

AGO POLICY

III.13

PRO BONO ACTIVITIES

Contact: Supervising Deputy or Solicitor General; AGO Pro Bono Committee

Cross References: [RCW 43.10.130](#); [RCW 42.52](#); [WAC 292-110-010](#); [RPC 1.7](#); [RPC 6.1](#); [Bar and Legal Professional Association Activities Policy](#); [Electronic Mail Use Policy](#); [Flexible Work Schedules Policy](#); [Internet Use Policy](#); [Leave Without Pay Policy](#); [Screening for Conflicts/Separation of Functions](#); [Use of State Resources Policy](#)

Approved: March 23, 2021

I. POLICY STATEMENT:

The purpose of this policy is to assist Assistant Attorneys General in meeting their professional obligations to provide pro bono legal services while complying with ethics requirements applicable to state employees. The purpose is also to encourage professional staff to assist in those services.

The policy of the AGO is to support attorney and professional staff efforts to provide pro bono legal services. Rule of Professional Conduct ([RPC](#)) [6.1](#) provides: “Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of pro bono public service per year.”

A. Definitions and Scope of Activities.

1. Definitions.

“**Staff:**” attorneys and professional staff are collectively termed staff.

“**Direct representation:**” This means writing letters on behalf of a client, making court appearances on behalf of a client, and engaging in other actions which involve attorneys identifying themselves as legal counsel for pro bono client/individual.

2. Scope of Approved Activities.

Under [RPC 6.1\(a\)](#), lawyers should provide legal services without fee to: (1) persons of limited means; or (2) charitable, religious, civil, community, governmental and educational organizations in matters designed primarily to address the needs of persons of limited means. Assistant Attorneys General will not participate in activities that are incompatible or conflict with the AGO’s obligations to its clients.

The scope of approved pro bono activities under [RPC 6.1\(a\)](#) includes direct representation of an individual referred through a legal aid program sponsored by a local bar association or other non-profit organization and participation in or administration of a volunteer legal clinic program.

The scope of approved pro bono activities pursuant to [RPC 6.1\(a\)\(2\)](#) includes: pro bono legal services for non-profit organizations or governmental entities. Attorneys may provide legal services to these entities in the form of advice and consultation. Direct representation of non-profit organizations or governmental entities is not permitted.

The AGO also encourages staff to participate in professional and bar association activities, *see* [RPC 6.1\(b\)\(3\)](#), and to provide community service of a non-legal nature.

B. Work Schedules.

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 Washington State Ethics Law, [RCW 42.52](#). They also may take advantage of flexible work schedule arrangements if approved by their supervising attorneys. If a flexible work schedule is not feasible, leave without pay or vacation leave may be approved.

Professional Staff may assist Assistant Attorneys General in providing pro bono legal services during the work day so long as the assistance does not interfere with the performance of official duties and is consistent with the Washington State Ethics Law, [RCW 42.52](#), and approval has been obtained from the lead professional staff. In addition, with supervisory approval, professional staff may serve as volunteers in pro bono legal aid programs. Professional staff are permitted to take advantage of flexible work schedule arrangements, leave without pay, or vacation leave in accordance with applicable civil service rules and collective bargaining agreements.

A roster of professional staff who are willing to volunteer to participate in assisting Assistant Attorneys General with pro bono legal services may be maintained by a designated coordinator or the AGO Pro Bono Committee.

C. Use of State Resources.

Limited use of state resources in support of pro bono activities is permitted as long as consistent with the [Use of State Resources Policy](#) provisions on permitted limited personal use. The [Frequently Asked Questions](#) from the Executive Ethics Board provides examples of permissible and impermissible uses of state resources. Permitted limited use may include occasional and infrequent use of the following resources so long as such use is brief in duration and results in little or no cost to the state (aka: “de minimis use”).

1. Office Equipment and Supplies.

Permitted use of resources for pro bono work may include de minimis use of the following resources: telephone use which does not involve the use of a Scan Code (staff are encouraged to use their personal cell phones); mobile devices provided by, and paid for by the AGO; use of cost-free sites on the internet for general research; use of the computer for word processing; and use of the printer (staff should provide paper for the printer). Because the AGO email system identifies the user as an AGO employee, staff may not use the AGO email system for communicating with clients or the courts in the course of doing pro bono work. For legal research, staff are encouraged to use Casemaker and Fastcase, for which access is provided free by the WSBA to its members, or other freely available legal research resources. Limited use of AGO Westlaw accounts is permitted for only those Westlaw features that are not available on another free legal research source and which will not incur additional charges to the AGO. These features include KeyCite and Headnote checking (similar to “Shepardizing”), WestCheck for briefs, and Key Number topic research. Such use of Westlaw should be limited to employees’ non-work hours unless an employee has obtained approval, as described in Section B, above, to conduct pro bono

work during their regular work hours. Staff should use PROBONO as the client ID for this limited use of AGO Westlaw accounts conducted under this policy. Staff should contact their supervisor for explicit approval if they have questions regarding a particular use of a state resource.

2. Office Space.

Generally, AGO office space may not be used for meetings with clients or opposing counsel in a pro bono case, or for meetings involving pro bono work for non-profit organizations or governmental entities performed consistent with *RPC 6.1(a)(2)*, unless the office space is a common area of a building not associated only with the AGO. However, where there is no practical alternative, the use does not interfere with AGO business, and care is taken to ensure that pro bono activities are distinguished from the AGO, a Division Chief may approve de minimus use of office space for pro bono work performed consistent with *RPC 6.1(a)(1)*.

3. AGO Address and Mail System.

Staff may not use AGO letterhead or office business cards or otherwise identify himself or herself as an AGO employee, except as necessary to clarify that he or she is acting in a pro bono capacity, in any communication, correspondence, or pleading in connection with pro bono legal activities. Staff performing pro bono work for clients should seek alternatives to the AGO mail system for sending and receiving mail. However, if there is no reasonable alternative available, AGO staff may use the street and post office box address in such correspondence or pleadings.

D. Independence.

1. Conflicts.

Prior to conducting any pro bono activity, staff seeking to perform pro bono work shall comply with *RPC 1.7*. Prior to engaging in direct representation, staff shall consult with their Division Chief to ensure a conflicts check is conducted consistent with the policy on *Screening for Conflicts/Separation of Functions*.

2. Role.

Staff performing pro bono legal services do so in their personal capacity apart from and in addition to their official duties. Any Assistant Attorney General representing clients on a pro bono basis shall inform his or her pro bono client and opposing parties and counsel in the pro bono case that: (1) the Assistant Attorney General is volunteering in his or her personal capacity and is acting in conformance with state laws and AGO policies on use of resources; (2) the Office of the Attorney General is not participating in the representation; and (3) any mail sent to the Assistant Attorney General may include the street address and post office box of the office, but should not reference the Office.

3. Malpractice Insurance.

The AGO does not provide professional liability coverage for pro bono legal services. Attorneys providing pro bono services are encouraged to independently ensure that pro bono work for individuals through a legal aid program sponsored by a local bar association or other non-profit organizations is covered by malpractice insurance. If coverage is not provided, the individual attorney assumes responsibility for any malpractice liability.

II. RESPONSIBILITIES:

The *Assistant Attorney General or professional staff member* shall request permission of the supervisor to undertake pro bono activity. However, permission is not necessary for participation in legal services clinics in which the attorney is not undertaking direct representation of an individual.

The *Assistant Attorney General or professional staff* shall ensure that the interests of the person or organization receiving pro bono legal services will not create a conflict or the appearance of a conflict in the exercise of the AAG's official responsibilities. *He or she* shall ensure that all state ethics rules and all Rules of Professional Conduct are followed. *Assistant Attorney General or professional staff* shall consult with his or her supervisor and the Ethics Committee if any questions arise concerning conflicts of interest. If performance of pro bono legal work requires blocks of time during the normal work day, *he or she* shall request the supervisor's written approval of a flexible work schedule or shall take vacation leave or leave without pay. The AGO will not reimburse any costs or expenses for pro bono representation. The Assistant Attorney General may seek reimbursement from a Bar Association or other entity providing such service, or may personally absorb such costs. Prior to use of AGO office space for meetings *he or she* shall seek Division Chief approval. *He or she* shall make clear to third parties that he or she is acting as attorney for the individual and not in an official capacity with the AGO. *He or she* shall assume responsibility for malpractice liability for pro bono work.

Supervising Attorneys or Lead Professional Staff shall support participation in pro bono legal activities by working with staff to determine ways in which the requirements of this policy can be met.

Supervising Attorneys or Lead Professional Staff shall approve in writing requests for use of flexible work schedules for pro bono legal activities that require significant blocks of time during the work day.

The *Division Chief* may authorize use of AGO office space for meetings. The *Division Chief* shall approve requests to undertake pro bono legal activities consistent with the policy.



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