



Administrative Policies and Procedures Manual

605 PRACTICE OF LAW: PRO BONO: FOR FINANCIAL GAIN

POLICY

Except as may be prohibited by a specific statute or Practice Book Rule and subject to the provisions of the Code of Ethics and of this policy, employees occupying permanent positions in the Judicial Branch who are members of the Bar of the State of Connecticut are encouraged to engage in pro bono legal work and in other law-related public-service activities and may practice law privately for financial gain.

GENERAL INFORMATION

The Judicial Branch of state government recognizes that the administration of justice is enhanced by the service of attorneys who offer their services for pro bono legal-service projects.

PRO BONO ACTIVITIES

Judicial employees who are attorneys may engage in law-related education throughout the state or at the national level to inform members of the public about their legal rights and obligations. Examples of typical activities in the field of law-related education include participation in educational seminars for lawyers, teachers, students or civic groups; preparation of educational materials for distribution to the public or for use in the above programs; and participation in Law Day programs and other law-related education programs sponsored by the Branch, the Connecticut Department of Education, the Connecticut Bar Association, the Consortium on Law-Related Education or other law-related education organizations.

Judicial employees may also consider other pro bono activities that would not pose an obvious ethical conflict because the matters are not likely to come before the Connecticut courts. In addition to serving on bar association committees or on boards of pro bono or legal services programs, such activities may include federal bankruptcy proceedings, preparation of wills and living wills, federal tax proceedings, the preparation of tax returns, and research and writing of briefs in federal litigation.

Attorneys wishing to render pro bono services may wish to contact various legal service agencies. Working under the aegis of such organizations could provide a source for obtaining pro bono legal work and obtaining malpractice coverage and necessary support resources.

JUDICIAL BRANCH GUIDELINES AND PRACTICE BOOK RULES

All Judicial Branch employees, in determining whether or not to undertake a specific pro bono project or provide specific legal services for financial gain, should consider, inter alia, the following factors: (1) the likelihood that the contemplated legal service will come before a Judicial authority, (2) the likelihood that the contemplated legal service will require or involve the identification of the attorney as a Judicial Branch employee, (3) the likelihood that the contemplated legal service will result in an appearance of impropriety in light of the attorney's responsibilities as a Judicial Branch employee, and (4) the expertise of the attorney to render the contemplated legal service.

Because pro bono legal work is the responsibility of the employee, not of the state, use of state resources for such purposes is not permissible. If a project is undertaken during normal working hours, time must be taken as vacation, personal leave or other approved leave time. In addition, the state is not liable for any malpractice occurring during pro bono participation or for the payment of any occupational tax that could be due as a result of the pro bono services.

The Connecticut Practice Book, Section 2-66, does not bar full-time court clerks from the practice of law entirely, but disallows their appearance as counsel in any civil or criminal case in any state or federal court. The statutes are less restrictive, stating in Connecticut General Statutes, Section 51-57(c) that no clerk of the superior court may defend, counsel, advice or act as attorney for any defendant in any criminal action or otherwise engage in the private practice of criminal law. The restrictions imposed by, Connecticut Practice Book, Section 2-66 apply to pro bono legal work.

STATE CODE OF ETHICS

In addition to the factors set forth above, Judicial Branch attorneys must consider the various prohibitions and limitations imposed by the Code of Ethics. Advisory Opinion 1999-1 summarizes these limitations as follows: While the Code of Ethics does not contain a blanket prohibition against outside employment, it does contain a number of restrictions on that employment. First, of course, a state employee may not use state time, materials or personnel to further his or her outside employment. Secondly, a state employee may not accept outside employment that would impair his or her independence of judgment as to his or her official duties, or that would induce disclosure of confidential information acquired in the course of those official duties. (Connecticut General Statutes, Section 1-84b). Finally, a state employee may not use his or her public office or position, or confidential information garnered from such office or position, for financial gain (Connecticut General Statutes, Section 1-84(c)).

Advisory Opinion 1999-1 held that it would be a violation of the Code of Ethics for a housing clerk to serve as a neutral arbitrator with respect to a commercial lease dispute. Despite all honorable intentions, given the broad responsibilities entrusted to the clerk, as well as the perceived or actual benefits available to members of the bar who appear, however seldom, before the Housing Court, the clerk's acceptance of a paid position on this arbitration panel would indeed constitute the impermissible impairment of the independence of judgment of the Housing Clerk in violation of Section 1-84b. Additionally, although the interest arbitrators doubtless admire and seek expertise such as that demonstrated by the clerk, an inadvertent violation of the Section 1-84c prohibition against use of office for financial gain would likely occur. At the Ethics Commission meeting at which the foregoing opinion was adopted, it was stated that court clerks are prohibited from accepting any employment from those who appear in their court.

Advisory Opinion 1993-1 determined that it was inappropriate for the Executive Director of the Judicial Review Council, whose statutory responsibilities include the ability to investigate complaints filed with the Judicial Review Council, to appear as a paid legal representative before the very individuals he regulated.

PROCEDURES

ADVISORY PANEL

In an effort to avoid any potential conflicts with the Code of Ethics or any other law, attorneys employed in the Judicial Branch who wish to undertake legal work (either pro bono or for financial gain) at their election may request advice concerning the propriety of the proposed legal work by submitting an application for an advisory opinion in writing to the Director of the Administrative Services Division Human Resource Management Unit. The Director will forward the application to an advisory panel to be appointed by the Chief Court Administrator consisting of one judge, the Executive Director of Court Operations, Superior Court and a Judicial Branch attorney engaged in pro bono legal work or other attorney designated by the Chief Court Administrator. If the panel deems it advisable, it will consult with the Office of State Ethics. In the final analysis, however, it is up to the attorney applicant to determine the propriety of his or her conduct.

Questions on this policy:

✉ HR.JBAPPM@jud.ct.gov

☎ (860) 706-5280