

Pro Bono Model Policy Handbook

The following notes correspond to the item numbers in the Model Pro Bono Policy Worksheet:

1. Your written pro bono policy can have as many (or as few) sections as you like. A list of sections you may want to include in your policy is provided here. It may be helpful to read through the entire model policy and template before deciding which sections to include. You can review what other firms include in their policies in the Handbook Appendix.
2. The OSB Pro Bono Committee recommends that your firm support the OSB Pro Bono Aspirational Standard, OSB Bylaw 13.1: *Pro bono publico* or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

Your firm may opt to support other or additional standards for pro bono, such as the ABA Model Rule 6.1 or the standards set by the Pro Bono Institute, a nonprofit organization housed at the Georgetown University Law Center that provides pro bono support to law firms nationwide.

ABA Rule 6.1 Voluntary Pro Bono Publico Service. Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the (50) 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.

For information on the Pro Bono Institute standard, see <http://www.probonoinst.org/>.

3. You may want to require or recommend that a certain number of pro bono hours be completed by each attorney in your firm. The 80 hour option comes from the OSB Aspirational Standard. The 50 hour option comes from ABA Model Rule 6.1.
4. Once you make a decision about how many pro bono hours your firm will require/recommend, you may want to make an additional requirement/recommendation as to how those hours should be divided between direct representation of low-income people and other types of pro bono work. It may be helpful to complete questions 5 and 6 on the worksheet (defining what your firm considers to be pro bono work) before answering this question. See examples of other firm policies in the Handbook Appendix.
5. A wide range of activities constitute pro bono legal services under both the OSB and ABA standards. Your firm is, of course, free to select those activities that you will consider part of your firm's pro bono expectations. While the OSB Pro Bono Committee recommends that your firm use the OSB standard and supplement it with any additional firm-specific expectations, the ultimate goal is for you to define your own expectations. The list of included and excluded activities in questions 5 and 6 is not comprehensive but includes most activities that are generally considered pro bono legal services. Those activities that are included within your firm's pro bono expectations will allow you to track and report the total hours of such work.
6. Like creating a definition for pro bono, stating what your firm does NOT consider as pro bono work can also be very helpful in providing guidance to attorneys in the office.
7. The OSB Pro Bono Aspirational Standard encourages lawyers who are unable to provide direct legal services to low-income people to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to low-income people. Firms may want to direct attorneys with an interest in making a contribution to the Lawyers' Campaign for Equal Justice, www.cej-oregon.org, or to an extensive list of organizations that provide legal services to persons of limited means in the *Pro Bono Opportunities in Oregon* handbook, www.osbar.org/probono/VolunteerOpportunities.html.
8. Some other state bar associations encourage lawyers to contribute a specific amount, ranging from \$250 - \$500 a year or 1% annual taxable professional income. A complete list of policies on financial contributions in lieu of pro bono service is available on the ABA website at www.abanet.org/legalservices/probono/stateethnicsrules.html.
9. Consider your firm's structure, goals, and resources in determining whether the pro bono cases and service opportunities will be coordinated by one person or committee in the firm or left up to individual attorneys.
10. Consider the clout you wish the coordinator to have as well as the time commitment coordination will require. The coordination of pro bono work within your firm can be expansive or it can be limited to sending a monthly email with compiled pro bono opportunities. See examples of how other firms have delegated responsibilities for coordinating pro bono in the Handbook Appendix.
11. There are a wide range of responsibilities that existing law firm pro bono committees handle. This list is simply a selection of responsibilities.
12. The Oregon State Bar Pro Bono Certification Program was created to promote volunteer legal services to low-income and other underserved Oregonians. Program guidelines are described in OSB

Bylaw 13.2. These programs screen cases and provide support for volunteer lawyers. Current OSB Certified Pro Bono Programs include:

- Catholic Charities
- Center for NonProfit Legal Services
- Columbia County Legal Aid Program
- Community Development Law Center
- Immigration Counseling Services
- Lane County Law and Advocacy Center
- Legal Aid Services of Oregon
- Lewis and Clark Legal Clinic
- Lewis and Clark Small Business Legal Clinic
- Oregon Advocacy Center
- Oregon Law Center
- Oregon State Bar Military Assistance Panel
- Oregon State Bar Problem Solvers Program
- St. Andrew Legal Clinic

You may want to direct your attorneys to a broader variety of pro bono opportunities, The *Pro Bono Opportunities in Oregon* handbook, published by the Oregon State Bar Pro Bono Program, the Oregon State Bar New Lawyers Division, and the Multnomah Bar Association Young Lawyers Section, includes pro bono opportunities with over 50 local organizations. The most current version is available at www.osbar.org/probono/VolunteerOpportunities.html. Many of these organizations come together every year at the annual Pro Bono Fair to talk with attorneys about available pro bono opportunities. For information about the Pro Bono Fair, usually held in early Spring, see www.osbar.org/probono.

Firms in the Portland Metro area and Central Oregon can subscribe to the newly established ProBonoOregon listserv, a resource for attorneys to select among pro bono cases pre-screened by OSB certified pro bono programs. Listserv subscribers receive weekly pro bono case postings from nonprofit law firms serving the low-income community in the Portland Metro area. Listings are formatted for easy case review and offering a wide variety of legal issues and service needs (from brief advice to full representation). For more information or to sign up, send an email to probonooregon-subscribe@mail.lawhelp.org or contact Lori Alton, Oregon Law Center at (503) 473-8326 or lorialton@yahoo.com.

Several Oregon law firms run legal clinics with support from a local nonprofit organization. Tonkon Torp and Schwabe Williamson and Wyatt partner with the Oregon Law Center. Stoel Rives co-sponsors a night clinic with Legal Aid Services of Oregon.

13. Firms that assign pro bono cases handle them in a variety of ways. One of the most systematic methods is an Attorney-on-Loan Program. Successful programs in New York, Washington, D.C., Boston, San Francisco, Miami, Los Angeles, and Minneapolis vary, but most sponsor associates to work full-time on pro bono matters, usually by rotating associates in and out of outside legal services provider organizations. Typically, participating attorneys receive the same compensation and benefits granted to other firm associates and the same opportunities to achieve partnership status.

For example, Holland and Knight's Chesterfield Smith Community Service Fellowship program selects three top law school graduates as Smith Fellows who work exclusively with a public interest organization while being an associate of the firm. Fellows serve for two years at the Center for Public

Representation in Boston, the Florida Immigrant Advocacy Center, Inc. in Miami, or the Lawyers Committee for Civil Rights Under Law in Washington, D.C. In the third year, they begin work in another practice area with the firm.

Locally, the Multnomah County District Attorneys Office has offered a “Special Prosecutor Program” for over 15 years. This program offers an avenue for attorneys in private law firms to gain courtroom experience by volunteering in the District Attorney’s Office at no additional cost to the taxpayer. A number of Portland law firms participated in the Special Prosecutor Program: Bogle and Gates; Lane, Powell; Bullivant, Houser; Stoel, Rives; Stoll, Berne; Schwabe, Williamson & Wyatt; Davis, Wright; Tonkon, Torp, Galen, Marmaduke & Booth; Lindsay, Hart, Neil & Weigler; Dunn; and Miller, Nash, Wiener, Hager & Carlsen. For more information, contact Frederick Lenzser, Senior Deputy District Attorney, at Frederick.Lenzser@mca.us.

14. See how other firms track pro bono in the Handbook Appendix.

Firms may want to explore custom software to track pro bono. For example, Pro Bono Net has created *Pro Bono Manager*, a new web based platform that enables law firms to more effectively manage and promote their pro bono work. As described by Pro Bono Net: “The software will centralize all information related to a firm’s pro bono program and its tools will greatly simplify internal promotion of pro bono as well as reporting, staffing and oversight. In addition to time and cost savings and increased efficiency, the software will help firms increase volunteer participation and improve outcomes for pro bono clients.” *Pro Bono Manager* will be launched to the public in early 2007. For more information about *Pro Bono Manager*, see http://www.probono.net/probonomanager/Pro_Bono_Manager_Fact_Sheet.pdf or contact Adam Licht at alicht@probono.net.

15. The OSB Aspirational Standard recognizes community service by lawyers as an element of pro bono, and the OSB Pro Bono Roll Call requests the number of hours of community pro bono service by attorneys.
16. To participate in the OSB Pro Bono Roll Call, firms report the number of pro bono hours provided by each attorney in the firm. Pro bono hours are reported in three categories, and a fourth category of pro bono acknowledges financial contributions to an organization that provides direct legal service to low-income clients. Customized reporting forms that list all attorneys in the firm are distributed by the Oregon State Bar every year. Forms are also available by contacting the OSB Pro Bono Program at probono@osbar.org or (503) 431-6355.

The Pro Bono Roll Call reporting categories correspond with the OSB Pro Bono Aspirational Standard:

Category A. VOLUNTEER LEGAL REPRESENTATION

This category includes volunteer legal services in which you provided direct representation

- ▮ for low-income clients through a legal aid office
- ▮ for a nonprofit organization’s pro bono program
- ▮ for an attorney assistance program through a court, library or other community initiative
- ▮ for civic, charitable, governmental, educational, or other public-service organizations with limited income
- ▮ for individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights

- for any indigent client that a lawyer intentionally opts not to charge before providing legal services

Category B. VOLUNTEER LAW IMPROVEMENT ACTIVITIES (NON-REPRESENTATION)

This category includes volunteer activities that improve the law, the legal system, and the legal profession. For examples, see www.osbar.org/probono/reporting.html.

Category C. COMMUNITY SERVICE

This category includes volunteer time in a non-legal capacity for the public good. Examples: volunteering for organizations like Meals on Wheels or Habitat for Humanity.

Category D. FINANCIAL CONTRIBUTION

The OSB Pro Bono Aspirational Standard encourages lawyers who are unable to provide direct legal services to low-income clients to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to low-income clients.

Law firms that participate in the OSB Pro Bono Roll Call are entered automatically into the Oregon New Lawyers Division (ONLD) Pro Bono Challenge. The Pro Bono Challenge tallies the hours reported in the Voluntary Legal Representation Category (Category A) and awards the small, medium, and large firm that contribute the most pro bono hours each year.

17. The American Bar Association introduced the Pro Bono Challenge in December of 1992 to the nation's largest law firms to encourage firms to increase their commitment to providing pro bono services. The ABA Pro Bono Challenge asks the lawyers in the country's top 500 firms to commit three to five percent of their firms' billable hours to pro bono projects.

The Pro Bono Institute's Law Firm Pro Bono Challenge asks law firms with 50 or more lawyers to acknowledge their institutional, firm-wide commitment to provide pro bono legal services to low income and disadvantaged individuals and families and non-profit groups by becoming Challenge Signatory Firms. Signatory Firms are expected to set a target of either 5 or 3 percent of total billable hours - in addition to the hours-per-attorney standard commonly used in articulating pro bono goals. Participating firms receive extensive technical assistance resources at the Law Firm Pro Bono Project. For additional information, please contact ttaylor@probonoinst.org."

18. Clients care about your firm's community service involvement. A firm pro bono report is a great way to highlight the professionalism of your firm and recognize the great work you are doing.
19. Examples of pro bono reports produced by Oregon law firms include:
 - Davis Wright Tremaine LLP: 2005 Pro Bono Portfolio, http://www.dwt.com/pro_bono/2005_ProBonoReport.pdf
 - Perkins Coie: 2004 Pro Bono Report, <http://www.perkinscoie.com/content/aboutperkins/relatedlinks/2004annual.pdf>
 - Kirkpatrick and Lockhart Preston Gates Ellis LLP, 2006 Pro Bono Report, http://www.klgates.com/files/Publication/ee7dc4c3-cd18-4ebf-81bf-26ff63cde4c5/Presentation/PublicationAttachment/cb002f21-14d1-4056-88e8-3f9256d65543/Pro_Bono06_1.pdf

20. A firm culture of support and recognition for pro bono is an important motivator for attorneys. Providing billable hours credit for pro bono work when evaluating lawyers sends a strong message of firm support. Among firms in the Northwest that give billable hour credit for pro bono, 50 hours of credit is the standard.

Firm participation in the OSB Pro Bono Roll Call allows the OSB to provide additional recognition. The Oregon State Bar recognizes outstanding pro bono service by firms in the annual Pro Bono Challenge, and individual lawyers who provide 40 or more hours of pro bono service to an OSB certified pro bono program receive a voucher from the OSB Pro Bono Program to redeem on OSB CLE program registration and materials.

Appendix: Current Law Firm Pro Bono Policies (January 2007)

1. Davis Wright Tremaine
2. Miller Nash (get updated version)
3. Tonkon Torp (get copy)
4. Elder Law Firm: Davis Pagnano & McNeil LLP(get copy)

Medium Firms that Reported in 2005 Pro Bono Roll Call: Preston Gates Ellis, Holland and Knight, Gevurtz Menashe Larson Howe, Williams Kastner Gibbs

1. DAVIS WRIGHT TREMAINE

DWT encourages its attorneys to engage in pro bono legal work. Our attorneys have the freedom to take on matters that interest them personally. As a result, DWT represents pro bono clients from a broad spectrum of socio-economic, racial and ethnic backgrounds and political persuasions.

All of the usual ethical considerations (which include the duty of zealous representation, conflicts of interest, avoidance of frivolous suits, the duty of candor to the court) apply to pro bono representations. Also, because Davis Wright Tremaine represents a number of clients that are prominent in their respective industries, any case that challenges industry practices and which may adversely affect existing clients (such as a challenge on banking practices, a plaintiff's libel case, or an environmental protest relating to timber sales) should be reviewed by the appropriate department chair before a representation is undertaken.

Because our lawyers participate in pro bono representations in the firm name, the same standard of care we apply to paying clients is required.

In a case where a client has some ability to pay, it is often wise to require a retainer that will cover the anticipated costs of the representation, which might include filing fees, service fees, and deposition costs.

The Partner-in-Charge along with the DWT Pro bono and Public Service Committee and any designee will monitor pro bono work. If a lawyer contemplates a significant pro bono commitment, that lawyer shall provide advance notice to and consult with the Partner-in-Charge of his or her office.

The Pro Bono Bank represents DWT's goal of committing 3% of total firmwide billable hours to pro bono work. DWT has adopted the ABA definition of "pro bono" for the purpose of determining what work is eligible for "Bank" credit. As used in the ABA definition, the term pro bono refers to activities of the firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice and consisting of:

(a) the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means;

(b) the provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; and

(c) the provision of legal assistance to charitable, religious, civic, community, governmental or 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.

Pro bono hours do not receive earned fee credit.

Managing Partner approval shall be required for billable hour credit in excess of 3% of total firmwide billable hours.

Individual attorneys will annually receive billable hour credit for pro bono hours up to a limit of 8% of the attorney's annual billable hours goal. Partner-in Charge approval must be sought and obtained by the individual attorney or his or her supervising attorney for billable hour credit beyond this percentage.

When it makes a difference, an appropriate adjustment will be made to individual and firm caps when fees are recovered and retained in a pro bono case.

The firm encourages all attorneys to find a way to participate in pro bono projects and to continue DWT's tradition as a leader in the community.

Staff Participation

DWT staff shall perform assigned tasks on pro bono matters with the same professionalism, attention and dedication as they perform billable projects.

Billable staff will be given billable credit toward their billable hours goal for all pro bono projects assigned to them by a DWT attorney. All assignments to billable staff shall be made through the billable staff coordinator for the office in question.

In addition to their regularly assigned duties, staff members make valuable contributions towards DWT's pro bono practice, such as serving as interpreters, assisting with legal clinic intakes and notarizing documents. DWT staff may participate in DWT's pro bono matters during the work day on tasks outside of their regular job responsibilities to the extent of their interest or ability, and subject to the regulations controlling the unauthorized practice of law, provided they first obtain permission from their immediate supervisor. DWT staff are further invited, though not required, to participate as unpaid volunteers on DWT's pro bono matters outside of regular working hours. Such volunteer efforts are a service to the firm and the pro bono clients we serve, and they are to be commended.

Annual Pro Bono Awards

DWT through its Pro bono and Public Service Committee shall annually issue awards for pro bono participation to attorneys and staff for exceptional contributions. Nominees shall be solicited each year from all attorneys and staff.

Effective January 1, 2005