

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