

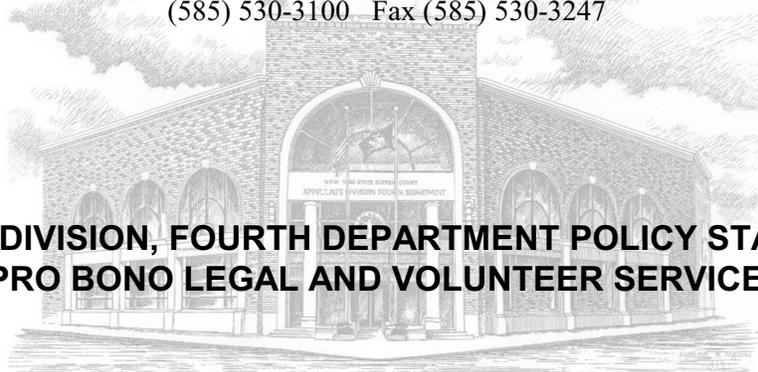


FRANCES E. CAFARELL
CLERK OF THE COURT

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION, FOURTH DEPARTMENT
M. DOLORES DENMAN COURTHOUSE
50 EAST AVENUE, SUITE 200
ROCHESTER, NEW YORK 14604
(585) 530-3100 Fax (585) 530-3247



ALAN L. ROSS
DEPUTY CLERK OF THE COURT



APPELLATE DIVISION, FOURTH DEPARTMENT POLICY STATEMENT ON PRO BONO LEGAL AND VOLUNTEER SERVICES

I. The Policy

Given the significant unmet need for legal and other community services in the state, it is the policy of the Appellate Division, Fourth Department, to encourage and support efforts by its employees to provide pro bono legal and volunteer services within the community.

The Policy on Pro Bono Legal and Volunteer Services extends to all Appellate Division employees and encourages all volunteer work, legal or non-legal. This best reflects the Appellate Division's commitment to developing a sense of community responsibility among all employees.

II. Administration of Pro Bono Legal and Volunteer Services Policy

A Pro Bono and Volunteer Services Committee has been established to oversee the implementation of the Appellate Division's Pro Bono Legal and Volunteer Services Policy. The Committee is comprised of the Clerk of the Court, Deputy Clerk of the Court, and the Executive Assistant.

III. Definition of Pro Bono Legal and Volunteer Services

A. Pro Bono

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 legal services for low income and disadvantaged persons, it is the policy of this office to encourage and support participation by agency attorneys in pro bono activities. To this end, the Appellate Division encourages its attorneys to set a personal goal of at least 50 hours per year of pro bono legal services.

The 50-hour aspirational goal is in accord with Rule 6.1 of the New York Rules of Professional Conduct.

Pro Bono legal services that meet this goal are:

- professional services rendered in civil matters, and in those criminal matters for which the government is not obliged to provide funds for legal representation, to persons who are financially unable to compensate counsel
- activities related to improving the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to, poor persons; and
- professional services to charitable, religious, civic and educational organizations in matters designed predominantly to address the needs of poor persons

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.

IV. Procedures

Any employee seeking to undertake pro bono or volunteer activities must: (1) ensure that the activities are consistent with the guidelines set forth in this policy; and (2) obtain all necessary approvals prior to commencing such activities.

Approval procedures: Participation by an employee in pro bono or volunteer activities requires prior approval from the employees supervisor and/or the Pro Bono and Volunteer Services Committee. The procedures for obtaining approval differ depending on whether the pro bono or volunteer activity has been “generally approved” by the Appellate Division.

A) Activities that have been generally approved

The Appellate Division has designated some pro bono and volunteer activities as “generally approved”. The designation of an activity or program as “generally approved” indicates that employees must obtain permission from their supervisor, but may engage in these activities without having to seek further permission from the Pro Bono and Volunteer Services Committee.

Supervisors should grant approval where the activity will not interfere or conflict with the attorney's responsibilities to the office, and otherwise meets the requirements set forth herein. 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.

Pro Bono activities sponsored by the Volunteer Legal Services Project of Monroe County, Inc., the Volunteer Lawyers Projects of the Onondaga County Bar Association and the Bar Association of Erie County and the Pro Bono Committee of the Oneida County Bar Association are “generally approved.”

Volunteer activities with the Rochester City School District World of Inquiry School 58 and volunteer activities with the Lawyers for Learning Programs of the Monroe County Bar Association and the Bar Association of Erie County are “generally approved.”

B) Activities that have not been generally approved

It is possible for an employee to engage in pro bono and volunteer activities that have not been designated as “generally approved” by the Appellate Division. In order to do so, the employees must seek

approval from their supervisor and from The Pro Bono and Volunteer Services Committee.

In all cases, employees must keep their supervisors informed whenever pro bono or volunteer activities will occur during regular working hours. While supervisors are encouraged to provide reasonable accommodation to employees desiring to perform pro bono legal or volunteer services, supervisors may limit these activities and employees must refrain from performing them, when the supervisor determines that such services will conflict with the employees work obligations.

V. Limitations on Pro Bono Legal and Volunteer Services

This office is supported by public funds and employees providing pro bono services and participating in volunteer activities must do so in their private capacities, without conflicting with the work of the Appellate Division.

No pro bono legal services or volunteer activities may be performed which would:

- a. interfere with the proper and effective performance of the employee's official duties;
- b. be of such nature that the outcome would be influenced or appear to be influenced by the employee's position in the Appellate Division;
- c. involve matters in which the State of New York, any of its agencies, or any of its employees acting in an official capacity is a party or has a direct or substantial interest; or
- d. in any other way create or appear to create a conflict of interest.

A) Use of Official Position or Public Office

When engaging in pro bono or volunteer activities, employees may not, in any manner, represent that they are acting on behalf of the Appellate Division or in their official capacity.

A person employed by the Appellate Division is responsible for ensuring that there is no misunderstanding by the client, any opposing parties, or others involved in a pro bono case or volunteer activity, that the employee is acting in his or her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of, the Appellate Division.

B) Use of Office Resources

1) Hours of Work

Appellate Division 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.

When a pro bono or volunteer activity occurs during regular work hours, the employee may request that his or her supervisor approve a flexible work schedule to accommodate the time needed for pro bono or volunteer work. Employees who do pro bono or volunteer work during regular work hours must account for 70 hours per pay period in performing their official duties and responsibilities.

An employee may be asked to participate in pro bono or volunteer activities as a representative of the Appellate Division. In those cases, the activities are part of the employee's official duties and can be performed during business hours without charging time.

2) Clerical Support

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

The Pro Bono and Volunteer Services Committee will develop a central pool of support staff who are willing to volunteer to support pro bono legal or volunteer projects. Assistance should be requested from the referring program or organization if a pro bono or volunteer activity requires more extensive clerical support than the Appellate Division can accommodate.

3) Supplies and Equipment

When engaging in pro bono or volunteer activities, attorneys may use office space, but may not use office equipment if such use involves additional costs to the State. For example, attorneys may use their computers, make local telephone calls, send e-mail, and use the law library. Attorneys may not make long-distance telephone calls, use government vehicles, use government postage, or otherwise use public resources in support of pro bono or volunteer activities.

This pro bono policy does not override statutes, rules, or regulations governing the use of government property. Any employee who has questions about the application of this section to any particular situation should consult his or her supervisor.

VI. Malpractice Insurance

The Appellate Division does not provide professional liability coverage for pro bono legal services. The Appellate Division encourages its attorneys to work with a legal services provider that carries malpractice insurance.

Dated: September 28, 2009

Amended: July 30, 2014



Hon. Henry J. Scudder

Presiding Justice