


# Ethics of Pro Bono

## Compliance and Ethics



As more legal departments and ACC chapters move to identify and create pro bono opportunities for in-house counsel and other legal department staff, it is important to consider the ethical rules that impact pro bono service.

**Importance of pro bono service**

Studies show that more than 80 percent of the legal needs of low-income individuals in the United States go unmet. Millions of people each year find themselves in civil court without legal representation. The lack of available legal resources for people who cannot afford to pay for counsel threatens to undermine our legal framework in which laws are supposed to apply equally without regard to a person's wealth. Pro bono service by in-house attorneys is crucial to help fill this gap in access to justice.

**Obligated to service**

The ABA Model Rules of Professional Conduct recognize that it is important for all attorneys to provide legal services to those who are unable to pay for them. Every state has included a similar exhortation to pro bono service in its professional responsibility rules or other state bar pronouncements. Most states do not require pro bono service, but many ask each attorney to aspire to reach annual goals ranging from 20-50 hours.

Of course, there are other incentives. Pro bono work often presents in-house counsel a change of pace from day-to-day responsibilities and provides an opportunity to hone legal skills. It also offers a meaningful way to make a life-changing difference for clients who do not have the resources to afford

representation.

**Defining pro bono**

The rules of professional conduct generally define pro bono as free legal services either for people of limited means or for organizations that serve people of limited means. This provides for a wide range of work, suitable for lawyers of any practice area or skill set. In addition, many legal departments and legal services providers have adopted policies that define pro bono practice.

**Ensuring compliance**

Although pro bono work is done for free, all standards of professional conduct apply equally to pro bono clients and to other clients. The ethical rules vary by state, but all states require the basic duties of competent and diligent representation, communication with the client about issues material to the matter, confidentiality and privilege.

Managing these obligations requires careful review for any attorney. Fortunately, these steps are simple enough to follow and most organized programs, whether at a legal department or ACC chapter, can establish procedures that will foster ethical compliance.

***Multijurisdictional practice rules***

First and foremost, in-house counsel must know if their status permits them to perform pro bono work. Fully admitted lawyers face no problem. However, those admitted under a limited license must determine if state bar rules permit them to perform pro bono work. Corporate Pro Bono, a global partnership project of ACC and the Pro Bono Institute, has developed several useful resources on this issue, including a report and an interactive map.

If the rules do not allow performance of pro bono work independently other alternatives may be available, including working under the supervision of a locally admitted lawyer.

***Competence***

Of course, the in-house lawyer must be competent to handle the pro bono matter. Fortunately, state rules provide if such knowledge does not already exist, it can be developed by working with someone experienced in the field. It might also be acquired through courses or self-study and by taking the time to draft templates and tools for use in the work.

***Scope of representation***

Once competence is established, in-house counsel should determine the scope of representation to be provided. It is important that in-house counsel set clear expectations of what they will (and won't) do. Establishing expectations up front is the best way to ensure the in-house counsel can fulfill all ethical duties to the client. There should be a clear understanding by both parties about this.

Most jurisdictions allow for limited scope engagements, which among other things permit in-house counsel concerned about demands on time to limit the services provided to a pro bono client. Specifying which tasks will be involved in a pro bono matter may influence the attorney's duties, including of those of competence, diligent representation and communication. Some ethical obligations, like avoiding conflicts, are treated differently in limited scope matters. It is important for in-

house counsel to review their state rules before taking on limited scope matters.

***Employer policies***

It is also important for in-house counsel to review their employers' policies around pro bono work to ensure the proposed representation conforms to those policies. An in-house department (or ACC chapter) is well served to set up an initial review process that addresses many ethical concerns such as confirming that training is provided, if needed, to ensure competence.

In-house departments and ACC chapters may also set up a process to confirm that no conflicts exist in matters in which conflicts checks are needed. This often involves searching any adverse party against company lists of employees, customers, dealers or suppliers to confirm that the matter is isolated from all company business. One should also make sure that the matter does not run counter to the public positions or economic interest of their employer.

***File management***

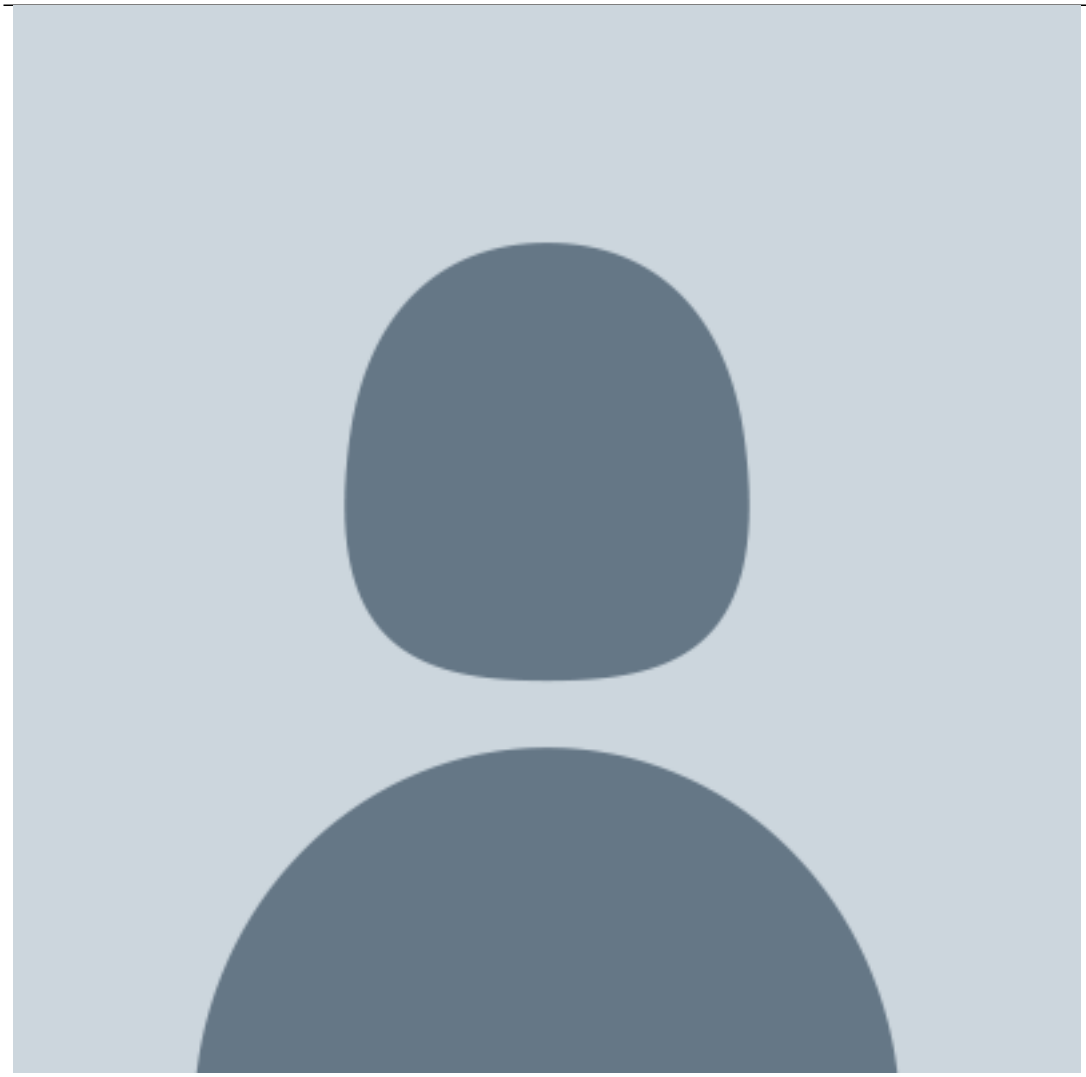
It behooves in-house counsel to make sure they approach the administration of pro bono matters in a very professional manner. A file should be opened and include an engagement letter and any client materials. Copies of notes, correspondence, agreements and other documents should be added appropriately. Any changes to the scope of the matter should be documented. At the conclusion of the matter, a closing letter should be sent to the client and included in the file, which should be safely stored in accordance with an appropriate document retention period.

**Conclusion**

Navigating ethical considerations may seem daunting but for the detail-oriented lawyer the task is manageable. It is important for in-house counsel to consult the local ethical rules, and for legal departments and ACC chapters to put in place an appropriate review process. However, a calm and commonsense approach to the engagement, the substantive work and matter administration will permit in-house counsel to address the details required of ensuring ethical representation.

For additional information on in-house pro bono, please visit *www.cpbo.org*.

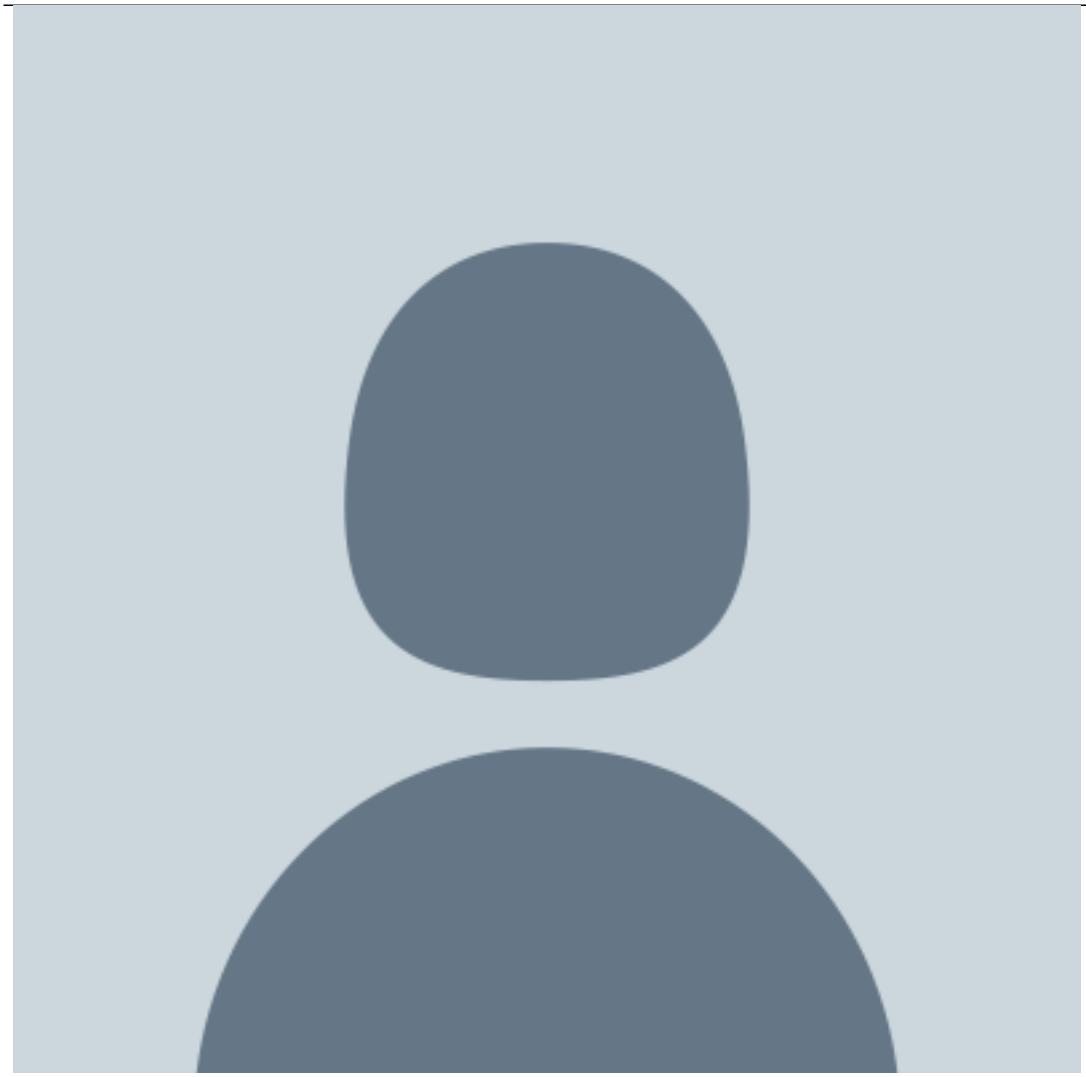
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