

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C.

PRO BONO AND PUBLIC SERVICE POLICY

The firm has a longstanding tradition of commitment to the communities which we seek to serve, but we would like to build on that legacy. We seek to build a pro bono program that will enhance our attorneys' participation in pro bono work by providing opportunities for pro bono work that complement the various interests, abilities, and practice areas represented, communicate the firm's strong commitment to pro bono service, and make pro bono service an integral part of the firm's culture. The firm strongly encourages each attorney, associates, shareholders, and of counsel, to participate in providing pro bono service to their respective communities.

A. *Why Is Pro Bono Important To The Firm?* The obvious reason, of course, is to provide a public service. We recognize that as attorneys we have an obligation to contribute to the communities in which we practice, and to the justice system. If that is not reason enough, there are also a number of sound business reasons to encourage broad-based participation in pro bono work throughout the firm. The existence of a strong pro bono commitment and program is a very effective recruitment tool for both new associates and lateral hires and may also contribute to retention of lawyers who join our firm. Carefully selected pro bono projects provide a wealth of opportunities for all attorneys to obtain hands-on experience and expand our opportunities for mentoring and evaluation of associates. Pro bono work can also be a great marketing tool. The publicity and resulting goodwill that can be generated by pro bono work can more than make up for the expenditure of resources. In addition, clients, particularly large corporate clients, have come to view a firm's commitment to community service in much the same way that they have come to view diversity.

B. What Constitutes Pro Bono Work? In determining which projects will 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 or education organizations in matter 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."

The delivery of legal services" and "the provision of legal assistance" mean the performance of legal work for which a paying client could have been billed by the firm. This definition is inclusive of legal work performed for appropriate non-profit organizations. When an attorney serves on the Board of a non-profit or charity organization, any legal services he or she provides would be "pro bono," while time spent serving as a Board member would be "public service." An attorney may, therefore, provide both pro bono service and public service work to an organization at the same meeting. For nearly every organization on which you serve on the Board or otherwise and may be called on to offer legal services, you should have a pro bono matter number and the applicable public service number to apportion your time.

1. Limitations on Pro Bono Work for Individuals:

While the following legal services might arguably in some circumstances fit the firm's definition of pro bono legal services, the firm has, as a matter of policy, decided to decline to approve pro bono matters in the following circumstances:

1. Legal services provided for attorneys, or for employees of a paying client of the firm; and
2. Legal services provided for friends or family members of attorneys or staff members of the firm.

In the event that an attorney believes that extraordinary circumstances exist which would justify an exception to this policy, the attorney should present the request, with an explanation of those circumstances, to the Pro Bono Shareholder and to the attorney's Practice Group Chair, for consideration.

It is understood that there are times when an attorney wishes open a file to provide legal services without charge or at a reduced rate even though the proposed client does not qualify for pro bono legal services. Such circumstances may include, for example, attorneys in the firm, firm staff, family members, close friends, or persons associated with paying clients of the firm. This policy is not intended to prohibit such work, but simply to ensure that these matters are not opened as pro bono files. In such circumstances, a billable file should be opened. The attorney may, in his or her discretion, write off any time associated with that file, subject to the firm's normal write-off procedures. The client must pay all expenses associated with such a file.

2. Requests to open pro bono files for work that has already been completed:

Requests to open a new pro bono matter for work that has already been done will generally be refused. Attorneys can use the emergency conflict check procedure and send in their requests while beginning the work if time is of the essence, but will not be able to wait until the matter is concluded before asking for pro bono approval. Exceptions may be made for in cases of truly exigent circumstances, such as the need to file an emergency petition. These would be reviewed and considered on a case-by-case basis.

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:

1. 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 (a) neither the owners nor the operators of the business could otherwise afford the legal services sought; or (b) the business will primarily serve low income customers or will operate in an economically-disadvantaged area.

2. A for-profit business entity may qualify to receive pro bono legal services where (a) 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, such as the National Minority Supplier Development Council, and (b) the owners or operators of the business are members of a historically disadvantaged minority group, and (c) neither the owners nor the operators of the business could otherwise afford the legal services sought.

3. 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.

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.

C. *Awards of Fees in Pro Bono Matters:* When a fee is awarded in a pro bono matter, expenses incurred by the firm or by the client in connection with the matter will first be reimbursed from the fee. The firm will then donate 50% of the remaining fee to the referring pro bono organization, if any. The remainder of the fee will be retained by the firm, but will be segregated from other fee revenue and reserved for the purpose of defraying expenses that cannot be borne by the client in other pro bono matters.

From time to time, the Pro Bono Committee shall review the segregated pro bono fee account. If, in the judgment of the Committee, the account contains funds greater than needed to defray pro bono expenses, the Committee may use a portion of such funds for sponsorships or donations to pro bono organizations.

C. *Structure:* The Firm's Pro Bono Shareholder has day to day responsibility for the development, implementation, and oversight of pro bono policies and programs throughout the Firm. The Pro Bono Shareholder works with and reports to the Pro Bono Committee, which will meet from time to time as necessary to review issues that may arise. The Pro Bono Shareholder also is assisted by one attorney coordinator in each office who acts as a facilitator, answers

questions concerning our procedures, helps to monitor the recording of pro bono and public service time and expenses, and otherwise provides advice and assistance to attorneys who are handling pro bono matters.

D. *Recordkeeping.* So that we can obtain a true picture of the pro bono work that is being done by attorneys in our firm, the Board has adopted the following recordkeeping requirements with respect to pro bono legal work and public service work. These requirements apply to "pro bono work" as it is defined previously in this memo:

1. Record all time spent on a pro bono matter, using the appropriate pro bono file number, just as you would time spent on a matter for a paying client. Time devoted to other public service work should also be recorded, using the appropriate public service file number.

2. Pro Bono Work. For each pro bono matter (as defined above) that you are handling, you must:

- a. Run a conflict check;
- b. Obtain approval of the Pro Bono Shareholder and your Practice Group Leader by completing and submitting the Pro Bono File Opening Questionnaire;
- c. Open a new matter under client number 2860000 (The matter name should include both the name of the pro bono client and the usual sort of matter name or description. For example: "Client - John Doe v. City of Memphis Civil Rights Litigation," or "Client - Richard Roe Estate Planning").
- d. Send a engagement letter or otherwise ensure that the scope of the engagement is set forth in writing.

3. Public Service Work ("PSW"). "Public service" work (referred to in the Attorney Supplement to the Firm Policy Handbook as "community service" work) includes active participation in any organized program or project that is designed to benefit the community or a civic, religious, or charitable organization. Public service work does not include service to bar associations (which should be recorded as Bar/Professional Org Work 9600000-000079). PSW that does not constitute pro bono under the definition above should be recorded under client number 9500010. In some cases, the attorney must run a conflict check, open a file, and send a "non-engagement" letter, as described below:

a. Service on a Board, Commission, or as an Officer: If you serve as an officer or a member of a board of directors, public commission, or otherwise serve in a policy-making capacity (as distinguished from providing legal advice), you must:

i. Run a conflict check: All of our normal conflict check procedures must be completed for each pro bono matter. When listing a pro bono matter for a conflict check, ensure that the name of the pro bono client, as well as the names of any adverse parties, appears in the matter description;

ii. Open a new matter under client number 9500000; and

iii. Send a “non-engagement” letter explaining that you have not been asked to serve as legal counsel to the organization, that you will provide an engagement letter in the event you will provide legal services, and that, absent an engagement letter, any opinions you express should not be interpreted as legal advice. A form letter is attached.

b. Volunteer Work: When you work as a volunteer for an organization in a non-policy-making capacity, such as leading a scout troop, building a habitat house, or raising funds for a charity, there is no need to run a conflict check or open a new Public Service matter. Time should be charged to the general PSW number, 9500010-002572.

c. Provision of Legal Services: If, in connection with service as a board or commission member or other similar position, you anticipate that you will be called upon to provide legal counsel to the organization, you should open a Pro Bono matter using client number 2860000, rather than a Public Service matter. In such instances, legal services should be recorded under the Pro Bono matter number, and time spent in a non-legal role should be recorded under the general PSW number, 9500010-002572.

4. Both pro bono and public service hours recorded as set forth above will be shown as separate line items on future management reports and will be considered by the Board in making compensation decisions.

5. Attorneys will receive billable credit for up to 20 hours of pro bono legal work each fiscal year. Pro bono time is carried on the monthly financial reports as nonbillable, but qualifying time is added to billable hours at the end of each fiscal year. Pro bono time in excess of 20 hours per fiscal year will remain on the financial reports as nonbillable.

6. If you are currently using any other client/matter numbers for pro bono or public service projects, please contact the individuals in your office who have been designated to facilitate our pro bono activities (see below):

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