



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

December 26, 2002

**MEMORANDUM FOR CHIEF COUNSELS
SENIOR COUNSEL TO THE INSPECTOR GENERAL**

FROM:

Kirk K. Van Tine
General Counsel

SUBJECT:

DOT Pro Bono Policy

I am pleased to issue the Department of Transportation Pro Bono Policy. Please distribute the attached explanatory Memorandum and the accompanying Pro Bono Policy Statement to each attorney on your staff, including those in field offices.

Secretary Mineta and I strongly support participation by DOT employees in pro bono and other volunteer activities, as reflected in the attached Policy. While pro bono legal and other voluntary services must be performed on government attorneys' own time, we encourage supervisors to make maximum use of existing flexibility to allow attorneys to plan and take the time necessary to provide pro bono legal and other volunteer services.

To ensure that our attorneys are aware of opportunities for pro bono services, I am establishing a Pro Bono Services Committee to develop and distribute information about pro bono service providers and pro bono opportunities. This Committee will include one attorney from each Chief Counsel's Office and will be chaired by an attorney in my office. Please provide the name of a representative from your office to Laura Aguilar, Attorney, Office of the General Counsel (x6-0365; laura.aguilar@ost.dot.gov) by January 15, 2003.

Thank you for your assistance.

Attachment



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December 26, 2002

**MEMORANDUM TO ALL DEPARTMENT OF TRANSPORTATION
ATTORNEYS**

FROM THE GENERAL COUNSEL

SUBJECT: DEPARTMENT OF TRANSPORTATION PRO BONO POLICY

On January 30, 2002, President Bush unveiled his USA Freedom Corps Initiative, which is designed to encourage and assist Americans to serve their community and country. "The Federal Government did not create this civic spirit; but we do have a responsibility to help support and encourage it where we can." Secretary Mineta and I share in the President's vision and we strongly encourage all Department attorneys to seek out opportunities to participate in pro bono legal services and other volunteer activities.

To that end, I am pleased to issue this Department of Transportation (DOT) Pro Bono Policy. This Policy, in general, reflects the strong commitment of this Administration to encourage citizens to step forward to assist our communities and young people, and, in particular, it responds to Executive Order 12988 ("Civil Justice Reform") of February 5, 1996, which calls on Federal agencies to develop appropriate programs to encourage pro bono legal and other volunteer services by government attorneys.

Handling pro bono matters can offer valuable opportunities to acquire legal skills and training that we would not otherwise receive as part of our official duties. Given the wide range of civil and criminal matters in which we can engage as lawyers in a personal capacity and our overall responsibilities as officers of the legal system to ensure the quality of justice, I strongly encourage every DOT attorney to participate in pro bono legal service opportunities that are available to us. However, all pro bono and volunteer service is subject to limitations, including certain prior approval requirements and compliance with all conflict of interest statutes and regulations and with all local unauthorized practice of law statutes. 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 attached Policy. You should consult with your ethics advisor and your supervisor prior to engaging in any pro bono activities.

I will be establishing a Pro Bono Services Committee to oversee the implementation of our pro bono program. The Committee, which will have a representative from each Chief Counsel Office and the General Counsel's Office, will develop and disseminate information about pro bono service providers and other information on opportunities for DOT attorneys to engage in pro bono activities.

I know that many of you are already are involved in volunteer services in our 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 in these activities.

Attachment



DEPARTMENT OF TRANSPORTATION PRO BONO LEGAL SERVICES POLICY STATEMENT

I. The Policy

While service in the Department of Transportation is itself one of the highest forms of public service, we, as attorneys, should strive to increase access to justice for all and to strengthen our communities. Given the significant unmet need for legal and other community services in the nation, it is the policy of the Department of Transportation to encourage and support efforts by Department employees to provide pro bono legal and volunteer services within their communities.

This Policy responds to Executive Order 12988 ("Civil Justice Reform"), which calls on Federal agencies to develop appropriate programs to encourage pro bono legal and other volunteer services by government attorneys. As Executive Order 12988 explicitly recognizes, pro bono legal and other voluntary services by government attorneys must be performed on their own time. In light of this, the decision of a DOT attorney to provide pro bono services remains strictly a personal one and cannot be officially influenced by the Department. However, consistent with applicable statutory, regulatory, and administrative requirements, DOT attorneys are encouraged to offer their professional services to help address the unmet legal needs of our communities and disadvantaged individuals.¹

II. Definition: What are Pro Bono Legal Services?

Although there is no single definition, the American Bar Association's Model Rules of Professional Conduct provide useful guidance. The Model Rules state that pro bono legal services are those legal services performed without compensation and include, but are not limited to, the provision of legal services to: persons of limited means; charitable, religious, civic, community, governmental, and educational organizations in matters which are designed primarily to address the needs of persons of limited means, or to further their organizational purpose; individuals, groups, or organizations seeking to

¹ One source of guidance that may help inform individual choices in providing pro bono legal services is Rule 6.1 ("Voluntary Pro Bono Publico Service") of the American Bar Association's Model Rules of Professional Conduct (1993) which states: "A lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year." The Model Rule also suggests that a lawyer voluntarily contribute financial support to organizations that provide legal services to persons of limited means. DOT attorneys, as well as other employees, are of course free to make voluntary contributions to legal services organizations and other organizations through the Combined Federal Campaign, or otherwise.

secure or protect civil rights, civil liberties, or public rights; or participation in activities for improving the law, the legal system, or the legal profession. Other related activities and services that should also be considered include efforts designed to increase individuals' understanding of the law, the legal system, or the legal profession.

III. Ethics Considerations

DOT attorneys need to be aware of a number of legal constraints that may apply to outside activities, including pro bono activities. These legal constraints include:

- 18 U.S.C. §205 (prohibiting Federal employees from engaging in the prosecution of claims against the Government or acting as an agent or attorney in matters in which the United States is a party or has a direct or substantial interest).

- Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635), including:
 - section 2635.502 (regarding activities that appear to interfere with the employee's performance of his or her duties in an impartial and unbiased manner);

 - section 2635.702 (prohibiting use of a Government title or position in any way that suggests that the Government is sanctioning personal activities);

 - section 2635.704 (prohibiting the use of real or personal Government property for other than authorized purposes);

 - section 2635.801 et seq. (regarding outside activities by Federal employees, including prohibitions on outside activities that would conflict with the employee's official duties).

DOT attorneys seeking to engage in any pro bono legal work should seek advice from their agency's ethics officer.

IV. Use of Official Position

DOT attorneys 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. A DOT employee may not use office letterhead or fax cover pages, agency or office business cards (whether or not purchased with appropriated funds), 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. (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, however, permissible).

Also, a DOT 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. It is strongly urged that a DOT attorney and his or her client in a pro bono case both sign a retainer letter making explicit that the DOT attorney is acting in his or her own individual capacity and not on behalf of the Department or employing operating administration. A model retainer letter is available in the Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law.

V. Scheduling Volunteer Activities

As noted above, pro bono activities are to be done on an employee's own time outside his/her scheduled working hours. In recognition that some of an employee's pro bono activities may require actions during the workday (e.g., court filings or appearances), supervisors are encouraged to be flexible.

A memorandum issued by the Director, Office of Personnel Management (OPM), concerning "Participation of Federal Employees in Volunteer Activities," dated April 23, 1998, provides guidance on scheduling work and granting time off to permit Federal agency employees to participate in volunteer activities. A copy of this memorandum is available on the OPM website (see <http://www.opm.gov/oca/compmemo/1998/cpm98-v.htm>) and in the Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law. Consistent with guidance issued in conjunction with the OPM Memorandum, supervisors should give consideration to allowing a limited amount of administrative leave where the pro bono work is directly related to the agency's mission or will enhance the professional development or skills of the employee in his or her current position.²

VI. Use of Office Equipment

As stated above, Federal employees may not use Government property for other than official purposes. However, it is reasonable to allow attorneys de minimis use of office equipment (including use of fax machines and telephones only within the local area codes) in connection with pro bono activities. Thus, use of Government offices and equipment (including library facilities and equipment but not on-line legal research services) is permissible only if it involves negligible additional expense to the Government.³

² See Memorandum for Heads of Executive Departments and Agencies from the Director, OPM, "Guidance on Volunteer Activities," April 23, 1998.

³ See "Recommended Executive Branch Model Policy/Guidance on Limited Personal Use of Government Office Equipment Including Information Technology," May 19, 1999.

VII. Use of Clerical Support

Agency support staff may not be assigned or otherwise be required to perform nonofficial duties, such as pro bono legal or volunteer work. However, support staff may volunteer their services to support pro bono legal or other volunteer activities.

VIII. Malpractice Insurance

The Federal Government does not provide malpractice insurance to its employees when they are undertaking pro bono activities. However, in some cases, legal services organizations do have umbrella malpractice insurance that covers pro bono work by volunteers.

IX. Additional Considerations for Attorneys Not Licensed to Practice in the District of Columbia:

Unauthorized Practice of Law: The District of Columbia Court of Appeals' Rule 49 allows government attorneys to provide pro bono legal services in the District of Columbia so long as they are members of a bar of a state, get cases on referral from an organization providing pro bono legal services, and are supervised by an active member of the District of Columbia Bar.

X. Administration of the DOT Pro Bono Policy Statement and Dissemination of Pro Bono Opportunities

Working with Chief Counsel offices, the Office of the General Counsel will establish a Pro Bono Services Committee to oversee the implementation of the DOT Pro Bono Policy Statement. The Committee will be chaired by a Pro Bono Program Manager. The Committee will also develop and disseminate information about pro bono service providers and other information on opportunities for DOT attorneys to engage in pro bono services in the Washington, DC area and in areas where DOT non-headquarters facilities are located. DOT attorneys are not limited to selecting pro bono opportunities disseminated by the Pro Bono Services Committee and are free to explore other pro bono options.

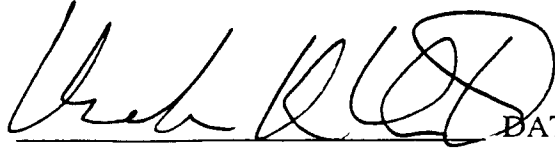
XI. Disclaimer

This Pro Bono Policy Statement is intended only to encourage pro bono activities by DOT attorneys, 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.

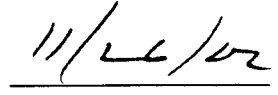
Neither the United States nor the Department of Transportation will be responsible in any manner or to any extent for any negligence or otherwise tortious acts or omissions on the part of any DOT employee while engaged in any pro bono activity. While the

Department encourages pro bono activities by its employees, it exercises no control over the services and activities of employees engaged in pro bono activities nor does it control the time or location of any pro bono activity. Each employee is acting outside the scope of his or her employment whenever the employee participates, supports or joins in any pro bono activity.

APPROVED:

A handwritten signature in black ink, appearing to read "Wesley R. [unclear]". The signature is written over a horizontal line.

DATE:

A handwritten date "11/26/02" in black ink, written over a horizontal line.