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**Informational Report**

**Of The**

**Alabama State Bar Committee On**

**Volunteer Lawyer Programs**

**July 14, 2010**

Attorneys in the state of Alabama have a long and distinguished tradition of providing pro bon legal services. Yet despite the generous contributions of many attorneys and law firms, the legal needs of the disadvantaged in our state continue to go largely unmet. The inability of our current system of public and pro bono legal services to meet the growing needs of indigent clients has created a crisis in access to justice. The Alabama State Bar Committee on Volunteer Lawyer Programs conducted an informal survey to determine what efforts were being made at the firm level to encourage pro bono service. The Committee determined that most firms lack a formal commitment to pro bono work. The few firms that have a written policy were large firms and only one firm in the state employed a pro bono coordinator.

In response to a perceived as a lack of leadership and structure in most law firm pro bono programs, the Alabama State Bar Committee on Volunteer Lawyer Programs drafted several model pro bono policies for law firms. The models are based on a review of existing policies in Alabama along with models from other states. It attempts to integrate a wide variety of ideas that have proven successful in increasing the amount and diversity of pro bono service provided by private law firms. There are three model policies and a checklist that are meant to assist law firms of all sizes in establishing an institutional commitment to pro bono work. Although a pro bono policy must be tailored to the particular firm involved, the Committee believes that certain elements are essential to any firm policy. We have attempted to incorporate those elements into the model.

The models are meant to be simple and easily adapted to any size law firm. Although individual firms may elect to adopt the model policy as written, the Committee expects that many firms will treat the model as a starting point for developing their own unique policies. We encourage such experimentation. Our goal is to begin the process of establishing an institutional commitment to pro bono service rather than to dictate the precise nature of that commitment.

**Model Pro Bono Policies**

**Model Checklist for Policy Development**

**Large Firm Model Policy**

**Plaintiff’s Firm Model Policy**

**Medium/Small Firm Model PolicyMODEL PRO BONO POLICY CHECKLIST**

**SUGGESTED SUBJECTS TO INCLUDE**

1. Statement of Mission / Philosophy /Commitment
2. Rationale / Purpose
3. Pro Bono Definition
4. Limitations on Acceptable Pro Bono Cases
5. Standards / Quality of Legal Services
6. Staffing and Supervision
7. Administration
8. Credit or Evaluation Systems
9. Procedures

--Assignment of Cases

--Intake of Cases

--Pre-Approval Requirement

--Emergency Situation

10. Fees Awarded in Pro Bono Cases

11. Pro Bono Policy Development / Interpretation / Implementation Governing Structure

12. Recordkeeping

13. Conflicts Checks and Policy

14. Training / Mentoring / Expertise

15. Engagement, Non-engagement, Closure Letters

16. Expenses for Pro Bono Cases

17. Relationship with Referral/ Provider Organizations

18. Priority / Emphasis

19. Participation Requirements

20. Pro Bono Services for “Usual” Clients

21. Professional Liability Insurance Considerations

22. Scope of Representation

23. Limits on Pro Bono Time

24. Non Pro Bono “Free” Legal Advice or Public Service

25. Pro Bono Institute Pro Bono Challenge

26. Screening Mechanism

27. Authorization / New Matters Memo

28. Legal Clinics

29. Charitable Donations

30. Billing Statements

31. Externships

32. Fellowships

33. Non-U.S. Offices

34. Hiring Process Discussion

*Model Large Firm Pro Bono Policy*

**STATEMENT OF A LAW FIRM’S COMMITMENT TO *PRO BONO*:**

The law firm of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ believes that *pro bono* service is an essential element of every attorney’s professional responsibility and that lawyers possess unique skills and abilities to serve the disadvantage and to promote the public interest in ways that no other profession can. The firm, therefore, encourages its lawyers to render public interest legal service. The lawyers in the firm are currently engaged in a variety of such endeavors, including [list current efforts].

The firm supports public interest legal service because, first and foremost, lawyers have a duty, as professionals, to contribute to the welfare of the community; to assist in the development of the legal profession; and to broaden the overall commitment to access to justice for all people. Furthermore, in a society governed under the rule of law, lawyers have an obligation to make sure the legal system works, especially for the disadvantaged. The firm encourages its lawyers to meet the standard of 50 hours of *pro bono* legal service per year, primarily by providing direct representation to low income individuals.

The firm also supports public interest legal service because it provides valuable experience for lawyers in the firm and because it gets lawyers actively involved in the community. An associate’s involvement in *pro bono* activities is an important factor in this firm’s ongoing evaluation of the associate, and a willingness to serve, and become involved with, the community evidences a level of maturity and professionalism which is highly prized by the firm.

**1.** **Qualifications for *Pro bono* Legal Services**

The term *pro bono* legal services refers to activities of the firm undertaken normally without expectation of a fee and consisting of the delivery of legal services by attorneys, or summer associates, law clerks or paralegals working under the supervision of an attorney:

(a) directly to persons of limited means;

(b) to charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means;

(c) to individuals, groups, or organizations seeking to secure or protect human rights, civil rights, civil liberties or public rights; and

(d) to charitable, civic, economic development, small business, community, arts, public health, or governmental organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.

**1.1** When evaluating whether an individual or entity cannot afford legal services, the firm should rely primarily on screening by legal services providers or other referral organizations to make such determinations The determination should be whether any competent legal representation would be available for the relevant matter without *pro bono* services, not whether the entity cannot afford the firm’s rates.

**1.2**. Proposed *pro bono* work for governmental institutions will be reviewed on a case-by-case basis.

**1.3** **Exclusion of *pro bono* work on behalf of for profit businesses**

As a general rule, for-profit business entities do not qualify to receive *pro bono* legal services from the firm, regardless of whether or not they are actually profitable. The following may be approved as exceptions to this rule on a case-by-case basis:

(a) A for-profit business entity may qualify to receive *pro bono* legal services where the business is owned or operated by low income individuals and (i) neither the owners nor the operators of the business could otherwise afford the legal services south; or (ii) the business will primarily serve low income customers or will operate in an economically-disadvantaged area.

(b) A for-profit business entity may qualify to receive *pro bono* legal services (i) where the business is referred to the firm by a legal aid organization, bar association or business development organization devoted to the advancement of historically disadvantaged groups, and (ii) the owners or operators of the business are members of a historically disadvantaged minority group, and (iii) neither the owners or the operators of the business could otherwise afford the legal services sought.

(c) For-profit subsidiaries or affiliates of not-for-profit organizations that are (or qualify to be) *pro bono* clients may qualify for *pro bono* assistance where such representation would further the purposes of the not-for-profit entity.

**1.4 Qualified non-profit organizations**

Requests to open *pro bono* files for non-profit organizations will be approved only when the proposed *pro bono* client is an organization of the type contemplated by our *pro bono* policy (i.e., a charitable, religious, civic, community, governmental or educational organization whose purpose is to address the needs of persons of limited means, to secure or protect civil rights, civil liberties, or public rights, or to support a community interest such as education or the arts). Requests to open *pro bono* files for clubs, fraternities, sororities, or condo or neighborhood associations will generally be refused.

**2. Payment of Legal Fees for *Pro bono* Matters**

(a) While legal work undertaken with the expectation of receiving a standard legal fee does not qualify as *pro bono* legal services, there are matters where the potential payment of a legal fee will not disqualify the matter from consideration as *pro bono* services:

(i) Recovery of fees pursuant to a fee-shifting statue, or negotiated settlement, for matters on behalf of a client that otherwise qualifies for *pro bono* services;

(ii) Payment of fees in a court-appointed criminal or civil matter where the fees are typically quite small in relationship to the amount of time spent on the representation; or

(iii) Payments of fees upon a successful financing of an economic development or affordable housing project, where the matter was taken pursuant to an agreement for the firm to receive fees from funds available at closing (if any) and the likelihood of recovery is too remote to allow the firm otherwise to engage in the representation.

(b) Where fees are ultimately recovered in an approved *pro bono* matter, such fees shall first compensate the firm for any out-of-pocket expenses for that matter, with the remainder placed in the firm’s *pro bono* general ledger account to be used for contributions to organizations that refer *pro bono* matters to the firm and for other firm *pro bono* expenses. In some cases, the firm may agree in advance to contribute a portion of its legal fees to a legal services or other organization that referred the matter or acted as co-counsel to the firm. Any such fee-recovery sharing agreement shall be approved in advance by the *Pro Bono* Committee.

**3.** **Treatment of *Pro Bono* Within the Firm**

A successful *pro bono* program requires the steady support of firm management, and internal firm policies that support and encourage attorney, paralegals and other employees who serve *pro bono* clients. In turn, attorneys, paralegals and other employees who on *pro bono* matters must treat our *pro bono* clients. In turn, attorneys, paralegals and other employees who work on *pro bono* matters must treat our *pro bono* clients as they would all other clients by providing excellent service that meets the highest ethical and professional standards, and that is performed in an efficient manner.

**4. Staffing and Supervision of *Pro Bono* Matters**

*Pro bono* matters are to be given the same level of staffing and supervision as any other legal matters the firm undertakes, with appropriate consideration to the experience of the attorneys, the complex matter, and the time to be spent on the matter.

**5. Approval of New *Pro Bono* Matters**

The firm will seek to approve any *pro bono* matter of interest to any attorney in the firm. Before any agreement to represent a potential *pro bono* client is made, however, the appropriate firm committees must determine whether the potential representation: (i) presents any ethical or positional conflicts with existing clients; (ii ) is consistent with the firm’s *pro bono* policies; (iii) can be staffed adequately, in light of available firm resources and expertise; and (iv) is otherwise in the best interests of the firm.

**5.1 Conflicts Check**

(a) *Ethical Conflicts*: As with any other matter, the firm cannot approve any *pro bono* representation that presents an ethical conflict with an existing or former client. Before any *pro bono* representation is submitted for approval, the responsible attorney must ensure that a full conflicts check is completed, and that any waivers, if appropriated, are signed, in consultation with the Ethics Committee.

(b) *Positional Conflicts*: Attorneys should also be aware that certain types of matter, wile not technically adverse to our existing clients, might require the firm to argue positions in direct conflict with positions we relevant office managing partner will also try to identify any positional conflicts, where appropriate, attorneys should seek approval of the appropriate departmental or practice group chair before submitting a matter presenting a potential position conflict for approval.

**6. Scope of *Pro Bono* Representation**

(a) Once a new *pro bono* matter has been approved, the responsible attorney should contact the client and deliver a signed engagement letter. When the client has counter-signed and returned the engagement letter, the representation may begin.

(b) *Pro bono* matters should be limited in scope to the particular issue at hand; except in cases of certain approved representations of non-profit organizations, the firm should not act as “general counsel” to a *pro bono* client. In some cases, it may be appropriate to limit further the scope of a potential representation by providing specific assistance to the legal services organization that represents the client rather than representing the client directly.

**6.1 Engagement Letters**

Before any *pro bono* representation commences, the client should sign a *pro bono* engagement letter.

(a) The engagement letter should clearly explain the scope of and potential termination of the representation, identify the responsible firm attorneys, allocate responsibility for expenses, and include waivers of future conflicts, as appropriate.

(b) For clients who do not speak English, the engagement letter should be read to the client by a translator, who should sign an accompanying certification of translation.

(c) For clients who are not competent to sign an engagement letter (*e.g*., a young child), the engagement letter should be signed by a the client’s guardian, as long as the guardian is not an actual or potential adverse party. If the client is a child who is competent to sign the letter, and who has no unconflicted guardian, the letter should be tailored to ensure that the client understands the terms of the representation.

**6.2 Expenses for Approved *Pro Bono* Matters**

To the extent possible, *pro bono* clients should bear the burden of out-of-pocket expenses in order to ensure that the client has an appropriate investment in the outcome of the case and so that the firm’s limited *pro bono* resources are available to assist other client. Nonetheless, the fact that a *pro bono* client cannot afford to bear the expenses in connection with a representation should not interfere with the firm discharging its professional responsibilities. In all cases, attorneys should be sensitive to costs and make use of procedures and services that reduce costs without reducing the quality of the legal services provided, including seeking reimbursement of costs when appropriate at the conclusion of a successful litigation or settlement. Any arrangement for a *pro bono* client to forego the payment of expenses in whole or in part is subject to the approval of the *Pro Bono* Committee as part of the approval process.

**6.3 Billing Statement for *Pro bono* Clients**

*Pro Formas*: Each month, pro forma billing statements for each active *pro bono* matter will be generated and sent to the billing attorney and one *Pro Bono* Committee member in each office. [Adapt to your firm’s needs]

**6.4 Closure of *Pro bono* Matters**

Once the matter described in the engagement letter has been completed, and no further work is expected, the attorney should send the client a letter stating that the matter is closed, and the *pro bono* matter should be administratively closed.

*Model Plaintiff Firm Pro Bono Policy*

**PRO BONO POLICY**

**General Statement of Policy**

[Insert firm name] is committed to the pro bono ethic and to providing pro bono legal services to individuals and organizations of limited financial means. This commitment is consistent with the ethical responsibility the legal profession places on lawyers to provide pro bono legal services and with the Alabama State Bar’s encouragement of such services. Thus, the Firm has adopted this Pro Bono Policy to encourage Firm attorneys to provide pro bono legal services and to foster an environment that is supportive to those engaged in the provision of pro bono legal services.

**Pro Bono Policies and Procedures**

Pro Bono Legal MattersAll proposed new pro bono legal matters shall be processed through the Firm's client intake system, using normal Firm procedures, including a conflicts check, and an engagement letter. All decisions to approve or disapprove such a matter shall be made in accordance with the following criteria:

Whether the matter fits within the definition of “pro bono” set forth below under "Definition of Pro Bono Legal Services;"

Whether the matter creates a conflict of interest for the Firm with respect to one or more of the Firm's clients, or a conflict of the Firm's business interests, marketing efforts, or profit goals;

Whether the Firm has the professional capability and expertise to competently handle, and provide partner-level supervision for the matter or, if not, whether it is consistent with the Firm's business and professional goals to develop that competence in connection with the matter;

Whether the professional time, staff time and other Firm resources available, or projected to be available, through the duration of the project are adequate to carry out the matter in a professional manner and provide the substantive legal expertise required;

Whether the Firm must become counsel of record in any public proceeding and the effect of that status on the extent of the Firm's commitment of resources and existing client resources;

Whether the requesting attorney has run a conflicts check and prepared a client retainer letter which addresses such matters as the scope of the matter and payment of costs incurred by the Firm in connection with the matter;

Whether the matter is more properly characterized as marketing, non-billable legal community activities, or client development;

Whether the scope of the matter has been sufficiently identified to ensure that there is no misunderstanding as to the nature of or extent of the Firm's provision of legal services on a pro bono basis; and

Whether the matter is approved by [insert name or title of managing attorney responsible for approving pro bono matters].

Pro Bono Legal Services and CostsAlthough pro bono legal services will generally be provided without charge, except in those cases where reduced fees are appropriate or when attorneys' fees are awarded, pro bono clients are expected to pay costs (e.g., filing fees, photocopy and long distance charges, expert witness fees, etc.) if they are reasonably able to do so. However, other arrangements or waivers may be approved by [insert name or title of managing attorney responsible for approving pro bono matters]; flexibility with respect to such other arrangements and waivers will depend on all the relevant facts and circumstances.

Associate Evaluation for Pro Bono Legal Matters

1 Associates shall be evaluated on their pro bono matters in the same manner in which they are reviewed on billable matters.

2 Summer associates will be encouraged to participate in pro bono activities with their supervising attorneys.

Definition of Pro Bono Legal ServicesPro bono legal services, for purposes of this policy, means providing legal services without charge, or at significantly reduced fees, for:

Low income individuals, or organizations which have as a principal purpose promoting the interests of low income individuals;

Individuals, groups of individuals, or organizations seeking to secure or protect civil rights, civil liberties or public rights;

Activities, whether or not under the auspices of a bar association, that are intended to increase the availability of legal services to the underserved or improve the administration of justice;

Projects referred to the Firm through public interest law firms and advocacy programs that are generally presumed to meet the Firm's definition of pro bono;

Organizations (1) which are organized or seek organization under the Nonprofit Corporation Law of a state and/or are exempt or seek exemption under Section 501(c)(3) of the Internal Revenue Code; (2) which, due to extraordinary circumstances, are otherwise unable to pay for those services without significantly affecting their ability to conduct their programmatic activities; and (3) for which the scope of services provided by the Firm on a pro bono basis is appropriately limited to such extraordinary circumstances; and

Other individuals or groups consistent with the guidelines of this policy.

Pro bono legal services, for purposes of this policy, does not include a wide range of valuable public service and Firm-beneficial civic and charitable activities in these categories:

Volunteer, non-legal services or work, including, for example, service on the board of directors of non-profit institutions or volunteering in a soup kitchen;

Services to a nonprofit organization with sufficient funds or other resources so that it should be expected to pay, or is in fact paying, for legal services as part of its normal business, including major cultural, healthcare, educational or political organizations;

Marketing promotional efforts;

Professional advancement projects, including, for example, speaking engagements, law school teaching or publication writing;

Work originally taken with the expectation that a fee will be paid but for which the client becomes unable or unwilling to pay;

Work performed for existing clients without charge;

Work performed for members or employees of the Firm; or

Absent unusual circumstances, work performed for family members or friends of Firm attorneys without charge.

Scope of Pro Bono Legal MattersMatters should be appropriately and clearly limited in scope (as by the client engagement letter) so that there is not an expectation that a client shall have access to all of the Firm's resources on a pro bono basis for all time and/or for all work. Each new case or project proposed as a pro bono matter shall be evaluated independently under this Policy. For example, a pro bono matter for a non-profit organization identified in the fifth bullet under "Definition of Pro Bono Legal Services" above should be expressly and clearly limited to a specific project or case, both in the client intake process and in the client engagement letter.

Fee Receivables in Pro Bono LitigationIf the Firm is awarded attorneys' fees and/or costs in any pro bono legal matter (e.g., in litigation or arbitration), then such award shall first be applied to reimburse the Firm for all outstanding out-of-pocket costs which the Firm has advanced in such matter, and thereafter, any or all of the balance of the award (if any) may, upon consultation with [insert name or title of managing attorney responsible for approving pro bono matters], be donated to the client, referring agency or other charitable organization (provided such a donation results in a charitable deduction to the Firm under Section 170(c) of the Internal Revenue Code), or donated to the Alabama State Bar fund for indigent clients.

**Reporting of Pro Bono Hours**

Hours worked on pro bono matters should be recorded. The Firm will annually report the total number of hours invested in pro bono matters to The Alabama State Bar for the Firm as a whole as well as for each individual attorney who has participated in such matters.*MODEL PRO BONO POLICY FOR SOLO PRACTITIONERS,*

*AND SMALL TO MEDIUM SIZED LAW FIRMS*

**PRO BONO POLICY**

**STATEMENT OF LAW FIRM’S COMMITMENT TO PRO BONO SERVICE**

The law firm of \_\_\_\_\_\_\_\_\_\_\_\_\_ believes that public interest legal service is an essential element of every attorney’s professional responsibility and that lawyers possess unique skills and abilities that allow us to serve the disadvantage and promote the public interest in ways that no other profession can. Therefore, lawyers are encouraged to render public interest legal service.

Attorneys have a duty to contribute to the welfare of the community, to assist in the development of the legal profession, and to broaden the overall commitment to access to justice for all people. Lawyers have an obligation to make sure that the legal system works, especially for the disadvantaged. This firm shall provide pro bono legal services to the community and under privileged individuals as time, personnel, and economic resources permit.

**PRO BONO, DEFINED:**

In determining which projects qualify to be treated as pro bono work, as distinguished from other types of public service, the firm has adopted a definition based on the Pro Bono Institute’s Pro Bono Challenge:

“Pro Bono” legal work includes, without limitation, participation in any bar- or court – approved pro bono program or project, as well as court-appointed representation of an indigent party. The term “pro bono” refers to activities of the Firm undertaken normally without expectation of fee and not in the course of ordinary commercial practice and consisting of:

1. The delivery of legal services on a pro bono basis to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations in matters which are designed primarily to address the needs of persons of limited means;
2. The provision of legal assistance to individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; and
3. The provision of legal assistance to charitable, religious, civic, community, governmental and educational organizations in matters in the furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organizations economic resources or would be otherwise inappropriate.”

**PRO BONO STANDARDS AND PROCEDURES:**

The firm provides the same standard of representation to all clients regardless of their ability to pay. Attorneys should possess the knowledge and experience required for success on any project undertaken. Attorneys working on projects outside their area of expertise will consult with other experienced lawyers, and do the necessary legal research, and / or seek out opportunities for Continuing Legal Education credit in those areas.

**ADMINISTRATION FOR PRO BONO ACTIVITIES:**

Prior to accepting a pro bono project or assignment, an attorney shall:

1. Check for conflicts of interests;
2. Ensure that the project is compatible with other workload constraints;
3. Ensure that each potential project or assignment is appropriate for pro bono

representation.

Each lawyer should join the State and local Volunteer Lawyers Program, and commit to accepting at least two pro bono assignments on referral from the VLP, the State and local bar associations, and or other agencies and organizations engaged in making referrals to assist indigent individuals with legal issues. Every lawyer should seek out opportunities to provide public service.

**CREDIT FOR PRO BONO SERVICE:**

All time spent working on pro bono matters should be treated as other billable matters. Lawyers are encouraged to log at least sixty hours of pro bono service per year.

**FEES AND DAMAGES AWARDS:**

Matters where the recovery of legal fees and or damages awards is not disqualified from consideration as pro bono services include:

1. Recovery of fees pursuant to a fee-shifting statue, or negotiated settlement, for matters on behalf of a client that otherwise qualifies for pro bono services,
2. Payment of fees in a court-appointed criminal or civil matter where the fees are typically quite small in relationship to the amount of time spent on the representation; or
3. Payments of fees upon a successful financing of an economic development or affordable housing project, where the matter was taken pursuant to an agreement for the firm to receive fees from funds available at closing (if any) and the likelihood of recovery is too remote to allow the firm otherwise to engage in the representation.

Monies received in non-court appointed cases should first be dispersed to repay out-of-pocket expenses incurred by the firm and the client, and further dispersed appropriately as determined on a case by case basis with priority on charitable contributions.