

THE SUPREME COURT OF MONTANA

MIKE McGRATH  
CHIEF JUSTICE



JUSTICE BUILDING  
215 NORTH SANDERS  
PO BOX 203001  
HELENA, MONTANA 59620-3001  
TELEPHONE (406) 444-5490  
FAX (406) 444-3274

April 11, 2023

District Court and Court of Limited  
Jurisdiction Judges

*Re: Judicial Pro Bono Handbook*

Dear Colleagues,

As you may know, lawyers who participated in a recent series of focus groups across Montana agreed universally that judicial involvement is one of the most important drivers of *pro bono* participation among the bar. Attorneys recognize judges as leaders in the legal system and in their communities, uniquely positioned to exercise positive and effective influence to encourage and increase *pro bono* service. As judges, you recognize not only the immense value of legal representation in meaningful access to justice, but its impact on the efficiency of our court system.

Together with other information gathered during the focus group sessions, the bench and bar are working to design and implement new ways of expanding the delivery of *pro bono* services and participation in access to justice initiatives. In that vein, the Supreme Court's Access to Justice Liaison Patty Fain has updated the Montana Judges *Pro Bono* Handbook to assist you in asking attorneys to commit to the professional responsibility of providing *pro bono* services and to provide you the necessary tools in taking an active role to encourage, facilitate, support and recognize *pro bono* service. I am pleased to provide you with a copy of the new Handbook. I encourage you to review it and to contact Ms. Fain with your questions and feedback.

As we continue the hard work of addressing the access to justice gap in Montana, I thank you for the difficult work you do in administering justice. We recognize your critical importance in achieving our overriding mission to secure equal justice under the law. We look forward to assisting you in promoting *pro bono* service in the communities where you live and serve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike McGrath".

Mike McGrath  
Chief Justice

# Montana Judicial Pro Bono Handbook

First Edition

April 2023

---

Page 1	Introduction Unmet Legal Needs Montana's Legal Services Delivery System
Page 4	Range of Pro Bono Services
Page 4	Rules of Professional Conduct and Pro Bono Defined
Page 5	Pro Bono Related Judicial Ethical Guidelines
Page 5	What Judges Can Do to Encourage and Support Pro Bono
Page 7	Judicial Service on Program Boards, Councils and Committees Court Pro Bono Policies
Attachment 1	Sample Judicial Recruitment Letter
Attachment 2	Sample Pro Bono Appreciation Service Letter
Attachment 3	Sample District Judicial Pro Bono Policy
Attachment 3A	Montana Supreme Court Pro Bono Policy
Attachment 4	Judicial Pro Bono Talking Points

PREPARED BY: MONTANA SUPREME COURT ACCESS TO JUSTICE PRO BONO ACTION COMMITTEE

## Introduction

This Montana Judicial Pro Bono Handbook is intended to provide Montana judges information and tools to assist you in taking an active role in encouraging, facilitating, supporting and recognizing pro bono representation. Judicial involvement is one of the most important drivers of pro bono participation by lawyers. As leaders in the legal profession and in your communities, you are uniquely positioned to encourage and promote increased efforts on the part of lawyers to provide legal assistance to persons and families unable to afford legal services. Pro bono service increases access to justice, drives positive community change and greatly improves judicial economy by reducing the number of self-representing parties. And providing and promoting pro bono service is an important strategy in achieving a fair and accessible justice system for all.

## Unmet Legal Needs

Montana Legal Services Association (MLSA) conducted a statewide study to assess the legal needs of low-and moderate individuals.<sup>1</sup> The conclusion remains relevant and concerning: the legal needs of low-income populations, including the elderly, children, the disabled and victims of domestic violence are not being adequately addressed. More than 133,000 Montana residents live at or below the poverty line.<sup>2</sup> There are thousands more who live above the poverty line but still struggle with life-changing issues: sufficient shelter, food, medical care and other necessities for themselves and their families.

Montana's Legal Needs Study and others across the country have repeatedly found that legal representation can be a cost-effective way to prevent further exacerbating circumstances and can be the single most important factor in obtaining meaningful access to justice. Increasing the pro bono effort is a critical component in improving access to the justice system.

### I. Montana's Legal Services Delivery System

Montana has a network of legal service providers and community programs working together to promote, support and facilitate delivery of pro bono services. Brief descriptions of program types are listed below. A detailed description of Montana programs utilizing or helping to support pro bono attorneys can be found at [www.probono.mt.gov](http://www.probono.mt.gov).

- *Montana Legal Services Association (MLSA)*

For over fifty years, MLSA has provided civil legal services to thousands of low-income Montanans living in all 56 counties and on all Tribal Reservations. The State Bar of Montana, the Montana Supreme Court, local bar associations, local court programs, and MLSA work together to involve private attorneys in programs providing pro bono services to low-income Montanans. MLSA is often a

---

<sup>1</sup> [The Justice Gap in Montana: As Vast as Big Sky Country](#)

<sup>2</sup> [United States Census July 2022](#)

partner with other community-based and statewide programs working to bring volunteer attorneys and people in need of services together.

MLSA is the sole statewide provider of general civil legal assistance to Montanans living in poverty. MLSA has long been aware that it alone cannot respond adequately to the legal needs of low-income Montanans. With over 180,000 eligible clients in Montana, private attorney participation is vital to making equal justice a reality.

MLSA has a full range of pro bono opportunities from limited scope assistance through in-person and phone advice clinics to full representation.

- *Local Pro Bono Programs*

There are locally based pro bono programs in several geographical locations across Montana. Most programs work in conjunction with the courts, local bar associations, MLSA and other service providers and organizations. Judges can be particularly helpful in encouraging participation through local organizations and bar committees.

- *Specialized Legal Services Programs*

There are local and statewide legal services programs and providers designed to address particular gaps for targeted populations or in a specialized area of the law or legal issue. Many programs work together to support one another in providing a more holistic approach to meeting the varied needs of these populations.

- *Law School Clinics and Student Opportunities*

The Alexander Blewett III School of Law offers a required, academic clinical program and a voluntary pro bono program to students for low-income and underrepresented Montanans. There are opportunities for attorneys to assist in providing services, including supervising and mentoring student attorneys to serve community needs.

- *Montana Supreme Court Statewide Pro Bono Program*

The Program works to expand and diversify the pool of programs and volunteer lawyers providing or performing pro bono work in Montana and develops plans and strategies to institutionalize a pro bono and public interest culture among Montana lawyers and expand opportunities for pro bono service to fit the skills and needs of volunteers. The program is available to assist judges in supporting and expanding pro bono service to meet the identified needs in their communities.

- *Montana Justice Foundation*

Pro bono is a large part of a more integrated solution in advancement of broader access to justice issues, but there will always be a critical need for appropriately funded legal service organizations and support in advocating for equal justice initiatives. The Montana Justice Foundation (MFJ) is a non-profit

organization acting as the charitable arm of Montana's Legal community by making grants with monies generated from IOLTA revenue and private giving to promote and advance access to justice in Montana. MJF has been a grantor of many of the legal services and pro bono programs across Montana and is an important partner in the work they do.

## **Range of Pro Bono Services**

Though many lawyers provide pro bono services directly through contacts in their own practices, formal requests for pro bono services generally come through organized programs for an individual client, ranging from brief advice and counseling to full representation. Provision of limited scope services can often help avoid full-scale litigation and provide manageable time opportunities, while engaging volunteers to serve a larger number of clients with more limited scope commitments. This includes in-person advice clinics, phone advice appointments, advising self-representing parties in court proceedings, mediating family law issues, and offering public education. There will always be a need for pro bono full representation. Access to justice partners continue to work toward developing and improving attorney resources and support to make full representation more time efficient and effective.

## **Attorney Rules of Professional Conduct and Pro Bono Defined**

Rule 6.1 of the Rules of Professional Conduct 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. In fulfilling this responsibility, a 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 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 education 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 legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Originally drafted using the American Bar Association Model Rules of Professional Conduct, the Montana Rules were revised in 2003 revising the first sentence to read “A lawyer should render at least...”, replacing the former “A lawyer should aspire to render at least...”. This change clarified the commitment of the Montana Bar and the judiciary to *pro bono* service. To learn more about applying the Rules of Professional Conduct, read the [Pro Bono Frequently Asked Questions](#).

## V. Pro Bono Related Judicial Ethical Guidelines

Judges have a special responsibility to ensure access to justice. As leaders in the legal system and in their communities, judges are uniquely positioned to exercise positive and effective influence on increasing the provision of pro bono services. Recommendations and strategies are offered in this Judicial Pro Bono Handbook and should be considered in conjunction with the ethical standards that must govern judicial conduct in the involvement in the promotion of pro bono.

The 2008 [Montana Code of Judicial Conduct](#) became effective January 1, 2009 and supports judges’ pro bono-related activities.

Rule 3.7(B) A judge may encourage lawyers to provide pro bono public service.

### COMMENT

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono public legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office.

[6] Subject to the requirements of Rule 3.1 and paragraph (A), a judge may provide leadership in improving equal access to the justice system; developing public education programs; engaging in outreach activities to promote the fair administration of justice; and convening and participating in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of legal services, and/or the administration of justice.

## VI. What Can Judges Do to Encourage and Support Pro Bono Service

Local judges in our district courts and courts of limited jurisdiction can be particularly important and effective in encouraging, promoting, and rewarding pro bono work and should take a leadership role in educating members of the bar about the need for pro bono legal services, about pro bono opportunities, and about the professional responsibility of lawyers to provide pro bono services including Rule 6.1 of the Rules of Professional Conduct.

## **Educate**

- Participation in local bench/bar meetings to discuss pro bono needs and issues.
- Presentations to newly admitted attorneys about pro bono and opportunities.
- Letter writing campaigns in coordination with local bar associations, legal service providers and statewide committees and organizations about the need for pro bono services and how to become involved.
- Presentations at bar events which address the needs for pro bono service and available opportunities to serve.
- Demonstrate wherever and whenever appropriate that you understand and believe that pro bono representation is helpful to the court and makes big differences in the justice system.

## **Recruit Pro Bono Lawyers**

Judicial recruitment is one of the most effective means for increasing lawyer participation in pro bono service. An ABA study of pro bono<sup>3</sup> found that solicitation for participation by a judge was the top incentive in providing pro bono assistance.<sup>4</sup> Recruitment activities could include:

- Meeting with members of local bar associations and specifically ask for assistance.
- Writing letters urging members of the bar to participate in a local program.
- Helping to identify the best coordination for courts to assist placement of local court-identified cases with available pro bono attorneys.
- Writing articles and editorials for attorney-related publications to encourage provision of pro bono services.
- Hosting periodic meetings or social events to discuss pro bono activities.
- Participating as a speaker at state, local, and specialty bar events.
- Making presentations to law firms and to public interest lawyers about pro bono service.
- Addressing new lawyers about the professional obligation of pro bono service.
- Outreach to lawyers and law firms to attend pro bono-specific meetings or to recruit for specific local pro bono projects.
- Making assignments directly to lawyers who have agreed to serve on a pro bono volunteer panel.
- Making attorneys aware of the ability to limit the scope of services to make pro bono more palatable to attorneys reluctant to accept full representation cases and honoring limited scope agreements between lawyers and clients as provided in M. R. Civ. P. 4.2.

---

<sup>3</sup> *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers*. The ABA Standing Committee on Pro Bono and Public Service. April 2018.

## **Recognition and Support of Pro Bono Work**

Retaining pro bono volunteers is as essential as recruiting new participants. Many participants do not expect to be recognized, but all appreciate the gesture, particularly by a member of the judiciary. When available, judges should participate in activities that recognize pro bono attorneys. Judicial recognition efforts should be considered in consultation with the Code of Judicial Conduct (see the Rules and Regulations section) but may include:

- Presenting pro bono awards at local, state and specialty bar events.
- Conducting or attending award presentations at judicial conferences.
- Meeting regularly with local legal service providers and programs to better understand available services and limitations.
- Sending letters to commend individual attorneys after the case has finally concluded.
- Sponsoring judicial receptions for pro bono attorneys.
- Acknowledging pro bono attorneys in court when appropriate, or in chambers.
- Adopting rules and procedures that support pro bono lawyers.
- Engaging in courtroom practices that enhance the efficiencies of pro bono attorneys with flexibility and preference in scheduling, opportunities for appearance by remote technology if travel is impractical, access to court records, and respect for limited scope appearances.

### **Train Pro Bono Lawyers**

Participation in the training of attorneys to expand availability of pro bono attorneys equipped to provide services sends a strong message to the bar about the value judges place on pro bono services. When judges participate in pro bono training activities, attendance and visibility increase while judicial participation confers additional credibility. Recognizing your limitations on time, statewide and local pro bono programs are eager to assist in preparing and facilitating presentations and materials for judges.

## **VII. Judicial Service on Advisory or Program Boards, Councils and Committees**

If you do not already, consider serving on your local pro bono committee, or on other program boards, councils or advisory councils focusing on the delivery of pro bono services. You can bring awareness of specific legal needs, challenges and trends represented in your courtroom. Judicial participation and leadership in these organized groups sets an excellent example and encourages participation by others. If you do not have a local pro bono committee, consider creating one and appointing members in conjunction with your local bar association. Pro bono professionals here in Montana are familiar with best practices in forming and supporting local committees and are available to help you. See the attachments for contact information.



## **VIII. Court Pro Bono Policies**

Consider adopting a judicial pro bono policy that encourages pro bono service, fosters fairness in allocating the pro bono workload and helps to educate attorneys in your area about pro bono opportunities and support in your geographical area. You can find an example of a Judicial District Pro Bono Policy in the attachments.

Also consider creating a court policy providing lawyer employees of the local court system opportunities to participate in pro bono and public service activities consistent with all other applicable federal, state and local laws and regulations consistent with the rules of professional conduct. The Montana Supreme Court Pro Bono Policy is attached for reference.

ATTACHMENT 1 TO JUDICIAL PRO BONO HANDBOOK  
Judicial Recruitment Letter

[JUDICIAL LETTERHEAD]

[DATE]

Dear Colleagues,

“Equal justice under law” represents something more than an aspiration or a moniker gracing the entrance of our courthouses. It exists when justice is available to all regardless of the ability to pay. As a lawyer, you have a unique opportunity to provide critical legal services to low-income people in your community through *pro bono* service, honoring the principles of the profession and your responsibility under Rule 6.1 of the Rules of Professional Conduct. Provision of *pro bono* legal services not only provides a lifeline to those in desperate need, it improves the economic and social fabric of our community and all who live here.

We are facing a civil legal aid crisis. Doing nothing is no longer an option. As members of the Bar, you are instrumental in shaping our justice system now and in the future to assure that the courthouse doors are not locked to those who cannot pay to enter. We are asking for your assistance in bridging the ever-expanding justice gap by providing *pro bono* service now.

*[You can include here information about a specific program, reference contact information or a website and include a link to recruitment sign up or event. Contact Patty Fain at [pfain@mt.gov](mailto:pfain@mt.gov) or 406/794-7824 to assist you in establishing a recruitment protocol and resources.]*

We look forward to seeing your participation in making our court system fair and efficient.

[JUDGE SIGNATURES]

**ATTACHMENT 2 TO JUDICIAL PRO BONO HANDBOOK  
ATTORNEY APPRECIATE LETTER**

[CAPTION]

[DATE]

ATTORNEY NAME  
ATTORNEY ADDRESS  
ATTORNEY ADDRESS

Re: *Your Pro Bono Contributions*

Dear [Attorney],

I would like to take this opportunity on behalf of the [Judicial District] judges to thank you for providing valuable pro bono public services to those who would otherwise receive no legal assistance. Your professional contributions are not only of great significance to those you represent, but are beneficial to this court, to your bar and to your community. During the time we have presided over cases in the [Judicial District], we've observed the substantial benefits pro bono attorneys bring to our justice system and believe pro bono participation often expresses what is most admirable in the legal profession.

Although we understand pro bono work can be challenging, we also understand it can be some of the most rewarding in your practice. We hope your experience was professionally and personally gratifying and you will continue to offer your invaluable services to those in great need.

We invite you to share your comments and suggestions to improve this court's support of your work and the work of the [Pro Bono Program]. We are sincerely grateful for your past service and look forward to your continued participation.

Sincerely,

[SIGNATURE BLOCK]

ATTACHMENT 3 to MONTANA JUDICIAL PRO BONO HANDBOOK  
Sample District Pro Bono Policy

**MONTANA [JUDICIAL DISTRICT]  
PRO BONO POLICY**

The judges of the [Judicial District] (the “Judiciary”) establish this Judicial Standards and Pro Bono Policy to encourage pro bono activity, foster fairness in allocating pro bono workload and educate attorneys practicing in the [Judicial District] about pro bono as provided by Rule 6.1 of the Montana Rules of Professional Conduct.

**General Judicial Policy for Pro Bono Program**

- 1.1 The Judiciary finds it is a professional responsibility of attorneys to provide *pro bono* legal services to those unable to pay and in need of legal representation.
- 1.2 The Judiciary endorses the [List any specific programs here] (“The Program”) and strives to enhance the capacity to provide *pro bono* service to community members and foster a positive institutional presence for The Program.
- 1.3 The Judiciary endorses *pro bono* work provided to and on behalf of other programs that provide the opportunity for *pro bono* service as outlined in 2.1 below.
- 1.4 The Judiciary does not provide oversight for The Program or other program operations but serves in an advisory capacity in matters relative to the court.
- 1.5 Recruitment and retention of *pro bono* attorneys is not a solicitation for charity (Canon 25, Canons of Judicial Ethics). Unrepresented litigants delay court proceedings and do not efficiently use judicial resources. The Code of Judicial Conduct provides that judges are to serve the public interest through the administration of speedy and careful justice.
- 1.6 It is appropriate and desirable that the Judiciary acknowledge the work of volunteer lawyers in writing and at public and private functions honoring volunteer lawyers.

**Pro Bono Defined**

- 2.1 Every lawyer in this District 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 publico* legal services per year. In fulfilling this obligation, the lawyer should:
  - a. provide a substantial majority of these fifty (50) hours to:

ATTACHMENT 3 to MONTANA JUDICIAL PRO BONO HANDBOOK  
**Sample District Pro Bono Policy**

- 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.*
- 2.2 The Judiciary acknowledges that attorneys have personal commitments and activities outside of the legal profession. Unless those commitments and activities meet the guidelines outlined in 2.1, above, the work is not defined as *pro bono* per this Policy and does not absolve an attorney of the responsibility to provide the *pro bono* services.
- 2.3 Provision of legal services to or employment by non-profit, public interest, charitable, religious, civic, community or government organizations for which you receive a salary or other compensation which is not substantially reduced does not meet the *pro bono* standards as outlined in 2.1 above.
- 2.4 For the purposes of defining *pro bono* for Program participation, a client's failure to pay an attorney as agreed does not constitute *pro bono*. Rule 6.1 includes the provision "without expectation of fee."

**Program Participation**

- 3.1 The Judiciary encourages and supports that all attorneys in the Judicial District have equal responsibility to provide *pro bono* services as outlined in 2.1 above regardless of status or nature of employment, excepting those that are specifically prohibited by law, policy, rule or other compelling reasons.
- 3.2 There is a wide range of opportunities for attorneys who cannot participate in traditional representation through local organized program referrals. This Policy presumes no exception to *pro bono* participation to attorneys who would otherwise be positioned to participate in *pro bono* activities. The Judiciary welcomes introduction of other *pro bono* opportunities that are within the scope of Rule 6.1.
- 3.3 Financial contributions are encouraged in addition to participation in The Program. An attorney compelled to financially contribute in lieu of participation in the Program or other *pro bono* work is urged to donate the equivalent of [50] billable hours.
- 3.4 Lack of participation by an attorney in The Program or other organized *pro bono* efforts will not impact judicial neutrality when the attorney appears before the bench.

ATTACHMENT 3 to MONTANA JUDICIAL PRO BONO HANDBOOK  
**Sample District Pro Bono Policy**

- 3.5 The Judiciary recognizes that an attorney may temporarily be unable to provide *pro bono* services.

Liability and Malpractice Insurance

- 4.1 The Judiciary does not expect that an attorney will participate in any *pro bono* program without adequate liability coverage unless they so choose. Attorneys should inquire directly with programs for information and policy regarding malpractice and liability coverage.

Resources, Training and Support

- 5.1 The Judiciary believes that support and training are essential to competent *pro bono* representation and will endeavor to participate in and encourage provision of adequate training, practice materials and support to programs and attorney volunteers including but not limited to mentors, continuing legal education programs, manuals, references and other materials that can facilitate *pro bono* representation.

[ALL JUDICIAL SIGNATURES]

## ATTACHMENT 3A - Montana Supreme Court Pro Bono Policy

### MONTANA SUPREME COURT PRO BONO POLICY Summer 2011

1. PURPOSE AND SCOPE. This policy addresses the performance of pro bono legal services by attorneys employed by the Montana Supreme Court.

2. DEFINITIONS.

“Pro bono legal services” means legal services described in Mont. R. Prof. Conduct 6.1, including but not limited to those performed without the expectation of compensation for low income individuals who otherwise lack the ability to retain attorneys to provide legal services for them.

3. GENERAL POLICY. By any standard, there is a large unmet need for legal services for low income persons in Montana. The Montana Supreme Court has adopted a Rule of Professional Conduct which encourages each Montana attorney to perform 50 hours of pro bono legal service each year. Mont. R. Prof. Conduct 6.1. Subject to direction from the justice for whom the attorney is employed, it is the policy of the Montana Supreme Court to encourage attorneys employed by the Court to volunteer to provide pro bono legal services in compliance with this policy and other applicable provisions of Montana law and the Montana Rules of Professional Conduct for lawyers.

4. USE OF COURT RESOURCES.

4.1 Hours of Work. Attorneys are encouraged to seek pro bono opportunities that can be accomplished outside of scheduled working hours. However, pro bono legal services activities may sometimes occur during work hours. The Court will be flexible and will accommodate, where feasible, the efforts of Court attorneys to perform pro bono services. Employees seeking to participate in pro bono activities during regularly scheduled work hours may be granted annual leave, compensatory time off, or leave without pay, consistent with policies governing the use of such leave by state employees generally.

4.2 Use of Office Equipment. Pro bono legal services are services provided in the public interest and in satisfaction of an ethical obligation of all attorneys to ensure that legal services are made available to persons of limited economic means. The Congress of the United States has recognized that this is not a private matter by authorizing the expenditure of tax dollars for the support of the national Legal Services program. Pro bono legal services therefore do not constitute the “private business” of the attorney for purposes of § 2-2-121(2)(a), MCA. Nevertheless,

respect for the public trust requires that public agency attorneys refrain from inappropriate use of state resources for purposes not connected to the Court's mission. Use of law books or on-line resources for which there is no usage-based charge in the performance of pro bono services involves only a negligible additional expense, if any, and is therefore permissible. When office computers and telephones are used in moderation for pro bono legal services, there is only negligible additional expense to the State for electricity, ink, and wear and tear, and such use therefore is permissible. This policy does not authorize the use for pro bono services of commercial electronic services for which there is a usage-based charge to the State. Consistent with this policy, attorneys may use office telephones for essential pro bono-related communication as long as no long distance or other additional usage-based charges to the State are incurred and the usage does not interfere with official business. Attorneys must list a personal cell phone or other private phone number for identification on all correspondence and court documents, and may not use a court telephone number for return calls.

Court attorneys who require fax and photocopying services in conjunction with pro bono work may obtain such services through the State Law Library consistent with its policies and procedures. Court attorneys should contact the State Law Librarian for direction and assistance in this regard.

This policy does not supersede Court policies designed to protect the safety or security of computer or local area network operations. Any use of State-provided equipment for pro bono activities must be consistent with such policies. This policy is also subject to any restrictions arising from law or contract on the use of State equipment or supplies.

Attorneys should contact their supervisors if there is any question as to whether an activity involves "negligible additional expense," interferes or threatens to interfere with official business, and is consistent with Court computer security policies or legal or contract restrictions on use of equipment or supplies.

4.3 Clerical Support. A Court attorney may not assign or otherwise require pro bono legal services of clerical or administrative support personnel.

4.4 Letterhead. Supreme Court employees may not use office letterhead or agency or office business cards in the performance of pro bono legal services.



## 5. CONFLICT OF INTEREST.

5.1 General. Supreme Court attorneys are bound by the Rules of Professional Conduct for attorneys and the ethical rules governing state employees to avoid conflicts of interest. Court attorneys may not accept pro bono clients in matters which create or appear to create a conflict of interest with their work for the Court. Such a conflict exists, among other situations, if a pro bono representation would require the attorney's recusal in a matter involved in the attorney's official duties.

5.2 Prohibited actions. Court attorneys may not do pro bono work on appeals to the Montana Supreme Court.

## 6. FORMALITIES OF REPRESENTATION.

6.1 Retainer Agreement. Court attorneys shall use the model retainer agreement attached to this policy, making explicit to a pro bono client that the attorney is acting in his or her individual capacity and not as a representative of the Court. The client must sign the agreement acknowledging that fact.

6.2 Malpractice Insurance. The State does not provide malpractice insurance coverage for the pro bono activities of its attorneys, since such activities are outside the course and scope of the attorneys' official duties. *See* § 2-9-305, MCA. Before accepting referral of a pro bono legal matter, the attorney should determine whether malpractice coverage exists through the referring pro bono program or organization, if any.

7. USE OF OFFICIAL POSITION OR PUBLIC OFFICE. Court attorneys who provide pro bono legal services may not indicate or represent in any way that they are acting on behalf of the State or any agency or office of the State, or in their official capacity. The incidental identification of the attorney as a State agency employee—for example, when an office post office box address or telephone number is used—is not prohibited. The attorney is responsible for making it clear to the client, any opposing parties, or others involved in the pro bono case, that the attorney is acting in his or her individual capacity as a volunteer and not as a representative of the State or any of its agencies. Court offices may not be used for meetings with clients or opposing counsel in a pro bono case unless the office space is a common area in a building not clearly associated with the Montana Supreme Court.

8. DISCLAIMER. This policy is intended only to encourage increased pro bono activities by Montana Supreme Court attorneys, and is not intended to create any right or benefit,

substantive or procedural, enforceable at law by any party against the State of Montana, its agencies, officers, or any person.

10. PERSONAL FAMILY LEGAL MATTERS. Notwithstanding any other provision of this policy, a Court attorney may perform personal and family legal services, including counseling family members in matters involving criminal law, provided the activity does not interfere with the proper and effective performance of the attorney's official duties.

Adopted this \_\_\_\_ day of August, 2011.

---

Chief Justice

---

---

---

---

---

---

---

---

Justices

**RETAINER AGREEMENT**

The undersigned client (CLIENT) engages the undersigned attorney (ATTORNEY) for legal representation in the following matter:

---

---

---

---

ATTORNEY will make no charge for attorney fees in this matter. CLIENT acknowledges that ATTORNEY is acting in ATTORNEY's individual capacity and is not acting as a representative of the State of Montana, the Montana Judiciary, or any other state entity.

CLIENT will cooperate fully with ATTORNEY and will provide all information known by or available to CLIENT which may aid ATTORNEY in representing CLIENT.

CLIENT authorizes and directs ATTORNEY to take all actions which ATTORNEY deems advisable on CLIENT's behalf. ATTORNEY agrees to notify CLIENT promptly of all significant developments and to consult with CLIENT in advance as to any significant decisions concerning those developments.

ATTORNEY will represent CLIENT diligently but makes no promises or representations as to the success of those efforts. ATTORNEY may terminate representation of CLIENT (1) if ATTORNEY believes further action is not justified on behalf of CLIENT or (2) if CLIENT does not cooperate with ATTORNEY.

CLIENT is responsible for any costs incurred other than attorney's fees. Efforts shall be made to waive costs whenever possible.

This retainer does not cover an appeal.

---

DATE

---

CLIENT

---

ATTORNEY

ATTACHMENT 4 TO JUDICIAL PRO BONO HANDBOOK  
Judicial Pro Bono Talking Points

**Judicial Pro Bono Talking Points**

These talking points are intended for judges to use when addressing groups of attorneys at events advancing and promoting pro bono service and can be tailored to specific audiences and time availability. Visit [www.probono.mt.gov](http://www.probono.mt.gov) and click on the “Judges” tab to find additional presentation resources.

**I. Introductory remarks**

- As lawyers of an honorable profession with a proud history in Montana of pro bono legal services. With the privilege of the ability to practice law comes the professional obligation to ensure that the justice system is available to everyone.
- The provision of pro bono work you assist those in need who could not otherwise pay for your services and improve the administration of justice. Pro bono matters.
- The systems across the state to assist you in providing pro bono service are continually improving and supported by legal services programs, local bar associations, and statewide pro bono initiatives. [Can include local support and resources here.]

**II. How your pro bono service helps your community.**

- Every time a lawyer assists a domestic violence survivor, it can prevent serious injury, save lives, spare children further trauma, prevent costly medical expenses, help court dockets, and change lives forever.
- When a lawyer helps a family stay in their home, they prevent homelessness and ease demand on shelters and other municipal and charitable services.
- When a lawyer prevents workers from wrongfully losing their jobs or denied wages, families can put food on the table and pay rent or mortgages.
- When a lawyer provides assistance with a guardianship, it protects a child or the elderly, facilitating critical advocacy to our most vulnerable populations.

**III. Limited Capacity of Legal Aid Programs**

- MLSA is the sole statewide provider of general civil legal assistance to Montanans living in poverty. MLSA alone cannot respond adequately to the legal needs of low-income Montanans. With over 180,000 eligible clients in Montana, private attorney participation is vital to making equal justice a reality.
- Because most legal aid programs are under-funded, programs must turn away the majority of those in need for lack of resources.

ATTACHMENT 4 TO JUDICIAL PRO BONO HANDBOOK  
**Judicial Pro Bono Talking Points**

**IV. Pro Bono Service is a Professional Responsibility**

- Pro bono serves the administration of justice.
- Pro bono ensures *meaningful* access to justice to those who desperately need legal assistance but do not have the resources to pay for it.
- It improves the public perception of the legal profession.
- It assists courts to operate more efficiently and effectively.

**V. Pro Bono makes business sense.**

- Law firm clients are interested in their attorney's social responsibility.
- Lawyers can benefit from pro bono work by developing skills and expertise and making and sustaining contacts in the community.
- Pro bono providers in Montana will provide no-cost CLE trainings and have access to professionally developed resources and materials. Participating attorneys can also benefit from mentoring and networking with other attorneys and experts.
- Organized pro bono programs usually offer malpractice insurance when representing a client referred by the program.

**VI. Wide range of pro bono opportunities**

- Pro bono opportunities are available for all types of attorneys – litigators, transactional, mediators, public interest lawyers – whether new or experienced there is an opportunity for you.
- There are all levels of commitments from limited scope opportunities in phone and clinic advice to full representation.

**VII. Get Involved**

- Join your local bar association pro bono committee or program.
- Contact Montana Legal Services Association and other legal service agencies listed on [www.probono.mt.gov](http://www.probono.mt.gov) and find out how you can help.
- It improves the public perception of the legal profession.
- It assists courts to operate more efficiently and effectively.

**VIII. Closing Remarks**

- Speaking on behalf of myself and my fellow judges, we extend our sincere gratitude for your continued provision of pro bono services. We understand the incredible demands on your time, and the court extends its sincere gratitude for the difference you are making in your communities.