



Model Pro Bono Policy and Procedures for Government Attorneys

Approved by the MSBA House of Delegates on January 29, 1994; updated August 2000

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On August 25, 1993 the Minnesota County Attorneys Association Board of Directors adopted as a general policy Section I, Paragraph A of Draft II of the Model Pro Bono Policy and Procedures for Government Attorneys with the following addition:

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 officer, under appropriate terms and conditions, to encourage and support participation by agency attorneys in pro bono activities.

Model Pro Bono Policy and Procedures for Government Attorneys

As Approved by the MSBA House of Delegates January 29, 1994

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 legal 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 16.1 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 (i.e. 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 nonprofit 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 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 able 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. MRPC, Rule 1.11.

(e) The attorney is restricted from representation by Lawyers Professional Responsibility Board Opinions 2 and 6 which place 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 case. In certain instances, such as offices, agencies, or courts representing or serving a specific 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 possible pro bono opportunities, 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 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 his 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 stationary, 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 stationary 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 time. [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 supervisors 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 committees, 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 the agency or office can accommodate.

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 bon 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. ■