

## Model Policy on Pro Bono Legal Services For Public Law Offices and Public Attorneys

### I. 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 recognizing the significant unmet need for civil legal services for low-income and disadvantaged persons in this state, it is the policy of [insert name of public law office/agency] to encourage, facilitate, and support participation in pro bono activities by employees who are licensed attorneys and who are interested in offering pro bono legal services. [Public law office/agency] further recognizes that 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 individual attorneys an opportunity to broaden their professional experience and skills and reflects favorably upon this [agency/office]'s commitment to public service.

**Optional Language:** The [insert name of public law office/agency] encourages staff attorneys to set a personal goal of at least 50 hours of pro bono services per year.

**Comment:** This section sets out a proposed statement of policy for a public law office that desires to support participation by its attorneys in pro bono services. While recognizing that employment as a government attorney is already one of the highest forms of public service, the unmet public need for legal assistance triggers an additional obligation to perform volunteer work. A policy statement should recognize the unmet legal needs in the greater community as well as the existence of many public lawyers who desire to provide legal assistance to the disadvantaged outside of his/her regular employment duties. The Minnesota State Bar Association has adopted an aspirational standard for the provision of pro bono legal services of fifty hours per year per individual attorney with at least twenty-five hours devoted to direct legal services to low-income persons. The American Bar Association has adopted a similar standard. It is acknowledged, however, that some public law offices will have greater constraints with respect to staff attorney time and office resources, and may choose not to include an explicit aspirational annual goal.

\*Rule 6.1 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.

### II. Pro Bono Services

#### A. Definitions:

Pro Bono 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 other disadvantaged persons;
  - b. 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 organization's purpose; 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” 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 contribute by participating in non-litigation activities or by providing litigation and non-litigation services described in A (2). In some circumstances, there may be statutory and/or regulatory restrictions that prohibit or impede government and public sector lawyers from performing certain pro bono services. Every effort should be made to encourage and support government attorneys who wish to provide pro bono services.

### **B: Types of Pro Bono Services**

The following are examples of pro bono activities which may be approved under this Policy. This list is not exhaustive. Attorneys who wish to provide other pro bono services must contact [*their supervisor; the office pro bono coordinator or committee; the division director etc.*] and follow the procedures in this Policy for prior approval.

1. Legal advice only clinics sponsored by a recognized attorney volunteer program
2. Volunteer lawyer panels
3. Bar Association Committee work
4. Providing representation to nonprofit corporations\*\*
5. Legal rights workshops
  - 6. Representation of individual clients\*\* through recognized attorney volunteer programs such as
    - Children’s Law Center Volunteer Attorney  
<http://www.clcmn.org/getinvolved/attorneys/>
    - Tubman Legal Services  
<http://www.tubman.org/get-involved/volunteerattorney.html>
    - Pro bono services for Minnesota American Bar Association  
<https://apps.americanbar.org/legalservices/probono/directory/minnesota.html>
    - [*individual public law offices may want to add programs or research and create their own list depending on location; office expertise; etc.*]
7. Serving as an officer, board member, or committee member in any organization whose purpose is to provide free or low-cost services to persons of limited means
8. Participating in mentoring activities with pre-law and law students and young lawyers, including Mock Trial or Moot Court programs
9. Participating in alternative dispute resolution processes, such as the Restorative Justice Project.

10. Providing research assistance or expert advice to providers of legal services to the low-income and disadvantaged.
11. Serving as an officer, board member, or committee member in any organization whose purpose is to serve minority members of the profession

**\*\***Representational activities must strictly adhere to limits/process identified in this Policy.

**Note:** some state and federal public law offices have statutory or code requirements against staff attorneys appearing as legal counsel in any action or litigation except in the discharge of his/her official duties.

**Comments:** The listed activities must not conflict with the public law office/ agency’s needs and are merely examples of pro bono work that *may* meet the interests of staff attorneys and which encompass the types of services that *may* be approved. This list is intentionally broader than the list of “generally approved” services as defined in IIC. For additional opportunities, public law offices and attorneys should consult the MSBA’s Directory of Pro Bono Opportunities for Lawyers. The most recent edition can be found at <https://www.projusticemn.org/volunteer/>. You may need to login to access some resources.

**C: Generally Approved Services**

The designation of an activity or program as “generally approved” indicates that attorneys employed by [the public law office/agency] have permission to engage in these services, or seek referrals from these programs, without having to seek further permission from the approving entity as described in section IV. For use in this policy, generally approved services may include:

1. Types of pro bono legal services that will not result in a conflict of interest with the duties of the attorney; and
2. Types of pro bono legal services within the experience level of the agency’s attorneys.
3. In the case of activities such as walk-in clinics, the general approval conferred by the approving entity [*supervisor, pro bono coordinator, committee, or other designated officer*] 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 approving entity permits the employee to seek cases from the programs; however, the attorney must adhere to the conflict rules described infra. The following is a complete list of generally approved services [*It is recommended that each public law office complete this list based on individual preferences and comfort, and to periodically update and evaluate to ensure it is meeting the policy purpose and goals*]:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. Bar Association Committee work
5. Mentoring or participation in activities for improving the law, the legal system, or the legal profession.

**Comment:** By pre-approving services in particular areas of practice, through specific legal services organizations, and through other pro bono opportunities, the agency sets a clear policy; eliminates bureaucratic barriers for attorneys wishing to participate in pro bono projects; eases administrative responsibilities on pro bono coordinators;

and refers attorneys to agencies that may be well suited to the attorneys' skills. Distinguishing between non-representational and representational services is of key importance. General approval should cover those services not subject to the uncertainties of trial, the potential for a malpractice lawsuit, the burden of costly litigation, and those tending to be time sensitive. For example, receiving training or referrals from legal service organizations or assisting the organization in a non-representational matter may be generally approved. *Minnesota Rule Professional Conduct 6.1(b)(3)*. Research, advice, or other non-representational services can also be performed with a general approval.

### **III. Approval**

#### **A. Generally Approved Services**

As defined in section II.C, generally approved services do not require the approval of the approving authority before an attorney may engage in the pro bono services.

Generally approved services may be periodically added or removed by [*public law office/agency*] as deemed necessary.

#### **B. Approval Required for All Services not on the Generally Approved List**

Participation in pro bono services, if not listed under generally approved services, must be approved in advance by [*insert the approving authority such as department head; general counsel; etc.*]. In representational services, the requesting attorney must also comply with section I. infra. When approving a request, the following criteria must be met:

1. The request must fall within the kinds of pro bono services permitted by this policy;
2. The matter must not appear likely to interfere with the performance of the attorney's official duties and responsibilities (e.g., the matter or activity must not appear likely to require protracted absences during office hours; or use of an unreasonable amount of office supplies or services); and
3. Participation must not result in a conflict of interest under Minnesota Rules of Professional Conduct 1.7, 1.9, 1.11, and [*public law office/agency*]'s internal conflict of interest policies and standards.

#### **C. Changes in Circumstances after Approval**

If, after commencing a pro bono service, the demands, time commitment, clients, or other obligations undergo a material change or become more complex than originally expected, the attorney must notify the approving authority of the changed circumstances. The approving authority may approve of the changed service after considering the factors listed in IV.B. If the changed circumstances fail to satisfy one or more of the factors in IV.B, withdrawal or termination shall be considered in accordance with Minnesota Rules of Professional Conduct 1.16.

**Comment:** If the public law office/agency develops the prior approved activity model, it is anticipated that prior approval will seldom be needed. In most instances, providing a substantial list of generally approved services will eliminate the need for case by case review except for unique requests by particular attorneys. Under IV.B, the agency must consider the amount of time and resources the pro bono service will require of the attorney. Minnesota's moonlighting provision, Minn. Stat. § 43A.38, subd. 4, prohibits public attorneys from using state resources for private purposes that are "not in the interest of the state." However, when adopting a pro bono services policy, the agency head should establish a policy explicitly supporting pro bono services and advocating that pro bono work is "in the interest of the state."

#### **D. 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 agency does

not provide malpractice coverage for pro bono work. Therefore, [*public law office/agency*] strongly encourages attorneys to only volunteer with a legal services provider that carries malpractice insurance.

**Comment:** Many of the referral programs provide malpractice coverage for volunteer lawyers. It is recommended that any generally approved services be screened to determine if the organization provides malpractice coverage. Public law offices may choose to adopt stricter language and require proof of such coverage before pro bono services are approved.

2. Accepting a Pro Bono Case
  - a. Each agency will establish its own conflicts checking procedure (See III.C.3).
  - b. The client will be notified that representation is subject to the conflicts check.
  - c. The attorney will follow established agency procedures for opening a file and communicating with the client.
  - d. The client should be informed how, when, and where to contact the attorney by telephone, email, or letter.

**Comment:** Many referral programs and/or organizations have form retainer letters, suggested procedures for opening and closing files, and may provide other case management assistance.

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 agency. MRPC, Rule 1.10, 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 MPRC, Rule 1.11 and the adjacent comment 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 services is the perceived or actual potential for a conflict of interest with the attorney's official duties and the interests of the agency 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 public law office/agency should identify situations which are clear conflicts for that office. However, it is encouraged that conflicts of interests be defined narrowly with case by case reviews conducted to determine whether or not an actual conflict of interest exists. 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 service is personally responsible for his or her pro bono files. In accordance with this policy and Section IV infra, 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 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. (See, III A & B above).

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

*[Public law office/agency]* 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 *[public law office/ agency]* or in their official capacity. Throughout the representation an attorney must make 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 her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of, *[public law office/agency]*.

**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 services. However, agencies are encouraged to be as flexible as possible, given the circumstances of the office. Generally approved services (identified agencies) should provide attorneys with meeting spaces and phone lines or other forms of support that the agency should not be providing. 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.

### IV. Use of Agency Resources

#### A. Hours of Work

*[Public law office/agency]* attorneys are encouraged to seek pro bono opportunities that can be accomplished outside their scheduled working hours. However, pro bono activities may sometimes require the performance of work during regular work hours. In this circumstance, the attorney may request that the approving authority authorize a flexible work schedule to accommodate the time needed for pro bono work, or permit leave without pay or use of vacation time in accordance with *[public law office/agency]* policies. If not interfering with the attorney's official duties, the approving authority may approve a flex schedule during the course of the pro bono service which allows for the attorney to perform official duties at times not conflicting with the pro bono services in accordance with *[public law office/agency]* policies.

**Optional Language:** When considering employee requests for leave to engage in pro bono work, 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 activity may

not influence the decision to grant an employee's request to engage in pro bono activities during normal hours of work.

**Comment:** One of the significant impediments to participation by government attorneys in pro bono services is the cost of participation and the necessary need to avoid expending public funds. The provisions in this section, therefore, recognize the concern that agencies not spend taxpayer dollars for matters outside the public service purposes and obligations of the agency. If a volunteer activity bears a reasonable relationship to the attorney's position or duties and responsibilities or will substantially contribute to advancing the attorney's skills needed in performing the attorney's job, 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.

## **B. Telephone Calls**

Attorney may not receive telephone calls from clients at the agency number if the call will or may go through a receptionist or switchboard which would identify the agency. Attorney should also not use [*public law office/agency*] general telephone number for pro bono activities. Local phone calls may be received and made either on the attorney's personal (direct) work line (as long as the attorney does not identify the agency), attorney's personal cell or home phone, or through the referring program or organization. Long distance calls may not be charged to [*public law office/agency*].

## **C. Offices/Library**

[*Public law office/agency*] offices may be used for pro bono projects where such work can be done in a manner that does not interfere with the performance of [*public law office/agency*] 's or volunteer attorney's regular functions or duties and responsibilities. [*Public law office/agency*] offices may not be used for meetings with clients or opposing counsel in a pro bono case if to do so would conflict with an internal policy or create an appearance that the attorney is acting as representative of, or on behalf of, [*public law office/agency*].

## **D. Office Supplies and Equipment**

Attorneys may not use office letterhead, office business cards, or otherwise identify him or herself as a government attorney in any communication, correspondence or pleading connected with pro bono activities. The address of [*public law office/agency*] may be used, with the permission of the approving authority (or coordinator or supervisor) if the address does not include the name or nature of the office. Office services and equipment such as computers (for word processing and email, copiers and fax machines) may be used in connection with pro bono services in a de minimus fashion.

## **E. Clerical Support**

**Option 1:** Typing, copying, collating, and other clerical support is permitted on a limited basis by clerical staff, with the approval of the clerical staff supervisor, to the extent allowable.

**Option 2:** Employees who are attorneys engaged in the provision of pro bono services may not ask other employees to perform typing, copying, collating and other support staff functions in connection with pro bono services.

**Comment:** Coordinators or committees are encouraged to consider the availability of clerical resources and/or supplies when generally approving a legal services program or activity. Many offer these benefits. Public law offices/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, staples, pens, postage, photocopying, fax, etc.) to support the provision of pro bono services. The above provision as written

allows the use of a limited amount of office resources/supplies, where the cost is minimal, and where it is not cost effective to try to document, calculate and attempt to recover the expense. Where costs are significant and identifiable, and the referring agency does not provide the needed support, the agency should accommodate the provision of pro bono services by allowing attorneys to use office equipment and supplies and then requiring prompt reimbursement of the expense to the agency.

#### **F. Use of Email, Electronic Resources and Databases**

Reasonable use of external email is permitted as long as employees indicate that the email is sent in their personal, rather than official capacity. The use of commercial and electronic databases, and internet/on-line resources, may be used when to use them would result in minimal or no additional cost to *[public law office/agency]*.

### **V. Optional Policy Language to Promote and Recognize Pro Bono Services Performed**

#### **A. Recording and Recognition**

##### **1. Recording of Pro Bono Services Rendered**

After completion or termination of the pro bono service/project, or at the end of each calendar year, the attorney shall submit a time statement to *[approving authority; or supervisor, agency pro bono coordinator, etc.]* providing the name of the attorney, the commencement and completion dates, and total number of hours spent performing the pro bono service. The statement is not required to be detailed.

**Comment:** Knowing the total hours spent by attorneys will greatly assist the public law office/agency in evaluating the effectiveness of the policy and to adjust it to suit the needs of the office and the volunteer attorneys. For example, certain services may require only a day long commitment while others will be substantially longer. If many employees seem to be seeking out single day services, generally approving those services may enable attorneys to more easily participate on their own schedules. Recording will also enable service organizations to work with government agencies to better facilitate connecting attorneys with opportunities.

##### **2. Recognition**

*[Public law office/agency]* will recognize attorneys completing the recommended 50 hours a year of pro bono service.

**Comment:** Recognition not only shows the attorney that pro bono work is important to the public law office/agency, but it also encourages an ethic of volunteerism in the agency that may encourage other attorneys to participate.