

(This version of the DOJ policy omits explanatory comments regarding many provisions. Go to http://www.usdoj.gov/jmd/ethics/docs/probonopol_pol.htm to read the full text.)

**Office of the Attorney General
Washington, D.C. 20530**

**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.

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 that 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 seeking to improve the law, the legal system, or the legal profession.
- B. Volunteer Services. Volunteer services are those services, 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 that are designed primarily to address the needs of persons of limited means or other disadvantaged persons.

III. LIMITATIONS ON PRO BONO LEGAL AND VOLUNTEER SERVICES

A. Pro Bono Legal Services. An employee seeking to engage in any pro bono legal work must follow agency procedures governing participation in outside activities, and should consult with his or her Deputy Designated Agency Ethics Official (DDAEO) (all references herein to "DDAEO" are meant to include other ethics officials in the component who have been designated by the DDAEO to provide ethics advice) regarding the prior approval requirements that are set forth below. See 5 C.F.R. § 3801.106.

1. Standards for Approval: In general, approval of an employee's request to engage in pro bono legal work shall be granted if the work would not:
 - a. violate any federal statute, rule or regulation, including, for example, 18 U.S.C. § 202, et seq. (Federal Conflict of Interest Laws); 5 C.F.R. Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); or 5 C.F.R. § 3801.106 (rule governing outside employment by DOJ employees);
 - b. interfere with the proper and effective performance of the employee's official duties, including the time and availability requirements of his or her position, see 5 C.F.R. § 2635.705;
 - c. create or appear to create a conflict of interest, see Section III.C. below; or
 - d. cause a reasonable person to question the integrity of the Department's programs or operations.
2. Approval Procedures: Participation by an employee in pro bono legal activities requires prior approval from the component head, and, in rare circumstances, a waiver from the Deputy Attorney General. See 5 C.F.R. § 3801.106(b). The procedures for obtaining approval differ depending on (a) whether the pro bono activity has been "generally approved" by the component head, and (b) whether the pro bono activity is representational or non-representational in nature. Employees with questions about any of the procedures set forth below should consult with their DDAEO.
 - a. Activities That Have Been Generally Approved: Component heads may designate some pro bono legal activities and legal services referral programs as "generally approved" for employees in their components. The designation of an activity or program as "generally approved" indicates that employees in the component have permission to engage in these activities, or seek referrals from these programs, without having to seek further permission from their component head. In the case of non-representational activities, such as walk-in clinics, the general approval conferred by the component head covers the employee's participation in the activity as well as minimal follow-up activity such as providing information, making phone calls for the client, or making a referral for further assistance. In the case of referrals from legal services organizations, the general approval conferred by the component head permits the employee to seek cases from the programs; however, in order to accept a case for representation, the employee must also obtain a case-specific approval as is described *infra*.

Component heads are encouraged to designate some activities and programs as generally approved because it shortens the approval process for pro bono work and makes it easier for employees to participate in pro bono activities. General approval is appropriate where the issues likely to arise during the employee's participation generally do not present an obvious conflict for employees in the component and where the sponsoring organization provides malpractice insurance for volunteers.

- b. **Activities That Have Not Been Generally Approved:** It is possible for an employee to engage in pro bono legal activities, or accept cases from legal services referral programs, that have not been designated as generally approved by his or her component head. In order to do so, the employee must seek approval from his or her component head through his or her DDAEO and supervisor, as is described *infra*.
3. **Approval Requirements:** Pro bono activities fall into two categories: non-representational activities and representational activities. The necessary approvals for each activity are as follows.

- a. **Non-Representational Activities:** In order for an employee to engage in a non-representational activity such as a walk-in clinic or a legal rights workshop, he or she must have approval from his or her component head. If the activity has been "generally approved," the employee does not need to seek any further approval in order to participate in the program and to perform minimal follow-up activities. Nonetheless, the employee must give notice of his or her participation to his or her DDAEO and supervisor, and be provided with a summary of the rules governing participation in the pro bono activity.

If the activity has not been generally approved by the component head, the employee must obtain approval from his or her component head through his or her DDAEO and supervisor.

- b. **Representational Activities:** In order for an employee to represent a client in a pro bono case, the employee must obtain approval from three individuals: (1) the component head; (2) the DDAEO; and (3) the supervisor. If the legal services organization referring the pro bono case has been designated as "generally approved" by the component head, the employee does not need further approval from the component head to accept the case for representation. However, the employee still needs to obtain written case-specific approval from his or her DDAEO and supervisor before proceeding. The purpose of case-specific approval is to ensure that the specific case that the employee wishes to accept does not present any conflicts or other issues that would preclude representation. General approval by the component head does not obviate the need for this case-specific approval.

If the employee wishes to accept a case from a legal services referral program that has not been generally approved by the component head, he or she must obtain case-specific approval from the component head as well as the DDAEO and supervisor. The employee should consult with the DDAEO for assistance seeking approval from the component head.

Written requests for case-specific approval must include the facts and issues in the specific case and state whether the employee/legal services program has malpractice insurance. The approvals must reflect a case-specific conflicts check, acknowledgment of the applicable rules and acknowledgment of the need to seek supervisory approval for any duty time/annual leave that may be needed to represent the client.

4. Where an employee has been denied approval to perform pro bono legal work, the employee can seek automatic review by the component head.
- B. Volunteer Services. An employee seeking to engage in volunteer activities must follow agency procedures for outside activities, which require prior approval only if the volunteer activity involves work that is a subject matter, policy or program in the component's area of responsibility. Employees should consult their DDAEO if they have questions regarding whether prior approval is necessary. See 5 C.F.R. § 3801.106.

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.

C. Prohibited Activities and 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. Part 2635, and the Department's supplemental standard of conduct, 5 C.F.R. § 3801.106, 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. Under the Department's outside employment regulation, employees are prohibited from participating in outside employment that involves any criminal or habeas corpus matter, whether Federal, state or local. See 5 C.F.R. § 3801.106(b)(ii). There may be cases where a criminal issue or criminal conduct may be related to the case, but is attenuated from the matter for which the DOJ attorney seeks to provide services. In these circumstances, it may be appropriate for the employee to participate in the matter, but specific approval from the Deputy Attorney General may be necessary. Employees who wish to seek such approval, or have any questions as to whether their case requires approval, should contact their DDAEO.

4. Matters Involving the Department of Justice. Department of Justice employees are prohibited from participating in outside employment that involves litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker. See 5 C.F.R. § 3801.106(b)(iii). This prohibition may be waived by the Deputy Attorney General under certain limited conditions. Employees should contact their DDAEO if they wish to request a waiver.
5. Responsibility for Conflicts Check.
 - a. The component head or the component head's designee will be responsible for ensuring that a conflicts check is completed for pro bono legal activities prior to approving such activities. Every pro bono case must receive a case-specific conflicts check before it is accepted, whether the attorney has taken it on through a generally approved pro bono activity or another program.
 - 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.

D. Additional Considerations

1. Retainer Agreement. Volunteer attorneys undertaking cases should prepare and execute retainer agreements setting out the agreed scope of work. 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. Change in Employment of Volunteer Attorney: DOJ Attorneys enter an attorney-client relationship with their pro bono client and therefore, if they leave the Department or change components, they are obligated either to take the pro bono case with them or to make alternative arrangements for continuity of representation. Departing attorneys should contact their component pro bono representatives, the Pro Bono Manager, and the referring organization if this situation arises. The component representative and Pro Bono Manager may be able to help the attorney to transfer the case, if that is the most appropriate course of action. Attorneys in this situation are reminded that they are bound by ethical rules, local practice rules, and their retainer agreement when terminating representation of a client. In the event that a case is transferred, the attorney must discuss the transfer with the client, file with the Court any necessary petitions seeking leave to withdraw from representation, and provide all relevant case files to the new attorney(s) undertaking the case.
3. 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 that covers volunteer attorneys. The Department of Justice does not provide malpractice coverage for pro bono work. Immunities that may be granted to government attorneys in the performance of their official duties do not extend to pro bono work. Therefore, the Department strongly encourages Department attorneys to work with a legal services provider that carries malpractice insurance.

4. Restrictions on the Unauthorized Practice of Law. Attorneys not licensed in the District of Columbia may 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.

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 of Justice 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 or using e-mail -- is not prohibited.

- A. A Department of Justice employee may not use office letterhead, agency or office business cards or fax cover-sheets, 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. When using external e-mail, the employee should indicate that the e-mail is being sent in his or her personal capacity and not in his or her official capacity as a Department of Justice employee.
- B. A Department of Justice attorney is responsible for ensuring that there is no misunderstanding by 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. A supervisor's personal views regarding the substance of the pro bono activity may not influence the decision to grant an employee's request to engage in pro bono legal or volunteer activities during hours of work.
- 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); 28 C.F.R. § 45.4. Department policy authorizes the following personal uses of government office and library equipment and facilities:
 1. personal uses that involve only negligible expense to the government (such as electricity, ink, small amounts of paper, and ordinary wear and tear) and that does not interfere with the conduct of official business of others; and

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

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 should contact their supervisor if there is any question whether an intended use involves "negligible" expense or "small amounts" of paper.

Research and Electronic Databases: This policy does not authorize the personal use of commercial electronic databases when there is an extra cost to the government. However, use of Westlaw is authorized; employees should identify the client or project as "pro bono" or "volunteer." Use of other databases, such as Lexis/Nexis, which do result in additional cost to the government is not authorized. In addition, research using the library's books or microfiche is authorized, as it involves only negligible additional expense to the United States.

Telephones and Fax Machines: 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 as to whether such use is in fact "limited."

E-Mail and Internet Services: The policy allows limited use of Department e-mail and Internet services. For example, employees may use internal e-mail to consult with the Pro Bono or Volunteer Services Program Managers, the component representative, their DDAEO, or another DOJ employee also working on a case or volunteer matter. Occasional individual e-mails to colleagues on a question related to a pro bono or volunteer matter are also permitted, as are group or broadcast e-mails by pro bono or volunteer component representatives and the Pro Bono and Volunteer Services Program Managers. Reasonable use of external e-mail is also permitted, as long as employees indicate that the e-mail is sent in their personal, rather than official, capacity. With respect to Internet use, employees should be familiar with the Department's policies concerning Internet use since there are additional security, confidentiality and other considerations that apply to Internet use. Employees may consult with their DDAEO or their pro bono representative about such policies.

This pro bono policy does not override statutes, rules, or regulations governing the use of specific types of government property, such as e-mail or the Internet, including 41 C.F.R. (FPMR) § 101-35 (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. Components may have more specific rules about personal use of government property that would also apply to pro bono work. 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).

- 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.

VI. ADMINISTRATION OF PRO BONO AND VOLUNTEER SERVICES PROGRAM

- A. Pro Bono and Volunteer Services Committees. Pro Bono and Volunteer Services Committees have been established to oversee the implementation of the Department's Policy Statement. The Committees are chaired by the Pro Bono Program Manager and the Volunteer Services Program Manager, respectively, see Section VI.B., and include representatives from all components within the Department. See VI.C. The Committees meet on a regular basis, facilitate the distribution of information on pro bono and volunteer opportunities, answer questions regarding pro bono and volunteer participation, and support the Department of Justice's participation in some pro bono activities such as the D.C. Bar Public Services Activities Corporation (PSAC).
- B. Pro Bono Program Manager. The Pro Bono Program Manager develops and publicizes pro bono legal opportunities in order to facilitate an increase in such activities throughout the Department of Justice. The position is located in the Office of Policy Development. The Program Manager works with U.S. Attorneys' Offices and all Department components in the development of office-specific pro bono programs. The Pro Bono Manager chairs the Department Committee that includes representatives from all components.
- C. Volunteer Services Program Manager. The Volunteer Services Program Manager publicizes the volunteer services opportunities throughout the Department of Justice. The position is located in the Justice Management Division, Personnel Staff. The Manager 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.

VII. DISCLAIMER

This 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: _____ DATE: _____