

IDAHO STATE JUDICIARY 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 Idaho State Judiciary encourages all attorneys to participate in the provision of 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 Idaho State Judiciary has determined that the provision of pro bono legal services is consistent with and furthers the Idaho State Judiciary's interests 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:

- Providing legal assistance to persons of limited means
- Assisting nonprofit entities enumerated in Rule 6.1

- Assisting and counseling clients in family law cases, in domestic violence cases or in cases seeking legal status for immigrant women and children who are victims of domestic violence
- Counseling clients in landlord/tenant disputes, public benefits and veterans' benefits cases, consumer protection and bankruptcy
- Drafting wills, 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

II. AUTHORIZATION TO PERFORM PRO BONO LEGAL WORK

Approval Procedures

Prior to performing any pro bono legal work, a judicial employee who is a law clerk must seek and obtain the approval of his or her supervising judge, while other judicial employees must seek and obtain the approval of the chief administrative judge of the court in which the judicial employee works.

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 complies with Canon 4(G) of the Idaho Code of Judicial Conduct, as well as this Policy, and 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

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 Idaho State Judiciary. A conflict of interest generally exists where services would:

- Require the recusal of the judicial employee or that employee's supervising judge from their official duties
- Create an appearance that the judicial employee's duties were performed in a biased or less than impartial manner
- Create a public perception of Idaho State Judiciary sanction or endorsement in high-profile or controversial matters involving the Idaho State Judiciary or the judicial employee's supervising judge.

Attorneys may not engage in criminal defense work. If assistance 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 certain pro bono legal work. The Idaho State Judiciary 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.

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 Idaho State Judiciary or in their official capacity on behalf of Idaho State Judiciary. 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 Idaho State Judiciary letterhead, business cards or fax coversheets, or otherwise identify himself or herself as an Idaho State Judiciary employee in any communication, correspondence or other document 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 an Idaho State Judiciary employee.

The attorney is responsible for ensuring that there is no misunderstanding by the client, or others involved in the pro bono activity, 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 Idaho State Judiciary.

IV. USE OF IDAHO STATE JUDICIARY 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.

Hours of Work

Attorneys are expected to seek pro bono legal opportunities that can be done outside their scheduled work hours. However, pro bono legal work may in limited circumstances 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 all required work hours during each week (excluding leave that they are otherwise entitled to use), plus whatever additional time is needed to provide the service the Idaho State Judiciary expects. Part-time attorneys must account for the number of hours provided in their part-time agreement. Pro Bono work 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.

Use of Public Resources

As a general rule, employees may use government property only for official business. This Policy authorizes the limited use of governmental resources, as follows:

- Personal uses that involve only negligible expense to Idaho State Judiciary (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 has minimal impact on Idaho State Judiciary phone cost

- Use of electronic research and databases is authorized when there is no extra cost. Use of other databases, such as LexisNexis, which do generate additional cost is not authorized
- An attorney providing pro bono services shall not meet with a client on Idaho State Judiciary premises except in situations where exigent circumstances provide no practical alternative
- Employees of the appellate courts who are on temporary assignment to the Idaho State Law Library may assist patrons with research, referral and related services.

Professional Support Staff

Pro bono legal work may not be required of support staff. On the other hand, the Idaho State Judiciary 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 duties.

Approved by the Court on March 15, 2010.