

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 110 \* HONOLULU, HAWAII 96813  
PHONE: (808) 768-5193 \* FAX: (808) 768-5105 \* INTERNET: [www.honolulu.gov](http://www.honolulu.gov)



KIRK W. CALDWELL  
ACTING MAYOR

CARRIE K.S. OKINAGA  
CORPORATION COUNSEL

KATHLEEN A. KELLY  
FIRST DEPUTY CORPORATION COUNSEL

July 27, 2010

TO: ALL DEPUTIES CORPORATION COUNSEL

FROM: CARRIE K.S. OKINAGA, CORPORATION COUNSEL  
DEPARTMENT OF THE CORPORATION COUNSEL *OKAO*

RE: PRO BONO ACTIVITIES BY DEPARTMENT OF THE CORPORATION COUNSEL (COR) ATTORNEYS

As you know, the Supreme Court has placed greater focus in recent years on attorney participation in pro bono activities, as evidenced by the pro bono reporting requirements under Rule 17d of the Rules of the Supreme Court of the State of Hawaii as well as the newly created Access to Justice Commission (Rule 21). Also, Hawaii Rule of Professional Conduct (HRPC) 6.1 sets forth an aspirational goal of 50 hours of pro bono services per year for each attorney.

While your work in the Department is itself an important public service, we all recognize the need to improve access to legal services for persons in need, and COR encourages and supports participation by COR Deputies in pro bono activities.<sup>1</sup> This

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<sup>1</sup> "Pro bono" is as defined in HRPC 6.1.

**Rule 6.1. PRO BONO SERVICE.**

A lawyer should aspire to provide at least fifty hours of pro bono services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide at least twenty-five hours of legal services without fee or expectation of fee to:
  - (1) persons of limited means or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
  - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational 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;
  - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
  - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means. Where, in a given year, the lawyer experiences personal or employment circumstances that make it unduly difficult or impossible to provide services which qualify as pro bono activity, the lawyer may substitute such a financial contribution for direct pro bono legal services.

memorandum is designed to build on the efforts of those of you who may be already providing pro bono services, to address some perceived impediments to government attorney participation, and to facilitate participation for those of you who are not currently engaged in pro bono activities. This memorandum should in no way be construed as requiring pro bono participation by you.

1. COR currently pays for or reimburses the payment of your bar dues with the expectation that your legal work will be on behalf of the Department. The department has also defrayed some costs related to mandatory Continuing Legal Education (CLE), and may do so again, provided that the budget allows such assistance. However you are not precluded, by virtue of the Department's payment of bar dues or CLE costs, from engaging in pro bono activities in a manner consistent with this Memorandum.

2. Your participation in pro bono legal work will not jeopardize your exemption as a government attorney from the payment of the Lawyer's Fund for Client Protection fee (see Supreme Court Rule 17(d)(3)).

3. You are authorized to participate in pro bono activities provided that:

i. The Mayor or his designee has officially designated a particular non-profit or charitable legal services activity as having a community-wide benefit. This designation will require that a written explanation and recommendation be prepared for the approval of the Mayor or his designee, setting forth how the activities provide a community-wide benefit, and the scope of the anticipated benefits. In instances in which there is more than one activity that can provide the community-wide benefit, the explanation and recommendation prepared for the approval of the Mayor or his designee should also explain why one activity was selected over other similarly situated activities. Deputies are directed to route the written explanation and recommendation through their division head and the Corporation Counsel for approval prior to transmittal to the Mayor or his designee;

ii. Those activities do not create an actual or potential conflict of interest, as defined by both the HRPC and the Revised Charter of the City and County of Honolulu 1973 ("RCH") (2000 ed.), Section 11-102;

iii. Those activities do not involve the use of confidential City information gained by reason of your employment as a Deputy Corporation Counsel; and

iv. Those activities are conducted in a manner that does not indicate or represent in any way that you are acting on behalf of the Department or in your official capacity. Do not use COR letterhead, business cards, or other items that identify you as a COR employee (except as set forth in 7 below). If you are in doubt about whether representation is appropriate, please check with your supervisor.

4. Before agreeing to meet with or accept a pro bono client, you should determine whether the referring legal services organization has a malpractice insurance policy which covers volunteer attorneys. The Department does not provide malpractice coverage for pro bono work.

5. COR Deputies should seek pro bono legal activities that can be accomplished outside the attorney's regular work hours. However, where these activities may occur during work hours, supervisors are authorized to be flexible and to grant vacation leave or flex time, as appropriate and to the extent feasible, for attorney pro bono work. Supervisors retain the ability to approve/disapprove leave where necessary to meet official workload demands.

6. As a general rule, employees may use government property only for official business (see RCH Section 11-104). However the following limited and de minimis uses of office supplies and equipment by COR deputies are authorized for approved pro bono legal work:

i. Uses that involve only negligible expenses such as electricity, ink, toner, small amounts of paper and office supplies;

ii. Limited telephone calls and use of cost-free internet sites in moderation and on personal time. Departmental computers, telephones, and facsimile machines may be used to communicate with legal services organizations regarding pro bono activities (although personal cellular phone use is encouraged);

iii. Research using the Department's library and reference books, CD-ROMs, and microfiches is authorized on personal time. Use of commercial electronic databases such as Westlaw is not authorized unless usage is on personal time and occurs without additional costs to the Department. Use of nonpublic information that is accessed through the Department is prohibited; and

iv. Departmental offices or facilities may be used to conduct research and prepare documents on personal time, but should not be used for meetings with clients unless authorized by your supervisor.

7. Nothing herein precludes COR Deputies from engaging in other pro bono activities relating to the Department during non-work hours.

8. If you have any questions in the course of your pro bono activities about the application of the City and County of Honolulu's standards of conduct or ethics laws to a particular case or situation, you are encouraged to consult with the City Ethics Commission at 768-7786.<sup>2</sup>

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<sup>2</sup> See also Advisory Opinion 2010-1, attached hereto and incorporated herein.

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If you have any questions relating to this Memorandum, feel free to contact me.

CKSO:aa

Attachment