



NOV - 8 2002

MEMORANDUM FOR: Heads of Legal Offices
FROM: Theodore W. Kassinger *TWK*
SUBJECT: *Pro Bono* Legal and Volunteer Policy

Pro bono legal work and other volunteer activities allow participants to assist individuals and strengthen communities, and, at the same time, present opportunities to enhance professional skills. Pursuant to Executive Order 12988, it is the policy of the Office of the General Counsel (OGC) of the Department of Commerce to facilitate voluntary participation in such activities by employees in OGC. Although Federal Government attorneys face some constraints on the types of *pro bono* legal and other volunteer activities they may perform, there is ample room for meaningful participation in these activities. The attached policy statement is intended as a guide for those who wish to become involved in *pro bono* activity by eliminating uncertainty regarding the types of *pro bono* legal and other volunteer activities in which attorneys may participate.

Attachment

November 4, 2002

Department of Commerce Office of the General Counsel
Statement on *Pro Bono* Legal and Volunteer Service Activities

Attorneys in the Department of Commerce can play a significant role in providing voluntary legal assistance and other community services to members of the public in need of their skills. In view of this, pursuant to Executive Order 12988, the Office of the General Counsel of the Department of Commerce is issuing this policy to encourage Department attorneys to undertake such efforts, consistent with applicable statutes and regulations governing conflicts of interest and outside activities.

Pro bono legal services contemplated by this policy include legal services to (1) persons of limited means or other disadvantaged persons; (2) charitable, religious, civic, community, governmental, health, and educational organizations in matters designed to address the needs of such persons; (3) individuals or organizations seeking to secure or protect civil rights, civil liberties or public rights; or (4) activities seeking to improve the law, the legal system or the legal profession. Nonlegal voluntary services contemplated by this policy include such services to persons or organizations in the foregoing first two categories.

Department attorneys seeking to engage in either *pro bono* legal services or nonlegal voluntary services should consult with an ethics official in the Office of the Assistant General Counsel for Administration to ensure that the services contemplated comply with conflict of interest statutes or ethics regulations, including restrictions on representing clients before a Federal agency or court, or engaging in activities that interfere with the proper and effective performance of official duties.

There are certain additional constraints as well. Attorneys undertaking *pro bono* legal services must prepare and execute a retainer agreement, to be signed by the client, making it explicit that the attorney is acting in an individual capacity and not on behalf of the Department. The Department does not provide malpractice insurance for *pro bono* work, and, as a consequence, it is recommended that attorneys protect themselves by ensuring that they have such coverage for the legal services contemplated. Attorneys not licensed in the District of Columbia may practice subject to the constraints of the District of Columbia's local rule regarding the unauthorized practice of law. Attorneys providing such services outside the District of Columbia must comply with all state and local requirements, including any licensing and fee requirements.

It is Department policy to support *pro bono* legal and other voluntary services. To this end, supervisors are encouraged to grant annual leave or leave without pay for such activities, so long as the employee's absence does not adversely affect the paramount needs of the office. Limited administrative leave may be granted for training which will enhance job-related skills or otherwise provide education directly beneficial to office operations. As a general rule, employees may use Government resources only for official business or as authorized by the

Government. However, to support the policy enunciated here, certain limited uses of these resources may be authorized by heads of legal offices so long as they do not interfere with normal operations of the office and do not occur during duty hours: (1) personal uses that involve only negligible expense to the Government, including minimal use of ink, electricity and paper; (2) limited personal telephone or fax calls that are either local or charged to non-Government accounts; (3) commercial electronic databases, such as Lexis/Nexis or Westlaw, which are paid for at a fixed rate rather than on an hourly basis; (4) Department bound reference materials; and (5) Internet services to the extent consistent with Department policy.

Disclaimer

This policy statement is intended only to encourage *pro bono* legal and volunteer services by Department attorneys, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

The United States and the Department of Commerce will not be responsible for any negligent or otherwise tortious acts or omissions on the part of any Department employee engaged in any *pro bono* or voluntary activity. While the Department encourages *pro bono* and voluntary activities by its employees, the Department exercises no control over the services and activities of its employees engaged in these services and activities, nor does it control the time or location of any such service or activity. Each employee is acting outside the scope of his or her Government employment when the employee participates, supports or joins in any *pro bono* legal or volunteer service or activity.