

MODEL POLICY FOR GOVERNMENT ATTORNEYS PERFORMING PRO BONO WORK

I. The Policy

There is a significant unmet need for legal and other community services to those of limited means and disadvantaged persons in Hawai‘i and the nation. 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,¹ the policy on Hawaii’s government attorneys seeks to encourage and support their participation in pro bono activities within their communities.²

¹ Hawai‘i Rules of Professional Conduct, Rule 6.1 states:

A lawyer should aspire to provide at least fifty hours of pro bono services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide at least twenty-five hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee 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;
 - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
 - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means. Where, in a given year, the lawyer experiences personal or employment circumstances that make it unduly difficult or impossible to provide services which qualify as pro bono activity, the lawyer may substitute such a financial contribution for direct pro bono legal services.

² “All government attorneys should do pro bono work because . . . lawyers must ‘do good’ for the poor and disadvantaged to change the public’s perception of our profession.” Chief Justice Ronald Moon.

II. Pro Bono Services

A. Scope of Pro Bono Services.

As used in this policy, “pro bono services” means the following:³

1. Providing legal services without remuneration to:

a. Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; 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

³ **The scope of pro bono activities described is intended to accommodate restrictions that may affect the aspirational goals in HRPC Rule 6.1.** Hawai‘i’s legislators enacted a statute precluding the attorney general and deputy attorneys general from engaging in the private practice of law. Haw. Rev. Stat. § 28-10 provides as follows:

Prohibition on private practice of law by the attorney general, first deputy, and other deputies. The attorney general, the attorney general's first deputy, and other deputies shall devote their entire time and attention to the duties of their respective offices. They shall not engage in the private practice of law, nor accept any fees or emoluments other than their official salaries for any legal services. This section shall not apply to any special deputy employed on a part-time basis for a limited period.

Similarly, the Hawai‘i County adopted a code of ethics that precludes the formation of an attorney client relationship by its corporation counsel. Hawai‘i County Code: Section 2-84 provides as follows:

Conflicts of interests.

- (a) No officer or employee shall take any official action directly affecting:
- (1) A business or other undertaking in which that officer or employee has a substantial financial interest;
 - (2) A private undertaking in which the officer or employee is engaged as legal counsel, advisor, consultant, or representative, or other agency capacity; . . .

b. Participation in activities for improving the law, the legal system, or the legal profession.

B. Types of Pro Bono Activities.

Specifically, the following types of pro bono matters and activities may be approved. Attorneys who wish to pursue other activities must obtain prior approval from [their supervisor; the office pro bono coordinator or committee; the division director, etc.] Pro bono matters and activities, which may be approved include, but are not limited to:

1. Participating, coordinating, promoting, and staffing neighborhood legal clinics, and other similar organizations, to make recommendations on services available in the community that may assist the public in resolving their legal dispute;⁴
2. Providing research assistance or expert advice to providers of legal services to the low-income and disadvantaged;
3. Participating on the board of a legal services organization;
4. Providing training or preparing materials for seminars or other educational activities involving issues of importance to low income and/or disadvantaged persons;
5. Participating on bar committees and projects relating to the delivery of legal services and pro bono legal services;
6. Participation in activities for improving the law, the legal system, or the legal profession; and,
7. Contribution of financial support to organizations that provide legal services to persons of limited means, where circumstances make it unduly difficult or impossible for the lawyer to provide services, which qualify as pro bono activity, the lawyer may substitute such a financial contribution for direct pro bono legal services.

⁴ In the Matter of the Request by Lincoln S. T. Ashida, Corporation Counsel of Hawai'i, Informal Advisory Opinion, Petition 2005-03, Board of Ethics dated May 18, 2005.

III. Procedures

A. Approval by Agency. Participation in pro bono activities must be approved in advance by [the attorney's supervisor; the office pro bono coordinator or committee; the division director, etc.]. Prior to approval, [the attorney's supervisor; the pro bono coordinator in consultation with the attorney's supervisor, etc.] shall determine:

1. Whether the request falls within the kinds of pro bono services or activities permitted by this policy;

2. Whether the matter appears likely to interfere with the performance of the attorney's official duties and responsibilities (e.g., the matter or activity appears likely to require protracted absences during office hours; or participation would clearly conflict with the interests of the agency or office); and,

3. A procedure developed to determine closure of the activity performed.

B. Conflicts of interest. Even if direct representation and the formation of an attorney client relationship is not formed, to ensure that statutes are not violated, the government entities adopting this policy should have a system in place for a thorough conflicts check to ensure that pro bono matters do not present a conflict with the attorney's work for the government or the appearance of such a conflict.

C. Use of Agency or Office Resources.

De minimis use of government property and equipment in fulfilling the attorneys professional responsibilities should be allowed pursuant to Hawai'i Rules of Professional Conduct Rule 6.1 and/or Hawai'i County Code of Ethics Article 15 Section 2-83,⁵ and subject to approval of the supervisor.⁶

⁵ Hawai'i County Code of Ethics, Article 15, Section 2-83 provides as follows:

Fair treatment.

(a) Officers and employees of the County, while discharging their duties and dealing with the public, shall adhere to the following precepts:

(1) All public property and equipment are to be treated as a public trust and are not to be used in a proprietary manner or for personal purposes without proper consent.

. . . .

(b) No officer or employee shall use or attempt to use the officer's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

Limited use of government resources in support of pro bono activities is permitted as long as the use is brief in duration, results in little or no cost to the governmental agency, and is consistent with the above-cited statute and County code.

1. Offices, Equipment, and Supplies. *De minimis* use of resources for pro bono work may include use of the following: telephone use (although personal cellular use is encouraged); use of cost-free internet sites; use of computer for word processing and/or research; printing; copying machines; use of Westlaw or Lexis Nexis subject to approval by the supervisor; common area of office space for meetings; and, other uses approved by the supervisor.

2. Work Schedule. Attorneys may perform pro bono legal services during the work day so long as such work does not interfere with the performance of official duties and is consistent with the Hawai'i Ethics law. They may also take advantage of flexible work schedule arrangements, if approved by their supervisor. If a flexible work schedule is not feasible, leave without pay or vacation leave may be approved by the supervisor.

D. Malpractice Insurance. The government offices do not provide professional liability insurance coverage for pro bono legal services. The attorneys providing the pro bono services are encouraged to ensure that the activities they are engaged in either are covered by professional liability insurance (e.g., through Volunteer Legal Services of Hawaii or the organization providing the pro bono service) or is not required.

. . . .
(3) Using County time, equipment or other facilities for private business or campaign purposes.

. . . .
(5) Using County property or personnel for other than a public activity or purpose.

. . . .
⁶ The Attorney General suggests that such *de minimis* use be subject also to "further guidance from the Ethics Commission." Email from Mary Anne Magnier, deputy attorney general, dated July 15, 2009.

