

1. Introduction

Every employee of the Hennepin County Public Defender's Office is, in some sense, engaged in *pro bono publico* work. We represent only the indigent, we are not paid by our clients, and what pay we do receive hardly reflects the value of the quality representation we provide. We don't do this work because it is the highest paying job we can find – we do this work precisely because we want to do public service work, because we want to do work which is *pro bono publico*.

Moreover, we hardly limit ourselves to the precise contours of the constitutional right to counsel – all of us help our clients with the myriad of life's problems that may arise. We help with driver's licenses, with housing problems, with employment matters, with CD issues, and on and on and on. We do that because we feel it is important, and because it is part of our "job".

So it is bizarre to speak of an obligation to do pro bono work to this staff, because any such "obligation" is clearly fulfilled during the regular course of our public defender work. And yet, there are occasional instances when an attorney in this Office would like to perform legal services for a worthy cause, and those services fall plainly outside the work of the office. The purpose of the following policy is to ensure staff that you have the support of the office in engaging in such worthwhile work.

2. Policy

The office recognizes that, in addition to the significant public interest work performed by staff as part of their employment with the County and 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 County and State resources as outlined below, is consistent with and furthers the County and 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 of Public Defender, Fourth Judicial District, encourages each staff member to consider ways to engage in pro bono activities.

Nothing in this policy is intended to limit the work of an assistant public defender in her or his official capacity. This policy is not intended to label as "pro bono" any of

the myriad of legal projects we regularly take on to help our clients. The work of this office has never been limited to only that representation which is constitutionally required. We often do related legal work for clients, and we do not allow others, especially not our adversaries, to define for us the scope of our employment. The intent of this “pro bono” policy is not to limit the kind of work we do as public defenders, but rather to provide additional avenues each of us may pursue in the never ending struggle for justice.

3. 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.
- B. Examples of pro bono activities which may be approved include, but are not limited to:
 - 1. Representation of individual clients;
 - 2. Providing representation to nonprofit organizations;
 - 3. 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;

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4. Performing research for or rendering expert advice to providers of legal services to the low income and disadvantaged;
5. Participating on the board of a legal services organization;
6. Providing training or preparing materials for seminars or other educational activities involving poverty law issues;
7. Participating on Bar committees and projects relating to the delivery of legal services and pro bono legal services.

4. Procedures

A. Approval

Participation in pro bono activities must be approved in advance by the First Assistant Public Defender. The following criteria will be used when approving a staff member's participation in a particular activity:

1. Whether the request is consistent with the terms and purposes of this policy.
2. Whether a conflict of interest exists under the Rules of Professional Responsibility.
3. Whether malpractice coverage exists or is an issue.
4. 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.
5. Whether the case would require establishment of a trust account by the staff member.
6. Staff will not be permitted to handle such cases. Trust accounts, where necessary, must be established and maintained by referring programs.

- B. Staff members must obtain approval for each new pro bono client, should continue to comply with these criteria, and should consult with their supervisors if they have 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, staff members must consult with their supervisors to discuss the change in circumstances and continued participation in the activity.

Similarly, the staff member's supervisor 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.
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 County or State; the State or County 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. 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, or on the 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.

5. 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 staff members have any reason to believe that those receiving service, opposing counsel, or the courts mistakenly believe that staff members are acting in an official role, staff must make a clear disclaimer that they are not acting on behalf of the office or in their official capacity. For example, if a staff member is known to opposing counsel or the court as a member of the Public Defender's staff, a disclaimer must be made.

II. D. Pro Bono Policy

- A. The staff member must not use office business cards or otherwise identify himself or herself as a public defender 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. 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.

6. Use Of Office Resources

A. Hours of work

Pro bono work may not be accepted or undertaken unless the staff member and supervisor agree that the staff member's office responsibilities can be met. Depending on the nature and extent of the pro bono work, a limited number of regular office hours may be devoted to pro bono work.

B. Telephone calls

Local telephone calls may be made from the staff member's phone. 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., Premise) may be used to do pro bono work. Online research tools (e.g., Lexis, Westlaw) may not be used to do pro bono work.

D. Clerical support: should be obtained from the coordinating agency when available..

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.