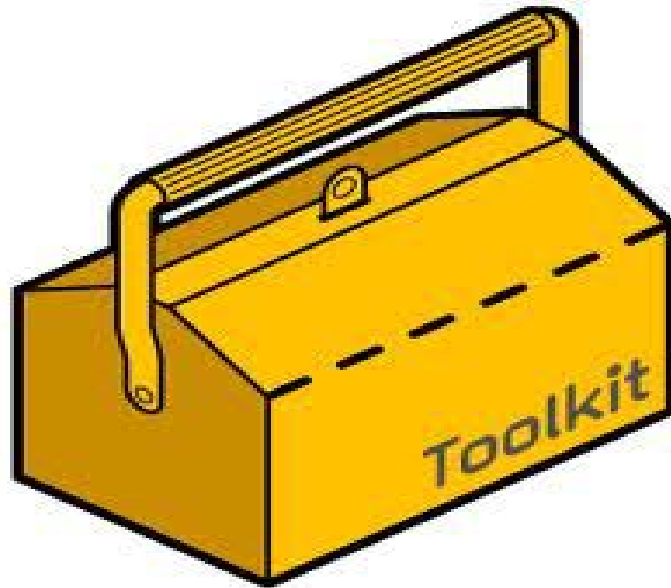


Pro Bono Policy Toolkit

A Guide to Developing, Adopting and Distributing a Pro Bono Policy



State Bar of Montana
Justice Initiatives Committee



STATE BAR OF MONTANA
Serving the people of Montana and their attorneys

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MONTANA *PRO BONO* POLICY TOOLKIT

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INTRODUCTION TO THE MONTANA PRO BONO POLICY TOOLKIT

There is extraordinary need for the provision of *pro bono* services in Montana. The State Bar of Montana Justice Initiatives Committee (formerly the Access to Justice Committee) developed, and the State Bar of Montana Board of Trustees adopted, a model *Pro Bono* Policy in 2008. The Model *Pro Bono* Policy incorporates many of the elements outlined in the Pro Bono Policy Toolkit. The Toolkit is designed to encourage adoption of the Model *Pro Bono* Policy or in the development of a policy unique to the lawyers and firms delivering *pro bono* services. Because the Toolkit is intended to be interactive, it is best accessed electronically to enable live links and document searching features.

Why develop or adopt pro bono policy? A pro bono policy is of benefit in almost all practice environments: small firms to large firms, corporate and in-house counsel, as well as the public sector. Many elements are the same for all types of practice scenarios, while others are unique such as rules or policies requiring apply more defined parameters or restrictions, for example, government lawyers.

A policy also makes good business sense. A policy promotes a common understanding of *pro bono publico* among lawyers and staff and demonstrates commitment and expectations regarding provision of *pro bono* services. A policy also establishes a clear understanding among lawyers and staff of the process for accepting and completing *pro bono* cases. Perhaps most importantly, it facilitates the ability for attorneys to fulfill the provisions of Rule 6.1 of the Montana Rules of Professional Conduct to contribute 50 hours of *pro bono publico* services per year in a alignment with the structure, ability and resources of a firm.

This Toolkit is designed not only to help firms, corporations, organizations and agencies to adopt or develop a *pro bono* policy, but also to provide guidance and support to those assisting and promoting the development of such policies to encourage and increase the provision of *pro bono* legal services.

A written pro bono policy can have as many (or as few) specific guidelines as desired. This Toolkit contains sample clauses and language together with information about *pro bono* in Montana. It may be helpful to read through the various “tools” in the Toolkit before deciding what to include in the *Pro Bono* Policy.

Key Elements of an Effective Pro Bono Policy

- **What is the firm's *pro bono* commitment?**

Firms may choose to create a simple statement explaining why the firm supports and promotes *pro bono* work and outline expectations of members of the firm concerning *pro bono* work. Some Pro Bono Policies contain only a Mission Statement concerning *pro bono* work.

- **How does the firm define *pro bono*?**

Rule 6.1 of the Montana Rules of Professional Conduct provides a range of activities that constitute *pro bono* legal services. Firms may include all activities outlined in Rule 6.1 or select those the firm chooses as part of its *pro bono* expectations or allocate a portion of hours in the tiered categories according to the intent of the Rule. It might also be helpful to include what the firm does not consider to be *pro bono* work.

- **Who is eligible to receive the firm's *pro bono* services?**

Firms can be as general or as specific as desired in identifying the types of cases or clients it chooses to accept *pro bono*. This might include financial thresholds, specific populations of the community, individual types of legal problems or through identified organized *pro bono* programs. A policy might also suggest taking cases either confined to an attorney's area of expertise or cases that will offer skill building, additional experience or mentoring opportunities. This process might also help the firm create a pre-screening procedure for firm staff.

- **What are the firm's expectations regarding lawyers providing *pro bono* services?**

You may wish to require or recommend that a certain number of *pro bono* hours or cases be completed by lawyers in the firm and how the firm desires those hours are allocated to direct representation to people of limited means versus other *pro bono* tiers.

- **What will be the firm's process for taking on a *pro bono* case?**

A firm should be clear what steps a lawyer has to follow before beginning work on a case. As with any case, a *pro bono* case can still present a conflict for the firm. In addition, firms – even the smallest firms – should have a system for discussing or approving *pro bono* work. This is especially true when other members of a firm will absorb the time cost associated with the provision of *pro bono* work. You might consider if one person will act as a *pro bono* manager for the firm and if attorneys will choose their own cases and if cases can be assigned by the firm.

- **Do you need *pro bono* coordination or case tracking?**

The firm's structure, goals and resources in determining whether the *pro bono* cases and opportunities to provide *pro bono* services will determine if you need a coordinator. Coordination can be involved or as simple as applicable. Larger firms may wish to create an internal *pro bono* committee that makes decisions about the administration of the program.

Tracking cases allows firms to accurately share the value of their contributions with others. While most firms do not perform *pro bono* services for recognition or positive press, it is a natural byproduct of the firm's contributions and serves as a fine example to others not providing those services.

- **What is the lawyer's responsibility to the *pro bono* client?**

It's best to clarify *pro bono* clients will receive the same level of service, privilege and confidentiality as a paying client. A firm's *pro bono* contributions may include substantially reduced fees or minimal financial contribution by the client (including costs or disbursements) or to draw from funds from supporting community or legal organizations designed to assist with these costs. A retainer should set out the details of the lawyer-client relationship including any or all of these items.

- **What procedures will the firm follow for tracking *pro bono* cases in billing, filing and other administrative systems?**

It is best practice to track and handle a *pro bono* case in the same manner as the firm's other cases. This will assist the firm in determining the number of open *pro bono* cases and the hours spent on *pro bono* each year.

- **What are the acceptable uses of the firm's resources for *pro bono* work?**

A *pro bono* policy can identify which resources are freely available for *pro bono* work and which are not. The policy can also consider how the firm's staff, equipment, facilities, and outside services can be utilized in providing *pro bono* services. Most state and federal public service employees are governed by agency *pro bono* policies. A local office of a state or federal agency who wishes to create a *pro bono* policy to further define special efforts or projects should always include the agency's adopted *pro bono* policy. *For a list of adopted state and federal policies, visit the Montana Supreme Court Pro Bono website.*

- **How will the firm encourage and recognize *pro bono* service by its lawyers?**

The influence a lawyer's *pro bono* contributions have on billable hours, compensation, and advancement in the firm can confirm a firm's true commitment to providing *pro bono* service. Rewarding and not penalizing a lawyer for taking *pro bono* cases and encouraging each lawyer to provide services provides clear guidelines for new lawyers and assists others in determining how *pro bono* is considered in the context of employment.

There are local, state and national awards recognizing *pro bono* contributions by individual lawyers and firms. Internally, firms may wish to acknowledge *pro bono* work through firm communications and highlight particularly compelling cases.

- **How will the firm and its lawyers connect with appropriate recipients of *pro bono* services?**

There are a number of programs in Montana designed to provide opportunities for *pro bono* work to people of limited means or organizations designed to assist people of limited means. There are also opportunities to work with certain populations that may be of particular interest to an attorney such as veterans or victims of domestic violence or with community-based initiatives where attorneys live and work. A firm may choose to only take cases from an organized *pro bono* program that provides financial screening, support and malpractice insurance or from any source on a case by case basis. A firm may also choose to develop an in-house or “signature” *pro bono* program designed specifically for the firm and its unique interests. There are agencies and programs that can assist you in designing your own *pro bono* program or in partnering you with another provider to deliver *pro bono* services.

The Montana Supreme Court Statewide Pro Bono Program provides an online opportunity guide for of local, state and national *pro bono* projects and programs including case type, financial qualifications for clients, availability for primary or secondary malpractice coverage and for each identified organized *pro bono* program in Montana or having a presence in Montana.

ProBono.net also provides an interactive *pro bono* opportunity tool for attorneys seeking *pro bono* opportunities affiliated with Montana Legal Services Association (MLSA) and Legal Services Corporation.

Pro Bono Policy Toolkit Worksheet

1. Which of the following sections will be included in the firm (organization) policy?

- Firm's Commitment to Pro Bono
- Firm's Pro Bono Expectations
- Pro Bono Defined
- Coordination of Pro Bono Work
- Staffing and Supervision of Pro Bono Activities
- Recognition of Pro Bono Work
- Other: _____

2. How many hours of pro bono service will the firm expect or recommend that each lawyer complete annually?

- 50
- Other _____

3. How many hours of that annual pro bono service should be direct representation of people of limited means?

- All
- Two-Thirds
- Half
- At least one case
- Other _____

4. Which of the following activities will the firm consider to fulfill its pro bono expectation? (Check all that apply)

- All activities outlined in Rule 6.1 of the Rules of Professional Conduct
- Direct provision of legal services to persons of limited means without an expectation of fee, including all volunteer services through Montana Legal Services or non-profit pro bono program.
- Delivery of free legal services to charitable, religious, civic, community, governmental and educational organizations who provide services primarily to people of limited means.
- Deliver of legal services **at no fee** to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights.
- Delivery of legal services **at a substantially reduced fee** to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights.

- Delivery of free legal services that benefit the public (e.g. nonprofit advice)
- Legal activities that improve the law, the legal system and the legal profession (serving at the state or local bar, a section a task force, etc.)
- Mentoring another lawyer on pro bono work

5. Which of the following activities, if any, will the firm specifically exclude from work it considers to fulfill its pro bono expectations (Check all that apply)

- Delivery of legal services at a substantially reduced fee to persons of limited means
- Voluntary financial contributions to organizations that provide legal services to persons of limited means
- Non-legal volunteer services to any civic, charitable and public service organizations (e.g. Food Bank, Schools, or other volunteer-based organizations)
- Other non-legal volunteer activities
- Uncollectible fee-generating or contingency fee matters
- Legal services to friends or family who are not of limited means
- CLE Instruction
- Volunteer service on board of directors or bar activities that are not related to improving the availability or quality of legal services to persons of limited means.
- None. Each lawyer is free to determine how to fulfill his or her pro bono responsibilities.
- Other: _____

6. What is the firm's policy on financial contributions to organizations that coordinate legal services to persons of limited means (Check one)

- Lawyers may contribute to organizations that coordinate legal services to persons of limited means in lieu of direct pro bono services.
- In addition to providing pro bono services, the firm encourages lawyers to contribute to organizations that coordinate legal services for persons of limited means.
- The firm will leave decisions about financial contributions up to individual lawyers.
- Other non-legal volunteer activities.
- Other: _____.

7. If the firm encourages an annual financial contribution, what contribution is sufficient to meet firm expectations?

- \$_____ per year.
- The firm will leave the amount of financial contributions up to individual lawyers.
- Not applicable. The firm will not encourage lawyers to make a financial contribution.

8. Who will coordinate the pro bono work of the firm's lawyers? (Check all that apply)

- The firm's pro bono program is coordinated by a designated Pro Bono Coordinator.
- The firm's pro bono program is coordinated by a Pro Bono Committee.
- The firm's pro bono program is coordinated by a Pro Bono Coordinator and a Pro Bono Committee.
- Individual lawyers may seek pro bono opportunities personally, but are expected to coordinate with the Pro Bono Coordinator and/or Pro Bono Committee.
- The firm's members should agree on pro bono work undertaken by each member.
- Other: _____

9. If the firm will have a pro bono coordinator, what role and responsibilities will be assigned to that coordinator? (Check all that apply)

- Serve as a member of the firm's management/executive committee
- Service as a contact person for organized pro bono programs
- Foster relationships with pro bono programs
- Coordinate case screening and assignments
- Disseminate information on pro bono opportunities to lawyers
- Match lawyers and opportunities
- Monitor the status of cases
- Produce quarterly or annual reports on firm's pro bono service
- Report pro bono hours of firm's lawyers to outside entities
- Recognize outstanding service of individual lawyers or of the firm as a whole (when and where applicable)
- Coordinate publicity for the firm's pro bono works
- Other: _____

10. If the firm will have a committee within the firm to coordinate pro bono work, what role and responsibilities will be assigned to that committee? (Check all that apply)

Current policy language found at VI. Pro Bono Coordination and Administration

- Serve as a contact for organized pro bono programs
- Foster relationships with pro bono programs
- Coordinate case screening and assignments
- Disseminate information on pro bono opportunities to lawyers
- Legal Match lawyers and opportunities
- Monitor the status of cases

- Produce quarterly or annual reports on firm's pro bono service
- Report pro bono hours of firm's lawyers to outside entities
- Recognize outstanding service of individual lawyers or of the firm as a whole (when and where applicable)
- Coordinate publicity for the firm's pro bono works
- Other: _____

11. If individual lawyers will be asked to find their own pro bono opportunities, what sources does the firm prefer they use? (Check all that apply)

- A program administered by Montana Legal Services Association
- A program administered by the State Bar of Montana serving the needs of people of limited means.
- A program administered by a local bar association serving the needs of people of limited means.
- A local or state pro bono program serving people of limited means
- Legal services to friends or family who are not of limited means
- Other: _____
- No preference.

12. How will the firm assign pro bono cases to its lawyers?

- The firm will employ a rotation policy to assign lawyers within the firm to pro bono cases the firm has been assigned.
- The firm will accept assignments of individual, and especially large or complex pro bono cases as firm projects to which all lawyers in the firm will contribute in some measure.
- Lawyers within the firm will accept individual assignments of pro bono cases.
- The firm has an employee or member on staff who works exclusively on pro bono cases on behalf of the firm.
- Other: _____

13. How will the firm monitor and track pro bono cases being handled by its lawyers that involve direct provision of legal services to persons of limited means?

- Lawyers will be expected to report their pro bono hours to the firm Pro Bono Coordinator.
- Lawyers will be expected to report their pro bono hours to the firm's Pro Bono Committee.
- The firm will track pro bono hours using the same tracking system used for billable hours.

The firm will track pro bono hours using an electronic tracking system other than the one used for billable hours.

Other: _____

15. Will the firm produce an annual pro bono report for either internal use or for distribution to clients, the bar or other designations?

Yes

No

16. If the firm produces an annual pro bono report for either internal use or for distribution to clients, the bar or other destinations, what components are or will be included?

Pro bono goal for the current year.

The number of pro bono hours provided by the firm.

The number of lawyers in the firm that provided pro bono services.

The number of pro bono hours provided by each lawyer.

The types of pro bono services provided.

The monetary value of the pro bono services provided by the firm.

Recognition of firm members providing exceptional pro bono services.

Press coverage

Highlight legal service clients

Other: _____

17. How will the firm encourage and recognize pro bono service by its lawyers? (Check all that apply)

All time spent on pro bono matters are treated in the same manner as billable hours for purposes of evaluating lawyers.

The firm will give billable hour credit for designated number of pro bono hours per year for purposes of evaluating lawyers.

The firm encourages each of its lawyers to have one active pro bono matter at all times.

No lawyer will be penalized or criticized for time devoted to pro bono within this policy.

Time will be designated at orientation to discuss the firm's pro bono policy and how to meet goals. Examples of pro bono service by firm members will be highlighted.

Other: _____

SAMPLE *PRO BONO* POLICY CLAUSES

The firm's *pro bono* commitment

Sample Clause 1 (from State Bar of Montana Model Pro Bono Policy)

An extraordinary need exists in this country for the provision of legal services for those unable to pay for them. Despite the generous contributions of many attorneys, the legal needs of the disadvantaged in Montana continue to go largely unmet. While many law firms undertake pro bono matters, many lack a formal written pro bono policy. The formal adoption of such a policy is critical in sending the message that this firm supports pro bono and encourages every attorney to render such service. We hereby adopt the following pro bono policy.

Sample Clause 2

The law firm of [law firm] believes that pro bono services are an essential element of every attorney's professional responsibility. Lawyers possess unique skills and abilities to serve persons of limited means and to promote public interest in ways that no other profession can. Lawyers have a duty, as professionals, to contribute to the welfare of the community, to assist in the development of the legal profession, and to broaden the overall commitment to access to justice for all people. Furthermore, in a society governed by the rule of law, lawyers have an obligation to ensure that the legal system works, especially for persons of limited means.

***Pro Bono* defined**

Sample Clause 1 (from State Bar of Montana Model Pro Bono Policy)

The foremost objective of our pro bono policy is to provide legal services to indigent or near-indigent members of our community and the non-profit organizations that assist them. The Montana Supreme Court has defined pro bono publico service under Rule 6.1 of the Montana Rules of Professional Conduct. That rule, in part, states:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least fifty (50) hours of pro bono legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the hours of the legal services without fee or expectation of a fee to (i) persons of limited means, or (ii) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means.

The rule goes on to discuss additional pro bono or reduced fee services to individuals, groups or organizations in matters in furtherance of their organizational purposes where the payment of standard fees would deplete the organization's resources or would otherwise be inappropriate.

Because the following activities, while meritorious, do not involve direct provision of legal services to the poor, the firm will not count them toward fulfillment of any attorney's goal to provide legal services to indigent persons or to non-profits that serve such person's needs: Participation in 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 or friends who are not eligible to be pro bono clients under the above criteria. Pro bono service does not include fee generating matters which have become uncollectible or unsuccessful contingency matters.

In addition to direct services, the firm also encourages all staff to contribute financial support to organizations that provide services free of charge to persons of limited means.

Sample Clause 2

The firm supports the *pro bono* standard outlined in Rule 6.1 of the Montana Rules of Professional Conduct.

Pro bono publico or pro bono services 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 those of limited means, without expectation of compensation should be the primary type of service provided by the Firm and its lawyers.

Eligibility to receive the firm's *pro bono* services

The firm recognizes that attorneys perform a wide variety of public service activities. We applaud and encourage such efforts.

We encourage lawyers to take on *pro bono* clients in any area in which there is a need and in which the lawyer has expertise or sees to enhance skills and training.

Optional additional statements

Our firm is particularly interested in offering *pro bono* services to people of limited means who do not qualify for other legal aid services or programs.

Our firm is particularly interested in offering *pro bono* services to people of limited means referred by Montana Legal Services Association.

Our firm is particularly interested in offering *pro bono* services to [name a demographics, program or organization].

Our pro bono commitment focuses on a particular type of service [program]. Lawyers should provide the defined services to [service][program] outlined above.

The firm's expectations concerning lawyers' provision of pro bono services

Sample Clause

Pro Bono is a firm-wide commitment. The firm expects each partner and associate to help fulfill this obligation.

The firm, therefore, expects each of its lawyers to complete _____ hours of pro bono service per year, of which _____ hours of which should be direct representation of those of limited means.

The firm's process for taking on a *pro bono* case

Sample Clause 1 (from State Bar of Montana Model Pro Bono Policy)

All pro bono legal matters will be opened in accordance with regular firm procedures including the utilization of a conflicts check and an engagement agreement. The firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters where permitted.

Sample Clause 2

Before beginning work on a *pro bono* matter, the lawyer must follow the firm's process for identifying client conflicts and must ask for approval to take on a *pro bono* client from [*Pro Bono* Coordinator, partner(s), Litigation Manager, Management or *Pro Bono* Committee]

***Pro bono* coordination, case tracking and reporting contributions**

Sample Clause 1 (State Bar of Montana Model Pro Bono Policy)

The firm shall designate a pro bono coordinator or pro bono committee whose responsibility it shall be for implementing and administering the firm's pro bono policies and procedures. These responsibilities include reviewing, accepting and/or rejecting pro bono legal projects, establishing firm income eligibility guidelines, and communicating pro bono opportunities available to attorneys and paralegals. Attorneys are encouraged to seek out pro bono matters that are of interest to them.

Pro bono legal services shall be directly provided by the individual lawyer and not be delegated or passed on to another lawyer in the firm. The lawyer shall keep track of all time spent providing pro bono services. The firm shall voluntarily report total annual pro bono hours expended to the state bar or other organization upon request.

Sample Clause 2

The firm's pro bono program is coordinated by _____.

Pro Bono hours are monitored and tracked using the following process:

The firm will review the status of *pro bono* files at regular business or partnership meetings on a [quarterly, monthly] basis, and will acknowledge the *pro bono* contributions of individual lawyers in internal communications and outside the law firm, as appropriate. Once a year, we will host an event to celebrate the *pro bono* efforts of the members of our firm.

The lawyer's responsibility to the *pro bono* client

Sample Clause 1

Our firm promises our *pro bono* clients the same quality of service that we endeavor to provide every client. We will set out our commitment to a *pro bono* client in a retainer agreement. We do not expect to be paid any fees for legal services on a *pro bono* case. However, the client is responsible for disbursements, unless we agree otherwise in writing. We will try to help with these costs by seeking ways to have disbursements covered through community or law firm contributions.

Procedures for tracking pro bono cases in billing, filing and other administrative systems

Sample Clause 1

All *pro bono* work must be logged into the firm's administrative systems and tracked following the same procedures used on any other client file, with the exception of accounts receivable.

Acceptable uses of the firm's resources for pro bono work

Sample Clause 1

The firm provides the same quality of representation to all clients regardless of their ability to pay. *Pro Bono* cases will be given the same staffing, attention, and resources as any other project. *Pro Bono* matters are to be supervised by partners with the full resources of the firm available in support. *Pro bono* matters also require the same procedures and protocols for approving use of firm resources and staff.

Attorneys should possess the knowledge and experience necessary for success on any project. *Pro bono* matters are no exception. Attorneys working on *pro bono* matters outside their area of expertise are expected to seek advice, training, and if necessary, supervision from attorneys in their specialty. Partners and experienced attorneys should consider mentoring on *pro bono* projects as an option for fulfilling the firm's requirements.

Sample Clause 2

Our firm's resources are available to a lawyer working on a *pro bono* case meeting the guidelines set forth in this Policy. However, a lawyer is expected to discuss costs and implications with [...*Pro Bono* Coordinator...*Managing Partner*....*Firm Administrator*] when the draw on staff, equipment and costs are likely to exceed a minimal level.

Encouraging and recognizing pro bono service firm lawyers

Sample Clause 1 (Montana State Bar Model Pro Bono Policy)

The Firm recognizes that the commitment to *pro bono* involves a personal expenditure of time. The firm strongly encourages and expects its attorneys to honor their professional responsibilities by providing *pro bono* services. Each attorney's efforts to satisfy this expectation will be considered in performance evaluations and compensation decisions. *Pro bono* work will be given equal consideration and reviewed according to the same standards as any other 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.

Sample Clause 2

A lawyer's involvement in pro bono activities is an important factor for this firm's ongoing evaluation of its associates. A willingness to serve and become involved with the community evidences a level of maturity and professionalism that is highly prized by the firm. Firm lawyers should be rewarded and never penalized for taking *pro bono*.

Sample Clause 3

The Firm recognizes the value of *pro bono* work to our lawyers, our firm and our community. Lawyers will not be penalized for taking on *pro bono* cases according to this policy. Hours spent on *pro bono* files will be included in the lawyer's hourly contribution to the firm and will be valued in the compensation process. Lawyers will be favorably evaluated on their willingness to take on *pro bono* activities and doing so will enhance their opportunities for promotion or advancement.

How the firm and its lawyers connect with appropriate recipients of *pro bono* services

Sample Clause 1 (State Bar of Montana Model Pro Bono Policy)

Attorneys are encouraged to seek out pro bono matters that are of interest to them. The law firm encourages attorneys to take pro bono cases through organized local and state pro bono programs including Montana Legal Services. Such programs provide many benefits as well as opportunities including free CLE training, screening for income eligibility, case merit and mentoring, professional liability insurance and reimbursement for some disbursements.

Sample Clause 2

Lawyers are welcome to bring *pro bono* clients to the firm. We will also, as a firm, seek out and maintain connections with appropriate organizations in the community, explaining our *pro bono* policy and inviting a defined number of requests for *pro bono* services.

Sample Clause 3

The firm operates its own internal *pro bono* program which focuses on [type of case, particular program]. All requests for services are screened through and accepted or rejected by our [Pro Bono Coordinator, Managing Partner].

PROPOSED MODEL PRO BONO POLICY **FOR MONTANA LAW FIRMS**

I. Commitment to Pro Bono

An extraordinary need exists in this country for the provision of legal services for those unable to pay for them. Despite the generous contributions of many attorneys, the legal needs of the disadvantaged in Montana continue to go largely unmet. While many law firms undertake pro bono matters, many lack a formal written pro bono policy. The formal adoption of such a policy is critical in sending the message that this firm supports pro bono and encourages every attorney to render such service. We hereby adopt the following pro bono policy.

II. Pro Bono Defined

The foremost objective of our pro bono policy is to provide legal services to indigent or near-indigent members of our community and the non-profit organizations that assist them. The Montana Supreme Court has defined pro bono publico service under Rule 6.1 of the Montana Rules of Professional Conduct. That rule, in part, states:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least fifty (50) hours of pro bono legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the hours of the legal services without fee or expectation of a fee to (i) persons of limited means, or (ii) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means.

The rule goes on to discuss additional pro bono or reduced fee services to individuals, groups or organizations in matters in furtherance of their organizational purposes where the payment of standard fees would deplete the organization's resources or would otherwise be inappropriate.

Because the following activities, while meritorious, do not involve direct provision of legal services to the poor, the firm will not count them toward fulfillment of any attorney's goal to provide legal services to indigent persons or to non-profits that serve such person's needs: Participation in 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 or friends who are not eligible to be pro bono clients under the above criteria. Pro bono service does not include fee generating matters which have become uncollectible or unsuccessful contingency matters.

In addition to direct services, the firm also encourages all staff to contribute financial support to organizations that provide services free of charge to persons of limited means.

III. Recognition of Pro Bono Service

The firm recognizes that the commitment to pro bono involves a personal expenditure of time. The firm strongly encourages and expects its attorneys to honor their professional responsibilities by providing pro bono services. Each attorney's efforts to satisfy this expectation will be considered in performance evaluations and compensation decisions. Pro bono work will be given equal consideration and reviewed according to the same standards as any other 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.

IV. Pro Bono Opportunities

Attorneys are encouraged to seek out pro bono matters that are of interest to them. The law firm encourages attorneys to take pro bono cases through organized local pro bono programs including Montana Legal Services. Such programs provide many benefits as well as opportunities including free CLE training, screening for income eligibility, case merit and mentoring, professional liability insurance and reimbursement for some disbursements.

V. Pro Bono Coordination and Administration

The firm shall designate a pro bono coordinator or pro bono committee whose responsibility it shall be for implementing and administering the firm's pro bono policies and procedures. These responsibilities include reviewing, accepting and/or rejecting pro bono legal projects, establishing firm income eligibility guidelines, and communicating pro bono opportunities available to attorneys and paralegals. Attorneys are encouraged to seek out pro bono matters that are of interest to them.

Pro bono legal services shall be directly provided by the individual lawyer and not be delegated or passed on to another lawyer in the firm. The lawyer shall keep track of all time spent providing pro bono services. The firm shall voluntarily report total annual pro bono hours expended to the state bar or other organization upon request.

Attorneys shall provide high quality representation to all clients regardless of their ability to pay. Pro bono projects will be given the same staffing, attention and resources as any other project. Pro bono matters are to be supervised by partners with the full resources of the firm available in support.

All pro bono legal matters will be opened in accordance with regular firm procedures including the utilization of a conflicts check and an engagement agreement. The firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters where permitted.

STATE BAR OF MONTANA PRO BONO FREQUENTLY ASKED QUESTIONS

*Created by the Justice Initiatives Committee
and approved by the Executive Committee*

1. What defines *pro bono publico* under [Rule 6.1 of the Montana Rules of Professional Conduct](#) and what are some examples that would qualify under the definition?

Rule 6.1 states: Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least (50) hours of pro bono publico legal services per year.

The rule can most easily be explained as a “tiered” approach to describing pro bono publico service.

*Under 6.1(a) a lawyer should provide a **substantial majority** of the (50) hours to*

*(a)(1) **persons of limited means,***

Examples:

1. Representing a person of limited means in a family law matter without an expected fee.
2. Representing a disabled client referred by a pro bono program in a Social Security overpayment.
3. Providing legal advice to an individual living in poverty at a free neighborhood legal clinic

OR

*(a)(2) to charitable, religious, civic, community, governmental and educational organizations that address **the needs of persons of limited means.***

Examples

1. Preparing incorporation documents for a new nonprofit health care clinic for low income persons
2. Assisting a church in acquiring a zoning variance for a homeless shelter

Note: Serving on the board of a local civic organization would ordinarily *not* qualify under Rule 6.1.

Under 6.1 (b) a lawyer should provide additional services as follows:

(b)(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;

Examples:

1. Representing low-income/elderly persons before the Public Utility Commission regarding a need for lifeline utility services
2. Lobbying the Montana legislature for comprehensive educational services for the disabled

Note: Appearing at the Montana legislature on behalf of an organization at no charge would ordinarily *not* qualify under Rule 6.1, unless that organization's primary purpose is to benefit persons of limited means.

(b)(2) delivery of legal services at a substantially reduced fee to persons of limited means

Examples:

1. Representing a person of limited means in a landlord-tenant issue at a pre-defined rate substantially less than what you would otherwise charge the client in your normal practice.

Note: Providing services to a friend or colleague at a reduced fee would normally *not* qualify, unless that friend or colleague is a person of limited means.

(b)(3) participation in activities for improving the law, the legal system or the legal profession.

Examples:

1. Developing an ADR program designed for Montanans living in poverty
2. Developing a pro bono CLE or mentoring program for new lawyers
3. Serving on the Board of Montana Legal Services Association or another legal nonprofit
4. Recruiting attorneys or raising money for a pro bono program

2. Who are “persons of limited means”? *Rule 6.1 does not specifically define this phrase. That decision is left to the individual program or attorneys. Many programs, such as those funded by the Legal Services Corporation or the Montana Justice Foundation, people living in poverty or “person of limited means” refers to those within 125% of [federal poverty guidelines](#)¹. Clients referred by an organized pro bono project generally have been screened for income eligibility according to the local guidelines. Attorneys accepting independent pro bono cases are encouraged to use the poverty guidelines, but they may also use their own judgment regarding who is a person living in poverty.*

3. Do legal services staff attorneys, public defenders, county attorneys and prosecutors count their work time as pro bono, since they provide free legal services to people living in poverty? *No. Although the services are free to the clients, the attorneys are paid for their work at salaries or with benefits they have accepted. However, if these attorneys provide volunteer legal assistance to the people living in poverty outside their regular work, they may report those hours as pro bono service.*

4. Do legal services to people living in poverty need to be provided through an organized pro bono project to qualify? *In most cases, services do not have to be provided through an organized pro bono project to qualify as pro bono. Many attorneys provide substantial amounts of qualifying pro bono legal services to people living in poverty on an independent basis. There are some situations*

(e.g. Emeritus status) in which pro bono services must be provided to a “qualified” pro bono program.

5. Why is the standard 50 hours? *The 50-hour goal is based on the pro bono standard established by the American Bar Association in 1988. 50 hours represents a little over 2% of an annual full time job.*

6. What happens if an attorney does not satisfy the 50-hour expectation? *Each Montana attorney is expected to provide 50 hours of qualifying services each year. To date, no attorney has faced discipline for failure to comply. For more information about pro bono opportunities, please visit the Montana Supreme Court’s [pro bono webpage](#).” Will be linked.*

7. Are attorneys expected to report their pro bono hours? How is this done?? *There is an annual voluntary pro bono reporting system and each attorney is encouraged to report qualifying hours. Attorneys are asked to report their pro bono service and financial contributions on-line in conjunction with the mandatory IOLTA Compliance Certificate due December 1 of each year. Links to online reporting can be found at the Montana State Bar website at www.montanabar.org.*

8. If substantially reduced fees are received directly from low income clients, do the services provided still qualify under Rule 6.1? *The Rule provides that the **substantial majority** of your pro bono hours should be without expectation of fee. But additional hours providing substantially reduced fee work for people of limited means is included in the second “tier” of the definition. Free and reduced fee services are separated for reporting purposes.*

9. What is the definition of “substantially reduced fee”? *The Rule does not specifically define “substantially reduced fee.” However, Lawyer Referral Services – including Montana - that offer reduced fee panels for people living in poverty, often use \$50-60/hour as the maximum that panel lawyers may charge. Lawyers doing reduced fee*

¹ Federal Poverty Measures - Department of Health and Human Services

work may use that fee or may use their own judgment in setting the fee.

10. Are there services in addition to representing a criminal defendant for free or for a substantially reduced fee that criminal law attorneys may count as pro bono? *Yes, criminal law attorneys can play an important role in “preventive law.” Many pre-teens, juveniles and their families are unfamiliar with the juvenile justice system until they are involved in the system. Community education, e.g., speaking at schools, community centers, etc., about the juvenile justice system counts as pro bono, so long as the audience is predominately comprised of people living in poverty.*

11. What if I accept a client on a fee-paying basis and later determine that, due to the client's income, services should be provided on a pro bono basis? *The definition includes legal services provided “without an expectation of fee.” Attorneys must use their discretion to determine what services are provided “without an expectation of fee.”*

12. What if my employer prohibits outside practice of law? *While some employers still prohibit the outside practice of law in pro bono matters, many employers, such as various government employers, are relaxing such restrictions. The State Bar attempts to work with those who have such restrictions to encourage them to remove or modify them. Attorneys whose employers currently prohibit the outside practice of law are encouraged to participate in the kinds of services that do not constitute the practice of law, such as those included under part (b) of the definition. No attorney is expected to comply with the Rule if absolutely prohibited by the employer. You may not be aware that your employer does in fact have a policy permitting pro bono and outlining the parameters in providing those services. If you aren't sure, check with your employer or visit the [Court's pro bono page](#)² and*

²

http://courts.mt.gov/cao/ct_services/probono/default.mcp

follow the attorney link for available or published policies.

13. Transactional attorneys often provide legal assistance to non-profit organizations such as schools, churches, and social service agencies by doing such things as drafting by-laws, handling contract negotiations, and providing legal advice. Do these services count under the definition? *Yes, where the population benefiting from or comprising the non-profit organization is serving predominately low income people and families. Examples may be legal services provided to Head Start educational program or a provider of social services to the homeless or persons of limited means as outlined under (c) of the Rule.*

14. Are there any other non-litigation services that transactional and other attorneys can provide that count as pro bono under the definition? *Yes. There are many kinds of pro bono opportunities that do not involve litigation or court work that would qualify as direct legal services to people living in poverty. Included are various real estate transactions (such as assistance with clearing title), explaining the terms of a contract drafting a will or other estate planning documents, probating a will, appealing the denial of SSI or other public benefits. Most pro bono programs provide volunteer attorneys with specialized training, materials and mentors to help guide volunteer attorneys through simple family law matters. Participation in a legal clinic or free legal seminar for the public, such as a legal awareness for the elderly clinic, also qualifies as pro bono so long as the audience is primarily comprised of people living in poverty. Simply providing free legal advice over the phone to a person of limited means qualifies, as does conducting intake interviews through organized pro bono programs.*

15. Legal services provided to other kinds of non-profit organizations and non-legal volunteer services provided to a non-profit organization or a low-income person are not included in the definition. Why not? *Montana attorneys provide countless hours of civil services in various kinds of community activities. The legal profession should*

be commended for its voluntary contributions to society. However, the Rule contemplates that lawyers have a special talent and license to provide a unique service that non-lawyers are prohibited from providing. The Rule history reflects that the legal needs of people living in poverty are only minimally being met and that it is an attorney's responsibility to provide equal access to justice to even our lowest income level citizens or residents. Montana Rules of Professional establish an ethical obligation of Montana attorneys to provide pro bono services to those otherwise unable to pay.

16. Do mediation services provided by an attorney count under the Rule? *Mediation services provided at no cost when at least one party is low-income qualify pro bono definition under the Rule.*

17. Can an attorney contribute money to a legal services program in lieu of providing 50 hours of pro bono legal services to people living in poverty? *The Rule provides "In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means." While the Rule does not outline a contribution in lieu of providing hours, the value of your time is equal to what you would otherwise charge a client for 50 hours of the work performed. Financial contributions to other nonprofit organizations that do not provide legal services to person of limited means do not appear to be contemplated by the Rule.*

18. Do law related lectures/education to the public count as pro bono activity? *When the law related lecture/education is provided to an audience of people of limited means, it is likely a pro bono activity under the "substantial majority" tier one. Other presentations, such as those for Bar-specific activities, are contemplated under lower tiers as "additional" hours.*

19. When pro bono work is done by one attorney at the request or direction of another, who should count the hours? *In the case of a subordinate attorney doing pro bono work as part of his/her job, at the direction of a supervising attorney, either attorney may count the hours, as long as the*

work is not reported twice. In the case of a law firm system whereby designated attorney/s do all of the firm's pro bono work as part of their job, the firm should equitably allocate the reportable hours amongst firm attorneys, making sure not to count such services twice. If one attorney pays another attorney to perform legal services to people living in poverty and assures that the work is done competently, the referring attorney may claim the pro bono hours. Of course, the paid attorney may not.

20. What if an attorney provides more than 50 hours of pro bono legal services? *Many Montana attorneys do provide more than 50 hours of pro bono legal services each year. These attorneys should be highly commended for their outstanding efforts. Many local bar associations present annual pro bono awards for outstanding efforts and the State Bar of Montana annually presents one or more pro bono service awards from a statewide pool of nominations.*

21. How can an attorney find out about local pro bono opportunities? *Many communities in the state of Montana have at least one organized pro bono project that can assist attorneys in identifying clients that need their services. Montana Legal Services Association is the largest referring entity in the state and often work with partnering local pro bono programs to refer eligible clients to willing attorneys. Visit the [Court's pro bono opportunities page](#) to find a recognized program in your area. One of the important benefits of one of the organized pro bono programs is the provision of primary or secondary professional liability insurance.*