



## TJAG POLICY MEMORANDUM: TJAGC Standards - 10

OPR:  
AF/JAA

### Pro Bono Activities by Judge Advocates and Civilian Attorneys

15 Aug 08

**1. Summary.** This policy memorandum provides guidance on pro bono activities by judge advocates and civilian attorneys of The Judge Advocate General Corps (TJAGC). Provided that all professional licensing requirements are met, active duty judge advocates and civilian attorneys may provide pro bono legal services. See TJS-02, *Air Force Rules of Professional Conduct and Standards for Civility in Professional Conduct*, Attachment 1, Rule 6.1. Any activities must not: (a) violate any federal statute, rule, or regulation, (b) interfere with duty performance, (c) create a conflict of interest, or (d) create the appearance of impropriety.

### 2. Applicability.

- a. This policy memorandum applies to all active duty judge advocates and civilian attorneys in TJAGC. Trial and appellate military judges must also adhere to additional restrictions contained in the Air Force Uniform Code of Judicial Conduct, Part IV, Canon 4 (TJAG Policy Memorandum TJS-4, *Judicial Conduct and Discipline of Air Force Trial and Appellate Military Judges*, Attachment 1).
- b. Air Force Reserve judge advocates and Air National Guard judge advocates must adhere to the standards pertaining to off-duty representation in TJAG Policy Memorandum ARC-1, *Rules and Standards of Professional Conduct for Air Reserve Component Judge Advocates*.

### 3. Guidance.

- a. **Definition of Pro Bono Legal Services.** Pro bono legal services is broadly defined. It includes many different types of legal activities that are performed without compensation. Pro bono legal services include, but are not limited to, making legal services available to:
  - (1) Persons of limited means or other disadvantaged persons;
  - (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; or
  - (3) Activities seeking to improve the law, the legal system, or the legal profession.
- b. **Approval Required for Staff Judge Advocates and Military Judges.** Staff judge advocates and military judges who wish to engage in pro bono activities must obtain prior written approval from the Deputy Judge Advocate General (DJAG).
- c. **Approval for Other Judge Advocates and Civilian Attorneys.** All other judge advocates and civilian attorneys who wish to engage in pro bono activities must obtain prior written approval of their staff judge advocate or equivalent.
- d. **Compliance with Professional Responsibility and Standards of Conduct Rules.** Judge advocates and civilian attorneys who wish to engage in pro bono activities shall conform strictly to all applicable professional responsibility rules in the jurisdiction where they render pro bono legal services. They must also comply with the professional responsibility rules, to include practice-related rules and licensing requirements of the jurisdiction in which they render pro bono legal services, as well as the licensing rules of the state(s) in which they hold a plenary license to practice law. These attorneys must thoroughly investigate the rules regarding the provision of pro bono legal services by out-of-state attorneys to ensure they do not violate the rules on unauthorized practice of law. Some jurisdictions allow Federal attorneys

who are not members of a particular bar to handle pro bono cases in that jurisdiction, while other jurisdictions do not. TJAGC attorneys should consult local rules and regulations regarding professional fees or practice restrictions that may exist in the jurisdiction in which they wish to perform pro bono work. Judge advocates shall remain current on their annual bar dues or annual attorney assessments and, if applicable, check whether they may claim a military exemption for payment of bar dues when performing pro bono work.

In addition, Air Force attorneys must comply with all standards of conduct rules set out in the Joint Ethics Regulation (JER), DOD 5500.7-R. The JER rules may be triggered by many different circumstances, including: conflicts of interest; activities in support of non-Federal entities; use of one's office, title, or position; gifts; and proper use of government time and resources.

e. **Pro Bono Restrictions.** In general, judge advocates and civilian attorneys shall not provide pro bono legal services that would:

(1) Violate any Federal statute, rule, or regulation, including, for example: 18 U.S.C. § 202, et seq. (Federal Conflict of Interest Laws); 5 C.F.R. Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); or The Joint Ethics Regulation (JER), DOD 5500.7-R. Examples of criminal conflict of interest statutes include:

(a) 18 U.S.C. § 203. Federal officers may not receive compensation for any representational services as agent or attorney in relation to a "particular matter" in which the United States is a party or has a direct and substantial interest.

(b) 18 USC § 205. Federal officers may not act as agent or attorney to prosecute any claim against the United States, and may not act as agent or attorney before any Federal department concerning a "covered matter" in which the United States is a party or has a direct and substantial interest. A "covered matter" includes any contract, claim, controversy, investigation or "particular matter." (See also OpJAGAF (Civil Law Opinion) 1985/41, Conflict of Interest [non-JA military officer/attorney could not represent a party in cases involving federal workers' compensation benefits, adversarial or non-adversarial administrative agency proceedings, or cases in the U.S. Court of Appeals for the Armed Forces].)

(c) 18 USC § 209. Federal officers may not receive any salary or supplementation of salary as compensation for services as an officer of the United States, from any source other than the Government of the United States.

(2) Interfere with the proper and effective performance of the employee's official duties, including the time and availability requirements of his or her position (see 5 C.F.R. § 2635.705);

(3) Violate the practice-related rules or licensing requirements of the jurisdiction in which legal services are rendered;

(4) Create or appear to create a conflict of interest; or

(5) Cause a reasonable person to question the integrity of TJAGC programs or operations. Accordingly, judge advocates may not wear the uniform or use their official military title while performing pro bono activities, as doing so may create an appearance of impropriety or imply that the Air Force has an interest or position in the pro bono matter.

f. **Hours of Work and Use of Government Resources.** Judge advocates and civilian attorneys should ordinarily perform pro bono legal work outside of their normal duty hours.

However, on limited occasions, Agency Designees (supervisors) may permit excused absences for reasonable periods of time for employees to voluntarily participate in community support activities that promote civic awareness and uncompensated public service. See JER §3-300(c).

As a general rule, government resources may be used only for government business. However, the use of government resources, including computers, printers, telephone, telefax, email, and related resources may be used to conduct pro bono work where there is only a negligible expense to the government and such use does not interfere with mission requirements. JER § 2-301.

Under no circumstances shall the judge advocate or civilian attorney use official letterhead, official business cards, or any other media during pro bono representation that states or implies that the lawyer is acting in an official capacity. JER § 3-209.

g. **Additional Considerations.** Judge advocates and civilian attorneys enter attorney-client relationships with pro bono clients and therefore, if they resign, change positions, deploy, or PCS, they are obligated to either take pro bono cases with them or to make alternative arrangements for continuity of representation. Attorneys in this situation are reminded that they are bound by ethical rules and local practice rules when terminating representation of a client. In the event that a case is transferred, the attorney must discuss the transfer with the client, file with the Court any necessary petitions seeking leave to withdraw from representation, and provide all relevant case files to any new attorneys assuming the case.

h. **Malpractice Insurance.** The Department of the Air Force does not provide malpractice coverage for pro bono work. Therefore, before agreeing to meet with or to accept a pro bono client, a judge advocate or civilian attorney should consider the potential personal liability of committing malpractice. Because the provision of pro bono services is outside the scope of a judge advocate's or civilian attorney's employment, any liability for malpractice accrues to the judge advocate or civilian attorney personally. Immunities that may be granted to federal attorneys in the performance of their official duties do not extend to pro bono work.

On the other hand, many pro bono organizations coordinate the delivery of pro bono legal services and provide malpractice insurance for volunteer attorneys. Therefore, it is strongly recommended that judge advocates or civilian attorneys perform pro bono work with a legal services provider that carries malpractice insurance and confirm, preferably in writing, that they are covered by it. If the pro bono services provider does not offer malpractice coverage, the attorney should consider purchasing his or her own coverage. The rules may vary from jurisdiction to jurisdiction and from organization to organization. Judge advocates and civilian attorneys should also check related state bar rules in the jurisdiction of the pro bono practice.

i. **Authority to Appear in Accordance with AFI 51-301.** Any judge advocate or civilian attorney providing pro bono legal services in accordance with all requirements and restrictions of this policy memorandum is hereby authorized, pursuant to AFI 51-301, *Civil Litigation*, paragraph 1.1.5, to appear in a civil, judicial, or administrative action as part of such pro bono legal services.

Approved 15 August 2008 by:

JACK L. RIVES  
Lieutenant General, USAF  
The Judge Advocate General

Attachment:  
Request for Approval of Pro Bono Activities

## REQUEST FOR APPROVAL OF PRO BONO ACTIVITIES

1. Last Name, First Name, Middle Initial	2. Grade	3. Duty Title
4. Organization Office Symbol Address	5. Duty Phone	6. State(s) Bar License(s) Held In
7. Place(s) or Organization(s) Where Pro Bono Services To Be Performed		
8. Generally Describe Pro Bono Services To Be Performed		
9. Time Period Pro Bono Services Will be Rendered (i.e. Once a Month, Every Other Sat, etc)		

I certify that I have reviewed TJAG Policy Memorandum: TJAGC Standards - 10 and that my pro bono activities will not: (a) violate any federal statute, rule, or regulation, (b) interfere with my duty performance, (c) create a conflict of interest, or (d) create the appearance of impropriety. I will comply with all applicable professional responsibility rules in the jurisdiction(s) in which I render pro bono services as well as the jurisdiction(s) in which I hold a plenary license to practice law. I understand the continuing nature of the attorney-client privilege and that my pro bono obligation continues upon permanent change of station or separation from military duty. I will complete representation in my pro bono matters or I must make alternate arrangements for case disposition. I understand that I may not wear my military uniform or use my official military title while performing pro bono activities.

10. Signature	11. Date Signed
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**I have reviewed and approved/disapproved the request of the above named individual for participation in the pro bono activities listed.**

12. Name/Grade of Commander/Supervisor	13. Signature	14. Date Signed
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Additional Comments