

Model Pro Bono Policy for Large Firms

An extraordinary need exists in this country for the provision of legal services for those unable to pay for them. Law firms possess the talent and resources to take the lead in changing the culture of pro bono in Colorado to better meet the legal needs of the poor. While many law firms undertake pro bono matters, many still lack a formal, written pro bono policy.

A law firm pro bono policy is critical to send a message that the firm truly supports pro bono and encourages every attorney to engage in pro bono service. Implementation of a formal pro bono policy will also provide attorneys in the firm with assurance that pro bono work will not hurt their advancement at the firm. Attached is a Model Pro Bono Policy, which can be modified to meet the needs of individual law firms. At the very least, a pro bono policy should:

- (1) clearly set forth an aspirational goal for attorneys, as well as the number of hours for which billable credit will be awarded for firms that operate on a billable hour system. The attached model policy uses the figure of at least 50 hours per attorney per year, which mirrors the aspirational goal set out in Rule 6.1 of the Colorado Rules of Professional Conduct.
- (2) demonstrate that pro bono service will be positively considered in evaluation and compensation decisions.
- (3) include a description of the processes that will be used to match attorneys with projects and monitor pro bono service, including tracking pro bono hours spent by lawyers and others in the firm.

The Colorado Supreme Court will soon begin recognizing Colorado law firms that voluntarily certify, on an annual basis, that their attorneys, on average, perform 50 hours of pro bono legal service (primarily for indigents) per year. Implementation of a pro bono policy with the characteristics described above should assist firms to support their attorneys to meet the aspirational goal of Rule 6.1 and allow firms to be recognized by the Supreme Court for their contribution to meeting the legal needs of the poor. This model policy was developed in order to assist firms in the accomplishment of this goal, and is the product of a two-step process of the Ad-Hoc Committee ("Committee") of the Colorado Access to Justice Commission. First, the Committee identified the critical elements of a law firm pro bono policy and integrated these elements into a draft model policy. Second, the Committee shared the draft policy with several law firms who helped further shape and refine it. There is no expectation that your firm will adopt this model policy as is, but rather the hope is that your law firm will be able to easily adapt this model policy to fit your unique needs, while incorporating the critical elements of a pro bono policy identified above.

MODEL PRO BONO POLICY

FOR

COLORADO LAW FIRMS

Working Draft
November 8, 2005

Table of Contents Page

I. Introduction and Overview of Pro Bono Policy

II. Firm Pro Bono Committee

III. Pro Bono Services Defined

IV. Firm Recognition of Pro Bono Service

A. Performance Review and Evaluation

B. Billable Credit For Pro Bono Legal Work

V. Administration of Pro Bono Service

A. Approval of Pro Bono Matters

B. Opening a Pro Bono Matter

C. Pro Bono Engagement Letter

D. Staffing of Pro Bono Matters

E. Supervision of Pro Bono Matters

F. Professional Liability Insurance

G. Paralegal Pro Bono Opportunities

H. Disbursements in Pro Bono Matters

I. Attorneys Fees in Pro Bono Matters

J. Departing Attorneys

VI. CLE Credit for Pro Bono Work

A. Amount of CLE Credit

B. How to Obtain CLE Credit

ATTACHMENTS

A. Preamble to the Colorado Rules of Professional Conduct

B. Colorado Rule of Professional Conduct 6.1

C. Sample Pro Bono Engagement Letter

D. Colorado Supreme Court Rule 260.8

E. Colorado Supreme Court Rule 260.8, Form 8

I. INTRODUCTION

II. Firm Pro Bono Committee [Firm Pro Bono Coordinator]

The Firm has established a Pro Bono Committee [Coordinator] responsible for implementing and administering the Firm's pro bono policies and procedures. The Pro Bono Committee consists of a representative group of attorneys of the Firm. In addition, the Firm has designated a Pro Bono Coordinator. The Pro Bono Committee/Pro Bono Coordinator has the following principal responsibilities:

- A. Encouraging and supporting pro bono legal endeavors;
- B. Reviewing, accepting and/or rejecting pro bono legal projects;
- C. Coordinating and monitoring pro bono legal projects, ensuring, among other things, that appropriate assistance, supervision and resources are available;
- D. Communicating pro bono options available to attorneys and paralegals in the Firm;
- E. Providing periodic reports on the Firm's pro bono activities; and
- F. Creating and maintaining a pro bono matter tracking system.

III. Pro Bono Services

The foremost objective of the Firm pro bono policy is to provide legal services to indigent or near-indigent members of the community and the nonprofit organizations that assist them, in accordance with Rule 6.1 of the Colorado Rules of Professional Conduct. The Firm recognizes there are a variety of ways in which the Firm's attorneys and paralegals can provide pro bono legal services in the community. The following, while not intended to be an exhaustive list, reflects the types of pro bono legal services the Firm supports:

- A. Representation of Low Income Persons: Representation of individuals who cannot afford legal services in civil or criminal matters of importance to a client;
- B. Civil Rights and Public Rights Law: Representation or advocacy on behalf of individuals or organizations seeking to vindicate rights with broad societal implications (class action suits or suits involving constitutional or civil rights) where it is inappropriate to charge legal fees; and
- C. Representation of charitable organizations: Representation or counseling to charitable, religious, civic, governmental, educational, or similar organizations in matters where the payment of standard legal fees would significantly diminish the resources of the organization, with an emphasis on service to organizations designed primarily to meet the needs of persons of limited income or improve the administration of justice.

Other types of pro bono services may include the following:

- D. Community Economic Development: Representation of micro-entrepreneurs and businesses for community economic development purposes, recognizing that business development plays a critical role in low income community development and provides a vehicle to help low income individuals to escape poverty;
- E. Administration of Justice in the Court System: Judicial assignments, whether as pro bono counsel, or a neutral arbiter, or other such assignment, which attorneys receive from courts on a mandatory basis by virtue of their membership in a trial bar; and

F. Law-related education: Legal education activities designed to assist students who are low-income, at risk or vulnerable to particular legal concerns.

G. Mentoring of a Law Student On Pro Bono Matters: Colorado Supreme Court Rule 260.8 provides that an attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which he/she mentors a law student. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which he/she mentors another lawyer. However, mentors shall not be members of the same firm or in association with the lawyer providing representation to the indigent client.

Because the following activities, while meritorious, do not involve direct provision of legal services to the poor, the Firm will not count them towards fulfillment of any attorney's, or the Firm's, goal to provide pro bono legal services to indigent persons or to nonprofits that serve such persons' needs: participation in a non-legal capacity in a community or volunteer organization; services to non-profit organizations with sufficient funds to pay for legal services as part of their normal expenses; client development work; non-legal service on the board of directors of a community or volunteer organization; bar association activities; and non-billable legal work for family members, friends, or members or staff of the Firm who are not eligible to be pro bono clients under the above criteria.

IV. Firm Recognition of Pro Bono Service

V. Administration of Pro Bono Service

1. There is no client or issue conflict or concern;
2. The legal issue raised is not frivolous or untenable;
3. The client does not have adequate funds to retain attorneys on her/his/its own; and
4. The matter is otherwise appropriate for pro bono representation.

All persons seeking approval of a pro bono project must: (1) submit a request identifying the client and other entity involved; (2) describe the nature of the work to be done; and (3) identify who will be working on the matter. Once the Firm undertakes a pro bono matter, the matter is treated in the same manner as the Firm's regular paying work.

B. Opening a Pro Bono Matter: It is the responsibility of the attorney seeking to provide pro bono legal services to complete the conflicts check and open a new matter in accordance with regular firm procedures.

C. Pro Bono Engagement letter: After a matter has received initial firm approval, the principal attorney on a pro bono legal matter must send an engagement letter to the pro bono client. Typically, the engagement letter should be sent after the initial client meeting during which the nature and terms of the engagement are discussed. (Sample pro bono engagement letter, Attachment C)

D. Staffing of pro bono matters: Pro bono legal matters are initially staffed on a voluntary basis. It may become necessary to assign additional attorneys to the matter if the initial staffing arrangements prove to be inadequate, and the Firm reserves the right to make such assignments.

E. Supervision of pro bono matters: As appropriate, a partner shall supervise any associate working on a pro bono legal matter and the supervising partner shall remain informed of the status of the matter to ensure its proper handling. In addition, it may be appropriate to use assistance or resources from outside the firm. The Firm will assist attorneys in finding a supervisor if necessary.

F. Professional Liability Insurance in Pro Bono Matters: Attorneys may provide legal assistance through those pro bono organizations that provide professional liability insurance for their volunteers. The Firm also carries professional liability insurance for its attorneys in instances where no coverage is available on a pro bono matter through a qualified legal aid organization. Before undertaking any pro bono legal commitments, the professional liability implications should be reviewed with the Pro Bono Committee or the Pro Bono Coordinator.

G. Paralegal Pro Bono Opportunities: Approved pro bono legal work for paralegals includes: (1) work taken on in conjunction with and under the supervision of an attorney working on a specific pro bono legal matter, or (2) work handled independently for an organization that provides pro bono legal opportunities, provided, however, that such participation does not create an attorney-client relationship and/or involve the paralegal's provision of legal advice.

H. Disbursements in pro bono cases: The Firm can and should bill and collect disbursements in pro bono legal matters where it is appropriate to do so based on the client's resources. The Firm encourages attorneys to pursue petitions for the waiver of filing fees (in forma pauperis petitions) when applicable, and to use pro bono experts, court reporters, investigators and other vendors when available to minimize expenses in pro bono legal matters. The Firm may advance or guarantee payment of incidental litigation expenses, provided the client agrees to be ultimately responsible for them. However, the Firm may later forego repayment of such expenses if such repayment would cause the client substantial financial hardship. See C.R.C.P. 1.8(e). The Pro Bono Committee/Pro Bono Coordinator must approve in advance any expense of a non-routine, significant nature, such as expert fees or translation costs. The supervising partner in a pro bono legal matter should participate in decisions with respect to disbursements.

I. Attorney Fees Received in Pro Bono Cases: The Firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters where possible. In the event of a recovery of attorney fees, the Firm encourages the donation of these fees to an organized non-profit entity whose purpose is or includes the provision of pro bono representation to indigent or near-indigent persons.

J. Departing Attorneys: When an attorney handling a pro bono case leaves the Firm, he or she should work with the Pro Bono Committee [Coordinator] (i) locate another attorney in the Firm to take over the representation of the pro bono client or (ii) see if the referring organization can facilitate another placement.

Colorado Supreme Court Rule 260.8 provides that attorneys may be awarded up to nine (9) hours of CLE credit per three-year reporting period for: (1) performing uncompensated pro bono legal representation on behalf of indigent or near indigent clients in a civil legal matter or (2) mentoring another lawyer or law student providing such representation. (See Rule 260.8, Attachment D)

A. Amount of CLE credit

Attorneys may earn one (1) CLE credit hour for every five (5) billable-equivalent hours of pro bono representation provided to the indigent client. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which he/she mentors another lawyer. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the indigent client. An attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which he/she mentors a law student.

B. How to obtain CLE credit

An attorney who seeks CLE credit under Rule 260.8 for work on an eligible matter must submit a completed Form 8 (Attachment E) to the assigning court, program or law school. The assigning entity must then report to the Colorado Board of

Continuing Legal and Judicial Education its recommendation as to the number of general CLE credits the reporting pro bono attorney should receive.

VI . CLE Credit for Pro Bono Work

A. Approval of Pro Bono Matters: Members of the Pro Bono Committee/Pro Bono Coordinator will review all proposed pro bono legal matters to ensure that:**A. Performance Review and Evaluation**
The Firm recognizes that the commitment to pro bono involves a personal expenditure of time. In acknowledgment of this commitment and to support Firm goals, an attorney's efforts to meet this expectation will be considered by the firm in measuring various aspects of the attorney's performance, such as yearly evaluations and bonuses where applicable. An attorney's pro bono legal work will be subject to the same criteria of performance review and evaluation as those applied to client-billable work. As with all client work, there should be an emphasis on effective results for the client and the efficient and cost-effective use of firm resources.

B. Billable Credit for Pro Bono Work

The Firm will give full credit for at least fifty (50) hours of pro bono legal services, and additional hours as approved by the Pro Bono Committee and/or Coordinator, in considering annual billable hour goals, bonuses and other evaluative criteria based on billable hours.

The Firm recognizes that the legal community has a unique responsibility to ensure that all citizens have access to a fair and just legal system. In recognizing this responsibility, the Firm encourages each of its attorneys to actively participate in some form of pro bono legal representation.

This commitment mirrors the core principles enunciated in the Colorado Rules of Professional Conduct: 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, and therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest . . . A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service. (Attachment A)

The Firm understands that there are various ways to provide pro bono legal services in our community. In selecting among the various pro bono opportunities, the Firm encourages and expects that attorneys (both partners and associates or other designation) will devote a minimum of fifty (50) hours each year to pro bono legal services, or a proportional amount of pro bono hours by attorneys on alternative work schedules. In fulfilling this responsibility, Firm attorneys should provide a substantial majority of the fifty (50) hours of pro bono legal services 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. Colorado Rule of Professional Conduct 6.1 (Attachment B) The Firm strongly believes that this level of participation lets our attorneys make a meaningful contribution to our legal community, and provides important opportunities to further their professional development.

Preface to
Model Pro Bono Policy for Colorado Law Firms