

PRO BONO ACTIVITIES

Summary of the Ethics Rules

I. INTRODUCTION

This guidance lays out the requirements for employees of the U.S. Department of Labor (hereinafter Department or DOL), regardless of their agency or division within the Department, who provide or seek to provide pro bono legal services. For questions about this guidance or its application, please contact the Ethics Office in the Office of Legal Counsel (OLC), Office of the Solicitor.

II. DEFINITION OF 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:

- 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 secure or protect civil rights, civil liberties, or public rights; or
- Activities for improving the law, the legal system, or the legal profession.

III. USE OF OFFICIAL POSITION

Any pro bono legal services you provide are performed in your personal capacity. You may not indicate or represent in any way that you are acting on behalf of the Department, or in your official capacity, when you are providing pro bono legal services.

You may not use office letterhead or fax cover pages, Department or office business cards (whether or not purchased with appropriated funds), or otherwise identify yourself as a Department employee in any communication, correspondence, or pleading connected with pro bono legal activities. The incidental identification of your 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.

You are responsible for explaining to the client, any opposing parties, or others involved in a pro bono case that you are acting in your individual capacity as a volunteer, and are not acting as a representative of, or on behalf of, the Department. You are strongly encouraged to enter into an engagement agreement with your client in a pro bono matter stating that you are acting in your individual capacity and not on behalf of the Department. The Sample Retainer Agreement for Attorney Services (Appendix A) includes suggested language.

IV. ETHICS CONSIDERATIONS AND LIMITATIONS

Prior Consultation Requirement

Anyone seeking to engage in pro bono legal work must consult with the OLC Ethics Office prior to engaging in such legal work. The purpose of this consultation is to ensure that the services contemplated comply with the federal ethics rules and Departmental Policy, and to assist you in complying with both. Before taking on a pro bono matter, DOL employees should email the Ethics Office a completed Prior Consultation Form (Appendix A). Ethics staff will respond within a timely fashion, usually within one week, with approval or follow-up questions.

Unlike some other agencies, the Department does not require or provide an ethics “clearance” for attorneys engaged in pro bono activities. However, even after consultation with the Ethics Office, DOL employees remain responsible for ensuring that they are not in violation of the Policy and restrictions on federal employee activities.

Specific Examples

DOL employees who have already consulted with the Ethics Office fill out a second Prior Consultation form and consult with the Ethics Office again if the nature of the matter changes.

DOL employees who represent an organization as the organization’s general counsel should consult with the Ethics Office each time the employee undertakes a new project for that organization.

Ethics Considerations

A number of legal constraints may apply to pro bono activities. These legal constraints include:

- 18 U.S.C. § 205 (Federal employees can be penalized under 18 U.S.C. § 216 for 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 and substantial interest).
 - This prevents employees from working on immigration cases, social security cases, etc. where the federal government is involved.
- Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635; 39 C.F.R. § 3000.735-101), 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);
 - An OSHA investigator involved in an ongoing case against a restaurant takes on a pro bono case suing the same restaurant
 - Section 2635.702 (prohibiting use of Government title or position in any way that suggests that the Government is sanctioning personal activities);
 - Writing a letter to opposing counsel on DOL Letterhead

- Section 2635.704 (prohibiting the use of real or personal Government property for other than authorized purposes);
 - Printing out 1,000 pages of evidentiary materials on the office printer
- 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).
 - An MSHA employee involved in any case involving a mine.

If you are handling cases under special appointment by the Department of Justice, you may also be subject to Department of Justice ethics rules.

If a pro bono legal activity at any time begins to create a conflict of interest, you must cease providing such legal services.

Malpractice Coverage.

Before agreeing to meet with or accept a pro bono legal client or matter, you should determine whether the referring pro bono program or organization has a malpractice insurance policy that covers you. The Department does not provide malpractice insurance to its employees when they are undertaking pro bono activities. NOTE: Typically, volunteer programs organized by the local bar and more-established referral programs do provide malpractice coverage. All DOJ-referred pro bono projects are with organizations that provide malpractice insurance.

V. USE OF DEPARTMENT RESOURCES

General Provision

As a general rule, you, as a Federal employee, may not use Government property for other than official purposes. However, consistent with DLMS 9 Ch. 900, it is permissible for you to use office equipment (including office computers, printers, and copiers, and the use of fax machines and telephones within local area codes) used in moderation on a limited basis during non-work hours in connection with pro bono activities. If you use your DOL e-mail address in connection with pro bono activities, you must ensure that any signature block stating your title and affiliation with the Department is removed. Incidental identification of an employee's official position or office, such as providing the employee's office phone number or using the Department's mailing address, when necessary, is allowed.

You may not meet with clients or opposing parties in the Department's buildings or on the grounds of the Department.¹

¹ We encourage you to meet with your clients in public spaces where confidentiality between you and the client can be maintained, such as DC Public Libraries. In choosing a location, we recommend you consider proximity to your work, public transportation, and ease of access for your client.

Because partisan political activity is subject to more restrictive rules than other non-official activity, you cannot use government property to conduct partisan political activity.

Use of Electronic Databases

Use of commercial electronic databases, such as Westlaw, is permissible to the extent there is no additional cost to the government and authorized by your office. For example, you may use Westlaw for legal research related to your pro bono activities for up to 30 hours per month. If your use of Westlaw or other commercial-electronic databases will exceed 30 hours per month, you must seek supervisory approval beforehand. Use of commercial electronic databases when there is an extra cost to the government is not authorized. These restrictions are intended to ensure compliance with the legal requirement that Government resources can be used only if that use involves negligible additional expense to the government.

Use of Clerical Support

Department support staff may not be assigned or otherwise be required to perform unofficial duties, such as pro bono legal work. However, a member of the Department's support staff may volunteer their services to support pro bono legal activities on their own time. You must avoid prohibited coercive conduct, such as pressuring a subordinate employee to volunteer their time to support the pro bono legal activities.

VI. UNAUTHORIZED PRACTICE OF LAW

Local Bar and Licensing Rules

You should be aware that local bar and professional licensing rules, including those regarding the unauthorized practice of law, apply to pro bono legal services. Employees are personally responsible for ensuring compliance with these rules and should consult local rules and restrictions. NOTE: DOL assumes no responsibility for researching or providing advice regarding local bar rules.

To do pro bono work in any state, you must be a member of that state's bar unless an exception is provided in the bar rules. As of **June 2022**, we are aware of five jurisdictions that have such exceptions: the District of Columbia, Maryland, Illinois, Colorado, and Texas.

District of Columbia (D.C.)

The D.C. local rule (D.C. App. Rule 49(c)(9)) concerning the unauthorized practice of law permits attorneys working for the U.S. Government who are not members of the D.C. Bar to handle pro bono cases in the District of Columbia so long as several requirements are met. Under the rule, an attorney must: 1) be authorized to practice law and in good standing in another state or territory; 2) provide pro bono legal services in affiliation with a non-profit organization that provides legal services to individuals with limited means at no charge or for a nominal processing fee; 3) be supervised by a member of the D.C. Bar on each pro bono matter; and 4) provide notice on all business documents relating to the pro bono matter that the attorney is not a member of the DC Bar and that the attorney's work on the matter is supervised by a D.C. Bar Member (e.g. "not admitted to the D.C. Bar; practice supervised by D.C. Bar Members" or

“Admitted only in Maryland; practice supervised by D.C. Bar Members.”) For matters involving appearance in the District of Columbia Court of Appeals or the Superior Court of the District of Columbia, the attorney must identify the supervising DC Bar member on their first pleading (including their name, address, e-mail address, telephone number, and D.C. Bar number) but should note that this DC Bar member is not entering an appearance but is merely fulfilling the role of supervisor for Rule 49.

Maryland

Effective March 2019, Maryland Rule 19-218 permits attorneys who are not members of the Maryland Bar to handle pro bono cases in Maryland as long as several requirements are met. Attorneys must file with the Clerk of the Court of Appeals a written request accompanied by 1) evidence of graduation from a qualified law school; 2) a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that state, and 3) a statement signed by the Executive Director of the legal services program that includes a certification that the attorney is currently employed by or associated with the program; a statement as to whether the attorney is receiving any compensation other than reimbursement of reasonable and necessary expenses; and an agreement that, within ten days after cessation of the attorney’s employment or association, the Executive Director will file the Notice required by section (e) of this Rule. Thereafter, the Clerk issues a certificate certifying that the attorney is authorized to practice under the Rule. [See Maryland Rule 19-218](#).

Illinois

Under Rule 756(k) of the Illinois Supreme Court Rules, attorneys licensed in another state may conduct pro bono work in Illinois if they obtain annual authorization from the state’s Attorney Registration and Disciplinary Commission. [See Illinois Supreme Court Pro Bono Rules](#).

Colorado

Under Rule 204.6 of the Colorado Court Rules, attorneys licensed in another state can obtain certification from the Colorado Supreme Court to conduct pro bono work in Colorado. [See Colorado Rules of Civil Procedure](#).

Texas

The New Opportunities Volunteer Attorney (NOVA) Pro Bono Program allows attorneys who are licensed in other states to practice pro bono work with an approved organization. Attorneys must be in good standing and have completed at least three hours of CLE each year. Approved organizations include the Dallas Volunteer Attorney Program and Legal Aid of Northwest Texas. See [NOVA Pro Bono Program](#).

Arizona

The Arizona Supreme Court can certify attorneys licensed in another jurisdiction for at least five years to practice law in Arizona to provide pro bono legal services under the auspices of a legal services organization. [See Arizona Supreme Court Rule 38](#).

New Jersey

Under Rule 1:21-3 of the Rules Governing the Courts of the State of New Jersey, attorneys barred in another state can receive permission to practice under supervision of an attorney barred in New Jersey when the out-of-state attorney is working with certified legal services or public interest organizations. [See Rules Governing the Courts of the State of New Jersey.](#)

VII. ADDITIONAL CONSIDERATIONS

Retainer Agreements

It is strongly recommended that you and your client in a pro bono case both sign a retainer letter that, among other things, makes it explicit that you are acting in your own individual capacity and not on behalf of the Department or the Federal government. NOTE: Legal services organizations you work with, not the Department, should be your primary source for templates and information regarding retainer agreements. In Appendix B you will find a U.S. Department of Justice-approved Sample Retainer Agreement for Attorney Services that may be used in the absence of such agreements.

Disclaimer

The Pro Bono guidance is intended only to encourage pro bono activities by attorneys and legal support staff, 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 offices, or any person. Neither the United States nor the Department of Labor will be responsible in any manner or to any extent for any negligence or otherwise tortious acts or omissions on the part of any 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 Federal employment whenever the employee participates, supports, or joins any pro bono activity.

VIII. ETHICS CONTACTS

If you have questions please contact:

- Vanessa Myers, Associate Solicitor for the Office of Legal Counsel, at Myers.Vanessa.J@dol.gov or (202) 693-5702
- Andrew Welz, Acting Counsel for Ethics, at Welz.Andrew.J@dol.gov or (202) 693-4421
- Torri Azbite, Ethics Program Manager, at azbite.torri.k@dol.gov or (202) 528-7400
- Audrey Koontz, Pro-Bono Point of Contact, at koontz.audrey.j@dol.gov or (202) 693-8072

APPENDIX A
Sample DOL Retainer Agreement for Attorney Services

1. By this agreement, _____ ("Client") retains _____ ("Pro Bono Counsel") to advise, represent, appear and act for Client concerning the following matter:

The Pro Bono Counsel is acting in his/her individual capacity, and is not acting on behalf of the **Department of Labor**.
2. This case was referred to Pro Bono Counsel through _____. The client understands that it is Pro Bono Counsel and not the **Department of Labor** that is representing him/her in this matter. The Client certifies that no other attorney is representing him/her in this matter and understands that the Pro Bono Counsel cannot and does not promise a successful outcome.
3. The Pro Bono Counsel agrees to undertake this representation on a pro bono basis, which means that the Pro Bono Counsel will not charge the Client for attorney or paralegal hours expended on this matter. Additionally, Pro Bono Counsel will not seek attorney's fees in connection with this matter.
4. The Client agrees to cooperate fully with the Pro Bono Counsel and will promptly notify the Pro Bono Counsel of any of the following:
 - (A) any changes in address, telephone number, or changes in the client's situation which may impact Attorney's representation; or
 - (B) any plans to leave town which might interfere with court dates or appointments.
5. The Client agrees to assist the Pro Bono Counsel with this matter by:
 - (A) providing complete information, including information that will assist the Pro Bono Counsel to investigate this matter;
 - (B) maintaining regular contact with Pro Bono Counsel as is necessary for the conduct of his/her case;
 - (C) attending and being on time for all appointments and court dates;
 - (D) promptly notifying Pro Bono Counsel when other people contact Client about the case; and
 - (E) helping to locate persons who may provide information about this case.
6. Pro Bono Counsel agrees to:
 - (A) keep the Client informed about the status of his/her case;
 - (B) keep all sensitive information provided by the client confidential unless authorized by the Client to disclose it (except that information may be shared with other attorneys who are working on the case or assisting with representation);
 - (C) consult with the Client before making any significant decisions about the case; and
 - (D) not settle the case without Client's consent.

7. The Client agrees to assume responsibility for all expenses, which may include, but are not limited to, agency or court filing fees, costs of service of process and certified mail and any other administrative costs or litigation expenses. Attorney will discuss any significant costs with Client before incurring them. Client understands that Pro Bono Counsel does not charge a fee for his/her work on the case.
8. When Pro Bono Counsel closes Client's file, all original documents that were furnished by Client shall be returned. Pro Bono Counsel will maintain the file for 5 years from the date of case closing, after which time it will be destroyed.
9. By agreeing to represent Client in the matter set forth above, Pro Bono Counsel does not agree to represent Client in any appeal, to collect any money judgment, or to enforce any order obtained in this matter. The parties may agree at a later time to extend representation to another matter. Any such extension will be the subject of a separate written agreement between the parties.
10. Client understands that Client may end this agreement at any time for any reason and agrees to notify Pro Bono Counsel in writing that he/she wishes to end this Agreement.
11. Client understands that Pro Bono Counsel reserves the right to withdraw from representing Client in certain limited circumstances. These circumstances include, but are not limited to, the following:
 - (A) where insufficient legal grounds exist to continue a court or administrative action or appeal;
 - (B) where Client fails to cooperate with the reasonable requests of Pro Bono Counsel;
 - (C) where a conflict of interest is discovered or arises which makes it inappropriate for Pro Bono Counsel to continue representation; and
 - (D) where client fails to meet the terms of this agreement.
12. Client has read this agreement in its entirety, or has had it read and explained to him/her in its entirety, before signing it. Client understands the terms of this agreement and agrees that it shall apply throughout the course of Pro Bono Counsel's representation of him/her.
13. This writing represents the entire agreement between the parties and cannot be amended or modified except in writing signed by the parties.

Client

Date

Pro Bono Counsel

Date

Pro Bono Co-Counsel

Date