PRO BONO POLICY FOR STATE JUDICIAL ATTORNEYS

I. Introduction

Of the 7 million indigent people in California, 47 percent will face some form of civil legal problem in a given year.¹ Yet “legal aid programs are still not able to provide even a minimal level of legal advice and assistance for 67 percent of the legal needs of California’s poor. Even for the one third of the legal need that is being addressed, it is often through brief services and advice, rather than with the full representation that low-income Californians often need and deserve.”² The “justice gap” — the gap between total resources available and what is needed to meet the needs of the poor — stood at $394.1 million in 2005.³ Since the onset of the recession, funding for legal services has decreased 70 percent as a result of historically low interest rates, even as 1.5 million additional Californians joined the ranks of the poor.⁴ The need for pro bono legal services has never been greater.

Since 2002, the State Bar has acknowledged the “dire need for pro bono legal services for the needy and disadvantaged.”⁵ In its Pro Bono Resolution, the State Bar urged all attorneys to provide at least 50 hours of pro bono legal services each year. Notably, the Bar also urged “all . . . governmental . . . employers to promote and support the involvement of [their employees] in pro bono and other public service activities.”⁶

³ Ibid.
A voluntary pro bono policy for judicial attorneys employed by the State of California may be a useful first step in helping judicial branch attorneys participate in this important work.

II. Judicial Attorney’s Manual

The 2013 Judicial Attorney’s Manual provides:

“Court policy limits a judicial attorney’s performance of outside legal work. Before performing any outside legal work, such as researching, drafting legal documents, engaging in litigation, or giving legal advice to anyone outside the court, a judicial attorney should ask the district’s or division’s presiding justice regarding the court’s policy for outside legal work. In some cases, the court’s policy may permit occasional legal work for a friend or family member if it is done on the attorney’s personal time, the attorney uses no court resources, no substantial litigation is anticipated, and the attorney does nothing to compromise the court’s reputation for independence and impartiality. The attorney should not mention his or her association with the court during the representation of any person or entity.” (§ 11.15)

This provision — while not specifically directed at pro bono work — identifies unique concerns raised by a judicial attorney’s performance of legal services. Those concerns include the time burden involved (especially where litigation is anticipated), the use of court resources, and the risk of compromising the court’s reputation for independence and impartiality.

The pro bono policy below is intended to help address the justice gap, without prohibiting the occasional legal work described in the foregoing provision.

III. Pro Bono Policy

Judicial attorneys may, on a voluntary basis, perform pro bono legal work, provided the following conditions are met:

A. For purposes of this policy, pro bono legal work refers to voluntary short-term limited legal services that are performed at a walk-in legal clinic, a legal rights workshop, or a pro se counseling program, where there is no expectation of an attorney-client relationship with, or representation of, the individuals attending the clinic,
workshop, or program beyond that limited consultation. Pro bono legal work may be performed only for individuals of limited means or other disadvantaged individuals, and must be performed without compensation to the judicial attorney or to the legal services organization or other entity sponsoring the clinic, workshop, or program. This definition is not intended to prohibit the occasional legal work for a friend or family member described in the Judicial Attorney’s Manual, section 11.15.

B. Any judicial attorney seeking to perform pro bono legal work must:

1. ensure that the activities are consistent with the guidelines set forth in this policy; and
2. obtain permission from his or her immediate supervisor, including any justice for whom the judicial attorney works, as well as the presiding justice. The supervisor and presiding justice have the discretion to approve pro bono legal work that is not specifically authorized by these guidelines but that they believe is appropriate.

C. In considering whether to participate in a specific clinic, workshop, or program, the judicial attorney may not undertake a project that (1) is substantially likely to be litigated within the California state court system, either at the trial court or appellate court level or (2) will require or involve the identification of the judicial attorney as an employee of the California judicial branch. Judicial attorneys should ensure that the individuals they assist are clearly informed that no attorney-client relationship or representation will continue beyond the limited assistance provided in the clinic, workshop, or program.

D. The pro bono legal work must not diminish the integrity and dignity of the court, or compromise its reputation for independence and impartiality. Judicial attorneys may not mention their association with the California judicial branch during the provision

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7 Courts, government agencies, bar associations, law schools, and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services — such as advice or the completion of legal forms that will assist persons in addressing their legal problems without further representation by the participating lawyers. In these programs, whenever a lawyer-client relationship is established, there is no expectation that the lawyer’s representation of the client will continue beyond that limited consultation.
of the pro bono services, and should ensure that those involved in the pro bono matters understand that the attorney is acting solely in his or her individual capacity as a volunteer.

E. The pro bono legal work may not interfere with the proper and effective performance of the judicial attorney’s official duties, including the time and availability requirements of his or her position. Judicial attorneys must keep their supervisors informed whenever pro bono legal work will occur during regular working hours and must follow standard procedures for taking time off (using vacation or annual leave when appropriate) to perform the pro bono legal work, so that no more than a de minimis amount of such work is performed in judicial branch offices during regular working hours. While supervisors are encouraged to provide reasonable accommodation to judicial attorneys desiring to perform pro bono work, supervisors have the discretion to limit or refuse a proposed activity, and judicial attorneys must refrain from performing it, when the supervisor determines that the activity poses a conflict with this policy or the judicial attorney’s work obligations.

F. This pro bono policy does not override statutes, regulations, or rules governing the use of government property. Under Government Code section 8314, court employees may not use public resources for “personal or other purposes which are not authorized by law.” “Personal purpose” includes “an outside endeavor not related to state business,” but does not include “the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.” (Gov. Code, § 8314, subd. (b)(1).) Thus, judicial attorneys may not assign or otherwise require court support staff to assist with pro bono work, and may not use office equipment or make telephone calls or otherwise use public resources in support of pro bono activities unless the use is de minimis. In addition, judicial attorneys may not use government vehicles or government postage, or use court email addresses, and may not access confidential court information for volunteer pro bono legal work.
G. Neither the California judicial branch nor the State of California provides professional liability or malpractice insurance for pro bono legal work, and neither is responsible in any way for any act or omission on the part of a judicial attorney in any pro bono or volunteer activity. Judicial attorneys who perform pro bono legal work are not acting in their official capacity for the court, so immunities that may be granted to government attorneys in the performance of their official duties do not extend to such work. Judicial attorneys who engage in pro bono legal work are strongly encouraged to determine the availability and necessity of professional liability insurance for their volunteer activities.

IV. Additional Information

Under Rule 2.54(B) of the Rules for Minimum Continuing Legal Education (MCLE), government attorneys, including employees of the California judicial branch, who provide pro bono legal services through a California qualified legal services project or a qualified support center do not lose their MCLE exemption. (See http://rules.calbar.ca.gov/Portals/10/documents/Rules_Title2_Div4-MCLE.pdf)