

UNITED STATES POSTAL SERVICE LAW DEPARTMENT
POLICY STATEMENT ON PRO BONO SERVICES

I. PURPOSE OF POLICY

Executive Order 12988, issued 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, including attorneys, to be performed on their own time, as permitted by statute, regulation, or other rule or guideline."

Consistent with that Order, and because the USPS Law Department supports increased access to justice for all, it is the policy of the Postal Service Law Department to encourage and support efforts by USPS Law Department employees to provide pro bono legal services within their communities, consistent with the employee's obligations to the Postal Service and applicable statutes and regulations governing conflicts of interest and outside activities.

Of course, Law Department employees who perform pro bono legal services are subject to the same ethics laws and regulations as all other Postal Service employees. In addition, Law Department attorneys are subject to the codes of ethical conduct imposed by the various state bar associations of which they are members.

The scope of this Law Department pro bono legal statement extends to all Postal Service Law Department employees and encourages all volunteer legal work. This inclusive structure best reflects the Law Department's commitment to developing a sense of community responsibility among its lawyers and support staff.

This Policy Statement is intended only to provide the parameters for pro bono legal activities by Law Department employees, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Postal Service, its officers or employees, or any person.

II. DEFINITION OF PRO BONO SERVICES

Pro Bono Services: Pro bono services are those legal services performed without compensation and include the provision of legal services to:

- 1) persons of limited means;
- 2) charitable, religious, civic, community, governmental, health and educational organizations in matters which are designed to assist persons of limited means;

- 3) individuals, groups or organizations seeking to secure or protect civil rights or;
- 4) improve the law, legal system or the legal profession.

III. LIMITATIONS ON PERFORMING PRO BONO SERVICES

Law Department employees are encouraged to perform pro bono services within the following limitations:

Prior Approval

Law Department employees seeking to engage in any pro bono legal work must follow government wide procedures under the Standards of Ethical Conduct for Employees in the Executive Branch (5 C.F.R. §2635 (1997)) and the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service in Chapter LX. Employees should consult with their Managing Counsel and their Ethical Conduct Officer regarding prior approval requirements. At a minimum, an employee shall ensure that her or his pro bono services do not:

- 1) violate any federal statute, rule or regulation;
- 2) interfere or conflict with the proper and effective performance of official duties, which includes time and availability requirements of her/his position;
- 3) create or appear to create a conflict of interest, or;
- 4) cause a reasonable person to question the integrity of the Postal Service's programs and operations.

Conflict of Interest

Employees may not engage in pro bono services that create or appear to create a conflict of interest with their Postal Service duties. In particular, postal employees are prohibited from engaging in matters in which the United States or the United States Postal Service is a party or has a direct and substantial interest. This could include criminal defense representation in federal court, tax matters, government contract actions, and postal labor matters. If an employee has any question or concern about a particular pro bono service s/he wishes to provide, that employee is responsible for checking with her/his Managing Counsel prior to beginning such service.

Additional Considerations in Performing Pro Bono Services

Retainer Agreements: In connection with each pro bono legal representation, postal attorneys are encouraged to provide his or her client with a retainer letter explicitly stating that the attorney is acting in his or her individual capacity and not on behalf of the Postal Service. The client should countersign this agreement in acknowledgment of this fact. A model retainer agreement can be obtained from the Postal Service Internal Website, and may be adapted as appropriate.

Malpractice Insurance, Costs and Fees: Consistent with the position that pro bono work is outside the scope of an employee's official duties, the Postal Service neither provides nor reimburses the cost of malpractice insurance for pro bono work. Postal attorneys who elect to provide legal services without malpractice insurance do so at their own risk. Some legal services organizations from which an attorney might obtain pro bono cases provide malpractice insurance coverage to volunteer attorneys. Before accepting a pro bono case, attorneys should check the availability of such coverage.

Any costs associated with providing pro bono assistance, including filing fees and other litigation costs, must be paid by the attorney's personal finances or the legal services organization and are not reimbursable by the Postal Service.

Finally, many states require attorneys to pay a yearly licensing fee for the privilege of practicing law in that state. Some jurisdictions, such as the District of Columbia, waive the licensing fee for government attorneys who perform pro bono work. A particular state's licensing fees should be researched by the postal attorney prior to accepting pro bono work in that state. Such fees are not reimbursable by the Postal Service beyond the current practice of reimbursing attorneys for the bar dues for a single jurisdiction.

Unauthorized Practice of Law: Postal attorneys must become knowledgeable about the rules of practice in the particular state where they will be performing pro bono activities. Some jurisdictions allow government attorneys who are not licensed or admitted to practice in that state to perform pro bono work as long as the pro bono work is supervised by an attorney admitted to that bar. Postal attorneys are advised to research this particular issue prior to accepting a pro bono case.

IV. USE OF OFFICIAL POSITION OR PUBLIC OFFICE

Postal Service Law Department employees who provide pro bono services may not indicate or represent in any way that they are acting on behalf of the Postal Service, or in their official, employee capacity.

For example, Law Department employees may not use office letterhead, agency or office business cards, or otherwise identify themselves as a postal employee in any communication, correspondence, or pleading connected with any pro bono or other volunteer services. Law Department employees are responsible for making it clear to their pro bono clients, opposing parties or anyone else 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, the Postal Service. The incidental identification of an employee's position or office, such as a business address or office phone number, is not prohibited.

In keeping with the separation and distinction between a postal employee's official duties and his or her pro bono activities, the United States and the United States Postal Service are not responsible in any manner or to any extent for any negligent or other tortious act or omission on the part of any USPS employee engaged in pro bono or volunteer services. Each employee performing pro bono services is acting outside the scope of her or his employment at all times when s/he participates in or supports any pro bono activity.

V. USE OF AGENCY RESOURCES

Hours of Work

Law Department employees are encouraged to seek pro bono legal opportunities that can be accomplished outside their scheduled working hours. However, pro bono legal activities may sometimes occur during work hours. Managing Counsels are urged to be flexible and to accommodate, where feasible, the efforts of their employees to do pro bono legal work.

When considering employee requests for leave to engage in pro bono legal activities, Managing Counsels 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 activities during hours of work may not be affected by a Managing Counsel's personal views regarding the substance of the pro bono activity.

As a general rule, it is inappropriate to pay an employee for time engaged in pro bono legal services. See 5 C.F.R. §2635.705 (1997). However, at the discretion of the employee's Managing Counsel, 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 legal activities.

Use of Office Equipment

Generally, 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) (1997). However, employees performing pro bono legal services may use office equipment in a manner consistent with Management Instruction EL-660-2000-5, Limited Personal Use of Government Office Equipment.

This policy may be revoked or limited at any time by any Managing Counsel for any business reason. Any employee who has questions about the application of this section to any particular situation should consult his or her Managing Counsel. 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), §2635.704(a), §2635.705(a)(1997).

Support Staff

In providing services on a volunteer basis, employees are expected to perform their own clerical and support work. Pro bono activities are not official duties, and may not be assigned to or otherwise required of support staff. It is 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 (1997). On the other hand, support staff may wish to volunteer their services. To avoid the appearance of coercion, all requests for pro bono support staff assistance should be funneled through the Managing Counsel.

A Managing Counsel may authorize support staff to provide pro bono support only if such service:

- 1) is entirely voluntary on the part of participating employees;
- 2) will not interfere with or detract from the successful completion of postal business and;
- 3) is scheduled far enough in advance to avoid disruption of postal business.

VI. ADMINISTRATION OF PRO BONO PROGRAM

Any management activities required to support pro bono services within the Law Department shall be carried out as directed from time to time by the General Counsel. There is a pro bono committee that reports to the General Counsel, which can give more specific information about pro bono opportunities.