



Approved On: October 23, 2014

## DOJ Policy Statement

### *PRO BONO* LEGAL SERVICES

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**PURPOSE:** This Policy Statement establishes Department policy and procedures for *pro bono* legal services.

**SCOPE:** All DOJ employees

**ORIGINATOR:** Professional Responsibility Advisory Office


**CATEGORY:** (I) Administrative, (II) Human Resources

**AUTHORITY:** 18 U.S.C. § 202, *et seq.* (Federal Conflict of Interest Laws); 5 U.S.C. §§ 7323(a) and 7324(a) (The Hatch Act); 5 C.F.R. Part 734 (Political Activities of Federal Employees); 5 C.F.R. Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); 5 C.F.R. § 3801.106 (rule governing outside employment by DOJ employees); Executive Order 12988 (Feb. 5, 1996); Office of Personnel Management Memorandum to Executive Agency Heads dated April 6, 2004.

**CANCELLATION:** Policy on *Pro Bono* Legal and Volunteer Services, approved by the Attorney General on May 5, 2000.  
<http://dojnet.doj.gov/jmd/ps/volunteer/pro-bono-sample.pdf>

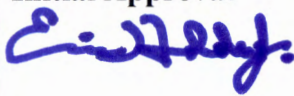
**DISTRIBUTION:** This Policy Statement is distributed electronically to those components referenced in the 'SCOPE' section as well as posted on the DOJ Directives electronic repository (SharePoint).

**APPROVED BY:** Eric H. Holder, Jr.  
Attorney General



## ACTION LOG

All DOJ directives are reviewed, at a minimum, every five years and revisions are made as necessary. The action log records dates of approval, recertification, and cancellation, as well as major and minor revisions to this directive. A brief summary of all revisions will be noted. In the event this directive is cancelled, superseded, or supersedes another directive, that will also be noted in the action log.

Action	Authorized by	Date	Summary
Initial Approval 	Eric H. Holder, Jr. Attorney General	Oct. 23, 2014	Establishes under DOJ's Directives Program the policy and procedures for <i>pro bono</i> legal activity, including the use of administrative leave.

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## GLOSSARY OF TERMS

### DEFINITIONS

Term	Definition
<b>Administrative Leave</b>	Excused absence from duty without loss of pay or charge of leave.
<b>Approved <i>Pro Bono</i> Activity</b>	An outside activity which has been approved according to the procedures and requirements provided in this document.
<b>Business Hours</b>	Designated hours during which an employee is on duty.
<b>General Approval</b>	Approval of a legal services program given by a component head to permit employees in that component to participate in opportunities offered by that legal services program. Employees must still seek individual approval from their direct supervisors and the component's Designated Agency Ethics Officer.
<b>Non-Representational Activity</b>	A <i>pro bono</i> activity in which the attorney does not enter into an ongoing attorney-client relationship and does not sign a retainer agreement with the client. Brief advice clinics are an example of a non-representational activity.
<b><i>Pro Bono</i> Legal Services</b>	Outside activity in the provision of legal services performed without compensation and include, but are not limited to, the provision of legal services for: 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. "Performed without compensation" means that no person or organization may be compensated for the employee's time, e.g., fees may not be sought by anyone for a Department attorney's services in a <i>pro bono</i> case.
<b>Representational Activity</b>	A <i>pro bono</i> activity in which the attorney enters into an ongoing attorney-client relationship and signs a retainer agreement for a specific task on behalf of the client.

## ACRONYMS

Acronym	Meaning
<b>DOJ</b>	Department of Justice
<b>OPM</b>	Office of Personnel Management
<b>DDAEO</b>	Deputy Designated Agency Ethics Official

## I. Policy

Given the significant unmet need for legal and other community services in the nation, it is the policy of the Department of Justice (DOJ or Department) to encourage and support efforts by Department employees to provide *pro bono* legal and related volunteer services within their communities consistent with applicable federal statutes and regulations governing conflicts-of-interest and outside activities. While service in the Department is 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 Department encourages its employees to set a personal goal of at least 50 hours per year of *pro bono* legal service. *See* American Bar Association Model Rule 6.1.

## II. Limitations on *Pro Bono* Legal Services

### A. General Procedures

An employee seeking to engage in any *pro bono* legal services must follow agency procedures governing participation in outside activities, and should consult with his or her Deputy Designated Agency Ethics Official (DDAEO) (all references 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 II.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 services 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 services 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 services, 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 services 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* legal services. 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 services, 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* legal services 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* legal services.

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 employee's 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 services, the employee can seek automatic review by the component head.



## **B. Prohibited Activities and Conflicts of Interest**

1. General Standard. Department employees may not engage in *pro bono* legal 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 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 services prior to approving such services. 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 *pro bono* legal services do not present a conflict of interest and do not otherwise violate any applicable statute or regulation.

The issue of conflicts should be determined by reference to the government-wide standards of conduct, 5 C.F.R. Part 2635 (particularly §§ 2635.801 - .802), and the Department's supplemental standard of conduct, 5 C.F.R. § 3801.106.

Application of these standards of conduct necessarily will involve the exercise of judgment. These judgments likely will differ from one component and situation to another. For this reason, each component is asked to work with the *Pro Bono* Manager, see Section V, and the Department's Designated Agency Ethics Official (DAEO) in setting its own component-specific conflict standard. If a volunteer has questions about conflicts, he or she should consult his or her DDAEO. The *Pro Bono* Manager is also available for consultation. See Section V.

Hatch Act Policy: Outside activity by Department employees must comport with the Hatch Act (5 U.S.C. §§ 7323(a) and 7324(a)), 5 C.F.R. Part 734, and with the Deputy Attorney General's July 14, 2014, memoranda delineating the Department's policy concerning political activities by employees. Department policy holds all political appointees to the restrictions of 5 C.F.R. Part 734, subpart D.

Non-Representational Assistance: Department employees may provide non-representational assistance without compensation, such as assistance in the filling out of forms for persons seeking government benefits, and may assist in the preparation of tax returns without compensation (e.g., through the Voluntary Income Tax Program), provided that the services satisfy the approval requirements of Section II.A. of this Policy Statement and do not present a conflict of interest, as addressed in Section II.B. In matters in which the Department is or represents a party, witness, litigant, investigator, or grant-maker, a waiver from the Deputy Attorney General must be obtained.

### C. Additional Considerations

1. 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 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 because attorneys providing *pro bono* legal services are not acting in their official capacity. Therefore, the Department strongly encourages Department attorneys to work with a legal services provider that carries malpractice insurance.
2. Restrictions on the Unauthorized Practice of Law. Generally, attorneys performing *pro bono* work must be licensed in the jurisdictions where they are practicing. A few jurisdictions have exceptions to this rule. Attorneys should consult with the *Pro Bono* Program Manager, their Professional Responsibility Officer, the Professional Responsibility Advisory Office, or their state bar association to determine whether they are authorized to engage in *pro bono* work in specific jurisdictions.

### III. Use of Official Position or Public Office

Department employees who provide *pro bono* legal services 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 Department 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. 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.

A Department 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.

## IV. Use of Agency Resources

### A. Hours of Work

Department employees are encouraged to seek *pro bono* legal services opportunities that can be accomplished outside their scheduled working hours. However, *pro bono* legal services 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 work. Employees seeking to participate in *pro bono* legal services during work hours may also be granted leave without pay, annual leave, or, in limited circumstances, administrative leave, as explained further below. When considering employee requests for leave to engage in *pro bono* legal services, 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* legal services may not influence the decision to grant an employee's request to engage in *pro bono* legal services during hours of work.

Administrative Leave. Performing *pro bono* legal services is a professional duty for all attorneys. It also enhances the skills which Department attorneys use in their work for the Department. The majority of *pro bono* legal services can typically be performed on the attorneys' own personal time during evenings and weekends. However, some tasks, such as court appearances and mediations, cannot be done outside of business hours and thus require some form of leave. To support the fulfillment of this professional duty, the Department provides 30 hours per year of administrative leave for approved *pro bono* activity that cannot be accomplished outside of business hours for all attorneys and legal staff.

Supervisors will consider the following factors when reviewing a request for administrative leave for approved *pro bono* activity: First, the supervisor will determine whether the activity cannot be accomplished outside of business hours. For example, if the activity, such as a court appearance or meditation, can only be scheduled during business hours, then this criterion is met. Second, the supervisor will determine whether the employee has already received 30 or more hours of administrative leave for approved *pro bono* activity during that calendar year. If not, then this criterion has been met.

Administrative leave must not be granted for *pro bono* legal services that directly benefit an employee or those with whom an employee has a personal relationship.

## **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); *see also* 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 research tools which do not incur any additional cost to the Department, such as Westlaw and LEXIS, is authorized; employees should identify the client or project as "pro bono" or "volunteer." 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: This 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: This 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* Program Manager, 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 *pro bono* legal services are

also permitted, as are group or broadcast e-mails by *pro bono* component representatives and the *Pro Bono* Program Manager. 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 or services, such as e-mail, long distance telephone service, or the Internet. 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 services are not official duties and may not be assigned to or otherwise required of support staff.

It may be coercive to ask subordinate employees if they will volunteer to help perform *pro bono* legal or volunteer services, e.g., the typing of briefs or documents. *See* 5 C.F.R. § 2635.705. On the other hand, support staff may wish to volunteer their services. The *Pro Bono* Program Manager has a central pool of support staff who are willing to volunteer to support *pro bono* legal or volunteer projects. *See* Section V.

## **V. Administration of *Pro Bono* Program**

### **A. Pro Bono Committee**

A *Pro Bono* Committee has been established to oversee the implementation of the Department's Policy Statement. The Committee is chaired by the *Pro Bono* Program Manager, *see* below, and includes representatives from all components within the Department. The Committee meets on a regular basis, facilitates the distribution of information on *pro bono* opportunities, answers questions regarding *pro bono* participation, and supports the Department's participation in some *pro bono* activities.

Each component will appoint an individual as *Pro Bono* Committee Representative to publicize and coordinate *pro bono* activities within the component and office and to refer persons to the component's DDAEO for conflicts advice. The duties of the *Pro Bono* Committee Representatives shall include regular attendance at Committee meetings and distribution to component employees of materials that are obtained at meetings.

**B. *Pro Bono* Program Manager**

The *Pro Bono* Program Manager develops and publicizes *pro bono* legal services opportunities in order to facilitate an increase in such activities throughout the Department. The Program Manager works with U.S. Attorneys' Offices and all Department components in the development of office-specific *pro bono* programs. The Program Manager chairs the Department Committee that includes representatives from all components.

**VI. Disclaimer**

This Policy Statement is intended only to encourage increased *pro bono* legal and related 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.