

WASHINGTON STATE
B A R A S S O C I A T I O N

Cover Sheet for Model Pro Bono Policies

August 2, 2019

The Model Pro Bono Policies were approved by the Board of Governors on July 26, 2019.

WSBA will make them available statewide.

Kevin Plachy 

Interim Director of Advancement



WASHINGTON STATE BAR ASSOCIATION

MEMO

To: Board of Governors

From: Paul Okner, Co-Chair, Pro Bono and Public Service Committee

Date: July 10, 2019

Re: *Model Pro Bono Policies for Corporate In-House Legal Departments, Law Firms, and Government Agencies*

ACTION: Adopt the Pro Bono and Public Service Committee’s *Model Pro Bono Policies for Corporate In-House Legal Departments, Law Firms, and Government Agencies*.

The Pro Bono and Public Service Committee’s request for adoption of the *Model Pro Bono Policies for Corporate In-House Legal Departments, Law Firms, and Government Agencies (Model Policies)* will be on the Board of Governor’s (“Board”) agenda and in the meeting materials for the July meeting.

Legal Need and Background

The results from the 2015 Civil Legal Needs Study¹ were a harsh reminder that justice remains inaccessible to many low-income Washingtonians. In 2014, over 70% of low-income households faced at least one civil legal issue. Of those households about 76% of low-income individuals with civil legal issues were unable to receive legal assistance. It is critical for the legal profession to help address this disparity.

The WSBA Pro Bono and Public Service Committee² (“Committee”) works to enhance a culture of legal service by promoting opportunities and best practices that encourage WSBA members to engage in pro bono and public service, with a particular focus on services to people with low or moderate income.

In part, this mission is guided by the principles outlined in the Preamble to the Rules of Professional Conduct (RPCs): “A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, *all lawyers* should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.”³ Further, in accordance with RPC 6.1, attorneys in Washington have “a professional responsibility to assist in the provision of legal services to those unable to pay...and should aspire to render at least 30 hours of pro bono publico service per year.”⁴ Pursuant to these values, the Pro Bono and Public Service Committee convened a Policy Workgroup (“Workgroup”) to develop model pro bono policies as a template for entities to develop an internal culture of pro bono and public service.

¹ https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf

² <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Pro-Bono-and-Public-Service-Committee>

³ https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpcpreamble

⁴ https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=RPC&ruleid=garpc6.1

The underlying intent behind this project was to promote widespread adoption of policies to enhance the legal profession. Policies serve as a reminder to attorneys of their professional responsibility to provide pro bono work, offer clarity on what is expected and permitted of employees within an organization, and can demonstrate an institutional commitment to pro bono service.

These Model Policies further the purposes of General Rule 12.2(a) to promote an effective legal system accessible to all and to provide services to [WSBA]'s members and the public.

In 2016, the Workgroup members convened to collect and evaluate pro bono policies from the ABA, as well as law firms, government agencies, and legal departments nationwide. After evaluating model policies across the country and existing policies in Washington, the Workgroup began the drafting process. These initial drafts were shared, vetted, and revised by Workgroup members from 2018 and into 2019. Based upon feedback from the WSBA membership, the Workgroup ultimately developed three separate policies in recognition of the nuances of various organizations: law firms, government agencies, and in-house legal departments.

These policies were also distributed to various stakeholders (both individuals and groups) for input. For example, the law firm model policies were shared with attorneys at small, medium, and large size firms. They were also distributed through various list serve channels, such as the WSBA Solo and Small Firm Section list serve. The government policy was vetted by the Government Lawyer's Bar Association and shared with individual attorneys from agencies such as the Attorney General's Office. The corporate policy was reviewed by colleagues at in-house legal departments and circulated to the WSBA Corporate Counsel Section's list serve.

The Workgroup received substantial and meaningful feedback in response to these outreach efforts. For example, members of the Government Lawyers' Bar Association made important comments regarding early drafts' unrealistic expectations about hourly commitments and use of public funds. These comments were considered and incorporated into subsequent versions of the government agency policy. Similarly, representatives from the Association of Corporate Counsel provided revisions to the in-house policy that resulted in a more realistic stance on malpractice insurance and company oversight of pro bono activity.

The Workgroup presented the final version of these *Model Policies* and the Committee approved these by a unanimous vote with the understanding that these policies would then be reviewed by WSBA's Office of General Counsel before final presentation before the Board at their July meeting.

If the Board does vote in favor of adopting these *Model Policies*, the Pro Bono and Public Service Committee is committed to promulgating these policies across Washington through direct contact, publishing the policies in WSBA news and media sources, and by posting the policy templates on the WSBA website, in furtherance of the Committee's mission.

These proposed *Model Policies* are the result of a multi-year process that included extensive research, drafting, re-drafting, and stakeholder input. The Committee looks forward to presenting these policies at the July 2019 Board meeting.

Law Firm Pro Bono Policy

The Pro Bono and Public Service Committee of the Washington State Bar Association, working under the belief that every law firm can benefit from a clear policy encouraging pro bono work by its employees, has created the following template policy for law firms in Washington state. This document is intended to be a starting point for the creation and adoption of such a policy, with the expectation that each law firm will customize the template to best reflect its strengths and goals. All law firms are welcome to reach out to the Pro Bono and Public Service Committee for assistance with finalizing and adopting a policy, or with identifying opportunities for pro bono work for the organization's attorneys.

[Law Firm]
Pro Bono Policy
Adopted _____, _____.

Over two million Washington households face significant legal challenges in a given year, and many of them are unable to access or afford an attorney's assistance in navigating these problems. This disconnect is amplified for low-income families, who, according to a recent Washington State Civil Legal Needs Study, receive beneficial legal assistance in just 24% of the instances in which they may require it. Foreclosure, residential eviction, job loss, bankruptcy, divorce, and health care issues are just a few of the challenges affecting low and moderate-income residents of Washington, and an inability to pay for qualified legal help contributes to a troubling deprivation of justice for this significant portion of our society. Although the Washington legal community has a long tradition of providing pro bono services, more must be done to address the unmet needs.

[Firm Name] (the "Firm") believes that pro bono service is an essential component of every attorney's professional career, and that the Firm has an opportunity and an obligation to assist those with the greatest need. The Firm acknowledges that individual lawyers meet their professional obligations to perform public interest legal service in a variety of ways, and does not explicitly require lawyers to participate in pro bono projects. Nonetheless, the Firm believes that participation in pro bono activities is beneficial for the public interest, for the Firm, and for individuals employed by the Firm.

Pro Bono Aspirations

According to Washington's Rule of Professional Conduct (RPC) 6.1, "Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay... and should aspire to render at least 30 hours of pro bono publico service per year." Washington State, the American Bar Association Model Rules of Professional Conduct, and many other states have gone even further, adopting a 50-hour goal of pro bono work per year. Lawyers who report a minimum of 50 hours or more of pro bono work to the Washington State Bar Association (WSBA) will receive commendation for such service. The Firm encourages all lawyers to dedicate a minimum of **[30/50/___]** hours per year to pro bono work.

Definition of Pro Bono

The Firm adopts the description for pro bono work outlined in Washington's Rule of Professional Conduct 6.1, which states that all attorneys should:

- a) provide legal services without fee or expectation of fee to:
 - i) persons of limited means or
 - ii) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- b) provide pro bono publico service through:
 - i) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, or charitable, religious, civil, 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;
- ii) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - iii) participation in activities for improving the law, the legal system or the legal profession.

Pro Bono Service Oversight

Pro Bono Activities at the Firm are overseen by the Pro Bono Coordinator. The Pro Bono Coordinator's responsibilities include:

- reviewing potential conflicts of interest;
- approving pro bono cases and projects to be undertaken by the Firm;
- reviewing and authorizing reduced-fee or sliding scale billing arrangements for moderate means clients;
- coordinating cooperation among Firm lawyers and the use of Firm resources for pro bono cases and projects; and
- reviewing lawyer and staff billing and timekeeping associated with pro bono cases and projects.

Pro Bono Client Representation Standard

The Firm is committed to providing the same high quality of representation to all clients regardless of their ability to pay. The Firm's conflict of interest policy applies to all pro bono cases and projects. Pro bono cases and projects should be given the same staffing, attention, and resources as any other project. Attorneys should possess the knowledge and expertise required for success on any project, including pro bono cases and projects. Attorneys working on pro bono cases and projects outside their area of expertise should seek guidance, training, or supervision from attorneys with the requisite expertise.

Pro Bono Opportunities

The Firm encourages attorneys to consider participating in pro bono work via a qualified legal services provider ("QLSP") recognized by the WSBA. QLSPs are established programs that often offer fully integrated volunteer opportunities, including training, staffing and resources, MCLE credits, and in some cases malpractice coverage. Other examples of pro bono opportunities include teaching a pro bono CLE, serving on bar association boards or committees mentoring pro bono attorneys, advocating changing laws that impede access to justice for those of low or moderate means, advising an organization that serves communities experiencing poverty and inequities, or taking a case on a reduced-fee, sliding scale basis of a client of moderate means in the areas of family, consumer and housing law through the WSBA Moderate Means Program.

Credit for Pro Bono Service

The Firm will count, as credited "billable hours," up to **[number]** hours per calendar year spent on pro bono legal services upon prior approval by the Pro Bono Coordinator. While non-participation in pro bono cases and projects will not adversely affect Firm lawyers, participation in pro bono work may be used as a factor in evaluations, advancement, or bonuses. The Firm also recognizes participation in pro bono activities **[at Firm meetings and awards ceremonies, in its annual reports and newsletters, and/or with gift cards and donations]**.

[Optional Paragraph]

Benefits of Pro Bono Service

There are many benefits of doing pro bono work which include:

- helping to meet critical legal needs and gaining satisfaction by giving back to the community;
- building the attorney's legal skills and knowledge;
- networking with other attorneys and leaders to enhance individual professional development and to amplify the Firm's commitment to pro bono; and
- if the attorney does pro bono work through a QLSP recognized by the WSBA, the attorney can receive additional benefits including:
 - one CLE credit hour for every hour of pro bono work (maximum 24 per reporting period);
 - access to free online CLEs focused on pro bono topics;
 - training specific to the pro bono case or project; and
 - malpractice insurance for the pro bono case.

Model Corporate/In-House Legal Department Pro Bono Policy

The Pro Bono and Public Service Committee of the Washington State Bar Association, working under the belief that every organization can benefit from a clear policy encouraging pro bono work by its employees, has created the following template policy for corporate and in-house legal departments in Washington state. This document is intended to be a starting point for the creation and adoption of such a policy, with the expectation that each organization will customize the template to best reflect its strengths and goals. All organizations are welcome to reach out to the Pro Bono and Public Service Committee for assistance with finalizing and adopting a policy, or with identifying opportunities for pro bono work for the organization's attorneys.

[Corporate/In-House Legal Department]

Pro Bono Policy

Adopted _____, _____.

Over two million Washington households face significant legal challenges in a given year, and many of them are unable to access or afford an attorney's assistance in navigating these problems. This disconnect is amplified for low-income families, who, according to a recent Washington State Civil Legal Needs Study, receive beneficial legal assistance in just 24% of the instances in which they may require it. Although the Washington legal community has a long tradition of providing pro bono services, more must be done to address the unmet needs.

[Company Name] ("Company") believes that pro bono service is an essential component of every attorney's professional career, and that Company's lawyers – like all attorneys – have an opportunity and an obligation to assist those with the greatest need for equal access to justice. The Company acknowledges that individual lawyers meet their professional obligations to perform pro bono and public interest legal services in a variety of ways, but does not explicitly require lawyers to participate in pro bono projects. Nonetheless, we believe that participation in pro bono activities is beneficial for the public interest, for the Company, and for individuals employed by the Company.

Pro Bono Aspirations

According to Washington's Rule of Professional Conduct (RPC) 6.1, "Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay... and should aspire to render at least 30 hours of pro bono publico service per year." Washington State, the American Bar Association Model Rules of Professional Conduct, and many other states have gone even further, adopting a 50-hour goal of pro bono work per year. Lawyers who report a minimum of 50 hours or more of pro bono work to the Washington State Bar Association (WSBA) will receive commendation for such service. The Company encourages all lawyers to dedicate a minimum of **[30/50/___]** hours per year to pro bono work.

Definition of pro bono

The Company's legal department adopts the description for pro bono work outlined in Washington's Rule of Professional Conduct 6.1, which states that all attorneys should:

- a) provide legal services without fee or expectation of fee to:
 - i) persons of limited means or
 - ii) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- b) provide pro bono publico service through:
 - i) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, or charitable, religious, civil, 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;
 - ii) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - iii) participation in activities for improving the law, the legal system or the legal profession.

Pro Bono Service Oversight

Pro Bono activities at the Company are overseen by a Pro Bono Coordinator and/or Pro Bono Committee. Company Pro Bono oversight responsibilities include:

- reviewing potential conflicts of interest;
- reviewing and approving potential pro bono work to be undertaken by Company attorneys, where appropriate; and
- approving Company expenses associated with pro bono activities (e.g. pro bono clinic expenses).

Pro Bono Client Representation Standard

The Company expects its lawyers to provide the same high quality of representation to all clients, including pro bono clients. Pro bono work may be undertaken during the work week, so long as it does not interfere with other assigned responsibilities and Company policies. Individuals doing pro bono work may utilize Company legal assistants, secretaries, and other support staff in a manner consistent with their job responsibilities. Attorneys should possess the knowledge and expertise required for success on any project, including pro bono cases and projects. Attorneys working on pro bono projects outside their area of expertise should seek guidance, training, or supervision from attorneys with the requisite expertise, or request additional resources from a Pro Bono Coordinator or Committee.

Malpractice Insurance Coverage

Because pro bono activities may not fall within the scope of the Company's legal work, attorneys should not assume that the Company's malpractice coverage will apply to pro bono work. Before agreeing to undertake pro bono legal services, Company attorneys should determine whether the pro bono program or organization has a malpractice insurance policy that covers volunteer attorneys. If coverage is not provided, the individual attorney assumes responsibility for any malpractice liability.

Pro Bono Opportunities

The Company encourages attorneys to consider participating in pro bono work via a qualified legal services provider ("QLSP") recognized by the WSBA. QLSPs are established programs that often offer fully integrated volunteer opportunities, including training, staffing and resources, MCLE credits, and in some cases malpractice coverage. Other examples of pro bono opportunities include teaching a pro bono CLE, serving on bar association boards or committees mentoring pro bono attorneys, advocating changing laws that impede access to justice for those of low or moderate means, or advising an organization that serves communities experiencing poverty and inequities.

Recognition for Pro Bono Service

While non-participation in pro bono cases and projects will not adversely affect Company lawyers, the Company may recognize participation in pro bono activities **[at company meetings and awards ceremonies, in its annual reports and newsletters, and/or with gift cards and donations]**.

[Optional Paragraph]

Benefits of Pro Bono Service

There are many benefits of doing pro bono work, which include:

- helping to meet critical legal needs and gaining satisfaction by giving back to the community;
- building the attorney's legal skills and knowledge;
- networking with other attorneys and leaders to enhance individual professional development; and
- if the attorney does pro bono work through a QLSP recognized by the WSBA, the attorney can receive additional benefits including:
 - one CLE credit hour for every hour of pro bono work (maximum 24 per reporting period);
 - access to free online CLEs focused on pro bono topics;
 - training specific to the pro bono case or project; and
 - malpractice insurance for the pro bono case.

Government Agency Pro Bono Policy

The Pro Bono and Public Service Committee of the Washington State Bar Association, working under the belief that every organization and government agency can benefit from a clear policy encouraging pro bono work by its employees, has created the following template policy for government agencies in Washington state. This document is intended to be a starting point for the creation and adoption of such a policy, with the expectation that each government agency will customize the template to best reflect its strengths and goals. All government agencies are welcome to reach out to the Pro Bono and Public Service Committee for assistance with finalizing and adopting a policy, or with identifying opportunities for pro bono work for the organization's attorneys.

[Government Agency]
Pro Bono Policy
Adopted _____, _____.

Over two million Washington households face significant legal challenges each year, and many of them are unable to access or afford an attorney's assistance in navigating these problems. This disconnect is amplified for low-income families, who, according to a recent Washington State Civil Legal Needs Study, receive beneficial legal assistance in just 24% of the instances in which they may require it.

Although the Washington legal community has a long tradition of providing pro bono services, more must be done to address the unmet needs. Government lawyers have a unique role to play in meeting this need. Government attorneys, as public servants, are committed to public service full-time. A majority of government attorneys work closely with or work on policies impacting the poor and marginalized. **[Government Agency]** (the "Agency") acknowledges that individual government lawyers meet their professional obligations to perform public interest legal service in a variety of ways and does not explicitly require government lawyers to participate in pro bono projects. Nonetheless, the Agency believes that participation in pro bono activities is beneficial for the public interest and that government attorneys bring unique expertise and experience from which the public will greatly benefit.

Pro Bono Aspirations

According to Washington's Rule of Professional Conduct (RPC) 6.1, "Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay... and should aspire to render at least 30 hours of pro bono publico service per year." Washington State, the American Bar Association Model Rules of Professional Conduct, and many other states have gone even further, adopting a 50-hour goal of pro bono work per year. Lawyers who report a minimum of 50 hours or more of pro bono work to the Washington State Bar Association (WSBA) will receive commendation for such service. Given their unique circumstances, the Agency encourages all Agency lawyers to dedicate a minimum of [30/50/___] hours per year to pro bono work.

Definition of Pro Bono

The Agency adopts the description for pro bono work outlined in Washington's Rule of Professional Conduct 6.1, which states that all attorneys should:

- a) provide legal services without fee or expectation of fee to:
 - i) persons of limited means or
 - ii) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- b) provide pro bono publico service through:
 - i) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, or charitable, religious, civil, 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;
 - ii) delivery of legal services at a substantially reduced fee to persons of limited means; or

- iii) participation in activities for improving the law, the legal system or the legal profession.

Pro Bono Opportunities

The Agency encourages Agency lawyers to consider participating in pro bono work via a qualified legal services provider (“QLSP”) recognized by the WSBA. QLSPs are established programs that often offer fully integrated volunteer opportunities, including training, staffing and resources, MCLE credits, and in some cases malpractice coverage. Other examples of pro bono opportunities include teaching a pro bono CLE, serving on bar association boards or committees mentoring pro bono attorneys, advocating changing laws that impede access to justice for those of low or moderate means, or advising an organization that serves communities experiencing poverty and inequities.

Use of Official Position or Public Office

Because the Agency is supported by public funds for the sole purpose of providing governmental legal services, Agency attorneys providing direct pro bono services to individuals must do so in their private capacities, on their own time, and without conflicting with the Agency’s work. Agency lawyers who provide direct pro bono legal services to individual clients:

- may not represent in any way that they are acting on behalf of the Agency, or in their official capacity;
- are responsible to make clear to clients and opposing parties and counsel that they are acting in their individual capacities as volunteers;
- may not use office resources including [**office letterhead, Agency or office business cards, agency e-mail system for communicating with clients or the courts**], except as permitted by the Agency’s policy regarding de minimis use of office resources; and
- may not use Agency office space for meetings with clients or opposing counsel in a pro bono case unless the office space is a common area of a building not associated only with the Agency, or unless the use is permitted by the Agency’s policy regarding de minimis use of office space for pro bono activities.

Malpractice Insurance Coverage

Because pro bono activities are not within the scope of the public employment or duties of Agency attorneys, the Agency does not provide malpractice coverage for pro bono work. Before agreeing to undertake pro bono legal services, Agency attorneys should determine whether the pro bono program or organization has a malpractice insurance policy that covers volunteer attorneys. If coverage is not provided, the individual attorney assumes responsibility for any malpractice liability.

Pro Bono Service Oversight

Pro bono activities of Agency lawyers will be overseen by [**a designated pro bono coordinator, their applicable supervisor, or a selected Human Resources contact**]. In each pro bono project or engagement, Agency lawyers must:

- gain requisite approval from their applicable supervisor or contact prior to undertaking potential pro bono cases and projects;
- make a reasonable request for paid/excused leave or a flexible work schedule for pro bono activity that occurs during normal working hours;
- ensure that participation complies with the Agency’s conflict of interest policy; and

- agree to the Agency's policy regarding de minimis use of office resources for pro bono activities.

[Optional Paragraph]

Benefits of Pro Bono Service

There are many benefits of doing pro bono work which include:

- helping to meet critical legal needs and gaining satisfaction by giving back to the community;
- building the attorney's legal skills and knowledge;
- networking with other attorneys and leaders to enhance individual professional development; and
- if the attorney does pro bono work through a QLSP recognized by the WSBA, the attorney can receive additional benefits including:
 - one CLE credit hour for every hour of pro bono work (maximum 24 per reporting period);
 - access to free online CLEs focused on pro bono topics;
 - training specific to the pro bono case or project; and
 - malpractice insurance for the pro bono case.