



December 21, 2005

Reply to Attn of: **General Law Practice Group**

TO: NASA Legal Team
FROM: General Counsel
SUBJECT: Policy on Pro Bono Legal Service by NASA Attorneys

This memorandum sets forth the NASA policy on pro bono work by NASA attorneys. Agencies were directed to establish policies for pro bono programs by Executive Order 12988, issued February 6, 1996, which states "all Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline." I fully support the voluntary efforts of any NASA attorney who seeks to engage in pro bono activities, subject to the policies laid out below.

Pro bono legal services contemplated by this policy include, but are not limited to, uncompensated legal services for: (1) persons of limited means; (2) charitable, religious, civic, community, governmental, health, and educational organizations in matters that are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose; (3) individuals, groups, 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. Volunteer services include, but are not limited to, uncompensated, non-legal services to: (1) persons of limited means or (2) charitable, religious, civic, community, governmental, health, and educational organizations in matters that are designed primarily to address the needs of persons of limited means or other disadvantaged persons.

Attorneys wishing to participate in pro bono activities should obtain approval for those activities in accordance with NASA's regulations located in 5 C.F.R. § 6901.103 for obtaining approval of outside employment. Attorneys should also consult with an Agency ethics attorney to be sure that they comply with conflicts of interest statutes and ethics regulations, including 18 U.S.C. § 205 which restricts Federal attorneys from representing clients before a Federal agency or court. Note that matters before D.C. agencies do not pose a representational issue under § 205, nor do matters before a non-Federal entity through which Federal funds are channeled.

Employees are encouraged to seek pro bono and volunteer opportunities that can be performed outside of their scheduled hours. Once pro bono activities are approved, however, it is inevitable that some legal services will need to be provided during the normal work week. Supervisors are urged to be flexible and to accommodate, where feasible, their employees' efforts to do pro bono work. It shall be the NASA policy to permit an attorney's supervisor to authorize reasonably necessary use of official time (for telephone conferences, filing of papers, and the like) for volunteer or pro bono work. Employees seeking to participate in pro bono legal or volunteer activities during work hours may also be granted leave without pay, annual leave, or, in very limited circumstances, administrative leave. For more on types of leave available, see NASA NPR 3600.1 and OPM guidance at <http://www.opm.gov/oca/leave/html/Volunteer2.asp>. Note also that pro bono legal and volunteer work is not part of the official duties of Federal attorneys and may not be assigned to or otherwise required of support staff.

It is also inevitable that some use of Government equipment and materials will be implicated. NASA policy, as stated in NPD 2540.1F, states that "NASA employees ... are permitted limited use of Government office equipment for personal needs if the use does not interfere with official business and involves only minimal additional expense to the Government." In accordance with this policy, an attorney's supervisor may authorize the reasonably necessary use of Government property (computers, copiers, fax machines, etc.) for performing pro bono work. Employees at Centers that have fixed-rate contracts with Lexis-Nexis or Westlaw may also request permission from their supervisors to use those services for pro bono work.

Attorneys who provide pro bono legal services or who participate in volunteer activities may not indicate or represent in any way that they are acting on behalf of the Agency or in their official capacity. Employees should not use Agency letterhead, business cards, or otherwise identify themselves as NASA employees in correspondence, communications, or pleadings when participating in pro bono or volunteer services. When using Agency email, attorneys should indicate that the email is being sent in their personal capacity and not as an employee of NASA. The incidental identification of an employee's position or office, such as providing a work address or when receiving a phone call or using email, are not prohibited. Attorneys undertaking pro bono cases should be sure to prepare and execute a retainer agreement, setting out the scope of work and clarifying that the attorney is acting in his or her individual capacity and not on behalf of NASA.

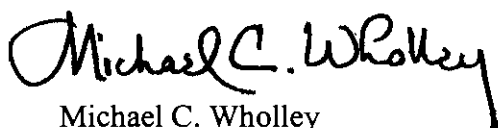
The Government does not provide malpractice insurance for attorneys providing pro bono legal or volunteer services. In addition, the immunities that are granted to Government attorneys in the course of their official duties do not extend to pro bono work. Many legal services providers, however, offer malpractice insurance for their pro bono attorneys. NASA strongly encourages its attorneys to work with a legal services provider that carries malpractice insurance.

U.S. Government attorneys who are not members of the D.C. Bar may handle pro bono cases in the District if several requirements are met. *See* D.C. App. Rule 49(c). The requirements are that the attorney must: (1) be an officer or employee of the United States; (2) be a member in good standing of the highest court of a state or territory; (3) provide legal counsel without a

fee in any matter handled; (4) be assigned or referred to the matter by an organization that provides legal services to the public without a fee; (5) be supervised by an enrolled active member of the D.C. Bar; and (6) if the matter requires a court appearance, file with the court having jurisdiction over the matter, and with the D.C. Court of Appeals' Committee on Unauthorized Practice, a certificate that the attorney is providing representation in that particular case without compensation.

Participation in pro bono legal services is an important way that we can help fulfill unmet needs in our communities. Although the barriers for us to contribute directly to meeting these needs as lawyers are significant, NASA attorneys should not be discouraged from trying to overcome them. Of course, there are other types of community assistance than the practice of law, and I wholeheartedly encourage this kind of volunteer participation as well.

An additional source of helpful information on Government attorneys providing pro bono services may be found at <http://www.probono.net/dc/about.cfm#Interagency>. Should you have any questions concerning the policy outlined above, please feel free to contact me at 202-358-2450 or Katie Spear at 202-358-0394.

A handwritten signature in black ink that reads "Michael C. Wholley". The signature is written in a cursive, flowing style.

Michael C. Wholley

Disclaimer:

This policy statement is intended only to encourage pro bono legal and volunteer services by Agency 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 NASA will not be responsible for any negligent or otherwise tortious acts or omissions on the part of any Agency employee engaged in any pro bono or voluntary activity. While the Agency encourages pro bono and voluntary activities by its employees, NASA 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.