



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

JUN 09 2009

MEMORANDUM FOR ALL DOD/OGC and DLSA PERSONNEL ASSIGNED TO
THE NATIONAL CAPITAL REGION

SUBJECT: Department of Defense Office of General Counsel (OGC)/Defense Legal
Services Agency (DLSA) Policy on Pro Bono Legal Services

Section 2 of Executive Order 12988, February 5, 1996, provides that all Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other voluntary service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline. Recent efforts in the DC area to enhance the pro bono support provided by local federal agencies suggest the advisability of an OGC policy.

Given the significant unmet need for legal services in the Washington, D.C. metropolitan area, it is the policy of the OGC/DLSA to encourage and support efforts by OGC/DLSA personnel assigned to the National Capital Region to provide pro bono legal services within their communities that are consistent with applicable federal statutes and regulations governing conflicts-of-interest and outside activities. While service in the OGC/DLSA is itself one of the highest forms of public service, OGC/DLSA further strives to increase access to justice for all.

Pro bono legal services are performed without compensation and include, but are not limited to, the provision of legal services to:

- persons of limited financial means or other disadvantaged persons;
- charitable, religious, civic, community, governmental, health, and educational organizations in matters that are designed primarily to address the needs of persons of limited financial means or other disadvantaged persons, or to further their organizational purpose;
- individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; or
- activities seeking to improve the law, the legal system, or the legal profession.

OGC/DLSA personnel seeking to engage in any pro bono legal work must follow OGC/DLSA procedures governing participation in outside activities. OGC/DLSA personnel may not engage in pro bono legal services that create or appear to create a



conflict of interest with their work for the Department. Before beginning pro bono work, personnel shall consult with their supervisor and ethics counselor.

Volunteer attorneys undertaking cases shall prepare and execute retainer agreements setting out the agreed scope of work and stating that they will perform such work without compensation. The retainer letter should make explicit to a pro bono legal client that the attorney is acting in his or her own individual capacity and not on behalf of the Department. The client must countersign a retainer letter in acknowledgment of this fact.

Before agreeing to meet with or accept a pro bono legal client, a OGC/DLSA attorney should determine whether the referring pro bono program or organization has a malpractice insurance policy that covers volunteer attorneys. The OGC/DLSA does not provide malpractice coverage for pro bono work. Immunities that may be granted to government attorneys in the performance of their official duties do not extend to pro bono work. Therefore, OGC/DLSA strongly encourages personnel to work with a legal services provider that carries malpractice insurance.

Attorneys not licensed in the jurisdiction where the pro bono activity will take place must comply with local rules concerning representation and avoid the unauthorized practice of law.

OGC/DLSA personnel who provide pro bono legal services may not indicate or represent in any way that they are acting on behalf of the OGC/DLSA or otherwise in their official capacity. The incidental identification of an employee's position or office is not prohibited, such as when an office number and street address are not sufficient to ensure mail delivery or when receiving a telephone call or using e-mail.

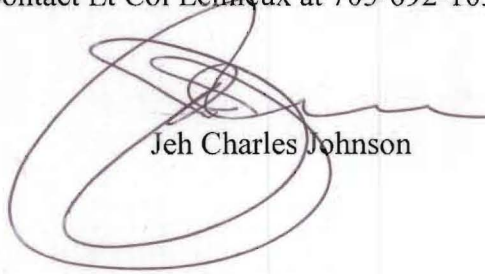
OGC/DLSA personnel are encouraged to seek pro bono legal opportunities that can be accomplished outside their scheduled working hours. However, pro bono legal activities may sometimes occur during work hours. Supervisors are urged to be flexible and to accommodate, where authorized and feasible, the efforts of their employees to do pro bono legal work, consistent with this policy, such as by allowing employees to take leave or, if local policy permits, to use flex-time arrangements or compressed work schedules.

As a general rule, employees may use government property only for official business or as authorized by the government. In using government property, employees must be mindful of their responsibility to protect and conserve such property and to use official time in an honest effort to perform official duties. Department policy authorizes the following personal uses of government office and library equipment and facilities:

- personal uses that involve only negligible expense to the government (such as electricity, ink, small amounts of paper, and ordinary wear and tear) and that do not interfere with the conduct of official business of others; and
- limited personal telephone and fax calls to locations within the office's commuting area, or that are charged to non-government accounts; and

- limited use of Department e-mail and Internet services.

I have designated Lt Col Dan Lemieux, of the Office of the Deputy General Counsel, (Personnel and Health Policy), to represent OGC on the Interagency Pro Bono Working Group. This working group is a committee composed of representatives of D.C. area federal agencies working to promote pro bono activities among federal attorneys and legal staff. If you are interested in pro bono work and would like to learn more about opportunities in the area, please contact Lt Col Lemieux at 703-692-1033.



Jeh Charles Johnson