

# **MOST COMMONLY ASKED QUESTIONS ABOUT GOVERNMENT ATTORNEYS DOING PRO BONO WORK**

## **I. Definitions and Limitations**

### **What types of services may I provide?**

Pro bono legal work and volunteer services may be broadly defined to include many different types of activities performed without compensation. Examples include, but are not limited to, services to persons of limited means or other disadvantaged persons, assistance to charitable, religious, civic, community, governmental, health, and educational organizations, services to individuals or groups seeking to protect civil rights, civil liberties or public rights, and activities seeking to improve the law or legal system.

### **What types of pro bono and volunteer services are prohibited?**

Any service that would conflict with your official duties is prohibited. 5 C.F.R. § 2635.802. For example, federal employees, in most cases, are prohibited from representing parties before the federal government. 18 U.S.C. § 205. (See questions below on conflicts of interest.) In addition, each federal agency has its own regulatory standards of conduct which its employees must follow. For example, Department of Justice attorneys may not provide services that involve criminal or habeas corpus matters, whether federal, state, or local. 5 C.F.R. § 3801.106.

### **May I provide services to political organizations?**

Yes, however, you must comply with the restrictions of the Hatch Act (5 U.S.C. § 7234) and the your agency's policy concerning political activities by high-level and political appointees. It should be noted that the Office of Personnel Management has stated that it would be inappropriate to grant administrative leave to employees to engage in partisan political activities. Also, because partisan political activity is subject to more restrictive rules than other non-official activity, no partisan political activity may take place on government time or by using government property. See 5 C.F.R. Part 734.

### **May I represent someone in an action against the United States?**

No. 18 U.S.C. § 205 prohibits you from representing another person before any court or agency of the United States, in a matter in which the United States is a party or has a direct and substantial interest. There are limited exceptions for representing your immediate family (spouse, child, and parents), fellow employees in personnel administration proceedings, and certain employee organizations in limited circumstances.

### **May I assist persons seeking government benefits?**

Yes, in limited ways. You may provide non-representational assistance, such as filling out forms for a person seeking government benefits. However, you should be mindful

that you may not contact a federal agency, with the intent to influence, on behalf of another person except those persons permitted by 18 U.S.C. § 205(e). You may not represent a third party before any government agency.

**May I prepare income tax returns?**

Yes, however, you are prohibited from representing another person before the IRS in connection with a tax return.

**May I assist family and friends?**

Yes, provided the services you are providing fall within the definition of pro bono and/or volunteer services and you are not receiving compensation.

NOTE: There are some limited exceptions to this rule which may permit employees to represent family and friends in non-pro bono matters as long as the United States is not a party and the matter is not criminal in nature. You should contact your Deputy Designated Agency Ethics Official (DDAEO) if you would like to represent a family member or friend and the representation does not fall within the definition of pro bono or volunteer services.

**II. Use of Position and Agency Resources**

**May I use my official position in connection with my pro bono and/or volunteer services?**

No. You may not indicate or represent in any way that you are acting on behalf of the your agency, or in your official capacity, when providing pro bono or volunteer services.

**May I use office letterhead or my business cards?**

No. You may not use office letterhead, business cards, fax cover sheets, etc., or otherwise identify yourself as a federal government employee in any communication, correspondence, or pleading.

**May I use agency resources such as phone, email, internet, or other government property in connection with my pro bono services?**

Each agency has its own policy on the use of its resources and property. Some agencies will allow for the personal use of government equipment and facilities provided there is only a negligible cost to the government (such as electricity, ink, small amounts of paper, and ordinary wear and tear). You should contact your supervisor or ethics officer to find out about your agency's policy.

**May I ask my secretary to assist me?**

No. Pro bono and volunteer services are not official duties and may not be assigned to or required of support staff.

**May I use Westlaw and other electronic computer databases?**

Each agency has its own policy on this issue. Contact your supervisor or agency ethics officer to find out about your agency's policy.

**May I participate in pro bono and/or volunteer services on government time?**

You are encouraged to seek pro bono and volunteer opportunities that can be accomplished outside of your scheduled working hours. However, activities may sometimes occur during the work day. You may be granted annual leave, leave without pay, or may be permitted to make up any time you are away from the office. Contact your supervisor or agency ethics officer to find out about your agency's policy.

**May I be given administrative leave?**

Generally, it is inappropriate to pay an employee for time engaged in *pro bono* or volunteer services. However, some agencies allow for administrative leave or excused absence for *pro bono* activity, such as the Department of Justice (various divisions), the Department of Labor, the Department of Energy, the Department of Housing and Urban Development, the National Labor Relations Board, and some others. To find out if your agency has such a policy, contact Laura Klein, Department of Justice Pro Bono Program Manager, at [Laura.F.Klein@usdoj.gov](mailto:Laura.F.Klein@usdoj.gov). Additionally, OPM has issued a general guidance on the availability of administrative leave for volunteer activity. In limited circumstances, it may be appropriate to excuse an employee from duty for brief periods of time without loss of pay or charge of leave. Excused absence should be limited to those situations in which the employee's services meet one or more of the following criteria: is directly related to the agency's mission; is officially sponsored or sanctioned by the agency; or will enhance the professional development or skills of the employee in his or her current position. See OPM Guidance at <http://www.opm.gov/oca/leave/html/Volunteer2.asp>.

### **III. Conflicts of Interest**

#### **Who should I talk to about any possible conflicts of interest?**

Your Deputy Designated Agency Ethics Official (DDAEO).

#### **What constitutes a conflict of interest?**

Any activity that would:

1. Violate any federal statute, rule, or regulation, including for example, 18 U.S.C. § 201 et seq. and the Standards of Conduct at 5 C.F.R. § 2635;
2. Interfere with the proper and effective performance of your official duties, including time availability;
3. Cause a reasonable person to question the integrity of your agency's programs or operations;
4. Require your recusal from significant aspects of your official duties;
5. Create an appearance that your official duties are being performed in a biased or less than impartial manner; or
6. Create an appearance of official sanction or endorsement.

#### **Must I get approval to provide pro bono services?**

Each agency has its own policy regarding its employees' outside activities. An employee seeking to engage in any pro bono legal work or volunteer services must follow his or her agency's procedures for outside activities. You should consult with your ethics officer regarding approval requirements.

### **IV. Miscellaneous**

#### **What about malpractice coverage?**

The federal government does not provide malpractice coverage. Generally, volunteer programs organized by the local bar or more established referral programs provide malpractice coverage. For example, the Legal Aid Society of DC provides malpractice coverage for its volunteers. You should ask the organization through which you will be providing pro bono services whether it will provide malpractice coverage for you.

### **May I participate if I am not a member of the state bar where I am located?**

To do pro bono work in any state, you must be a member of that state's bar. However, federal government attorneys do not need to be members of the D.C. Bar in order to do pro bono work in D.C. Under an amendment to D.C. App. Rule 49, federal government attorneys who are not members of the D.C. Bar may provide legal counsel without fee provided that such a matter is assigned or referred to the attorney by an organization that provides legal services to the public without fee, the attorney is a member in good standing of another bar, the attorney provides the service without fee, and the attorney is supervised by an enrolled, active member of the District of Columbia Bar.

### **Are there activities I can do that do not involve client representation?**

Absolutely! Government attorneys regularly staff legal clinics. At these clinics, attorneys provide brief advice and referral for clients on a walk-in basis and do not take on the cases. You can also help clients to fill out tax forms, perform know-your-rights workshops for victims at domestic violence shelters, teach legal education in local schools, write wills and powers of attorney for elderly clients, and much more.

### **What if I have never done any pro bono work before?**

It is never too late to start doing pro bono work. There are lots of resources and support to help you. First, you can start by going to a training. The bar associations and other organizations host trainings throughout the year on substantive areas of law that are designed for attorneys who are new to the subject area. Second, local legal services organizations can assign mentors to government attorneys to help you with your work. Third, [probono.net](http://probono.net) and local legal service providers have terrific manuals, sample forms, and a pleadings bank that you can use. Many attorneys start by co-counseling their first pro bono case. And you don't have to start by taking a case – you can attend a brief advice clinic, volunteer at an intake site or do a range of other activities.

### **Is there a committee which helps government agencies to develop pro bono policies and programs?**

Yes. The Interagency Pro Bono Working Group has been established to assist federal agencies in developing pro bono policies and programs. The Working Group also organizes events to encourage more government attorneys to participate in pro bono work. The Working Group is chaired by the Department of Justice Pro Bono Program Manager and includes representatives from both large agencies, such as the Department of Transportation, and smaller agencies, such as the Office of Government Ethics.

### **How can I get my agency involved?**

Call the DOJ Pro Bono Program Manager, Laura Klein, at (202) 353-7529 or e-mail [laura.f.klein@usdoj.gov](mailto:laura.f.klein@usdoj.gov).

