



Office of the Attorney General
Washington, D. C. 20530

March 8, 1996

MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

FROM THE ATTORNEY GENERAL

SUBJECT: Department of Justice Pro Bono
and Volunteer Services Policy

In compliance with President Clinton's Executive Order on civil justice reform¹, I have today signed the Department of Justice Policy Statement on Pro Bono Legal and Volunteer Services. This Policy Statement summarizes existing Department of Justice policies and rules on topics such as leave, conflict of interest, and use of property, in an effort to facilitate pro bono and volunteer services by employees. The Deputy Designated Agency Ethics Official in your office has a copy of the Policy Statement.

Given the significant unmet need for legal and other community services in the nation, this policy is being issued to encourage and support efforts by Department of Justice employees to provide pro bono legal and volunteer services within their communities that are consistent with applicable federal statutes and regulations governing conflicts-of-interest and outside activities. While service in the Department of Justice is itself 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, I encourage all Department employees to join me in setting a voluntary, personal goal of at least 50 hours per year of pro bono legal and non-legal volunteer service.

Pro bono legal work and volunteer services are broadly defined to include many different types of activities, performed without compensation. Examples of such legal services and volunteer work are assistance to persons of limited means or other disadvantaged persons, as well as assistance to charitable, religious, civic, community, governmental, health and educational organizations. The Department does not seek to restrict the type of pro bono or volunteer activities in which employees engage, provided that such activities do not violate any statutory or regulatory restrictions as outlined in the Policy Statement.

¹Executive Order 12988, Section 2 which provides that "All Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline."

All pro bono and volunteer service is subject to limitations, including certain prior approval requirements, compliance with all conflict of interest statutes and regulations, and compliance with all local unauthorized practice of law statutes and fee requirements. These and other restrictions on the use of one's official position and use of agency resources are set forth in more detail in the Policy Statement. The Department Ethics Office and the Deputy Designated Agency Ethics Official in each component will provide guidance to employees in compliance with all statutes and regulations in order to facilitate pro bono and volunteer service to the maximum extent possible consistent with the law.

Department employees are encouraged to participate in 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.

I have asked the Office of Policy Development to provide the administrative structure and support for the pro bono program. The volunteer services program will continue to be operated out of JMD. A Pro Bono Program Manager in OPD will be responsible for developing additional pro bono opportunities for Departmental employees, publicizing those opportunities, arranging training for employees participating in pro bono work, and coordinating that work with the existing Volunteer Services Program.

I am asking each component to appoint a representative to the Pro Bono and Volunteer Services Committee, which will oversee implementation of our pro bono policy. It will be chaired by the Pro Bono Program Manager. Those representatives will publicize and coordinate pro bono work within their components. It will be the responsibility of the Deputy Designated Agency Ethics Official in each component to conduct conflicts checks as necessary.

I know that many of you already are involved in volunteer services in your community or through programs here at the Department. Some of you already are providing much needed pro bono legal work. I hope that our policy encourages many more employees to participate.



Office of the Attorney General
Washington, D. C. 20530

March 6, 1996

**DEPARTMENT OF JUSTICE POLICY STATEMENT
ON PRO BONO LEGAL AND VOLUNTEER SERVICES**

**I. DEPARTMENT OF JUSTICE PRO BONO LEGAL AND VOLUNTEER
POLICY**

The Policy. Given the significant unmet need for legal and other community services in the nation, it is the policy of the Department of Justice to encourage and support efforts by Department employees to provide pro bono legal and volunteer services within their communities that are consistent with applicable federal statutes and regulations governing conflicts-of-interest and outside activities. While service in the Department of Justice is itself 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 Attorney General encourages Department employees to set a personal goal of at least 50 hours per year of pro bono legal and volunteer service.

COMMENT:

Scope of the Program. The Department's Policy Statement on Pro Bono Legal and Volunteer Services (the "Policy Statement") will extend to all Department employees and encourage all volunteer work, legal or non-legal. This inclusive structure best reflects the Department's commitment to developing a sense of community responsibility, not only among lawyers but among all citizens.

The 50-hour goal. The Department of Justice has adopted a 50-hour aspirational goal. In the context of pro bono legal services, the 50-hour aspirational goal is in accord with the American Bar Association's Model Rule 6.1, and falls within the range adopted by other state bar associations.

II. DEFINITION OF PRO BONO LEGAL AND VOLUNTEER SERVICES

Definition. Pro bono legal work and volunteer services are broadly defined to include many different types of activities, performed without compensation.

A. Pro bono legal services. Pro bono legal services are those legal services performed without compensation and include, but are not limited to, the provision of legal services to:

1. persons of limited means or other disadvantaged persons;
2. charitable, religious, civic, community, governmental, health and educational organizations in matters which 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 for improving the law, the legal system, or the legal profession.

***COMMENT:** This definition is based on Rule 6.1 of the ABA Model Rules of Professional Conduct, with some modifications that, among other things, make clear that the legal services must be provided without fee. This definition of pro bono legal services includes a broad range of activities; the listed activities are intended as examples only. The Department recognizes, however, that statutory or regulatory restrictions may prohibit government lawyers from performing certain pro bono services. See Section III.*

B. Volunteer services. Volunteer services are those activities, 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 which are designed primarily to address the needs of persons of limited means or other disadvantaged persons.

***COMMENT:** The Department does not seek to restrict the type of volunteer activities in which employees may engage in their free time, provided that the activities do not violate any statutory or regulatory restrictions. See Section III.*

The Attorney General encourages Department employees to participate in the Department-sponsored mentoring programs and volunteer activities that further the Department's program priorities. For example, the strong leadership skills of many Department employees could be put to good use helping at-risk youth in classrooms, youth clubs, shelters, and midnight basketball programs. The Volunteer Services Program Coordinator, see Section VI, will have information regarding such programs.

III. LIMITATIONS ON PRO BONO LEGAL AND VOLUNTEER SERVICES

A. Prior Approval.

1. Pro Bono Legal Services. An employee seeking to engage in any pro bono legal work must follow agency procedures for outside activities, and must consult with his or her Deputy Designated Agency Ethics Official regarding prior approval requirements. See 5 C.F.R. § 2635.803 and note thereto.

Component heads are encouraged to designate some pro bono legal activities as preapproved such that the employee need only give advance notice to a designated supervisor before undertaking the outside activity.

- a. In general, approval of an employee's request to engage in pro bono legal work shall be granted if the work would not:
 - (1) violate any federal statute, rule or regulation, including, for example, 18 U.S.C. § 201 et seq. and 5 C.F.R. Pt. 2635;
 - (2) interfere with the proper and effective performance of the employee's official duties (including time and availability requirements of his or her position), see 5 C.F.R. § 2635.705;
 - (3) create or appear to create a conflict of interest, see Section III.B. below; or
 - (4) cause a reasonable person to question the integrity of the Department's programs or operations.
 - b. Where an employee has been denied approval by a component head's designee to perform pro bono legal work, the decision will be appealed automatically to the component head.
2. Volunteer Services. An employee seeking to engage in volunteer activities must follow agency procedures for outside activities, and must consult with his or her Deputy Designated Agency Ethics Official regarding prior approval requirements. See 5 C.F.R. § 2635.803 and note thereto.

The standards for granting approval for volunteer services are the same as those set forth above for volunteer legal services. See Section III.A.1.a.

***COMMENT:** Offices may choose to institute their own pro bono or volunteer service programs in which certain activities are pre-approved. For example, the U.S. Attorney's Office in the Southern District of Florida has received permission from the Executive Office for U.S. Attorneys to run a pro bono program in conjunction with the Dade County Bar. Under this program, Assistant United States Attorneys in the Southern District have the opportunity and necessary approval to provide volunteer legal representation in select domestic violence, child advocacy, divorce, and small claims cases. The Attorney General urges all components to consult with the Pro Bono and Volunteer Services Committee, see Section VI.A., and the Department's Designated Ethics Official to determine which outside activities it may want to designate as preapproved.*

B. Conflicts of Interest.

1. General Standard. Department employees may not engage in pro bono legal or volunteer 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. § 2635, 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. Department of Justice attorneys are prohibited by statute from providing pro bono legal assistance in any case in which the United States is a party or has a direct and substantial interest -- which includes criminal defense representation in federal court, see 18 U.S.C. § 205. In the past, full-time Department employees have also been prohibited by regulation from providing outside professional services (including, for example, services as a lawyer, paralegal, investigator, secretary, economist or

physician) in criminal or habeas-corpus matters in any court. It is the Department's intention to continue that prohibition.

4. Responsibility for Conflicts Check.

- a. The component head or the component head's designee will be responsible for completing the conflicts check for pro bono legal activities prior to approving such activities.
- b. The Department employee will be responsible for ensuring that his or her volunteer services do not present a conflict of interest, and do not otherwise violate any applicable statute or regulation.

COMMENT: The issue of conflicts should be determined by reference to the government-wide standards of conduct, 5 C.F.R. § 2635 (particularly §§ 2635.801 - .802), and any subsequently published Department of Justice supplemental regulations.

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 will be asked to work with the Pro Bono and Volunteer Services Committee, see Section VI, and the Department's Designated Ethics Official in setting its own component-specific conflict standard. Deputy Designated Agency Ethics Officials (DAEOs) in each component are available for consultation on conflicts questions, as is the Pro Bono Program Manager. See Section VI.B.

Hatch Act Policy: Outside activity by Department employees must comport with the regulations implementing the Hatch Act Reform Amendments of 1993, 5 C.F.R. Pt. 734, and with the February 27, 1996 Attorney General memorandum delineating the Department's policy concerning political activities by employees. Department policy holds all political appointees to the restrictions of 5 C.F.R. Pt. 734, subpt. 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 prior approval requirements of Section III.A of this Policy Statement, and do not present a conflict of interest as addressed in Section III.B.

C. Additional Considerations.

1. Retainer Agreement. The Pro Bono Program Manager, *see* Section VI.B., will have available a model retainer letter making explicit to a pro bono legal client that the attorney is acting in his or her own individual capacity and not on behalf of the Department. The client must countersign a retainer letter in acknowledgment of this fact.
2. 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 which covers volunteer attorneys. The Department of Justice does not provide malpractice coverage for pro bono work.

COMMENT: Generally, volunteer programs organized by the local bar or the more established referral programs do provide malpractice coverage. The Pro Bono Program Manager will have information regarding which programs provide malpractice insurance coverage for volunteer attorneys. Attorneys who choose to provide legal services without malpractice insurance coverage are acting at their own risk.

3. The District of Columbia Professional Licensing Fee. The D.C. Code has been amended to provide that members of the District of Columbia bar "engaged in the provision of legal services, on a pro bono basis solely or in combination with government service," an exemption from the requirement to pay the District of Columbia professional licensing fee of \$250. D.C. Act 10-304.
4. Restrictions on the Unauthorized Practice of Law. Attorneys not licensed in the District of Columbia do not need to pay the District of Columbia licensing fee, but may only practice subject to the constraints of the District of Columbia's local rule regarding the unauthorized practice of law. D.C. Court of Appeals Rule 49.

COMMENT: D.C. Court of Appeals Rule 49 currently prohibits Department attorneys who are not members of the D.C. Bar from taking on pro bono representational work. The D.C. Bar is currently considering a revised Rule 49 which would exempt federal government attorneys who are members in good standing of another state bar and who accept pro bono cases under the supervision of a D.C. Bar member employed by or affiliated with a legal services or referral program, or other non-profit organization in D.C. The Pro Bono Program Manager will have information regarding the revision of Rule 49 for Department attorneys who are not members of the D.C. Bar but who wish to accept pro bono cases.

Department attorneys in other jurisdictions are advised to consult their local rules and regulations regarding any professional fees and practice restrictions that may exist.

IV. USE OF OFFICIAL POSITION OR PUBLIC OFFICE

The Policy. Department of Justice employees who provide pro bono legal services or who participate in volunteer activities may not indicate or represent in any way that they are acting on behalf of the Department, 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 -- is not prohibited.

- A. A Department of Justice employee may not use office letterhead, agency or office business cards, or otherwise identify himself or herself as a Department employee in any communication, correspondence, or pleading connected with pro bono legal activities or other volunteer services.
- B. A Department of Justice attorney is responsible for making it clear to 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.

V. USE OF AGENCY RESOURCES

- A. **Hours of Work.** Department 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. Employees seeking to participate in pro bono legal or volunteer activities during work hours may also be granted leave without pay, annual leave, or, in very limited circumstances, administrative leave, as explained in the comment.

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

COMMENT: *The Attorney General recognizes the serious budgetary constraints and*

heavy workloads faced by each of the components. Therefore, 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.

Administrative Leave. As a general rule, it is inappropriate to pay an employee for time engaged in pro bono legal or volunteer services. However, in limited circumstances, 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 activities. See Federal Personnel Manual System, FPM Letter 992-1 (April 19, 1991). Excused absence should be limited to those situations in which the employee's volunteer service meets one or more of the following criteria: is directly related to the Department's mission; is officially sponsored or sanctioned by the Attorney General; or will enhance the professional development or skills of the employee in his or her current position. Id.

Prior Department of Justice ethics regulations have permitted supervisors to grant leave "for court appearances or other necessary incidents of representation." See United States Attorneys' Manual 1-4.350. Also, past Attorneys General and this Attorney General have authorized the granting of administrative leave to encourage participation in a project such as the mentoring program sponsored by the Department.

Administrative leave should not be granted for volunteer or pro bono legal activities 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). Department policy authorizes the following personal uses of government office and library equipment and facilities:

1. personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and
2. limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-government accounts.

This Department policy permits personal use of equipment and facilities only if it involves negligible additional expense to the government -- such as electricity, ink, small amounts of paper, and ordinary wear-and-tear. 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 wishing to use more than a small amount of paper must provide their own or pay for its cost. Employees should contact their supervisor if there is any question whether an intended use involves "negligible" expense or "small amounts" of paper.

This policy does not authorize the personal use of commercial electronic databases when there is an extra cost to the government. On the other hand, research using the library's books or microfiche would be authorized, as it involves only negligible additional expense to the United States.

The 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 over whether such use is in fact "limited."

The policy does not override statutes, rules or regulations governing the use of specific types of government property, such as electronic mail, and 41 C.F.R. (FPMR) § 201-21.601 (governing the ordinary use of long-distance telephone services). It may be revoked or limited at any time by any supervisor or component for any business reason. 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).

COMMENT: The above policy has been the Department's practice since 1989. It was codified as a section of the Justice Property Management Regulations, 41 C.F.R. (JPMR) § 128-1.5006-4, in April 1995.

- C. **Clerical Support.** Pro bono legal and volunteer work are not official duties, and may not be assigned to or otherwise required of support staff.

COMMENT: It may be 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. On the other hand, support staff may wish to volunteer their services. The Pro Bono Program Manager and Volunteer Services Program Coordinator will develop a central pool of support staff who are willing to volunteer to support pro bono legal or volunteer projects. See Section VI.B.

VI. ADMINISTRATION OF PRO BONO AND VOLUNTEER SERVICES PROGRAM

- A. Pro Bono and Volunteer Services Committee. A Pro Bono and Volunteer Services Committee will be established to oversee the implementation of the Department's Policy Statement. The Committee will be chaired by the Pro Bono Program Manager, see Section VI.B., and include representatives from law enforcement, the Attorney General's Advisory Committee, litigating and non-litigating components, and the Volunteer Services Program Coordinator, see VI.C.

COMMENT: The Department recognizes that further refinements of its Policy Statement will be necessary. Specifically, the implementation of the Policy Statement in law enforcement agencies and United States Attorney's Offices will need further examination. In addition, the approval process outlined in Section III.A. will need to be monitored closely.

- B. Pro Bono Program Manager. The Pro Bono Program Manager will develop and publicize pro bono legal opportunities in order to facilitate an increase in such activities throughout the Department of Justice. The position will be located in the Office of Policy Development. The Program Manager will work with United States Attorney's Offices in the development of office-specific pro bono programs.

COMMENT: It is anticipated that each component and United States Attorney's Office will appoint an individual to publicize and coordinate pro bono activities within the component and office and to refer persons to the component's Deputy Designated Agency Ethics Officer (DAEO) for conflict screening.

- C. Volunteer Services Program Coordinator. The Volunteer Services Program Coordinator publicizes the volunteer services opportunities throughout the Department of Justice. The position is located in the Justice Management Division, Personnel Staff. The Coordinator refers employees to volunteer clearinghouses in their communities, assists employees in establishing and participating in Partners in Education programs, and organizes National Volunteer Week activities.

COMMENT: The position of Volunteer Services Program Coordinator already exists and works with contact persons in every component. This policy does not anticipate any change in the administration of the volunteer services program other than the involvement of the Coordinator in the Pro Bono and Volunteer Services Committee.

VII. DISCLAIMER

The Policy Statement is intended only to encourage increased pro bono legal and 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.

APPROVED:

A handwritten signature in cursive script, appearing to read "Janet Reno", is written over a horizontal line.

DATE:

A handwritten date "3/6/96" is written over a horizontal line.