by the Pro Bono Coordinating Committee.

NOTE: ATTORNEYS MAY NOT PROVIDE PRO BONO SERVICES IN CRIMINAL MATTERS.

VI. Procedures and Guidelines

A. Notice and Approval

1. Before agreeing to provide legal services in a pro bono matter, the attorney must notify the Pro Bono Coordinating Committee and the attorney’s supervisor of the assignment.

2. The Committee shall approve or disapprove the matter and determine what limitations, if any, shall apply.

3. Before discussing a case, the attorney must inform a pro bono client or the referral agency, as appropriate, that the attorney must first do a conflicts check before final acceptance of the matter.

4. The attorney must make clear to the client that the attorney, not this Office, shall be client’s counsel.

5. The attorney should tell the client how,
when and where to call or write him/her.

B. Case Management

Once an attorney has approval to accept the matter, the attorney shall follow the procedures set by the referral agency for establishing and administering files, tracking deadlines, statutes of limitations and all other matters pertinent to the case. The Office is not responsible for any of these matters.

C. Legal Malpractice Insurance

This Office does not provide insurance coverage for pro bono work and assumes no liability for pro bono activities performed by any of its employees. Coverage is typically provided by the referral agency, particularly those providing direct legal representation of pro bono clients. In matters in which insurance is unavailable or impractical to procure, such as startup representation of non-profit corporations, attorneys should recognize the risk of personal liability that they assume before undertaking to provide legal services.

D. Use of the Name of the Attorney General

Attorneys who provide pro bono services do so in an individual capacity and may not represent any person that they are acting on behalf of the Commonwealth, the Office or any agency of the Commonwealth. Attorneys shall not:

1. Use Office stationery or anything bearing the Office letterhead or logo;

2. Distribute business cards provided by the Office; or

3. Use anything else that associates the pro bono services being performed with the official work of the Office.

NOTE: ATTORNEYS SHALL TAKE EVERY REASONABLE PRECAUTION TO AVOID GIVING THE IMPRESSION TO A CLIENT, A COURT OR ANY PARTY OR COUNSEL IN A CASE OR OTHER MATTER THAT THE COMMONWEALTH OR THE OFFICE IS PROVIDING LEGAL ADVICE OR REPRESENTATION.

E. When Pro Bono Legal Services may be Provided

1. Attorneys must give first priority to Office duties. Pro bono matters should be handled outside regular work hours, such as during lunch periods, before and after regular work hours, and on weekends, holidays and leave time, whenever feasible.

2. It is recognized that due to limitations on use of Office resources for pro bono purposes, as set forth in Section F below, it may be necessary for an attorney to perform pro bono services on-site at the referral agency or non-profit organization during regular work hours.

3. At whatever site it is performed, time spent on pro bono services during regular work hours shall be made up by the attorney on a weekly basis so that the attorney can account for a total of 37.5 hours per week on Office duties and approved annual, personal or unpaid leave.

F. Use of Resources

1. The general policy is that an attorney may not use Office resources for pro bono matters.

2. Attorneys are specifically prohibited from using the following Office resources for pro bono matters:

   (a) Commonwealth vehicles;

   (b) Credit cards;

   (c) Accounts for payment of costs and expenses;

   (d) Facsimile and copying equipment;

   (e) On-line computer research services billed to OAG on a fee-per-use basis;

   (f) Telephones for long-distance calls except to the referral agency; or
(g) Supplies such as letterhead, envelopes and postage.

3. Attorneys may use the following Office resources for pro bono matters so long as the use does not interfere with Office work or efficiency:

(a) Library;

(b) Dictation equipment; and

(c) Computers and typewriters.

4. Attorneys may work on pro bono matters in the Office but are prohibited from using the Office to meet with pro bono clients or others concerning such matters.

5. Attorneys may make local telephone calls relating to pro bono matters from the Office but may not receive such calls except on their personal or direct lines. A pro bono client should be given the telephone number of the referring agency for the purpose of contacting the attorney by telephone.

6. Office support staff may assist attorneys in pro bono matters only:

(a) Within guidelines the same as those prescribed for attorneys in Sections E.1 and E.3 above;

(b) After specific individual agreement to do so; and

(c) In a manner that does not violate the Fair Labor Standards Act, the Master Agreement and Memorandum between the Commonwealth and Council 13, AFSCME or any other relevant law or regulations.

7. The referral agency or non-profit organization for whom pro bono matters are undertaken should be consulted at the outset about policies on use of their offices, support staff, credit cards, telephones, equipment, supplies, etc. so that their resources can be used to the extent permitted and feasible.

G. Training

1. Attorneys representing pro bono clients are subject to Rule of Professional Conduct 1.1 which provides that a lawyer shall provide competent representation to a client. Attorneys should not accept any case for which they do not have the requisite legal knowledge and skills necessary for the representation.

2. The Office of Attorney General does not assume responsibility to provide appropriate training opportunities for attorneys in pro bono programs.
I. POLICY STATEMENT:

The Attorney General's Office recognizes the public interest underlying the provision of legal services to those who cannot afford representation. Rule of Professional Conduct 6.1 provides: "A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means." In light of this public interest, the Attorney General's Office permits assistant attorneys general to provide pro bono legal services for individuals through a legal aid program sponsored by a local bar association as an exception to the limitation on the private practice of law. This public interest and the benefit of participation by assistant attorneys general is also recognized by statute. See RCW 43.10.130. This program is voluntary and attorneys who choose to do so will engage in pro bono activity in their personal capacity and in addition to their official duties. (Individuals who wish to participate in a pro bono program for individuals which is sponsored by an organization other than a local bar association should request an exception to this aspect of the policy from the deputy
attorney general who supervises the division to which they are assigned.)

The policy does not affect the ability of staff to be involved in volunteer work for non-profit organizations, provided that attorneys exercise care and judgment so that they do not act in the capacity of a legal representative for such organizations.

A mechanism to allow limited reimbursed use of state resources in support of pro bono activities is established to reduce the inconvenience to assistant attorneys general who choose to participate, while still avoiding inappropriate use of state resources. In the past, the policy of the Attorney General's Office was to allow participation in pro bono programs, but to prohibit the use of office time, facilities, equipment, or personnel in connection with the private legal work. As a result, assistant attorneys general who have chosen to participate have found attending to minor tasks such as photocopying very inconvenient. One purpose of this policy is to outline the use of state resources which is permissible, and to provide a mechanism for payment for those resources by a pro bono program.

In light of the public interest which is served by providing legal services to those who cannot afford representation, and in light of the fact that pro bono representation sometimes requires appearances and performance of tasks during work hours, attorneys should be allowed to take advantage of flexible work schedule arrangements rather than being required to take leave. When performance of pro bono work is required during regular work hours, the attorney may (1) request that his or her supervisor approve, in writing, a flexible work schedule to accommodate the time needed; or (2) may take leave without pay or vacation leave.

Professional support staff who volunteer to participate in assisting AAGs involved in a pro bono program may provide limited support services during the work day so long as the volunteer work does not interfere with the performance of the primary responsibilities to official duties. A roster of professional support staff who have volunteered to participate in assisting assistant attorneys general in pro bono activities will be maintained by a designated coordinator.

Professional support staff who serve as volunteers in pro bono programs other than the limited support services described above shall take leave or compensatory time for time used during the work day or develop a flexible work schedule in
accordance with the merit system rules applicable to their positions.

II. PROCEDURES:

Responsibility: Assistant Attorney General

Action:
Requests permission of supervisor to undertake representation of person qualified and referred through appropriate legal aid organization. Permission is not necessary for participation in legal services clinics in which the attorney is not undertaking representation of an individual.

Ensures that the interest of the person receiving legal aid does not conflict with the interests of the State of Washington, will not create the appearance of conflict in the exercise of the official responsibilities of the assistant attorney general, and that all Rules of Professional Conduct are followed. Consults supervisor and the Ethics Committee if any questions concerning conflicts of interest arise.

Performs pro bono activities on his or her own time and in addition to devoting normal working hours and whatever additional time is needed to perform duties of assistant attorney general. If performance of pro bono work requires blocks of time during the normal work day, requests supervisor's written approval of a flexible work schedule, or takes leave without pay, or vacation leave.
Records and reports use of state resources such as computers, photocopiers, postage, and long distance telephone calls on form provided by AG Fiscal Office; requests prior permission if such anticipated costs exceed $50 per case.

Makes clear to third parties that he or she is acting as attorney for individual and not in official capacity with the Attorney General's Office. Volunteer attorneys should not use official Attorney General letterhead or list the Attorney General's Office in any return address, though mail may be received at the post office box or street location of the Attorney General's Office. Generally, Attorney General offices may not be used for meetings with clients or opposing counsel in a pro bono case unless the office space is a common area in a building not clearly associated only with the Attorney General's office.

Where there is no practicable alternative and care is taken to ensure that pro bono activities are distinguished from the Attorney General's Office, a division chief may approve use of office space.

Arranges for malpractice insurance coverage through a policy which covers volunteer attorneys for a particular program or through other means. The Attorney General's Office does not provide malpractice coverage for pro bono work.

Supports participation in pro bono activities by working with assistant attorney general or
professional support staff who wish to participate in pro bono activities to determine ways the requirements of this policy can be met.

Approves requests of assistant attorneys general to undertake representation of person qualified and referred through appropriate legal aid organization where no conflict with official duties exists.

Approves in writing requests for use of flexible work schedule for pro bono activities which require significant blocks of time during the work day.

Arranges agreements with legal aid programs under which reimbursement will be made to state for costs of resources used in pro bono representation in manner which does not require overly burdensome record keeping.

Provides forms on which assistant attorneys general participating in pro bono program can record use of particular types of state resources, and assigns appropriate costs to such resources.

Bills appropriate legal aid or pro bono program for costs.
RESOLUTION NO.

A RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF BROWARD COUNTY, FLORIDA,
REQUESTING PERMISSION OF THE BOARD ALLOWING
MEMBERS OF THE COUNTY ATTORNEY'S OFFICE AND
OTHER BROWARD COUNTY STAFF ATTORNEYS TO
PARTicipate IN THE BROWARD LAWYERS CARE
PROGRAM, A PROGRAM PROVIDING PRO BONO SERVICES
FOR INDIGENT RESIDENTS OF BROWARD COUNTY; TO
UTILIZE THE SERVICES OF THE OFFICE OF THE
COUNTY ATTORNEY'S STAFF; AND PROVIDING FOR AN
EFFECTIVE DATE.

WHEREAS, Broward Lawyers Care is a pro bono program which is
a joint effort of the Broward County Bar Association and Legal Aid
Service of Broward County to help fill the gap in the provision of
free legal services in civil matters to the truly indigent; and

WHEREAS, Legal Aid Service of Broward County, Inc. is unable
to meet the overwhelming needs of the indigent without the
assistance of Broward Lawyers Care; and

WHEREAS, the ability of the Broward Lawyers Care program to
meet the need for legal representation of the indigent is dependent
upon the voluntary participation of local attorneys; and

WHEREAS, members of the Broward County Attorney's Office and
other Broward County staff attorneys have expressed an interest in
participating in the Broward Lawyers Care program; and

WHEREAS, it has been found and determined through Ordinance
No. 73-5, that the establishment of a funded legal aid program to
provide legal services to indigent persons in Broward County is a
necessary facility for the proper administration of justice in
civil actions in the courts of Broward County; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD
COUNTY, FLORIDA:

Section 1. That the provision of pro bono legal services to
indigent residents of Broward County through Broward Lawyers Care
will significantly expand the availability of legal services to the indigent in accordance with the intent of Ordinance No. 73-5.

Section 2. That members of the Broward County Attorney's Office and other Broward County staff attorneys may participate in the program, and may utilize the services of the support staff for the purpose of fulfilling their obligation.

Section 2. EFFECTIVE DATE.

This Resolution shall become effective as provided by law.

ADOPTED this 22nd day of October, 1991.
RESOLUTION 93-357

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, ESTABLISHING THE ACLF AND NURSING HOME SPECIAL ADVOCATE PROGRAM TO ASSIST RESIDENTS OF ACLFs AND NURSING HOMES TO ASSERT THEIR RIGHTS UNDER CHAPTER 400, FLORIDA STATUTES; AUTHORIZING THE COUNTY ATTORNEY'S OFFICE TO COORDINATE THE PROGRAM; AND ESTABLISHING A FUNDING MECHANISM; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it has been brought to the attention of the Broward County Board of County Commissioners that a number of Adult Congregate Living Facilities (ACLFs) and Nursing Homes in Broward County licensed by the State of Florida pursuant to Chapter 400, Florida Statutes, fail to adhere to the guidelines set forth in the statutes; and

WHEREAS, Chapter 400, Part I, Florida Statutes, regulates the operation of nursing homes, and Chapter 400, Part II, Florida Statutes, regulates the operation of ACLFs, which provides that residents have basic constitutional and statutory rights, including the right to be free from mental and physical abuse and the right to adequate and appropriate health care; and

WHEREAS, Florida Statutes § 400.023 (1991) relating to Nursing Homes, and Florida Statute § 400.429 (1991) relating to ACLFs, provide that if the rights of a resident are violated, the resident or resident's guardian or personal representative may sue the facility and recover damages, costs and attorney's fees; and

WHEREAS, many ACLF and nursing home residents are indigent and unable to assert their constitutional and statutory rights because they are frail and elderly, or have a mental or physical disability; and

WHEREAS, § 10-74, Broward County Code of Ordinances provides that Broward County has determined that the provision of legal services for indigent persons is a public purpose; and

WHEREAS, on January 5, 1993, the Attorney General of the State of Florida, presented a check in the sum of $29,156.37 to the Board
of County Commissioners, collected through its Broward County Consumer Protection Program, to be used for further enhancement of consumer rights; and

WHEREAS, the Broward County Board of County Commissioners has determined that it would be in the best interests of the indigent residents of ACLFs and nursing homes that a program be established to assist such residents to assert their constitutional and statutory rights in order to protect their health, safety and welfare; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. CREATION OF ACLF AND NURSING HOME SPECIAL ADVOCATE PROGRAM.

1.1 There is hereby created and established a program to be known as the ACLF and Nursing Home Special Advocate Program ("ANSAP").

(a) ANSAP shall be coordinated by the County Attorney's Office.

(b) The County Attorney's Office is authorized to institute lawsuits on behalf of indigent residents of ACLFs and nursing homes whose rights have been violated; in some cases to coordinate pro bono legal services; to pay costs if necessary; and in other instances to hire special counsel to assist in the prosecution of such lawsuits.

1.2 The funding for ANSAP shall be derived from the funds provided to the Board of County Commissioners by the Attorney General of the State of Florida, which funds were collected as fines from the Attorney General's Broward County Consumer Protection Program.
Section 2. **SEVERABILITY.**

If any section, sentence, clause or phrase of this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 3. **EFFECTIVE DATE.**

This Resolution shall become effective upon adoption.

ADOPTED this 10th day of August, 1993.
CITY OF DES MOINES LEGAL DEPARTMENT

POLICY REGARDING
PRO BONO PUBLIC SERVICE

Prepared and adopted by:

Roger A. Nowadzky
Corporation Counsel

September 1995
I. INTRODUCTION

Historically, many public law offices and to date many municipal attorneys have been reluctant to become involved in pro bono legal services by virtue of the nature of the work. As government attorneys we are already involved in service to the public. Likewise, there are numerous obstacles that impede the provision of pro bono service which attorneys in private practice may not face.

However, there is a growing recognition that public lawyers have the same pro bono obligations as their colleagues in private practice. The Federal Bar Association has recognized the historic obligation of lawyers to assist the poor and indigent in obtaining effective representation, and has supported the active participation of all attorneys in pro bono activities.\(^1\) Likewise the American Bar Association’s Model Rules of Professional Conduct suggests that every lawyer "regardless of professional prominence or professional workload should participate in serving the disadvantaged."\(^2\)

More specifically, the Iowa Code of Professional Responsibility, EC 2-27 like the Model Rules, encompasses all lawyers in this obligation.

Because the office of Corporation Counsel of the City of Des Moines wishes to promote ethical conduct of its lawyers, the following policy is established which sets out appropriate guidelines and limitations under which pro bono activity may be undertaken. In addition to this policy, legal staff who consider performing pro bono services should consult relevant provisions of the applicable Canons of Ethics, Codes of Professional Responsibil-

\(^1\)Resolution 83-5 adopted by the National Counsel of the Federal Bar Association, Louisville, Kentucky, September 24, 1983.

\(^2\)Rule 6.1, revised in February 1993, of the American Bar Association’s Model Rules of Professional Conduct suggests 50 hours annually of legal services for all lawyers, including government lawyers, and suggests an expanded definition of pro bono service to accommodate government lawyers.
ity, and statutes and regulations, and city policy governing conflicts of interest.

In performing pro bono services, city legal staff should bear in mind that the City of Des Moines, as a client, is entitled to professional loyalty as is any other client.

This policy has been established after exhaustive consultation and review of public law office pro bono polices from across the United States and Canada. This policy will be reviewed periodical-ly and modified as need be.

II. POLICY ADOPTED

The office of Corporation Counsel recognizes the ethical obligation of every attorney to ensure that all members of society have access to civil legal services and to undertake activities to improve the legal system. To that end, it is the policy of this office to cooperate with staff attorneys to allow voluntary participation in pro bono work.

Likewise, it is the policy of the office to actively support and encourage the professional development of the legal staff to the benefit of the City. To this end also, pro bono service as defined by the policy is encouraged and supported as a public purpose.3

III. DEFINITION OF PRO BONO PUBLIC SERVICE

A. For purposes of this policy, public interest legal service or pro bono public service is legal and law-related services including both the donated representation of clients and non-litigation volunteer activities. Pro bono services means:

1. Providing legal services without renumeration to:

   a. Persons of limited means; or

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3See March 3, 1986, State Department of Justice memorandum approving Assistant Attorney Generals doing pro bono work and opining that a public purpose is served by the provision of indigent legal services.
b. **Charitable** , religious, civic, community, governmental, and educational organizations, in matters which are designed primarily to address the needs of persons of limited means; and

2. Providing any additional services through:
   a. The delivery of legal services without renumeration to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental, and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; or

   b. Participation in activities for improving the law, the legal system or the legal profession.

**IV. APPROVAL OF ACTIVITIES**

The non-litigation projects for the United States District Court for the Southern District of Iowa in lieu of assessment or representation of indigent plaintiffs in civil rights cases, pursuant to Court Order No. M1-105, is specifically approved as a pro bono service activity. Attorneys who wish to pursue other pro bono service activities must obtain prior written approval as provided for in Section VI of this policy from the Solicitor heading their Legal Department division, and from Corporation Counsel.
V. OFFICE RESPONSIBILITIES

It is absolutely essential that any pro bono service activity undertaken by City legal staff not interfere with the performance of their official City duties and responsibilities. The work of the City’s Legal Department must be given top priority. In addition all potential or apparent conflicts of interest with City work must be prevented.

VI. PROCEDURES FOR APPROVAL

A. Participation in pro bono service activities must be approved in advance by the Solicitor of the attorney’s Legal Department division and by Corporation Counsel. Prior to approval, the Solicitor and Corporation Counsel shall determine:

1. Whether the request falls within the type of pro bono service activities defined by Section III and permitted by this policy;

2. Whether the proposed activity appears likely to reasonably interfere with the performance of the attorney’s official City duties and responsibilities as prohibited by Section V of this policy; and

3. Whether the proposed activity is likely to involve the interest of the City, or to create or appear to create conflict of interest with the City, the performance of the attorney’s official duties with the City, or with a legal position held by the City.

B. If after obtaining approval for a pro bono service activity, it appears that the matter will be or has become more time consuming, more complex, or presents other problems or potential problems for the attorney as it relates to the attorneys duties and responsibilities to the City, the attorney is obligated to contact and discuss continued participation with the attorney’s Solicitor and Corporation Counsel.

VII. ATTORNEY’S TIME

A. If, in the judgment of the attorney’s Solicitor and
Corporation Counsel, the approved pro bono service activity bears a reasonable relationship to the work of the attorney, the attorney’s Solicitor and Corporation Counsel may approve the attorney’s participation as part of the attorney’s assigned duties for the City. This is subject to the judgment of the Solicitor and Corporation Counsel that the attorney has the ability to carry out his or her normal duties as provided in Section V of this policy.

B. If in the opinion of the attorney’s Solicitor and Corporation Counsel that the approved pro bono service activity does not bear a reasonable relationship to the work of the attorney, vacation or personal leave time, or administrative leave time, if accrued, may be used to participate in the pro bono service activity, subject to Section V of this policy. In addition, flex time and ad hoc compensatory arrangements may be determined by the attorney’s Solicitor and Corporation Counsel to be appropriate to accommodate the situation.

VIII. USE OF CITY OFFICE RESOURCES

Except for activities approved under Section VII(A) of this policy:

A. Supplies and Equipment

No City supplies and equipment shall be used in pro bono service activities. The only exceptions are the very limited use of telephones to place local calls, use of the attorney’s individual office space and computer, and use of the office library for legal research. When such equipment and space is utilized, it shall be done in a manner which does not interfere with the performance of the office’s or attorney’s regular duties and responsibilities. Attorneys shall arrange to receive telephone messages from pro bono service clients at telephone other than the City Legal Department’s numbers.

B. Clerical Support

No member of the office’s clerical staff may use City equipment or City time to provide support for a pro
bono service activity unless specifically approved by Corporation Counsel.

IX. IDENTIFICATION WITH THE CITY
Exempt for activities approved under Section VII(A) of this policy:
A. Staff attorneys who participate in pro bono service activities or in providing pro bono services shall not indicate or represent in any way that they are acting on behalf of the City, or in their official capacity.
B. The attorney is responsible for making it clear to the client, any opposing party, the Court or tribunal, or other third parties involved in the pro bono case or activity, that the attorney is acting in his or her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of the City.
C. The attorney shall not use City letterhead, City business cards, or otherwise identify himself or herself as an attorney for the City in any communication, correspondence or pleading connected with the pro bono activities. The attorney shall not use the office address for receipt of correspondence.
D. City offices shall not be used for meetings with pro bono service clients and opposing counsel in pro bono service cases.
E. The attorney shall not accept the pro bono service case if the attorney’s official position with the City will influence or appear to influence the outcome of the case.
F. The attorney shall not participate in any pro bono activity which is conducted in such a manner that it appears to reflect the official position of the City.

X. CONFLICT OF INTEREST
Attorneys shall not engage in any pro bono service activity
which shall be deemed a conflict of interest under Canons of Ethics, Codes of Professional Responsibilities, statues, regulations or City policy, including the policy of Section VI(A)(3) of this policy.

XI. MALPRACTICE AND TRUST ACCOUNT

This office does not provide professional liability coverage for pro bono service work. Lawyers participating in pro bono service activities are responsible for acquisition of professional liability coverage and trust accounts where necessary for pro bono service work.

XII. EFFECTIVE DATE

This policy is effective on and after September 1, 1995.
Model Pro Bono Policy for Appellate Court Staff Attorneys

adopted by

The Conference of Appellate Staff Attorneys

June 27, 1994
PRO BONO PUBLICO SERVICE

CASA Model Policy for Staff Attorneys

As with all members of the bar, staff attorneys should aspire to engage in pro bono publico activities each year. Consultation with and authorization by this court is a prerequisite to such pro bono involvement. Pro bono activities and services must be selected and provided in a manner that avoids any appearance of impropriety or influence, as well as any conflict of interest with the staff attorney's duties.

Staff attorneys may:

- Provide legal, management, or educational services without fee or expectation of fee to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations in matters primarily designed to address the needs of persons of limited means. Such services must be limited to matters not likely to come before this court.

- Provide legal, management, or educational services without fee or expectation of fee to charitable, religious, civic, community, governmental, and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard fees would significantly deplete the organization's economic resources or would be otherwise inappropriate. Such services must be limited to matters not likely to come before this court.

- Participate in activities to improve the law, the legal system, or the legal profession.
See Model Rules of Professional Conduct Rules 6.1 (1993). Accordingly, staff attorneys may engage in pro bono services upon compliance with the following policies and procedures:

- Staff attorneys shall make prior written application and obtain approval from [individual or group designated by employing court] for each pro bono engagement. Staff attorneys may provide the previously enumerated services to the extent that such services do not interfere with the performance of their employment duties. Pro bono services shall be performed under such written terms and conditions as may be specified by [individual or group designated by employing court].

- Authorization to provide pro bono services shall continue only until completion of the particular engagement for which approval was obtained, except that approval may be granted on an annual basis with respect to an organization or project that provides services to persons unable to afford counsel. Each authorized staff attorney shall report the number of pro bono hours and engagements to [individual or group designated by employing court on an annual basis].

- Provision of pro bono services and related activities may not take place during usual working hours unless appropriate vacation or personal leave is authorized and charged. No public resources may be used in connection with pro bono service, except as explicitly authorized by this court. Reasonable precautions must be taken in all cases to avoid actual conflicts of interest,
as well as the perception of such conflicts, and to avoid the actual or perceived lending of the prestige or authority of the public office or position of the staff attorney. No staff attorney shall convey the impression that the staff attorney is in a special position to exert influence.

- This court and its personnel assume no responsibility for malpractice insurance, occupational taxes, additional licensing fees, or educational expenses related to the provision of pro bono services by staff attorneys. This court and its personnel assume no responsibility, legal or otherwise, for supervision or consultation with staff attorneys on pro bono matters.

Unanimously adopted by Membership
June 27, 1994, Key West, Florida
CODE OF CONDUCT
FOR JUDICIAL EMPLOYEES

CANON 4: IN ENGAGING IN OUTSIDE ACTIVITIES, A JUDICIAL
EMPLOYEE SHOULD AVOID THE RISK OF CONFLICT WITH
OFFICIAL DUTIES, SHOULD AVOID THE APPEARANCE OF
IMPROPRIETY, AND SHOULD COMPLY WITH DISCLOSURE
REQUIREMENTS.

D. Practice of Law. A judicial employee should not engage in the practice of law except that
a judicial employee may act pro se, may perform routine legal work incident to the
management of the personal affairs of the judicial employee or a member of the judicial
employee’s family, and may provide pro bono legal services in civil matters, so long as
such pro se, family, or pro bono legal work does not present an appearance of
impropriety, does not take place while on duty or in the judicial employee’s workplace,
and does not interfere with the judicial employee’s primary responsibility to the office in
which the judicial employee serves, and further provided that:

(1) in the case of pro se legal work, such work is done without compensation (other than
such compensation as may be allowed by statute or court rule in probate proceedings);

(2) in the case of family legal work, such work is done without compensation (other than such
compensation as may be allowed by statute or court rule in probate proceedings) and does
not involve the entry of an appearance in a federal court;

(3) in the case of pro bono legal services, such work (a) is done without compensation; (b)
does not involve the entry of an appearance in any federal, state, or local court or
administrative agency; (c) does not involve a matter of public controversy, an issue likely
to come before the judicial employee’s court, or litigation against federal, state or local
government; and (d) is reviewed in advance with the appointing authority to determine
whether the proposed services are consistent with the foregoing standards and the other
provisions of this code.

Judicial employees may also serve as uncompensated mediators or arbitrators for nonprofit
organizations, subject to the standards applicable to pro bono practice of law, as set forth above,
and the other provisions of this code.

A judicial employee should ascertain any limitations imposed by the appointing judge or
the court on which the appointing judge serves concerning the practice of law by a former judicial
employee before the judge or the court and should observe such limitations after leaving such
employment.

Note: See also 18 U.S.C. § 203 (representation in matters involving the United States); 18
U.S.C. § 205 (claims against the United States); 28 U.S.C. § 955 (restriction on clerks of court
practicing law.)
MEMORANDUM

To: Chief Judges of the District Courts of Appeal
Chief Judges of the Circuit Courts

From: Chief Justice Rosemary Barkett

Date: January 13, 1994

Subject: Pro Bono Legal Work By Law Clerks

The purpose of this memorandum is to advise you that on September 7, 1993, the Florida Supreme Court considered the question of whether law clerks employed by the State Courts System would be permitted to provide pro bono legal services. The Court approved pro bono legal work by law clerks for everything other than direct representation of a client in court, with the proviso that law clerks may appear in court if they are serving as a guardian ad litem.

Please convey this information to the judges and law clerks in your court.

RB:dgh

cc: Sid White, Clerk of the Florida Supreme Court
Ken Palmer, State Courts Administrator
MICHIGAN

J-7
January 23, 1998

SYLLABUS

A sitting Judge may engage in activities designed to promote and encourage attorneys to provide pro bono legal services.

A sitting judge should not directly solicit individual attorneys to provide pro bono services to specific persons.

References: MCJC 2, 4(A)(B)(C), 5(B); MRPC 6.1

TEXT

A group of sitting judges have requested an opinion regarding the activities they may undertake to promote and encourage attorneys to engage in pro bono representation of needy persons. It is the opinion of this Committee that, so long as the sitting judge is not engaged in solicitation of individual attorneys under circumstances which may reflect upon the impartiality of the sitting judge, or otherwise create an appearance of impropriety, a sitting judge may engage in a wide range of activities designed to promote and encourage attorneys to undertake pro bono representation.

MCJC 4 provides a number of activities in which a sitting judge may engage all of which are designed to improve the law, the legal system and the administration of justice. That Canon provides that a sitting judge may, inter alia:

Speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

Appear at public hearings before executive or legislative bodies or officials on matters concerning the law, the legal system and the administration of justice.

Serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice.

MCJC 4(A)(B)(C). All of these are activities which can be used to promote greater participation in pro bono efforts by lawyers.

In addition, MCJC 5(B) provides that a sitting judge may participate in civic and charitable activities that do not reflect adversely upon the judge’s impartiality or interfere with the performance of judicial duties. A judge may also join in general appeals on behalf of educational, religious, charitable or fraternal organizations, and speak on behalf of such organizations. Thus, a judge may also engage in these activities with organizations engaged in the promotion of pro bono activities.

A judge is axiomatically engaging in ethical conduct when encouraging attorneys to fulfill their responsibilities under the Michigan Rules of Professional Conduct. MRPC
6.1 provides that a lawyer should render public interest legal service, by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. In encouraging or promoting participation in the rendering of *pro bono* services, a sitting judge is doing no more than encouraging attorneys to comply with the aspirational provisions of MRPC 6.1.

The introduction to Canon 4 of the MCJC states that:

"As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent the time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law."

In view of these "encouragements", it could be said that a judge is doing no more than fulfilling his or her obligations under Canon 4 in promoting and encouraging attorneys to undertake *pro bono* representation of *pro se* and other needy clients.

MCJC 2 provides that a judge must avoid all impropriety and the appearance of impropriety, and should engage in conduct which promotes public confidence in the integrity and impartiality of the judiciary. It may be possible under some circumstances for a judge to engage in the solicitation of individual attorneys for participation in *pro bono* activities, which under the circumstances, could be deemed as coercive on the part of the attorney being solicited. Where such individual solicitation is engaged in, attorneys could feel coerced into abiding by the request of a judge, fearing that if they do not abide by the request, they would fall into disfavor with the judge. To avoid even the appearance of impropriety, and to otherwise prevent the potential erosion of confidence in the impartiality of the judge, a sitting judge should refrain from soliciting individual attorneys under such circumstances.

Our system of justice is improved when all are equal before the law and have equal access to our judicial system. The encouragement and promotion of attorney participation in *pro bono* representation of needy clients only serves to improve our judicial system as a whole. Therefore, it is clearly permissible for sitting judges to write, speak, lecture, and otherwise participate in a wide range of activities designed to promote and encourage attorneys to engage in such *pro bono* representation.
Minnesota State Bar Association
Model Pro Bono Policy
and Procedures
For Government Attorneys

Introduction/Preamble

Minnesota attorneys, both public and private, have volunteered countless hours of pro bono legal services to their communities. Despite the efforts of many volunteer attorneys, however, the unmet legal needs of the disadvantaged, throughout the state, greatly exceed the capacity of volunteers and full-time services programs.

In an effort to encourage and support participation by government attorneys and judges in pro bono services and activities, the Minnesota State Bar Association’s Legal Assistance to the Disadvantaged Committee has drafted a model pro bono policy for government agencies, offices and attorneys, to assist them in developing pro bono policies and procedures.

This policy is intended to be a model. The Committee does not, necessarily anticipate wholesale adoption of this, or any, policy without consideration of the needs and concerns of the individual agency or office. Specific components of the policies adopted may vary from agency to agency or office to office. The model policy is based on a review of government attorney pro bono policies in Minnesota and throughout the country and reflects what the Committee considers to be the most reasonable and supportive provisions of those we reviewed. The model policy should, at a minimum, be used as a reference to identify the areas and issues which should be addressed in developing a government attorney pro bono policy.

We recognize that some government attorneys, other public sector attorneys, and judges may be restricted from participation in certain pro bono activities. Further, government attorneys face a number of perceived and actual impediments to involvement in the provision of pro bono legal services, such as conflicts of interest and limitations on the use of state resources. Nevertheless, it is possible for public sector attorneys to provide pro bono services, and we encourage government agencies and offices to adopt a pro bono policy and to actively support, encourage, and recognize government and public sector attorneys who wish to do pro bono work.
I. The Agency Policy

The Policy. Recognizing the ethical obligation of every attorney to provide legal services to those of limited means and to undertake activities to improve the legal system, and the significant unmet need for civil legal services for low-income and disadvantaged persons in this state, it is the policy of this office to encourage and support participation by agency attorneys in pro bono activities.

COMMENT: It is important for government agencies and offices to formally recognize and approve participation by government attorneys in pro bono activities. This section sets out a proposed statement of policy for an agency or office supporting participation by staff attorneys in pro bono activities.

Every attorney has a responsibility to provide pro bono legal services. Rule 6.1 of the Minnesota Rules of Professional Conduct provides that:

A lawyer should render public interest legal services. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

In 1990, the Minnesota State Bar Association adopted an aspirational standard for the provision of pro bono legal services of fifty hours per year with at least twenty-five hours devoted to direct legal services to low-income persons. The American Bar Association has adopted a similar standard.

Pro bono work reflects favorably upon the agency’s commitment to public service. Attorneys have unique skills and abilities which can be used to provide services for the disadvantaged, and to promote the public interest, in ways no other profession can. Volunteering for pro bono work also provides to individual attorneys an opportunity to broaden their professional experience and skills, as well as the satisfaction of helping those in need.

II. Pro Bono Services

A. Definition. Pro bono services, that is, donated legal and law-related services, include both the pro bono representation of clients and non-litigation volunteer activities. As used in this policy, “pro bono services” means:

1. providing legal services without remuneration to:

   a. persons of limited means; or

   b. charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

2. providing additional law-related services through:

   a. the delivery of legal services without remuneration to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate; or

   b. participation in activities for improving the law, the legal system or the legal profession.

COMMENT: The definition of “pro bono services” used in this model policy recognizes the critical need for legal services for disadvantaged persons and persons of limited means. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule-making, and the provision of training or mentoring to those who represent persons of limited means.

This definition of “pro bono services,” however, also includes a broad range of non-litigation activities. Government attorneys who are unable or find it difficult to provide direct representation to pro bono clients, can, nevertheless,
contribute by participating in non-litigation activities or by providing litigation and non-litigation services described in A(2). We recognize that statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing certain pro bono services. Every effort should, nevertheless, be made to encourage and support government attorneys who wish to provide pro bono services.

B. Types of Pro Bono Activities. Specifically, the following types of pro bono matters and activities may be approved. Attorneys who wish to pursue other activities must obtain prior approval from [their supervisor; the office pro bono coordinator or committee; the division director etc.] [List case types and activities]:

**COMMENT:** Although not a necessity, the Committee encourages agencies or offices to consider listing specific (or not so specific) types of cases and activities which meet the agency's needs and the interests of staff attorneys. The following list is an example which may provide a starting place, and, as appropriate, may be rejected, modified, or adopted as is.

Pro bono matters and activities which may be approved include, but are not limited to:

1. Representation of individual clients:
   a. in domestic abuse cases;
   b. with AIDS or other disabilities;

2. Serving as a guardian ad litem;

3. Providing representation to non-profit organizations which provide services falling within the definition of pro bono services;

4. Providing advice:
   a. in landlord-tenant or consumer matters;
   b. on wills, powers of attorney, and private guardianships;

5. Providing research assistance or expert advice to providers of legal services to the low-income and disadvantaged;

6. Participating on the board of a legal services organization;

7. Providing training or preparing materials for seminars or other educational activities involving poverty law issues;

8. Participating on bar committees and projects relating to the delivery of legal services and pro bono legal services.

This list is not comprehensive but is included to provide an example and some suggestions with respect to the types of services and activities which might be considered. A good reference is the Minnesota Bar State Bar Association Pro Bono Opportunities Directory which lists a number of different volunteer programs and a wide variety of pro bono opportunities.

III. Procedures

A. Approval by Agency. Participation in pro bono activities must be approved in advance by the attorney's supervisor; the office pro bono coordinator or committee; the division director etc.). Prior to approval, [the attorney's supervisor; the pro bono coordinator in consultation with the attorney's supervisor, etc.] shall determine:

1. Whether the request falls within the kinds of pro bono services or activities permitted by this policy.

2. Whether the matter appears likely to interfere with the performance of the attorney's official duties and responsibilities (e.g., the matter or activity appears likely to require protracted absences during office hours; or participation would clearly conflict with the interests of the agency or office.)
3. [The attorney’s supervisor etc.] must be contacted and continuing participation in the matter or activity discussed, if, after obtaining approval for a pro bono project, it appears that the matter will be more time-consuming or complex than originally contemplated.

**COMMENT:** Approval of pro bono services does not necessarily have to be made on a case-by-case basis. Consideration should be given to establishing a procedure for pre-approval of certain activities or types of cases.

### B. Representation of Pro Bono Clients.

1. **Malpractice Coverage.** Before agreeing to meet with or accept a pro bono client, the attorney should determine whether the referring program or organization has a malpractice insurance policy which covers volunteer attorneys. This office does not provide malpractice coverage for pro bono work.

**COMMENT:** If malpractice coverage is a concern, such coverage is available through some referral programs or organizations, including the civil legal services programs’ volunteer attorney programs.

2. **Accepting a Pro Bono Case**
   a. The client must be informed that a conflicts check must be made before acceptance of the case. After the first meeting with the client, a conflicts check must be made. (See III(B)).

**CONFLICT OF INTEREST** below.
   b. A retainer letter, specifically confirming the scope of the representation, and outlining the client’s obligations and responsibilities, should then be sent to the client. A copy should be maintained in the attorney’s file.
   c. The client should be informed how, when, and where to contact the attorney by telephone or letter.

**COMMENT:** Many referral programs or organizations have form retainer letters and closing letters, or may be above to provide examples, and either have, or may be able to provide, suggested procedures for opening and closing a case file.

3. **Conflict of Interest.** A conflict of interest exists where:
   a. Acceptance of the case would result in simultaneous representation by the attorney of parties with adverse interests, or the attorney’s obligations to the client would limit his or her ability to represent the office or agency. MRPC, Rule 1.7; Rule 1.9.
   b. Acceptance of the case would result in representation adverse to the interests of a former client. MRPC, Rule 1.9.
   c. The representation of the client would involve the attorney in a matter in which the attorney participated personally and substantially as a public officer or employee, unless, after consultation, the appropriate government agency or office consents. MRPC, Rule 1.11.
   d. The attorney knows or has access to confidential government information which could be used to the disadvantage of the adverse party. MRCP, Rule 1.11.
   e. The attorney is restricted from representation by Lawyers Professional Responsibility Board Opinions 2 and 6 which places certain limits on the defense of criminal cases by city, municipal, or county attorneys.
f. Those matters in which representation or participation would clearly create the appearance of a conflict of interest.

**COMMENT:** One impediment to the participation of government attorneys in pro bono work is the perceived or actual potential for a conflict of interest with the attorney's official duties and the interests of the agency or office for which the attorney works. The potential for a conflict of interest, or the appearance of a conflict of interest, should not be viewed so broadly as to discourage pro bono service. Each agency should identify situations which are clear conflicts for that office. We encourage agencies to define conflicts of interests as narrowly as possible and to review matters on a case-by-case basis to determine whether or not an actual conflict of interest exists in that particular county or geographic area, the potential for a conflict may be avoided by providing pro bono services in neighboring counties.

4. **Case Administration.** An attorney participating in a pro bono project or matter is personally responsible for his or her pro bono files. The attorney should open a file for each case, and implement a calendaring and/or tickler system to ensure that deadlines are met and significant dates are not missed. A closing letter should be sent to the pro bono client when the matter is completed or resolved.

**COMMENT:** A government agency or office is, generally, restricted from direct involvement in the supervision or administration of an attorney's pro bono files. Pro bono clients are, however, entitled to competent and effective representation. If guidance or assistance is needed, many referral programs or organizations can provide information on case management, and provide forms, training, and access to the expertise of their staffs.

Agencies or offices are encouraged to consider identifying a "pro bono coordinator" or "committee" to facilitate administration of the pro bono policy or plan. The coordinator would be responsible for administration of the pro bono policy, and could assist in identifying and responding to conflicts of interest and resource problems and issues, and in identifying resources when an attorney needs assistance, as well as resolving concerns directly related to the administration of the policy. It may also be helpful to develop a form book for use in pro bono cases.

**IV. Identification With The Agency**

Government attorneys who participate in pro bono activities or in providing pro bono services may not indicate or represent in any way that they are acting on behalf of the agency or office, or in their official capacity.

A. The attorney is responsible for making it clear to the client, any opposing parties, or others involved in a pro bono case or activity, that the attorney is acting in his or her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of, the agency or office.

B. The attorney may not use office letterhead, agency or office business cards, or otherwise identify himself or herself as a government attorney in any communication, correspondence or pleading connected with pro bono activities. The office address may be used, with the permission of the director or supervisor, if the address does not include the agency name or indicate the nature of the office.

C. The general agency or office telephone number may not be used for pro bono activities. Phone calls may be received either on the attorney's personal line or through the referring program or organization. The attorney may not receive telephone calls from clients at the office number if the call will or may go through a receptionist or switchboard which would identify the office or agency.

D. Agency offices may not be used for meetings with clients or opposing counsel in a pro bono case.

**COMMENT:** It is important that it is clear to the client, opposing parties, or others involved in a case or activity, that the attorney is acting in his or her individual capacity, and not on behalf of, or as a representative of, the government agency. Thus, the use of offices or stationery, or the receipt of telephone calls from clients where
the call may be answered in a way that identifies the agency, is generally restricted to prevent leaving the incorrect impression that the agency is representing a pro bono client or is in some way involved in a pro bono activity.

Agencies are encouraged to be as flexible as possible, given the circumstances of the office. It may, for example, be possible to allow the receipt of telephone calls, and the use of office space and/or a limited amount of office stationery when the matter involves a non-litigation activity. Receipt of calls at an office telephone may not present a problem if the agency is not identified to the caller, or other appropriate steps have been taken to avoid confusion or misunderstanding. Attorneys generally should be permitted to receive calls from opposing attorneys or other non-clients on their personal lines.

Referring attorney programs or organizations should be requested to provide space for meetings with clients and opposing attorneys, and to take telephone messages or to provide a mailing address when needed. It is usually appropriate for an attorney representing a pro bono client to identify him or herself on pleadings and in letters as a volunteer attorney for the referral program or organization.

V. Use of Agency or Office Resources

A. Hours of Work. When performance of pro bono work is required during regular work hours, the attorney may request that [his or her supervisor, etc.] approve a flexible work schedule to accommodate the time needed for pro bono work, or may take leave without pay or vacation leave. [The standard work week or pay period consists of ___ hours. Attorneys who do pro bono work during office hours must account for ___ hours per week/pay period [the standard work week or pay period] in performing their official duties and responsibilities.]

COMMENT: One of the significant impediments to participation by government attorneys in pro bono activities is the cost of participation. A number of statutes and regulations restrict the use of state resources or public funds for purposes other than official agency or government work. Some agencies in other states have applied such rules or statutes in a very restrictive manner, requiring government attorneys to do pro bono work outside of working hours and entirely at their own expense. Such requirements appear to the Committee, to be unnecessarily prohibitive. The provisions in this section, therefore, reflect what the Committee felt was reasonably possible, within the restrictions and prohibitions generally imposed by such statutes and rules, recognizing the concern that state agencies not spend taxpayer dollars for matters outside the public service purposes and obligations of the agency.

We strongly encourage agencies and offices to adopt a policy allowing attorneys to take advantage of flexible work schedule arrangements, rather than requiring volunteer attorneys to use vacation time or unpaid leave when work on a pro bono matter or activity is required, by the nature of the activity, during regular work hours. Most governmental agencies permit supervisor’s to modify work hours and to approve a flexible work schedule at the request of the employee. See, e.g., the State of Minnesota, DOER, Commissioner’s Plan 1993, Ch. 2. Offices or agencies may wish to consider including in this section automatic approval of a flexible work schedule if required by an attorney’s pro bono work (for example, for court appearances or attendance at meetings scheduled during work hours). The attorney is still accountable for his or her regular work hours, but may make up any hours necessary as arranged with his or her supervisor.

We acknowledge that many government attorneys, as professionals, put in more than the required hours in their positions, and, as a practical matter, many already work informal “flex hours.” If a volunteer activity bears a reasonable relationship to the attorney’s position or duties and responsibilities, supervisors are encouraged to include participation in such activities as part of the employee’s assigned duties, e.g., participation on bar committee, or preparation of legal education materials. Such activities may not fall within the definition of “pro bono services” (because the attorney is then doing his or her regular job and is receiving remuneration in the form of wages), but such inclusion makes it easier for attorneys to be involved in public service activities.

B. Timekeeping. Time spent on pro bono work during regular office hours should be recorded [in a manner to be determined by the agency or office.] No record need be maintained for pro bono work performed outside office hours.

COMMENT: Each agency should determine whether attorneys should be required to make a record of time spent on pro bono activities during office hours. It is probably not necessary in most situations.
C. **Telephone Calls.** Local telephone calls may be made from the attorney's personal line. Long distance phone calls may not be charged to the office or agency. Arrangements for long distance calls should be made through the referring program or organization. (But see IV(F) SUPPLIES AND THE USE OF EQUIPMENT.)

D. **Offices/Library.** Attorneys may use their personal offices to do research and to draft pleadings, briefs, letters or other written materials. The library may also be used for doing research related to pro bono projects. Such work should be done in a manner which does not interfere with the performance of the office's or attorney's regular functions or duties and responsibilities. Office computer research facilities (e.g., Lexis or Westlaw) may not be used to do pro bono research.

E. **Clerical Support.** Typing, copying, collating, and so on, is permitted on a limited basis by clerical staff, who agree to volunteer their time, with the approval of the clerical staff's supervisor, to the extent union work rules permit.

**COMMENT:** Clerical supervisors should be encouraged to be flexible in scheduling to allow volunteer work by clerical staff during and after regular business hours. Clerical workers should be made aware that clerical work on pro bono matters is voluntary, and that any time spent on pro bono matters is not compensable work time. Office tasks must be given priority, but the typing of short letters, pleadings or other documents and limited copying should be permitted, with the approval of the clerical staffs' supervisor. Assistance should be requested from the referring program or organization if a pro bono matter or activity requires more extensive typing or copying than

F. **Supplies and Equipment.**

1. Attorneys may use word processing and dictation equipment so long as such use does not interfere with the performance of the office's or the attorney's regular functions or duties and responsibilities.

2. A limited amount of office supplies, photocopying, and fax use is available to attorneys performing pro bono work. Significant, identifiable expenses, e.g., use of a large amount of paper, more than [____] pages photocopied or faxed, stamps, long-distance telephone calls, and so on, should be promptly reimbursed to the office or agency.

**COMMENT:** Attorneys who participate in pro bono activities are encouraged to explore the availability of supplies, the use of equipment, and other resources which may be provided by or be available through referring programs and organizations. Many can provide significant support. (See comments in other sections.) Use of other resources, such as the Minnesota Justice Foundation, which provides research assistance through law students, should also be encouraged.

Agencies are encouraged to be as flexible as possible in allowing the use of office supplies and equipment (e.g., paper; supplies such as paper clips and staples, pens, etc.; postage; photocopying; use of the office fax; and so on) to support the provision of pro bono services and activities. The provision proposed by the Committee is a compromise. As written, it allows the use of a limited amount of office supplies, where the cost is minimal, and it is not cost effective to try to document, calculate and attempt to recover the expense. (For example, the percentage of a pen or pencil used in doing pro bono work, the cost of a few sheets of typing or writing paper, the cost of a few pages of copying, or sending a couple of pages by fax.) Where costs are significant and identifiable, the Committee proposes that the agency accommodate the provision of pro bono services by allowing attorneys to use office equipment and supplies and then requiring prompt reimbursement of the expense to the office or agency. Agencies and government attorneys are encouraged to use their creativity and imagination in resolving these issues.
Setting Up a Project

"The beginning is the most important part of the work." —Plato

There are several ways in which government attorney offices promote pro bono service. One way is by developing policy and facilitating the provision of pro bono service through a list of approved pro bono programs. Another way is by adopting a policy and an approval process for any outside pro bono activity for which an attorney may wish to participate. An additional way is to adopt a policy and organize a specific project or clinic for the staff attorneys. This chapter addresses the latter type or “in-house government pro bono project.” An in-house government pro bono project is far more likely to succeed if it has a firm commitment from senior officials, be it an agency director, department head, or board. While one person’s commitment may be sufficient to provide the impetus for the project, a larger structure is needed to sustain it. Those in charge must support the volunteer project and provide leadership to make sure that it becomes integrated with the overall mission of the office.

Committee or Coordinator Structure

An important element in a successful project is the organizational structure. In order to implement the policies and carry out the responsibilities of the volunteer project, it can be helpful to create a Pro Bono Steering Committee and, if possible, designate a Pro Bono Coordinator. In general, the Pro Bono Coordinator or Committee is the liaison between the government office and the outside pro bono program or programs, and handles project administration and training. Setting up a committee allows more representatives from relevant divisions of the office to be involved in the project and available for consultation. The committee might include someone with fiscal or training responsibilities, someone knowledgeable about legal services to the poor, an ethics/conflicts specialist and a coordinator.

A coordinator can facilitate the internal administrative work of the pro bono project. Administrative tasks might include: preparing conflicts checks, maintaining a database on cases in progress, receiving referrals from the pro bono program and making case placements.
Contact Local Bar and Pro Bono Programs for Partnership/ Sources/ Screening

The primary way to organize pro bono activities is to develop relationships with a number of pro bono legal services providers. Partnering with a pro bono program can result in specially tailored pro bono projects designed to accommodate the needs of government attorneys. For example, government attorneys who are prohibited from representing individual pro bono clients may be able to handle initial client interviews, serve on the board of a non-profit affordable housing corporation, or participate in educational seminars. For government attorneys who are able to represent individual clients, pro bono programs can assist them by linking them with cases and by offering the use of office equipment, telephones, and space for client interviews. Another strategy is to create new ways to participate in pro bono activities. In the Connecticut Attorney General’s Office lawyers serve as trainers, write educational pamphlets, or participate in community legal education programs for low-income groups. In these activities, no attorney-client relationship is established and therefore the most typical conflicts do not arise.

The Department of Justice developed a method of project recruitment it calls a Pro Bono Fair, which is held twice a year. DOJ invites local pro bono organizations, that meet its criteria, from the District of Columbia, Maryland and Virginia to send representatives and materials from their programs for a two hour lunch time fair. Each fair showcases from 12 to 14 programs. Tables with materials are set up in a heavily traveled corridor with representatives available to answer questions. Notice of the fair is send to other federal agencies.

The Thurston-Mason pro bono program in Olympia, Washington has worked with government attorneys from the program’s beginning. Assistant attorneys general were on the original committee that organized and recruited for the program. The program enlisted the co-sponsorship of the local bar, the legal services office, and the local Governmental Lawyers Association. The Association mailed to each government attorney a letter urging participation in the pro bono program and signed by its past and present officers, the county prosecutor, several heads of major divisions within the Attorney General’s Office, and the Chief Justice of the Washington State Supreme Court. The letter was followed by a joint meeting of the Government Lawyers and the local bar where many of those attending signed up as a pro bono volunteer.45

Another way to facilitate pro bono work is to provide a resource book which lists all state pro bono programs, distribute it to all government attorneys, and encourage them to get involved in one of the programs. An example is the Office of Attorney General Source Book put out by the State of Florida, a portion of which is included at the end of this chapter. Developing the source book can be a project for a government pro bono committee or a joint project with the bar association. However it is accomplished, it will be a useful resource for lawyers seeking information about pro bono programs.

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PRO BONO SOURCE BOOK

INTRODUCTION

This manual is designed to be a reference tool for government lawyers needing information about pro bono service. We hope that many of you will use this source book to learn about the many worthwhile programs that could use your help.

Included is the Department's policy on pro bono service, as well as a breakdown of the agencies throughout the state that offer programs to assist the disadvantaged. Please note that this office has recently implemented a policy authorizing the use of state agency equipment while performing pro bono services for the poor. This policy has been approved by the Comptroller as consistent with the public interest. It is our hope that this policy will enable more government lawyers to offer pro bono assistance to the poor. This policy and other relevant materials are included in the appendix.

Please contact Pat Gleason, General Counsel, at 904/488-9853 or SunCom 278-9853, if you need further information regarding pro bono service. If you know of additional organizations which should be listed, please contact Marni Versiga at the same number.

Robert A. Butterworth
Attorney General
COUNTY: Alachua (Eighth Circuit)

NAME OF ORGANIZATION: Volunteer Attorney Program
Three Rivers Legal Services, Inc.

CONTACT PERSON: Marcia Lockhart

ADDRESS: 111 Southwest First Street
Gainesville, Florida 32601

TELEPHONE: (352) 372-0519

FAX: (352) 375-1631

TYPE OF CASES TYPICALLY HANDLED ON PRO BONO BASIS: Family Law, Housing, Consumer, Real Property, Tort Defense, Probate and Wills, IRS and Insurance.

AMOUNT OF TIME REQUIRED PER WEEK ON AVERAGE: Variable according to type of case. Request a minimum of 20 hours per year.

ADMINISTRATIVE SUPPORT SERVICES OFFERED: YES NO

Clerical X

Office space for client interviews X

Malpractice insurance protection X

Office equipment (limited) X

Volunteer Law Clerks for PBI Cases X

COUNTY: Alachua

NAME OF ORGANIZATION: Virgil Hawkins Civil Law Clinic

CONTACT PERSON: Don Peters

ADDRESS: Post Office Box 117626
College of Law
Gainesville, Florida 32611

TELEPHONE: (352) 392-0412

FAX: (352)392-0414

TYPE OF CASES TYPICALLY HANDLED ON PRO BONO BASIS: Family law (divorce, custody, visitation, paternity).

AMOUNT OF TIME REQUIRED PER WEEK ON AVERAGE:

ADMINISTRATIVE SUPPORT SERVICES OFFERED: YES  NO

Clerical

Office space for client interviews

Malpractice insurance protection

Office equipment

OTHER INFORMATION: Law students from the University of Florida Law School perform duties and handle case work similar to that handled by attorneys. Students accept family law cases primarily off a waiting list compiled by Three Rivers Legal Services.
Managing the Project

Those who are victorious plan effectively and change decisively. They are like a great river that maintains its course but adjusts its flow, are skilled in both planning and adapting, and need not fear the result of a thousand battles for they win in advance, defeating those that have already lost.

-- Sun Tzu

Referral and Case Assignment

The manner in which the project is set up will determine how the project is managed. If the project takes cases from existing volunteer lawyer programs, then the approval and conflicts procedures will be critical. On the other hand, the most important feature of a successful in-house pro bono project is the referral and case assignment mechanism. The referral process should include a screening for financial eligibility performed by the referral source (legal services and pro bono providers), a conflicts check, and a standardized method for recording both case assignments as well as the status of each case. These tasks can be managed or facilitated by the pro bono coordinator or committee. A committee structure allows the task of accepting and assigning cases to be rotated among committee members to minimize burden. When a coordinator is in place, that person handles all routine functions, and where conflicts are likely to arise, discusses the case with one or more attorneys on the pro bono roster who have volunteered to screen conflicts.

To ensure that attorneys provide high-quality service to pro bono clients, government offices should make sure that the pro bono programs they work with have well-developed case support systems and training. Case support can include: a thorough statement of the facts of the case and an accurate assessment of what will be required; mentoring and co-counseling by staff, legal services lawyers, or private bar members with expertise in the given substantive area; office space for interviews; specialized manuals on various substantive areas; sample pleadings, paralegal, law student or secretarial services; and funds to cover litigation costs.

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46 Training is discussed in Chapter 2.
Review and Evaluation

A crucial part of project management is review and evaluation. From time to time, pro bono lawyers in the government offices should meet to review operations, update procedures, and change or add referring pro bono programs if necessary. In addition, the project should hold a more formal periodic review to determine whether it is achieving the goals it has set. Reviews are beneficial because the needs of clients can change and systems can become outdated. These reviews should be part of a regular planning process.

There are a variety of methods available for evaluating the project. These range from review of internal reporting systems that provide the governing body with information on project activities, to formal review by agency or organizational leaders, peer review teams, or other independent outside evaluators.\(^\text{47}\) Data should be gathered to answer the following types of questions:

- What is the nature and scope of the pro bono services being provided?
- Has the project been effective in recruiting attorneys to take pro bono assignments?
- Is the pro bono program/s from which we are receiving referrals the best-suited to the office's special needs? Have we received the types of cases that do not create conflicts?
- Is the project's case acceptance function organized and functioning well?
- What practices and procedures should be followed to assure that the legal services provided to indigent clients meet minimum standards of quality?
- Is the project effective?

How the Department of Justice Pro Bono Project is Organized

The Department of Justice pro bono program does no direct case acceptance. Rather, its aim is to help its attorneys work with existing pro bono programs. In some offices, a group of DOJ attorneys work with a particular pro bono program in a more coordinated fashion; for example, DOJ lawyers may staff a bar clinic on a particular night. Generally, however, DOJ lawyers are referred to pro bono programs in their area that provide (1) malpractice insurance for volunteers, (2) screening mechanisms to reduce the chance of conflicts of interest, and (3) training and/or mentoring for DOJ lawyers working in areas unfamiliar to them.

Although DOJ pro bono program oversight is in the Office of Policy Development (OPD), the project is decentralized to the extent possible. Each component of the department is responsible for approving cases handled by its own attorneys. DOJ chose to use a decentralized structure because each component has unique concerns including the types of cases most likely to raise ethical issues, as well as resource and time constraints. Moreover, some components, such as the United States Attorneys Offices, the Federal Bureau of Investigation, and the Immigration and Naturalization Service, are geographically dispersed. An OPD Senior Counsel serves part-time as the pro bono manager. The pro bono manager works with legal services and bar association programs to facilitate opportunities for Department employees, chairs the Department's Pro Bono and Volunteer Services Committee, and provides support to the pro bono representatives in each component. Each Department component has a representative on the Pro Bono and Volunteer Services Committee. That representative communicates with the employees in his or

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\(^{47}\) Id.
her component, consulting with the component head and the ethics official to obtain preliminary approval of pro bono programs, and generally serving as a point person on pro bono issues for the component.

The Department of Justice applies the same rules and policies to the pro bono project as to other nonofficial activities. A few of the relevant rules and policies are the following:

- **Leave:** Pro bono projects are intended to be done on an employee's own time. Supervisors are encouraged to be flexible and they may allow limited leave during the work day (e.g., for court appearances).
- **Use of Office Equipment:** As a general rule, government employees may use government property only for official business or as authorized. The DOJ’s policy allows personal use of equipment and facilities only if it involves negligible additional expense to the government, such as electricity, ink, small amounts of paper, ordinary wear-and-tear. Limited local phone and fax calls are also permitted.
- **Agreement for Services:** The Department asks its employees who take on pro bono cases to sign an agreement with their client to clarify that the individual and not the Department is the representative. The DOJ pro bono project has prepared a model agreement for services.  

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48 A copy of the Department of Justice’s Agreement for Services is under tab 13.
TAB

12
PRO BONO PROGRAM VOLUNTEER FORM

NAME: ____________________________________________________________

AGENCY/DIVISION: ________________________________________________

TELEPHONE NUMBER: ______________________________________________

I AM INTERESTED IN VOLUNTEERING IN THE FOLLOWING AREAS:

☐ (A) Divorces involving no custody disputes;

☐ (B) General wills, advance directives, powers of attorney, private guardianships not involving any State agency;

☐ (C) Landlord/tenant cases not involving the application of the Consumer Protection Act;

☐ (D) Counseling and other legal assistance, such as incorporation, leave negotiations, etc. through the Lawyers Clearing House Project to nonprofit organizations that serve low-income people (except for work related to development projects for which State aid might be sought);

☐ (E) Veterans benefit appeals; and

☐ (F) Personal bankruptcy – cases to be accepted on a limited basis only while the Pro Bono Committee assesses potential conflict problems.

☐ I do not wish to volunteer.

If you want to attend a training program in the next few months in any of the topics you have chosen, please list the topics here:

___________________________________________

___________________________________________

___________________________________________

If you want the training before you are assigned a case please check here: ☐
Dear Attorney:

Thank you for agreeing to represent the above-named client. Enclosed find information which should be of use to you in this regard concerning fees, costs and procedures. Also enclosed find a Final Deposition Form to be returned at the end of this case.

If you cannot represent this client, please notify our office immediately. Regardless, the Initial Disposition Form below should be returned either after the initial interview or if the client failed to contact you. In the latter instance, please allow 30 days for the client to contact you before returning the Initial Disposition Form to us.

Thank you for your generous service to the Pro Bono Program.

------------------------------------------

INITIAL DISPOSITION FORM

Attorney: ____________________________ Client: ____________________________

Date: ____________________________ Pro Bono No.: ____________________________

____ I interviewed client and will provide representation. Client's objective(s) and likelihood of success: ____________________________________________________________

Anticipated Case Completion Date: ____________________________

Anticipated Number of Lawyer Hours Needed for Resolution: ____________________________

____ I interviewed client and will not provide further representation because: ____________________________________________________________

Pro Bono Hours Spent: ____________________________________________________________

____ Client did not contact office.
VOLUNTEER LEGAL SERVICES PROJECT
OF MONROE COUNTY, INC.

Initial Case Disposition

Client ________________________________

Date of Referral ________________________________

Please check one

____ The client has failed to appear for an appointment with me.

____ The client has withdrawn his/her request for services. Pro bono hours spent _____

____ The client has been interviewed and advised and no further services are necessary because:

________________________________________________________________________

________________________________________________________________________

Pro bono hours spent _____.

____ The work on this case is complete, and the file should be closed. I provided the following services:

________________________________________________________________________

________________________________________________________________________

Pro bono hours spent: _____.

____ The client has been interviewed and I will provide further legal services.

Client's objective and likelihood of success:

________________________________________________________________________

________________________________________________________________________

Expected date of completion ________________________________

Signed ________________________________ Date ________

Please return this form to VLSP, 80 St. Paul St., Suite 640, Rochester, NY 14604, within one month after receiving this case referral.
Dear Attorney:

Please complete the form below to enable us to keep advised of the above-referenced client's case. This is necessary for our compliance with requirements for federal funding. We have made the form as brief as possible, and need only a short statement outlining the status of this case. We would very much appreciate your cooperation and assistance in meeting reporting requirements and in closing cases which have remained open in our files for some time. If this case is closed, please complete the Final Disposition Form on the reverse side.

Do not hesitate to call on me for any possible assistance. If I am not able to answer your question, I may be able to find someone who can. In addition, there usually is a law student available to do legal research and prepare written memoranda for participating attorneys. Finally, the program is able to assist in obtaining pertinent information from the many support centers funded by the Legal Services Corporation throughout the country.

Thank you for your participation in the Pro Bono Referral System.

Steven B. Scudder, Director

Date: _____________________________

Brief Summary of Work Since Previous Case Update (or attach copy of time record):
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Brief Summary of Work Remaining to be Done:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Anticipated Case Completion Date: _____________________________

Comments:
PUBLIC LAWYERS LEGAL SERVICES PROGRAM
EXPENSE/TRUST ACCOUNT FORM

1. Case/Matter: ________________________________________________

2. Attorney: _____________________________________________________

3. Reimbursement to attorney for expense incurred ________________; direct payment request ________________ (check applicable line).

4. Payee: _______________________________________________________

5. Amount: ______________________________________________________

6. Nature of expense:
   (a) Court Costs _______________________________________________
   (b) Reimbursement to Agency
       (1) Xerox; ___________________________________________________
       (2) Postage; ________________________________________________
       (3) Telephone _______________________________________________
   (c) Other _____________________________________________________

7. Receipt/canceled check: attached available.

8. Mail/Pick-up instructions: ______________________________________

   I certify that the above expense is necessary and appropriate and was actually incurred for the Public Lawyers Legal Services Project.

   Date: __________________ Signature: ____________________________

   __________________________________________________________________________

   TRUST ACCOUNT TRANSACTIONS

9. Deposit: (a) amount ____; (b) payor _____; (c) payee _________

10. Withdrawal: (a) amount ___________; (b) payee ___________________

11. Mail/Pick-up instructions: _________________________________________

   Date: __________________ Signature: ____________________________

   __________________________________________________________________________

OAG Policies & Procedures - Private Practice & Pro Bono

§10.2 - Attachment

January 6, 1995
TAB

13
AGREEMENT FOR ATTORNEY SERVICES

This agreement represents the understanding between ____________________________ ("the Client") and ____________________________ ("the Attorney") with respect to the provision of legal services. The Attorney, who is acting in his/her individual capacity, and not on behalf of the Department of Justice, is a participant in the Law Firm Pro Bono Clinic of the D.C. Bar Public Service Activities Corporation (PSAC).

1. The Attorney agrees to represent the Client by providing legal services in the following matter:

2. The Attorney agrees to undertake this representation on a pro bono basis, which means that the Attorney will not charge for attorney or paralegal hours expended on the matter.

3. The Attorney agrees to advance the costs of litigation, including any court filing fees, copying charges, long distance telephone charges, postage charges, and other such fees necessary for litigation. The Client will not be required to reimburse the Attorney for these costs.

4. By agreeing to this representation, the Attorney does not agree at this time to represent the Client in connection with an appeal. The parties may agree at a later time to extend representation to an appeal. If they do so, they will sign a separate agreement to that effect.

5. The Client agrees to:
   a. Provide complete and honest information, including information that will assist the Attorney in investigation the matter.
   b. Attend and be on time for all appointments and court dates.
   c. Promptly notify the Attorney of any changes of address or telephone number.
   d. Promptly notify the Attorney of any change in financial situation which may make the Client ineligible for representation through the Law Firm Pro Bono Clinic.
6. The Attorney agrees to:

   a. Keep the Client informed about the status of the case.

   b. Keep all sensitive information provided by the Client confidential unless authorized by the Client to disclose it (except that information may be shared with other attorneys to the extent necessary to assist with the representation).

   c. Consult with the Client before making any significant decisions about the case.

   d. Not settle the case without the Client’s consent.

7. The Client may terminate this Agreement at any time for any reason. The Attorney may terminate this Agreement by providing written notice of his/her intention to do so, if the Client does not comply with its terms.

Client Name (please print) ____________________________  Attorney Name (please print) ____________________________

Client Signature ____________________________________  Attorney Signature ________________________________

Date ______________________________________________  Date ____________________________________________
PRIVATE ATTORNEY INVOLVEMENT PROGRAM
WEST TEXAS LEGAL SERVICES

GENERAL PRO BONO RETAINER AGREEMENT

hereinafter called Client, whether one or more, authorize(s) Attorney at Law (hereinafter called Attorney) and West Texas Legal Services, Inc. (WTLS) to represent Client at no charge and to do all things necessary or desirable, including initiating litigation, in connection with:

Client understands that Attorney will represent client solely with regard to the services included above and that for further consultation regarding other matters, whether related or unrelated, client has been advised to contact WEST TEXAS LEGAL SERVICES or other counsel.

Client Agrees to keep Attorney and WTLS informed of a current address and understand that the failure to do so may result in Attorney’s and WTLS’s withdrawal from Representation.

Client understands and agrees that the Attorney may seek and retain attorney fees that may be assessed against any adverse party by the court through settlement.

Client understands that there will be no attorney’s fees charged for the services provided by the Attorney and WTLS, however, Client understands and agrees that Client is responsible for payment of all other costs and/or filing fees.

Client understands that at the conclusion of his/her case any remaining costs will be returned to him/her if he/she has provided Attorney and WTLS with his/her current mailing address. Client further understands that if Attorney and WTLS is unable to locate him/her to return these costs that such costs will become the property of WTLS after five (5) years from the date his/her case is closed and will be used to pay costs and fees for other eligible clients who are unable to pay such costs.

Client agrees to keep appointments made with Attorney and WTLS Staff, and to attend Court Hearings, Depositions, and Conferences as instructed by WTLS Staff or the Attorney representing Client, and Client understands that failure to do so authorizes Attorney and WTLS to withdraw from representation of Client.
Client further understands and agrees that Attorney and WTLS may withdraw from representation should a change in Client's circumstances render Client ineligible for services or when required by the Code of Professional Responsibility, or when required by Federal Regulation.

Finally, Client understands and agrees that the agreement to represent Client does not include an agreement to appeal this matter further; Client also understands that no settlement of this matter will be made without Client's approval.

Client's Signature

Date

Client's Signature

Date

Attorney's Signature

Date
Program Evaluation Outline
from
Standards for Programs Providing
Civil Pro Bono Legal Service
to Persons of Limited Means

I. Reasons for Periodic Evaluation

1. Needs of clients change
2. Systems become outdated
3. Planning for the future requires evaluation of past performance

II. Goals of Evaluation

1. Enable a program to determine if it is:
   a) providing high quality legal services to clients
   b) in an efficient and effective manner,
   c) achieving its goals and objectives,
   d) using innovative strategies to leverage available resources to meet client need, and
   e) fulfilling requirements of funders

2. Foster good management of the program by:
   a) addressing weakness
   b) enforcing strengths
   c) building upon successes

III. Methods of evaluation

1. Internal reporting systems
2. Outside review
   a) by funders
   b) peer review teams
   c) independent outside evaluators

IV. Important Areas of Inquiry

1. Client satisfaction
   a) evaluate interactions of staff and volunteers with clients
   b) reveals effectiveness of delivery design in meeting client needs

2. Quality of service provided by volunteers
   a) for direct referral systems, use tracking and oversight system to evaluate
   b) get feedback from other lawyers and judges on quality of practice of volunteers.
   c) if intake takes place at community organizations, staff may be source of information.
   d) get client views on whether objectives met and pleased with service received
e) volunteers can provide self assessment of the quality of manner of service provided

3. Ability to recruit, utilize and retain volunteers
   a) must go beyond number of volunteers on panel
   b) To assess active involvement of lawyers:
      1) number of volunteers who regularly participate
      2) number of hours they contribute
      3) number of matters they are handling
      4) extent of services they are providing
   c) Determine if there are other models of service delivery that may more effectively and efficiently leverage volunteer resources to meet client needs
   d) seek views of volunteers on satisfaction with program and suggestions for improving it

4. Is Program Meeting its Identified Priorities
   To assess this:
   a) types and numbers of matters placed with volunteers
   b) priority cases which program has difficulty placing with volunteers
   c) nonpriority matters that generate the most requests for assistance

5. Is Program Using Funds Effectively and Efficiently to Meet Goals
   a) program should determine quantitative information appropriate to program and assemble/present it consistently and on a regular basis over time
   b) purposes - give governing body an overview of program, understand economics of the program and identify changes in the program over time
   c) should collect:
      1) number of clients served or cases completed
      2) extent of services provided (number of hours?)
      3) type and complexity of services
      4) results achieved for client and client community
      5) number of volunteers participating
      6) aggregate and average amount of volunteer time provided annually

6. Relations with Organized Bar and other Providers of Legal Services
   a) coordinated and cooperative relations should be a goal
   b) frank discussions with representatives
      1) ways in which positive relations have been fostered
      2) problems that exist
      3) ways relations may be improved

7. Success in obtaining intangible benefits for low income community and legal services community, such as heightened level of concern for, awareness of and involvement with legal services issues

Excerpted from Standards by Haana Cohn for Workshop at 1996 ABA Pro Bono Conference
Publicizing the Project and Recruiting Volunteer Attorneys

"The secret of success is constancy to purpose."
--Benjamin Disraeli.

Publicity

Publicizing a pro bono project to employees is critical to its success in recruiting attorneys, maintaining morale, and securing the support of the department. There are a number of ways to publicize a project, such as: distributing the pro bono policy to all attorneys, holding a meeting to describe the project and answer questions that arise, developing a brochure to be included in the paychecks of all attorney employees or incorporated in new employee packets, sending notices from pro bono committee members through e-mail or electronic bulletin boards, developing and disseminating an internal newsletter, and placing notices in relevant association publications. The Maryland Attorney General, for example, announced the establishment of the pro bono project through a memorandum to all attorneys. The memo invited attorneys to one of two meetings held over the noon hour to meet with a law school professor who specialized in the type of work that would be handled. The project continues to be promoted through information packets containing the policy and a list of pro bono opportunities which are sent to all new hires. In addition, periodic training sessions in pro bono case areas are conducted by the in-house training division. The program also increases its visibility through a periodic lawyer satisfaction survey sent to all staff who have participated in the program. The New York Attorney General’s Office policy was introduced through various media including, a memorandum to all attorneys, a press release, and Bar Association newsletters.

Recruitment

While there are many ways to recruit volunteer attorneys, a great deal of energy may be necessary to effect change if the attitude of the attorney community is unresponsive or negative. Members of the core organizing committee should not become discouraged when confronted with negative attitudes. The most convincing argument to skeptics is simply to succeed. The committee should proceed, no matter how limited the scope of or participation in the initial project, so that other attorneys become more interested and responsive. Those initially uninterested may become more so when they see those participating in the project gaining valuable training, recognition, experience in diverse areas of law, and satisfaction. The endorsement and involvement of one or more top attorneys, as well as the support of departmental leaders will encourage other lawyers to participate.
The ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, while designed to provide guidance to bar association legal services programs or independent pro bono programs, can also offer insight to government offices in the process of establishing a project. Standard 3.5-1 states, “A pro bono program should develop effective strategies for recruiting volunteers.”49 The Commentary suggests that members of the program’s governing body should view recruitment of volunteers as one of their important responsibilities. A program must decide if it will depend upon recruitment letters, personal contact, or a combination of both approaches. If resources permit, a program should always choose a combination of approaches to attract as many volunteers as possible.50

One of the best methods of recruitment is to integrate recruitment of volunteer attorneys into the day-to-day activities of the organization. A few ways to accomplish this include:

- frequent references by supervisors or department leaders at staff meetings or other government attorney events;
- demonstration of support for pro bono by leadership through direct pro bono service;
- development of a new attorney packet, to be handed out during orientation, that discusses the project, touts the benefits of participation, and stresses that no experience is required.

Many projects sponsor annual pro bono recruiting campaigns. These campaigns often are initiated through a letter to staff, signed either by the Agency Chief, the Attorney General, the Public Defender, or the State or City Attorney. Frequently, these recruitment letters are accompanied by brochures describing pro bono participation and the projects.

Other methods of recruitment include:

- printing recruitment information in commonly read publications or internal newsletters;
- holding a “brown bag” lunch-and-learn program to pass on information about how attorneys can get involved;
- sending letters from supervisors or directors of government agencies encouraging participation;
- arranging a function where the head of the agency or the governor speaks;
- providing specialized in-house training on substantive areas most suited to government attorneys;
- arranging for a “government attorney” night at a local clinic where “conflict-free” cases are handled;
- establishing an annual Law Day recruitment event;
- preparing a sign-up form which is included in every issue of the newsletter; and
- working with local courts to obtain priority for volunteer attorneys’ during motion and trial dockets;
- bringing representatives of local pro bono programs in to talk about their programs.

49 ABA Standards at Standard 3.5-1 (Relations with Volunteers-Recruitment)

50 Id. at Commentary to Standard 3.5-1 (Relations with Volunteers-Recruitment)
A common issue to deal with during mass recruitment drives is the appropriate matching of attorneys with areas of greatest need and with project priority service areas. Consideration of this issue can reduce the chances of over-recruitment for areas of low priority that lead to infrequent case assignments and eventual disinterest. Recruitment is enhanced by knowing the areas in which referring pro bono programs need help and determining how to give recently recruited volunteers a positive experience shortly after signing them up. A successful recruitment campaign without adequate follow up may have more negative effects than positive in the long run.

**Creative Use of Volunteers**

While recruitment of volunteers is critical, the effectiveness of the project is greatly diminished if it fails to use or under-employs the time and skills of those volunteers, or if they are not satisfied with their volunteer experience. Therefore, it is crucial that projects develop effective strategies to ensure that every volunteer is engaged as soon as possible after volunteering. A project should try to provide a number of volunteer opportunities so that options exist. Attorneys often find the following options attractive because they offer a defined time period, unlike open-ended case referrals or mentoring commitments:

- Attorney of the Day at an office doing intake and/or placement of cases,
- In-house volunteers helping with other office tasks,
- Community Education,
- Advice/Pro Se Clinics.

Using government attorneys for case intake and referral can benefit the clients, agencies, and attorneys themselves. In addition, lawyers can advise pro bono program staff in screening referrals for legal merit, responding to emergencies by obtaining extensions of time, and working on problems from certain walk-in clients.

The Maine Volunteer Lawyers Project and the state Attorney General’s office set up a project in which government lawyers serve as the “lawyer of the day” every other Friday morning. The lawyer of the day telephones other attorneys, whose names appear on a panel list maintained by the project, to match a low income client with an attorney knowledgeable in the area of law needed and whose office was located as close to the client as possible. The time required is not charged against annual leave, but considered as part of the attorney’s regular responsibilities.

In addition to more traditional participation, (i.e. legal representation) government attorneys can also participate in legal education. Legal education to community groups can be effective in preventing legal problems before they occur. Whether seminars, educational trainings, or adjuncts to other programs; these educational sessions offer opportunities to network, to increase public awareness, to improve public relations with the community, and to use a different set of skills.

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51 *Id.* at Standard 3.5-2 (Relations with Volunteers - Utilization).
Advice and Pro Se clinics offer similar opportunities on a one-to-one basis. Some projects view such clinics as the best application of limited attorney resources in areas of law where demand from clients far exceeds the supply of attorneys and clients can more readily represent themselves after receiving limited assistance. Clinics can be set up for general advice or advice in a particular area of law such as family law, bankruptcy/debt counseling, child support, or tenant's rights. The legal problems experienced by a particular client group -- for example, senior citizens -- can also be targeted.

Having recognized that county and district attorneys could not directly represent pro bono clients in court, the office in Tom Green County, Texas, created a pro bono project tailored to those concerns. On a specific Saturday morning, attorneys meet with previously screened clients at the Pro Se Divorce Clinic. During the meeting, the attorney assists in the explanation of the prepared pleadings and reviews the locations of the various courts, their respective clerk's offices, and the courtroom locations. The attorney also reviews a prepared script of a final hearing with the pro se client.

Recruitment efforts should be on-going and never viewed as completed. The need for volunteers to provide pro bono legal services to the poor remains great. When one volunteer drops out, new sources of volunteers can often be tapped.\textsuperscript{52}

\textsuperscript{52} Id.
TAB

14
THE WHITE HOUSE
WASHINGTON
April 22, 1998

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Strengthening Our Commitment to Service

Citizen service is one of the most important ways we demonstrate that we care for and are responsible for one another. It is also an American tradition that we meet our challenges as members of a true community, with all of us working together. Thus, citizen service should not just be a temporary pursuit of only a week or a month. The ethic of service must extend throughout a lifetime.

Over the years, great numbers of Federal employees have been generous with their time and talents and have made positive contributions to their local communities, even as they have fulfilled their official responsibilities. At the same time, as the Nation’s largest employer, the Federal Government has a responsibility to set an example by helping to make it possible for its employees to dedicate time to serve others.

Therefore, I am today directing Federal departments and agencies to explore additional measures to expand service opportunities for Federal employees. Each department and agency should review its work scheduling practices and make maximum use of existing flexibilities to allow Federal employees to plan and take time off to perform community service as the public business permits. Each department and agency should also inform its employees of the various flexibilities available to them to participate in volunteer activities. The Office of Personnel Management should provide information to departments and agencies in support of this effort. Each department and agency should then report to the Office of Personnel Management within 90 days on the measures taken to implement this memorandum.

William J. Clinton
MEMORANDUM

TO: All Employees

FROM: Paul M. Igasaki
Chairman

RE: Pro Bono Legal and Voluntary Services Initiative

I am continually gratified by the generous efforts each of you puts into your work at the Commission. Many of you apply that same generosity of spirit to off-duty volunteer activities that seek to serve people in need or to improve the common good of the communities in which you live or work. Such activity is commendable.

I would like to take this opportunity to underscore my support and encouragement for you to continue or to start performing pro bono legal and volunteer activities. While government employment is itself a form of public service, I believe that the Commission should facilitate and enable its employees to perform off-duty, volunteer services within their communities that are consistent with applicable federal statutes and regulations governing conflicts of interest and outside activities.

The President has asked each agency to develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, as permitted by statute, regulation, or other rule or guideline. The attached Pro Bono and Voluntary Services Initiative, prepared by the Office of Legal Counsel and coordinated with all offices and the union, implements this important Presidential directive. I believe that it provides the guidance and information that should facilitate such activities by Commission employees.

Attachment
ATTORNEY GENERAL’S OFFICE AND STATE BAR ASSOC. MAKE ASSISTING THE POOR EASIER FOR GOVERNMENT ATTORNEYS

ALBANY -- In a first-of-its-kind initiative for a state agency, the attorney general’s office, with assistance from the New York State Bar Association (NYSBA), has launched a significant campaign to find ways of involving more government attorneys in programs providing free legal assistance to the poor.

In response to the community’s “significant need” for pro bono and the expressed desire of assistant attorney’s general to provide these services, Attorney General Dennis C. Vacco appointed a special pro bono committee to work closely with the state bar to identify, select and implement pro bono projects for government attorney participation.

NYSBA President Joshua M. Pruzansky of Smithtown, said, “We applaud Attorney General Vacco’s ground breaking efforts in his support of assistant attorneys general being able to provide pro bono and other volunteer efforts to the community. The members of this profession, in New York alone, provided upward of 2 million hours of pro bono service per year. Now, due to the initiatives of the Attorney General, public employee members of his staff will also be able to enlist in the effort to provide legal and volunteer services to the less fortunate.”

A recent Department of Law memo states, “Assistant attorneys general are encouraged to provide pro bono legal and volunteer services that are consistent with applicable state statutes and regulations governing conflict of interest and outside activities.”

Generally, government attorneys have been discouraged or prohibited from participating in pro bono activities by their employers. This accounts for the low level of pro bono services provided by this segment of attorneys. Public employees face other barriers to pro bono, including conflicts of interest, and restrictions on using state-owned equipment for outside purposes.

Ten programs from different areas of the state were identified as appropriate for assistant attorney’s general. The pre-approved programs do not involve litigation, and seek to assist children, senior citizens, and victims of domestic violence.

The 60,000-member New York State Bar Association is the official statewide organization of attorneys in New York and the largest voluntary state bar association in the nation.

-30-
Awareness

Campaign Underscores Urgent Need for Pro Bono Lawyers

Pro Bono Awareness Campaign Launched

by Kim Van Wormer, NYSBA Marketing Coordinator

In an effort to create awareness of the legal needs of the poor and to increase the level of pro bono participation by the legal profession, the NYSBA has launched a statewide print advertising campaign co-sponsored by local bar associations, law schools, legal services and pro bono programs. Two ads (“And Justice for All?” and “There are Millions of Reasons to Do Pro Bono”) will appear in legal publications in March, April and May as a lead-in to Law Day, May 1.

More Information Needed

The campaign was developed, in part, as a result of a survey conducted by the NYSBA on why lawyers volunteer time and donate money to legal services programs. Respondents reported that before they would consider volunteering time or donating money they needed more information about the legal needs of the poor and their responsibility to meet those needs. As a result, the NYSBA President’s Committee on Access to Justice worked closely with the NYSBA Marketing Department to develop a campaign to heighten awareness of those issues and, ultimately, increase participation and financial contributions.

“The first step to increasing levels of participation and donations is to educate practicing lawyers and law students about the fundamental issues related to pro bono,” says Tony Perez Cassino, Director of NYSBA Department of Pro Bono Affairs. “Before we can expect lawyers to volunteer or donate, we must build awareness of the tremendous need by the poor for their services, and clarify the professional responsibility of each lawyer regarding that need.”

Joint Effort for Success

The impact of the campaign hinges on the efforts of the NYSBA, local bar associations, law schools, legal services and pro bono programs to reach a majority of the legal profession by placing the ads in numerous publications. The NYSBA has placed a quarter-page ad in the New York Law Journal every Tuesday from March 24 through May 5. The ads will also appear in NYSBA’s State Bar Journal, State Bar News and a majority of its section newsletters. Additional information is posted on the NYSBA pro bono web page at (www.nysba.org).

Local bar associations and law schools have received the camera-ready print ads to be placed in journals, newsletters and other publications. Legal services and pro bono programs have been encouraged to initiate volunteer and fundraising recruitment drives following the campaign.

If you would like to obtain a copy of the ad for publication or need more information, please contact the Department of Pro Bono Affairs at (518) 487-5641.

And justice for all?

In communities across New York State, poor people are facing serious legal problems. Families are being illegally evicted. Children are going hungry. People are being unfairly denied financial assistance, insurance benefits and more. They need help. We need volunteers.

If every attorney did just 20 hours of pro bono work a year – and made a financial contribution to a legal services or pro bono organization – we could help them get the justice they deserve. Give your time. Share your talent. Contact your local pro bono program or call the New York State Bar Association at 518-487-5641 today.

Sponsored by the New York State Bar Association

The pro bono awareness campaign is currently in progress. Look for this ad in the New York Law Journal, State Bar Journal and other NYSBA publications and your local bar publication.
NYS Attorney General Launches Effort to Support Pro Bono Activities

New York State Attorney General Dennis Vacco has launched one of the most significant campaigns to expand pro bono participation by government lawyers in New York State. Over the past few months, a pro bono committee from his office has worked closely with the New York State Bar Association to identify ways of involving assistant attorney’s general in appropriate pro bono activities. The committee has reviewed its existing pro bono policy and assisted in identifying, developing and implementing pro bono projects for its more than 400 lawyers. It has also reached out to pro bono programs around the state to identify projects which may be suitable for government lawyers.

Vacco Expresses Support

A survey conducted by the Office of Court Administration some years ago found that government lawyers had a low rate of participation in pro bono activities. One of the reasons most commonly cited for this lack of participation is that employers prohibit or discourage participation. In order to address this issue and create an environment which is conducive to pro bono, Attorney General Vacco recently sent to all staff members a copy of their office pro bono policy and a letter expressing his support and encouragement for these activities. In that letter he stated, “Given the significant need for legal pro bono and other community services in New York State, and in furtherance of our shared ethical obligation to the community, I have asked the Attorney General’s Advisory Council to form an ad hoc pro bono committee to assist me by identifying, selecting, and implementing specific statewide pro bono programs. As the State’s chief legal officer, I encourage and support efforts by assistant attorney’s general to provide pro bono legal and volunteer services that are consistent with applicable state statutes and regulations governing conflict of interest and outside activities.”

Restrictions and Conflicts

Government employees are subject to stringent restrictions regarding office time and the use of state owned equipment and resources for outside activities. In addition, employees of the Attorney General’s office must be cautious not to enter into matters which may conflict with other cases being handled by the office. The Attorney General’s pro bono policy deals with many of these issues, and the pro bono committee will be working to address employee questions or concerns, and support greater participation by assistant attorney’s general.
Pro Bono at the Minnesota Attorney General's Office: An Update

By: P. Kenneth Kohanstamm, Assistant Minnesota Attorney General

A few years ago debate was waged on these pages as to the wisdom of adopting policies that would promote performance of pro bono by government attorneys. This update summarizes the policy adopted by the Minnesota Attorney General’s Office and describes the kinds and levels of participation realized thus far.

Attorney General’s Pro Bono Policy

An early draft of the MSBA pro bono policy for government attorneys provided that supervisors could consider an employee’s pro bono work when evaluating the employee’s work. That provision was dropped from the model policy before it was finalized and is not part of the Attorney General’s pro bono policy, adopted in November 1995.

In recognition of the obvious — that Attorney General staff members are extremely busy in their professional and personal lives — the office’s emphasis has been to facilitate the performance of pro bono work by those already motivated to do it, rather than to try to entice or coerce pro bono work from others. This facilitation has been accomplished by putting into place a balanced pro bono policy and by pre-screening several referring programs with well-established track records of providing legal services to the needy.

The preapproved referring programs are: SMRLS (Southern Minnesota Regional Legal Services) in St. Paul; VLN (Volunteer Lawyers Network of Minneapolis); Minnesota Advocates for Human Rights; and the Domestic Abuse Project of Minneapolis. All are able to provide training (sometimes with CLE credits), legal resources (sometimes on disk), and malpractice insurance coverage.

To further encourage participation by the Attorney General’s staff, the office’s Pro Bono Committee has developed a conflict checklist and model retainer letter, and has arranged a system by which volunteer secretaries are matched with pro bono attorneys.

The Attorney General’s pro bono policy makes clear that staff members’ pro bono work is not within the scope of their or her employment with the State and the State does not assume any liability for their pro bono work. Staff may not use their office business cards, office stationery, office conference rooms, or office computer research facilities, e.g. Lexis or Westlaw. If clients, opposing counsel, or the courts mistakenly believe that a staff member is acting in an official role, staff must make a clear disclaimer.

Participation Levels

Notwithstanding these limitations, approximately 20 percent of the Attorney General’s 250 attorneys are presently involved in pro bono activities.

• Telephone Advice Panel at SMRLS’ office in downtown St. Paul. Volunteer attorneys field questions pertaining to consumer law, landlord tenant, and conciliation court. SMRLS backup attorneys are on premises. This panel is coordinated by Assistant Attorney General Ann Cohen.

• ACG Housing Team. Volunteer attorneys represent individual clients in Ramsey County Housing Court. Cases primarily involve unlawful detainer (eviction) and often resolve at the initial appearance on motion or by agreement of the parties. If the case is not resolved, trial is scheduled within seven days. Boilerplate pleadings and training are provided. The housing team is currently handling SMRLS referrals two days a month. Assistant Attorney General Tom Vasaly coordinates the housing team.

• Minnesota Advocates for Human Rights Refugee and Asylum Project. Volunteer attorneys represent persons seeking asylum in the United States on grounds that they have suffered past persecution or have a well-founded fear of persecution if they were to return to their home country. Recently, Assistant Attorney General David Woodward described to an all-staff meeting his experiences in representing an Ethiopian asylee before the Immigration and Naturalization Service.

Conclusion

The biggest obstacle to recruitment of government attorneys for pro bono work is their lack of time and the need to sharply delineate their pro bono work from work done in their official capacities. Nevertheless, strides are being made in enabling those who can make the time to do this important work. The United States Justice Department has recently promulgated a pro bono policy for its employees and a few other states have as well. The Minnesota Attorney General’s Office would be pleased to share a copy of its pro bono policy and the details of its relationship to referring programs with other government offices. Please contact the chair of the Pro Bono Committee, Assistant Attorney General Ken Kohanstamm at 612/282-5729.


2 Editor’s note: The pro bono policy of the United States Justice Department was published in its entirety in the Winter 1996-97 issue of the Public Law News (Vol. VI, Issue 2) at pp. 10-13.
How Can You Help?

Attorneys in North Central Florida who want to take part in the pro bono movement have several opportunities.

Three Rivers Legal Services, Inc. provides direct civil legal services to eligible clients. Private attorneys can represent and/or advise clients in many areas of civil law but they are particularly needed in the areas of probate and real property, housing, insurance, consumer and family law.

Guardian Ad Litem Program provides guardians ad litem for children who are victims of abuse and neglect and those who are the subject of divorce custody disputes. Attorneys are needed to assist in representing these guardian volunteers.

Florida Institutional Legal Services, Inc. provides civil legal services to inmates in several of the state prisons located in North Central Florida. Attorneys are needed to handle basic civil rights problems, family law and post-conviction relief.

Lawyers can make a difference! Those who cannot afford an attorney are often twice-victimized — once by the legal problem confronting them and again by the obstacles and procedures of our complicated legal system.

You ... the lawyer ...
have the unique opportunity to change the system.

To volunteer, call 372-0519 or complete the enclosed enrollment form.

"An American's entitlement to justice must not be a function of income, class or status. Every living, breathing individual who becomes involved in an entanglement which needs legal resolution is entitled to the best quality of representation available."

- Barbara Jordan, April 1992
Lyndon B. Johnson School of Public Affairs

Sometimes the words "thank you" are the best fee that you can possibly get.

Frederick Koberlein
Third Judicial Circuit

When I was sworn in, I had already read the attorney's oath several times before the judge said it. I knew what I was saying when I said those last sentences: "I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So Help Me God."

Jaye Marie Clayton
Eighth Judicial Circuit

Open the Doors to Justice

A Project of the
Third and Eighth Judicial Circuit
Pro Bono Committees
Access to justice and legal representation has been a problem for thousands of our country's poor for too long. Locally, 20-28% of our population - about 100,000 people - falls below the federal poverty level. As a lawyer, you alone have the responsibility and ability to change this situation ... for now and for later.

A little of your time makes a difference. As you know, the Florida Supreme Court recently issued a ruling suggesting that attorneys participate in programs providing legal assistance to those in need. You can use your unique expertise to help solve the life-shattering legal problems confronting the lower income population of the Third and Eighth Judicial Circuits ... many of which grow into expensive and complex societal problems later.

What Can You Expect from the Programs?

- Three Rivers Legal Services offers a variety of benefits to the volunteer, including pre-screening for eligibility and legal merit, malpractice insurance, limited litigation cost reimbursement, use of Three Rivers' library and Westlaw, and access to student researchers from the University of Florida College of Law. Training sessions and office space are available.

Case Update and Closing reports are requested for ongoing cases and year-end reporting information will be available to you to ease your Florida Bar reporting process.

Mentors are available for non-family law practitioners assisting in the family law area.

- Florida Institutional Legal Services provides malpractice insurance, an extensive law library and student researchers.

- The Guardian Ad Litem Program provides volunteer training, office space, reference materials and word processing/secretarial services. The guardians ad litem and pro bono attorneys are covered by limited immunity provided by Florida Statutes.

Through Pro Bono Programs, there are many ways you can help ... whether you are a government or private attorney, whether you are a sole practitioner or with a firm ...

Call 372-0519 for more information!

How Do You Apply and What is Required to Participate?

Complete the enclosed Attorney Enrollment Form and return it to Three Rivers Legal Services, Inc. administrative offices for the circuit pro bono plan.

The Enrollment Form gives you the option of volunteering in one or more of the participating programs. Each individual program has different methods of follow-up and a small amount of reporting is asked of you.

As the clearinghouse for this circuit-wide program, Three Rivers Legal Services will forward your enrollment form to the appropriate provider.

We ask that you treat your pro bono client with the same respect and efficiency that you would your paying client.

No fees can be accepted or expected from your representation of the client. Where possible, you should seek to recover fees and costs from the opposing parties. You then have the option of rebating any recovery to the referring program to help defray the costs of other cases, or you may keep the fees and not count the hours as pro bono.

What Commitment Must You Make?

The Florida Supreme Court has recommended a minimum of 20 hours per year. You may indicate your particular preference for case types as well as refuse a referral when time prohibits acceptance or a conflict occurs.

You are asked to commit to a minimum of two years to the initial program with which you sign. You are especially asked to complete all referrals assigned, unless an unforeseeable circumstance occurs requiring departure from the case. In such an event, the referring agency should be contacted.

The referring agencies will help you by making your pro bono experience as simple as possible.

One Last Option

As a final option, attorneys may support the efforts of legal services to the poor by donating a tax deductible contribution of at least $350 to the legal services provider of your choice.

On behalf of the thousands of clients already receiving assistance from pro bono attorneys, thank you!
ABA-VLP Lawyer Participation Survey

Name: __________________________________________
Department: ____________________________________
Building: ________________________________
Mailstop: ___________________________ Extension: ______

1. In which state(s) are you licensed to practice law? ________________________________

2. Are you actively practicing law in any areas now? ____ yes ____ no
   If so, what areas? ___________________________________________________________
   If not, how long has it been since you actively practiced law? _______

3. Are you already doing pro bono legal work? ____ yes ____ no
   If yes, where______________________________________________________________

4. In what substantive areas have you practiced law? _____________________________
   ___________________________________________________________

5. Would you consider becoming a mentor/advisor to another ABA lawyer who asked for assistance in an area of
   law that you have experience in? ____ yes ____ no

6. Are you willing to accept pro bono cases? ____ yes ____ no

7. Would you be willing to do intake and brief advice? ____ yes ____ no

8. Please rank your top 5 areas of interest in which you might be willing to take a case and/or your top 5 areas of
   interest where you might do intake/brief advice: (1 is highest)

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<thead>
<tr>
<th>Case Intake</th>
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<td>Collection Defense</td>
<td>Insurance</td>
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<td>Consumer</td>
<td>Landlord/Tenant</td>
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<td>Child Abuse/Neglect</td>
<td>Mediation</td>
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<td>Custody</td>
<td>Non-profit Representation</td>
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<tr>
<td>Divorce - default</td>
<td>(i.e. drafting by-laws etc.)</td>
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<tr>
<td>Divorce - contested</td>
<td>Probate</td>
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<td>Domestic Violence</td>
<td>Public Benefits</td>
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<td>Driver's License</td>
<td>Real Estate</td>
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<td>Revocation/Suspension</td>
<td>Replevin</td>
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<td>Foreclosures</td>
<td>Social Security (SSA/SSI)</td>
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<tr>
<td>Guardianship - adult</td>
<td>Tort Defense</td>
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<tr>
<td>Guardianship - child</td>
<td>Unemployment Compensation</td>
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<td>Housing Court</td>
<td>Wills</td>
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<tr>
<td>Other</td>
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Frequently Asked Questions

What about professional liability insurance?

When you accept a case for VLP, you are covered by the malpractice insurance of the agency referring the case.

I am a lawyer but not licensed in Illinois (or a non-lawyer) interested in volunteering. How can I participate?

Various training sessions will be available by the entities involved to train you if you are unfamiliar with the case categories offered. It is also possible to be partnered with a more experienced or licensed lawyer. Each entity has also outlined various other ways to become involved.

Who pays costs?

Most clients with matters in litigation who are referred through a local agency will be eligible for waiver of filing and service costs. In such cases, an Application to Sue or Defend as a Poor Person may be filed on a client’s behalf. Expenses incidental to representation, other than those expressly provided for, will not be covered by the Association.

Training Opportunities

Various training opportunities will be offered on a regular basis. Some will be here at the ABA, while others will be sponsored by the individual pro bono programs in a variety of locations. Manuals, sample pleadings and blank court forms are available to volunteers as well as mentors in a variety of substantive issues.

MR 6.1 Voluntary Pro Bono Publico Service

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should: (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to persons of limited means...

For more Information contact Cassie Diaz-Bello at Ext 5770, Diazbelc@staff.abanet.org
Some training is provided.

Volunteer Opportunities

The children's supplemental security

The Children's Supplemental Security

The Chicago Legal Clinic

The Children's Supplemental Security

Department of Social Services (DSS)

Legal Assistance Foundation

Chicago Legal Clinic

Volunteer Opportunities

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Recognition

“Give yourself fully to your endeavors. Decide to construct your character through excellent actions and determine to pay the price of a worthy goal. The trials you encounter will introduce you to your strengths.”

-- Epictetus

Volunteers, in general, need encouragement and recognition of attorneys’ volunteer service is one form of encouragement that all projects use. It is important to determine the form of recognition that will be most appropriate for your volunteers. ABA Pro Bono Standard 3.5-8 states that pro bono programs should develop effective methods for the recognition of its volunteers. The commentary suggests that when planning for the recognition of volunteers, various sources should be engaged to aid in the effort. Sources that should be considered are: the local bar association, the pro bono program, the judiciary, and the local press.

Methods of Recognition

Pro bono programs and state or local bars sponsor award and recognition events. Government offices could also hold them internally. The public recognition of government attorneys who have made outstanding pro bono contributions benefits the project and the attorneys in multiple ways. First, it is an effective recruiting tool. Awards events encourage and inspire other attorneys to participate in pro bono projects. Further, recognition events present opportunities for government attorneys to improve relations with the community. Therefore, media representatives should be invited to awards and recognition events, and provided with information about the office’s pro bono commitment prior to the event. Finally, and perhaps most importantly, pro bono attorneys deserve recognition for the work they have accomplished.

Projects can recognize volunteer attorneys in any of the following ways:

• awards ceremony as part of an annual Law Day celebration,
• special reception for the sole purpose of recognizing pro bono attorneys,

53 Id. at Standard 3.5-8 (Relations with Volunteers - Recognition)
a recognition luncheon or dinner where names of attorneys that have made outstanding contributions and the hours they have volunteered are printed in the program,

- special awards for government pro bono
- recognition from the bar association or judges specifically to government attorneys
- Honor Rolls of all attorneys within a government office who contribute a certain number of hours,
- individualized letters sent at the end of the year thanking all volunteers,
- magazine or newsletter articles honoring those who participated,
- certificates or vouchers for free CLE classes distributed to those who served a certain number of hours or cases,
- recognition of pro bono hours added into annual performance evaluations,
- recognition in the form of a “thank you for your help” or “we couldn’t have done it without you.”
TAB

16
Certificate of Appreciation

awarded to

for taking the Illinois Pro Bono Center's Pro Bono Pledge
and completing at least one pro bono case this year.

Thank you for your contribution to pro bono efforts in Illinois.

William D. McGrath, Executive Director
Illinois Pro Bono Center
About the Award

The Hodson Award, named in honor of the distinguished public service career of the late Major General Kenneth J. Hodson, a former Judge Advocate General of the U.S. Army, recognizes sustained, outstanding performance or a specific and extraordinary service by a government or public sector law office; it is not an award for an individual. Eligible nominees include all government (including military) or public sector law offices (e.g., legal aid bureaus, public defender offices and other legal organizations funded by the Legal Services Corporation) at the federal, state and local levels. Departments or units within offices are also eligible.

Previous Hodson Award recipients:
1993 - The Public Protection Division of the Pennsylvania Attorney General's Office.
1995 - The International and Operational Law Division, Office of the Judge Advocate General, Department of the Army.
1996 - Office of the County Attorney, Broward County, Florida.
1997 - The Domestic Abuse Service Center of the Hennepin County Attorney's Office, Minneapolis, Minnesota.

About the Award

The Nelson Award was established in 1994 as a tribute to the late L. Clair Nelson, who served as a Council member of the Government and Public Sector Lawyers Division. He contributed his loyalty, time and extraordinary talent to ABA activities and held numerous leadership positions within the ABA. The Award recognizes outstanding contributions to the ABA by a government or public sector lawyer, and all government and public sector lawyers are eligible nominees. The Division will consider an individual's specific extraordinary accomplishments as well as sustained superior contributions over a number of years.

Previous Nelson Award recipients:
1995 - Charles H. Dorsey, Jr., Baltimore, Maryland (presented posthumously)
1996 - John W. Witt, San Diego, California

About the Award

The Dorsey Award recognizes exceptional work by a public defender or legal aid lawyer. The Award was established in 1995 as a tribute to the late Charles H. Dorsey, Jr., long-time Executive Director of Maryland's Legal Aid Bureau, Inc., a champion of the poor and underprivileged and, at the time of his death, the Chair-Elect of the Government and Public Sector Lawyers Division. Eligible recipients are lawyers in the employ of public or private legal aid bureaus, indigent defense, or Legal Services Corporation funded legal organizations providing legal service to the disadvantaged.

Previous Dorsey Award recipients:
1996 - Katharine Krause, Los Angeles, California (presented posthumously)

Please nominate a public lawyer or law office for one of these prestigious awards named in honor of three great American public lawyers.

Nominee Information Required

1. Full name, address (including zip code) and telephone number of nominee.*
2. Summary of nominee's outstanding service and/or achievement (25-100 words).
3. Detailed narrative explanation of the nominee's service including the following information: how the nominee's service is outstanding, significant and above the call of duty, timeframe of the service and assessment of the impact of the extraordinary service. (600-800 words)
4. Names, titles and phone numbers of three other persons who are familiar with the nominee's achievements.
5. Specifically for the nominator: provide a brief statement about yourself (name, title, address, phone number, years of practice and any other factor which you believe would assist the Awards Committee in evaluating the nomination).

*For the Hodson Award, also includes:
- Name of the nominee's office or director or manager.
- Size of the nominee office (number of lawyers, number of support personnel, approximate annual budget).
- Mission of nominee office (broad explanation of the mission and principle function as a government or public sector office).
See back panel for submission information.
SUBMISSION OF NOMINATIONS
All nomination materials must be received by April 1, 1998.
Please send 10 copies of your nomination package to:

American Bar Association
Government and Public Sector Lawyers Division
Awards Committee
740 15th Street, NW
Washington, DC 20005 - 1022

The Awards will be presented at the 1998 ABA Annual Meeting in Toronto.
For more information, call Division Associate Director, Susan Kidd at 202-662-1022.

Note to Nominators: Please inform the Awards Committee if you do not want your name divulged to the nominee or references supplied.
The North Carolina Bar Association (NCBA) established the Outstanding Legal Services Attorney Award in 1991 to recognize a legal services' staff attorney who has made exemplary contributions to the provision of legal assistance to help meet the needs of North Carolina's 1.2 million poverty population.

The Pro Bono Planning Committee, the advisory board of the NCBA's Pro Bono Project, is pleased to recognize, on an annual basis, a legal services attorney who has gone above and beyond the call of duty in responding to an important ethical tenet of the Code of Professional Responsibility. Since the award was established, members of the Pro Bono Planning Committee have been moved by the level of commitment and dedication shown by legal services attorneys in their plight to advocate the rights of those who can least speak for themselves.

Through each presentation of the Outstanding Legal Services Attorney Award, the NCBA honors not only the recipient, but the approximately 70 legal services attorneys statewide, who despite a substantial reduction in funds, continue to creatively use their skills and talents to ensure access to justice for poor and disadvantaged citizens of North Carolina.
Pro Bono HONOR ROLL

In January, 1991, former State Bar President James K. Robinson encouraged law firms and corporations to endorse the voluntary State Bar Pro Bono Standard adopted by the Representative Assembly, and to adopt written Pro Bono policies for their lawyers. Each month the Journal has published the names of those firms, corporations, and organizations which adopted such policies. The list has more than tripled in size, from nineteen in January 1991, to over seventy as of November 30, 1993.

The Pro Bono Involvement Committee salutes the following firms, corporations, and organizations for publicly encouraging their lawyers to participate in important public service efforts.

Firms adopting policies since December 1, 1993 are in boldface.

**Firms**

<table>
<thead>
<tr>
<th>Firm Name</th>
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<tr>
<td>Alex J. Miller</td>
<td>John B. Payne, Jr.</td>
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<tr>
<td>Barr, Anhue &amp; Sacks, P.C.</td>
<td>Josephson &amp; Fink</td>
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<td>Barris, Sott, Denn &amp; Driher</td>
<td>Kennan M. DeWitt</td>
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<td>Bator &amp; Zartarian</td>
<td>Kerr, Russell and Weber</td>
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<td>Benson McCurdy &amp; Watkins, P.C.</td>
<td>Kitch, Sauber, Druculas, Wagner</td>
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<td>Blaine B. Johnson, Jr., P.C.</td>
<td>&amp; Kenney, P.C.</td>
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<td>Blakeslee, Chambers, Peterson,</td>
<td>Kreis, Fenderle, Callander</td>
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<tr>
<td>Daltrymppe &amp; Christopherson</td>
<td>&amp; Huddles, P.C.</td>
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<td>Blaske &amp; Blaske, P.C.</td>
<td>Law Offices of James W. Zerrenner</td>
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<td>Bodman, Longley &amp; Dahling</td>
<td>Law Weathers &amp; Richardson, P.C.</td>
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<td>Buchman &amp; Bos</td>
<td>Leon J. Weiss</td>
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<td>Buester, Buester, Blank, Lynch, Fryhoff &amp; Graham</td>
<td>Lewis, White &amp; Clay, P.C.</td>
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<td>Burzlaff &amp; Dusman, P.C.</td>
<td>Marietta S. Robinson</td>
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<tr>
<td>Butzel, Long</td>
<td>Miller, Canfield, Paddock &amp; Stone</td>
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<td>Campbell, Shultz &amp; Rayal, P.C.</td>
<td>Miller, Johnson, Smell &amp; Cummins</td>
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<td>Charoos &amp; Christensen, P.C.</td>
<td>Morganroth &amp; Morganroth, P.C.</td>
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<td>Charles P. Reisman</td>
<td>Mosher, Majors &amp; Alexander, P.C.</td>
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<td>Clark, Klein &amp; Beaumont</td>
<td>Pepper, Hamilton &amp; Scheetz</td>
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<td>David B. Herrington</td>
<td>Peter Patrick, P.C.</td>
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<td>Davidson, Steiger, Adair &amp; Hill</td>
<td>Plunkett &amp; Cooney, P.C.</td>
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<td>Denenberg, Tuffley &amp; Jameson, P.C.</td>
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<td>J. Thomas Carroll, Jr., P.C.</td>
<td>Washtenaw County Bar Association</td>
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Every reader is urged to initiate steps within the firm, corporate legal department, or organization with which he or she is associated leading to adoption of this policy. We ask that notice of adoption be provided to Kay Fischer, Director, Lawyers' Public Service Activities, at State Bar Headquarters in Lansing, who will compile a list of firms and legal departments which have taken this action.

See the December 1990 Bar Journal at page 1259 for more information.
Frequently Asked Questions

"Obstacles are those frightful things you see when you fail to focus on your goals."  
--Leonard Finkel

May military lawyers do pro bono?

Lawyers in the Armed Forces may, under certain circumstances, engage in the private practice of law - including the furnishing of pro bono publico legal services - while off duty. 54 They are, however, first required to comply with applicable service directives and policies regarding off-duty employment. Generally, these rules require lawyers in the Armed Forces to: (1) inform and receive the written approval of their superiors; (2) be licensed to practice in the state where stationed or employed; (3) participate in pro bono through the local or state bar association; (4) adhere to the ethical standards of conduct set forth in the Joint Ethics Regulation, Department of Defense Directive 5500.7-R, or as applicable, state law; and, (5) avoid potential and actual conflicts of interest by not representing any person in their private capacity in an action in which the United States is a party or has an interest. Also, active duty military and civilian attorneys in the Armed Forces are prohibited from providing pro bono legal services to those persons authorized to receive free military legal assistance except when specifically approved. Those considering participating in pro bono service should check their respective department directives for the applicable rules.

Many military and civilian lawyers in the Armed Forces provide legal assistance to military service members, their families and other authorized clients on personal legal problems and needs. Some of these clients, because of their financial situation, could receive pro bono publico legal services sponsored by various local and state bar associations. Within these constraints,

54 In August 1995, the ABA adopted a resolution recommended by the ABA Government and Public Sector Lawyers Division which urged bar admission authorities to revise, where necessary, existing rules regarding admissions on motion to provide that military lawyers associated with organized legal service programs be specially admitted for the purpose of providing pro bono legal service. The Report with Recommendations to the ABA House of Delegates can be found under tab 17.
lawyers in the Armed Forces may make an additional contribution to society at large by helping the poor obtain needed legal services. Through voluntary pro bono work, lawyers in the Armed Forces have a special opportunity to further answer the call for public service. Those interested in providing pro bono publico legal services should refer to the applicable service directives and policies and consult their immediate supervisor for approval. Lawyers in the Armed Forces should, however, be aware that while federal laws may protect them from liability for malpractice claims arising from legal services provided while on duty, they do not provide protection from liability arising from pro bono work outside of military duties.

What if lawyers lack necessary legal skills?

Pro bono work may require not only ordinary lawyering skills but also specialized knowledge and skills considerably different from those required in the lawyer's normal areas of practice. Pro bono service provides an opportunity to learn, to develop, and to polish skills in substantive law and in lawyering techniques. Many pro bono programs offer training programs for participating lawyers. Some training programs meet state bar requirements for CLE credits. Another method of developing skills is to attend relevant CLE programs. A third solution is to provide senior mentors to less experienced lawyers.

Will trust accounts be required?

It is a rare pro bono case that results in the collection of money which would require the use of a trust account. If the occasion arises, pro bono projects should check with the state bar regarding trust account requirements. Many government employee credit unions offer no-fee, low-minimum-balance trust accounts.

Will occupational license fees or taxes apply?

In many areas, government attorneys are exempt from local requirements to pay either occupational license fees or occupational taxes. Nevertheless, in some states government lawyers who do pro bono work may be liable for such fees or taxes. Before 1994, in the District of Columbia, government lawyers who applied for exemption of the District's Nonregulatory Professional License Fee and were granted such exemption would nullify that exemption by providing legal pro bono services. This matter was brought to the attention of the D.C. Council by the D.C. Bar and the Federal Bar Association and an amendment was adopted in July, 1994 to allow exemptions for government lawyers who provide pro bono services outside the scope of their regular duties.

In jurisdictions where such occupational taxes or fees apply - and where government lawyers are exempt - those lawyers organizing projects should seek a clarifying ruling from the appropriate court to ensure that providing pro bono services does not remove the exemption. Examples of licensing arrangements include the following: Connecticut's Commissioner of Revenue Services ruled that government attorneys were not required to pay an occupational tax for pro bono work; Florida's Attorney General ruled that government lawyers participating in pro bono services do not need to obtain an occupational license, inasmuch as they are doing work for a charitable organization.
Some programs do not require bar membership. In the District of Columbia, federal government lawyers who are not licensed in D.C., may represent clients in pro bono matters if they are licensed somewhere and meet the requirement in D.C. Court of Appeals Rule 49(c)(9)(C).

May government resources be used for pro bono?

Use of government offices, personnel, and equipment for outside purposes may be prohibited by federal, state, or local law. However, prohibitions against use of government resources should not be a major bar to performing pro bono services. The most obvious way to solve this problem is to have lawyers use the resources provided by the pro bono programs. Many established programs provide volunteer lawyers with supplies and administrative support. In Florida, the legal aid programs provide administrative support for government lawyers who handle pro bono cases.

Although federal, state, and local governments generally forbid the use of agency resources for non-governmental purposes, the agencies often allow de minimis use and thus some pro bono activities may be acceptable.

Some governmental agencies do allow limited amounts of agency time and facilities to be used. The justification is that fostering outside public service is part of government. For example, Idaho allows attorneys to use a “reasonable” amount of agency-approved work time and facilities to participate in a mediation program. The rationale is that the skills the attorneys will acquire in the process will be a help to agency clients. The City of Baltimore’s Solicitor, Neal Janey, issued a letter in 1989 that authorized the attorneys working for his office to engage in pro bono work. Permission was given to perform pro bono work during city working hours provided that approval was received prior to volunteering. Connecticut, Iowa, Maryland, Nevada, and South Carolina and some federal agencies have similar policies.
TAB

17
RESOLVED, That the American Bar Association urges bar admission authorities in the several states to revise, where necessary, existing rules regarding admissions on motion to provide that military lawyers associated with organized legal service programs be specially admitted for the purpose of providing pro bono publico legal services.
REPORT

While off duty, military lawyers in the nation's armed forces may, under certain circumstances, engage in the private practice of law, including practice involving the delivery of pro bono publico legal services. As a prerequisite, however, military lawyers must comply with applicable service directives and policies regarding off-duty employment. Generally, these directives and policies require lawyers in the armed forces to: (1) be licensed to practice in the state where stationed or employed; (2) obtain the written approval of their superiors; (3) be sanctioned in their pro bono publico service by the local or state bar association; (4) adhere to the ethical standards of conduct set forth in the Joint Ethics Regulation, Department of Defense Directive 5500.7-R or, as applicable, state law; and, (5) avoid potential and actual conflicts of interest by not representing any person in an action in which the United States is a party or has an interest. It should also be pointed out that federal laws that may protect military lawyers from pecuniary liability for malpractice claims arising from legal services provided in the course of their official duties have no application to off-duty practice - including pro bono publico legal work - even when all the above conditions are met.

Virtually all military personnel are subject to worldwide assignment and most military personnel relocate many times over the course of a military career. As a natural consequence of this exigency of the service, military lawyers - who must be admitted and licensed to practice law in at least one state or territory of the United States or the District of Columbia - often are assigned to and reside in states in which they are not admitted to practice.

State bar admission requirements mandating licensure to practice law in the jurisdiction in which legal services are performed is a significant impediment to military attorneys who wish to provide pro bono publico legal services in their off-duty time.

To determine the national scope of this impediment, we surveyed the admission rules in the several states to find out which states, if any, made special provisions authorizing out-of-state attorneys to provide pro bono publico legal services. Here is what we found:

Ten states have admission rules providing authorization for admission of out-of-state attorneys to practice before state courts and administrative tribunals in causes associated with an organized legal services program providing legal assistance to indigent persons. These rules usually impose a temporal limit (e.g., one to two years) and prohibit such admittees from performing legal services for clients other than those being served by the organized legal services program. States which have such rules include: Arizona (S. Ct. Rule 40); Delaware (Bar Rule 55.1); Florida (Bar Rule 13-1.2); Kentucky (S. Ct. Rule 2.112); Maryland (Ct. Rule 15); Nevada (Ct. Rule 49.3); New Jersey (Ct. Rule 1: 21-3); New York (Ct. Rules, §602.2); Ohio (Ct. Rule IX); and, Rhode Island (Ct. Rule 2).
Three other states have special admission rules designed to permit out-of-state lawyers to engage in pro bono publico practice but under more limited circumstances. South Carolina (Ct. Rule 415) issues a limited certificate to practice law to retired lawyers associated with an approved legal services organization. Washington (Ct. Rule 8) permits members in good standing in other bars to provide indigent representation in a legal services organization on the condition that they must apply for and take the Washington State Bar Examination within a specified period of time after being specially admitted to provide pro bono publico services. West Virginia (Ct. Rule 10.0) has an even more limited provision that authorizes special admission for pro bono publico purposes only for law students whose work must be supervised by a licensed attorney.

There are about 4,300 uniformed lawyers serving in the armed forces. There is little question that some of these lawyers - and hopefully many of them - would engage willingly in off duty pro bono publico legal work if the impediments imposed by state admission rules were to be lifted. Indeed, this matter was brought to the attention of the Government and Public Sector Lawyers Division by military lawyers attending a Division-sponsored program on pro bono opportunities for public lawyers. We agreed to look into the matter and we have concluded that the military lawyers who raised the issue were correct: admissions rules which do not provide for special admission for military lawyers significantly deplete the potential pool of competent counsel willing to provide legal aid to indigents. Can there be any doubt that more, rather than less, lawyers are needed to provide legal services to the poor? Our association is currently working to preserve the Legal Services Corporation because under that organization's auspices needy persons have been able to secure competent legal advice and assistance. Recognizing the need for competence and for accountability, we have added language to our Recommendation to make it clear that the kind of special admission we favor would be limited to those lawyers associated with organized legal service programs.

With a proper respect for the several states’ need to regulate carefully admission practices, we hope the House of Delegates will adopt this Recommendation: We believe that if implemented by admissions authorities it will increase the pool of competent lawyers willing to provide pro bono publico services and we also believe that its passage by the House of Delegates will demonstrate to our military law colleagues that they enjoy the respect of the American Bar Association as able lawyers capable of sharing in the profession’s responsibility to provide pro bono publico services. We urge its adoption.

Respectfully submitted,

E.E. Anderson, Chair

Government and Public Sector Lawyers Division
Conclusion

Government attorneys face unique obstacles to providing pro bono legal services. However, in the words of Annita Roddick, who started the Body Shop, “If you think you're too small to be effective, you've never been to bed with a mosquito.” Think big. Government lawyers in federal, state, and local offices, are finding solutions to common obstacles of pro bono involvement for government and public sector lawyers. As an increasing number of government offices are recognizing the public purpose served by pro bono work and are instituting policies to allow government attorneys to provide pro bono legal services under certain circumstances.

Pro bono programs, bar associations and government attorney volunteers must continue to develop policies and projects that address their unique circumstances. It is our hope that this manual will help government lawyers get started.