

The policy below is intended for use in government offices.

GOVERNMENT & PUBLIC LAWYERS' PRO BONO POLICY

If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.

Judge Learned Hand

VISION STATEMENT/INTRODUCTION

The [Name of government office] encourages all attorneys to participate in voluntary pro bono legal service to persons who lack the means to gain access to justice. This policy implements that vision.

Rule 6.1 of the Idaho Rules of Professional Conduct states: "Every lawyer has a professional responsibility to provide legal service to those unable to pay. A lawyer should render at least (50) hours of *pro bono publico* service per year." Rule 6.1 further states that every lawyer "should voluntarily contribute financial support to organizations that provide legal services to persons of limited means."

The [Name of government office] has determined that the provision of pro bono legal services, including a nominal use of [Name of government office's] resources as outlined below, is consistent with and furthers the [Name of government office's] interest by providing access to justice for the needy, broadening the experience of our attorneys, and enabling them to fulfill the professional responsibility assumed by their oath and licensure by the Idaho State Bar.

I. DEFINITION OF PRO BONO LEGAL SERVICES

Pro bono legal work is broadly defined by IRPC Rule 6.1 to include provision of legal services to:

- persons of limited means or other disadvantaged persons;
- charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purposes;
- individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or
- activities seeking to improve the law, the legal system or the legal profession.

Examples of pro bono representation that fulfill the pro bono responsibility of Rule 6.1 include, but are not limited to:

- Representation of persons of limited means
- Representation of nonprofit entities enumerated in Rule 6.1
- Accepting referrals, in family law cases, in domestic violence cases requiring a protective order, or in cases seeking legal status for immigrant women and children who are victims of domestic violence
- Representing clients in landlord/tenant disputes, public benefits and veterans' benefits cases, consumer protection and bankruptcy
- Drafting wills, handling simple probates, drafting guardianships and conservatorships, or otherwise serving low-income persons in those matters
- Assisting a non-profit organization in the process of incorporation and filing for 501(c)(3) status

- Working with the Idaho Volunteer Lawyers Program and/or Idaho Legal Aid Services to otherwise provide legal services and assistance to low-income persons.

Examples of pro bono service that do not involve creating an attorney-client relationship, but that are within the scope of Rule 6.1, include, but are not limited to:

- Providing advice at pro se workshops or clinics
- staffing sessions for pre-screened pro se litigants, helping them navigate through the interactive court-assistance forms
- Serving on the board of a legal services organization
- Staffing “street law” clinics on Law Day and other occasions
- Making law-in-the-classroom or other public legal education presentations
- Presenting at CLE’s on indigent law and pro bono issues, and mentoring attorneys who take cases in those areas
- Mediating Small Claims Court cases or neighborhood disputes
- Participating on state or district bar committees and projects related to the delivery of legal services and pro bono legal services.

[Be advised that the subcommittee that drafted this section has included the final option -- state and district bar committee work -- because we appreciate how much those organizations need the help and because they are recognized in Rule 6.1. However, we are aware of, and sympathize with, the significant objections that have been made to “counting” such work as pro bono legal service.]

II. APPLYING FOR PERMISSION TO DO PRO BONO LEGAL WORK

Approval Procedures [Large Organizations]

The [Name of government office] create a Pro Bono Committee and name a senior deputy to supervise the [Name of government office] pro bono program. The Pro Bono Committee shall encourage attorney participation in pro bono work, rule on potential conflicts of interest, and administer the day-to-day details of the program as outlined below.

General Standards for Approval of Involvement in Pro Bono Legal Services

In general, approval of an attorney’s request to engage in pro bono legal work shall be granted if the work would not:

- Violate any federal or state law or bar rule
- Interfere with the proper and effective performance of the attorney’s official duties, including the time and availability requirements of his or her position
- Create or appear to create a conflict of interest

A supervisor’s personal views regarding the substance of the pro bono activity should not influence the decision to grant an attorney’s request to engage in pro bono legal or volunteer activities during hours of work. Nonetheless, the supervisor must be able to judge whether such accommodations would interfere with the operation of [Name of government office].

Approval Procedures

Participation in pro bono work or volunteer service requires prior approval unless the proposed activity is non-representational, does not create an attorney-client relationship or that office policy has made clear does not require additional permission. Representational activities always require case-specific approval to determine that there is no conflict of interest and that the work will not interfere with the attorney's responsibilities.

Following approval of pro bono representation, a retainer letter, specifically confirming the scope of the representation and outlining the client's obligations and responsibilities, must be sent to the client. The letter must make it clear that the attorney is not acting on behalf of [Name of government office] or in an official capacity on behalf of [Name of government office].

Once the attorney has completed representation, a brief letter must be sent to the referring organization stating that the case has been completed and what was accomplished.

Conflicts of Interest

Attorneys' pro bono legal or volunteer services cannot create or appear to create a conflict of interest with their work for the [Name of government office]. A conflict of interest generally exists where services would:

- require the recusal of the attorney from the attorney's official duties
- create an appearance that the attorney's duties were performed in a biased or less than impartial manner
- create a public perception of [Name of government office] sanction or endorsement in high profile or controversial matters involving [Name of government office].

Attorneys may not engage in criminal defense work. If representation of a client involves potential criminal issues, or issues related to criminal issues, the supervisor will determine whether the representation can be undertaken.

Other Issues

Attorneys must have malpractice insurance in order to perform representational work. The [Name of government office] does not provide such insurance. The Idaho Volunteer Lawyers Program (IVLP) and Idaho Legal Aid Services (ILAS) provide malpractice coverage for work done through their programs and IVLP provides malpractice coverage for cases it refers.

Cases handled through IVLP and ILAS also provide automatic waiver of court fees. An attorney may not accept a case that requires creation of a trust account.

III. USE OF OFFICIAL POSITION OR PUBLIC OFFICE

Attorneys who provide pro bono legal services may not indicate or represent in any way that they are acting on behalf of [Name of government office] or in their official capacity on behalf of [Name of government office]. The incidental identification of the attorney's position or office -- for example, when an office phone number, street address, or email address is given for contact purposes -- is not prohibited. Attorneys may list or provide their office, street or mailing address, telephone number, and email address on official documents and correspondence so that courts and other persons may reach

them during business hours, but cannot use their official title or the name of the office on any official documents or correspondence.

The attorney may not use [Name of government office] letterhead, business cards or FX cover-sheets, or otherwise identify himself or herself as a [Name of government office] employee in any communication, correspondence or pleading connected with pro bono legal activities. When using email, the attorney must state that the e-mail is being sent in his or her personal capacity and not in the official capacity of a [Name of government office] employee.

The attorney is responsible for ensuring that there is no misunderstanding by the client, any opposing parties, or others involved in the pro bono case, that the attorney is acting in an individual capacity as a volunteer and is not acting as a representative of, or on behalf of, the [Name of government office].

IV. USE OF [Name of government office] RESOURCES

The Idaho Supreme Court has declared that service by individual attorneys in a pro bono capacity is a professional duty of Bar members and serves a public purpose and need. Thus, the provision of such services by government attorneys, although incidentally benefitting the individual client, primarily serves an overall public purpose.

A. Hours of Work

Attorneys are encouraged to seek pro bono legal opportunities that can be done outside their scheduled work hours. However, pro bono legal work may sometimes occur during work hours. Supervisors are urged to be flexible and to accommodate where feasible the efforts of attorneys to do pro bono work.

Full-time attorneys must continue to account for at least 40 hours of professional services each week (excluding leave that they are otherwise entitled to use), plus whatever additional time is needed to provide the service the [Name of government office] expects. Part-time attorneys must account for the number of hours provided in their part-time agreement. Pro Bono representation is undertaken in addition to, not in lieu of, these core responsibilities.

Attorneys providing small amounts of pro bono time during the work day should be allowed to take advantage of flexible work schedule arrangements rather than being required to take leave. Significant blocks of time spent on a pro bono matter -- i.e., amounts in excess of one hour -- should be recorded as leave. Leave can be of any type including accumulated comp time, vacation time, or work without pay.

B. Use of Office Equipment

As a general rule, employees may use government property only for official business. This Policy authorizes the following use of government equipment and facilities:

- personal uses that involve only negligible expense to [Name of government office] (such as electricity, ink, small amounts of paper, ordinary wear and tear) and that does not interfere with the conduct of official business
- personal telephone and FAX use that does not significantly impact the [Name of government office] phone cost
- [If an agency has a cost-effective way of tracking telephone/FAX/copier usage, it may wish to insert alternative wording. The assumption here is that such tracking does not exist or that the transaction costs in tracking it would exceed the cost of usage.]
- Use of electronic research and databases is authorized when there is no extra cost. Use of

other databases, such as Lexis/Nexus, which do cause additional cost is not authorized.

An attorney providing representational services shall not meet with a client on [Name of government office] premises except in situations where exigent circumstances provide no practical alternative.

C. Professional Support Staff

Pro bono legal work may not be required of support staff. On the other hand, the [Name of government office] is aware of the commitment on the part of the National Federation of Paralegal Associations and other professional groups to support pro bono service on the part of paralegals and legal secretaries. Professional support staff who volunteer to assist attorneys involved in pro bono work may provide limited support services during the work day so long as the work does not interfere with performance of their primary responsibility to official duties.

[NOTE: Attorneys who use office resources in fulfilling their pro bono service should be aware of the implications of the Idaho Public Records Law. That law honors the attorney-client privilege, but other aspects of attorney work, such as attorney time sheets and other documents, may be subject to public review.]