

ADMINISTRATION MEMORANDUM NO. 80.04
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STATE OF NEW YORK
DEPARTMENT OF LAW

January 7, 2002

**TO: ALL EMPLOYEES OF THE
DEPARTMENT OF LAW**

**FROM: ELIOT SPITZER
ATTORNEY GENERAL**

**RE: GUIDELINES FOR PRO BONO PUBLICO AND
BAR ASSOCIATION ACTIVITIES
EXECUTIVE ORDER NUMBER 4.1**

WHEREAS, there is a significant need for attorneys to render pro bono publico services and to support the work of bar associations; and

WHEREAS, many attorneys in the Department of Law have expressed a desire to provide pro bono services and participate in bar association activities; and

WHEREAS, the Department of Law encourages its employees to engage in pro bono and bar association activities; and

WHEREAS, this office is supported by public funds for the sole purpose of providing governmental legal services, and attorneys providing pro bono services and participating in bar association activities must do so in their private capacities, on their own time and without conflicting with the Department's work;

NOW, therefore, in order to encourage Department attorneys to engage in pro bono and bar association activities while ensuring that such activities do not conflict with the purposes or activities of the Department of Law, it is hereby

ORDERED, that:

1. All attorneys employed by the Department of Law are encouraged to render pro bono legal services and support the work of bar associations.

2. Any attorney seeking to undertake such activities must: (1) ensure that the activities are consistent with the guidelines set forth in this order; and (2) obtain all necessary approvals prior to commencing such activities.

3. The following are types of pro bono legal services that may be permitted, subject to the restrictions set forth in this order:

a. Legal services, other than litigation services, rendered through a pro bono program of an organization which provides legal services to individuals or entities unable to afford such services.

b. Legal services, other than litigation services, to charitable, religious, civic, governmental and educational institutions in matters in furtherance of their organizational purpose, where the payment of customary legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.

c. Legal services, other than litigation services, rendered through a pro bono program of an organization and designed to increase the availability of legal services or otherwise improve the legal profession or the administration of justice.

d. Legal services, other than litigation services, on behalf of a family member of the employee, and any type of pro se legal services. While these are not traditional pro bono services, they may be permitted if the attorney first obtains the approval of his or her supervisor and the Employee Conduct Committee pursuant to the provisions of Executive Order Number 10.

4. Pro bono and bar association activities are not within the scope of the public employment or duties of Department of Law attorneys, and no State representation or indemnity will be provided for such activities. As a result, attorneys should consider whether the organization involved has adequate malpractice insurance coverage and provides reimbursement for expenses.

5. No pro bono legal services or bar association activities may be performed which would:

a. interfere with the proper and effective performance of the employee's official duties;

b. be of such nature that the outcome would be influenced or appear to be influenced by the employee's position in the Department of Law;

c. involve matters in which the State of New York, any of its agencies, or any of its employees acting in an official capacity is a party or has a direct or substantial interest; or

d. in any other way create or appear to create a conflict of interest.

6. Pro bono services are outside activities, and thus an attorney may not engage in such activities unless the attorney first obtains approval from his or her supervisor and the Employee Conduct Committee pursuant to the provisions of Executive Order Number 10. Supervisors shall review each application and shall grant approval where the pro bono activity will not interfere or conflict with the attorney's responsibilities to the office, and otherwise meet the requirements set forth herein. The amount of time to be spent on the pro bono activity shall be carefully considered.

7. Although bar association activities similarly are considered outside activities, the approval of the Employee Conduct Committee pursuant to the provisions of Executive Order Number 10 is not required for an attorney to join a bar association or participate in committee or other association activities, provided that: (a) the attorney obtains the approval of his or her supervisor; and (b) the bar association activities do not violate the prohibitions set forth in Paragraph 5 above.

8. Attorneys receiving reimbursement for expenses incurred during the performance of pro bono or bar association activities must ensure that such reimbursement complies with all applicable limitations, including 19 N.Y.C.R.R. Part 930.

9. When a pro bono or bar association activity occurs during normal working hours, leave accruals must be charged or the time spent on the activity must be made up within one week.

10. Attorneys must keep their supervisors informed whenever pro bono or bar association activities will occur during regular working hours. While supervisors are encouraged to provide reasonable accommodation to attorneys desiring to perform pro bono legal services, supervisors may limit these activities and the attorney must refrain from performing them, when the supervisor determines that such services will conflict with the attorney's work obligations.

11. Support staff of the Department of Law may not be used to perform any functions in connection with pro bono or bar association activities.

12. When engaging in pro bono or bar association activities, attorneys may not use office letterhead or business cards, or otherwise, in any manner, represent that they are acting in their official capacities or on behalf of the Attorney General's office.

13. When engaging in pro bono or bar association activities, attorneys may use office space, but may not use office equipment unless such use involves only nominal cost to the State. For example, attorneys may use their computers, make local telephone calls, send e-mail, use the law library, do computer research (including using the Premis CD-Rom databases), and use very limited amounts of paper for copying or receiving faxes. Attorneys may not make long-distance telephone calls, make large numbers of copies, use government vehicles, use government postage, or use any office equipment in support of pro bono or bar association activities in a manner that will incur more than a nominal cost to the State.

14. In rare circumstances, an attorney may be asked to participate in bar association activities as a representative of the Department of Law. In those cases, the activities are part of the attorney's official duties and can be performed during business hours without charging time, and the attorney may use office support services and supplies. Under these rare circumstances, the activities are within the scope of the attorney's official duties, and if necessary the State provides representation and indemnity.

15. Any violation of this Order may result in dismissal or other appropriate sanction.

Dated: January 7, 2002

ELIOT SPITZER
Attorney General

**Administrative Memorandum Number 80.04 dated January 7, 2002 supersedes
Administrative Memorandum Number 80.04 dated April 15, 1999.**