



Department of Energy

Washington, DC 20585

March 5, 2010

MEMORANDUM FOR: ATTORNEYS IN THE OFFICE OF
GENERAL COUNSEL

FROM: SCOTT BLAKE HARRIS^{5.}
GENERAL COUNSEL

SUBJECT: *PRO BONO* LEGAL SERVICE

The Office of General Counsel (OGC) has a longstanding policy of encouraging and supporting the involvement of its attorneys in *pro bono* legal service. I intend to continue and expand upon that policy. To that end, this memorandum is designed to provide guidance to OGC attorneys who wish to perform *pro bono* legal service.

Pro bono legal service is broadly defined to include many types of legal representation performed without compensation. To give a few examples, it includes legal work on behalf of the indigent or disadvantaged, or on behalf of charitable, religious, civic, community, health, or educational organizations.

The Department does not restrict the type of *pro bono* legal service in which its attorneys may engage, provided that their service violates no statutory, regulatory, or bar organization restriction. I believe it is our obligation as attorneys strongly to consider providing *pro bono* legal service. And I encourage all of you to do so. At the same time, there are important restrictions on what government attorneys can do.

All *pro bono* legal service by OGC attorneys is subject to several requirements: prior written approval from your supervisor and the Assistant General Counsel for General Law; compliance with applicable conflict of interest statutes and regulations; and compliance with "unauthorized practice of law" statutes and fee requirements. For example, you may not engage in *pro bono* legal service that creates a conflict of interest or the appearance of a conflict. Nor, with limited exceptions, may you represent third parties before the federal government or in matters in which the federal government has a direct and substantial interest. In addition, in performing *pro bono* legal service, you should not formally identify yourself as a Department employee (e.g., on correspondence or filings before a tribunal).

Because *pro bono* legal service is not part of your official duties, supervisors may not assign or otherwise require it. Where you choose to provide such service, however, we recognize that at times you may need to be available to a *pro bono* client during regular working hours. You should feel free to perform *pro bono* legal service during those hours if you are approved for annual leave or leave without pay, or if you arrange with your supervisor to work additional time outside of your regularly scheduled hours.



In addition, in some circumstances, OGC will authorize administrative leave for the performance of *pro bono* legal service. OPM permits us to do so where: (1) the absence is directly related to the Department's mission; (2) the absence is officially sponsored or sanctioned by Department leadership; (3) the absence will clearly enhance your professional development or skills in your current position; or (4) the absence is brief and in the interest of the Department. Based on these criteria, OGC will generally approve administrative leave for court appearances and for client or witness interactions where access to a client or witness is circumscribed (*e.g.*, by hospital or prison visiting hours). Supervisors may approve up to 40 hours of administrative leave per calendar year.

Attorneys employed by the federal government are obligated to conserve government resources and may not use such resources for private purposes. The Department allows the personal use of office supplies, telephones, fax machines, photocopiers, and computers under certain circumstances, as described in DOE Order 203.1 (July 7, 2005). Such use should result in no more than a negligible cost to the government.

Many attorneys employed by the federal government are not licensed to practice in the District of Columbia. But Rule 49 of the D.C. Court of Appeals provides an exception to the usual requirement that attorneys practicing in the District be licensed here. Rule 49 states that an attorney *can* provide legal services in the District if the attorney is "a member in good standing of the highest court of a state or territory, and is assigned or referred by an organization that provides legal services to the public without a fee; provided that the person is supervised by an enrolled, active member of the District of Columbia bar." Please note, however, that attorneys practicing under Rule 49 are subject to the D.C. Rules of Professional Conduct.

DOE is a member of the Interagency *Pro Bono* Working Group, a committee comprised of more than 30 federal agencies committed to encouraging *pro bono* legal service by publicizing *pro bono* opportunities and offering educational and other programming to attorneys interested in volunteering. Our representative to this interagency collaborative is Wade Boswell (GC-12).

If you have any questions about *pro bono* legal service or the restrictions we must observe in providing it, or if you would like suggestions on how to find *pro bono* opportunities, please feel free to reach out to Wade at (202) 586-1484 or wade.boswell@hq.doe.gov.

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