AMERICAN IMMIGRATION LAWYERS ASSOCIATION MEMBER PRO BONO PROGRAM PRO BONO STANDARDS

Recognizing the increasingly dire need for pro bono immigration legal services for the indigent and disadvantaged throughout the country; acknowledging that Members of the American Immigration Lawyers Association are in a unique position to influence, direct and provide pro bono immigration legal services to meet these legal needs; and having resolved to encourage the support and provision of pro bono immigration legal services by its Members, and to adopt and abide by Pro Bono Standards that set forth official guidelines for such services by Members; the Pro Bono Standards are presented herein:

- 1. The term "pro bono immigration legal services" refers to activities of a Member that are:
 - a) Legal services, or legal assistance, in the immigration field;
 - b) Performed by the Member;
 - c) Without expectation of a fee;
 - d) Provided to persons of limited means, or to charitable and other service organizations in matters that are primarily for the benefit of persons of limited means.
- 2. "Legal services" means direct delivery of legal services. "Legal assistance" means mentoring, training, and other like activities whereby Members may contribute to the provision of pro bono immigration legal services by other attorneys.
- 3. "Immigration field" is intended to embrace not only legal services relating directly to practice of United States ("U.S.") immigration law, but also to legal services and legal assistance that Members provide in other legal disciplines as ancillarly services on behalf of immigration clients.
- 4. The term "persons of limited means" should be defined with reference to poverty guidelines or other accepted, recognizable standards. Members may rely on reasonable representations by qualified service providers and other organizations that routinely screen clients concerning economic resources.
- 5. Members should strive to perform a minimum 50 hours of pro bono immigration legal services annually. Members who work part-time may meet this goal by using a percentage to adjust the minimum hours downward. A substantial number of pro bono hours by a Member in one year may be carried over one additional year, and thus pro bono hours may be allocated over a two-year period to meet this minimum aspirational goal.
- 6. Members should report their pro bono hours in accordance with then-existing AILA reporting procedures.
- 7. Members are encouraged to provide financial support to organizations that assist poor and disadvantaged immigrants through programs designed to address the problem of their unmet legal needs.

AMERICAN IMMIGRATION LAWYERS ASSOCIATION MEMBER PRO BONO PROGRAM GUIDANCE FOR MEMBERS

This Guidance for Members is intended to assist Members in resolving issues regarding AILA's Member Pro Bono Program and accompanying Pro Bono Standards. From time to time, AILA honors its Members who have demonstrated sustained commitment of pro bono legal services or legal assistance to the immigrant community. AILA encourages all Members to provide pro bono legal services or legal assistance for the benefit of the immigrant community through its AILA Member Pro Bono Pledge and other similar initiatives. This Guidance for Members is intended to apply to all AILA pro bono recognition programs and initiatives.

Who is Performing the Legal Work?

This Section addresses questions concerning who must provide the pro bono immigration legal services in order for the work to be credited to the Member for purposes of meeting the Pro Bono Standards

Question: In determining a Member's total number of hours spent on pro bono immigration legal services for purposes of the Pro Bono Standards, should time spent by the Member's staff, assistants, and/or other attorneys working with the Member count?

Answer: No. The Pro Bono Standards are intended to encourage pro bono immigration legal services directly by Members, who are best equipped to provide such specialized work related to the immigration law field. While law firm-based pro bono service is highly valued, is in great need, and has been recognized by AILA through past awards, the Pro Bono Standards focus on the responsibilities of individual Members. The AILA Member Pro Bono Pledge, for example, is not a program specifically designed for law firms. Therefore, the pro bono hours spent by other attorneys cannot be aggregated among multiple attorneys to benefit a Member. Only the pro bono hours directly contributed by the Member will count. Also, the activities of the individuals who work in, or direct or administer, a law firm's pro bono program--such as paralegals, law clerks, interns, pro bono coordinators, pro bono counsel, pro bono committee members, or law firm staff—do not constitute pro bono services within the meaning of the Pro Bono Standards.

What Type of Work Performed Will Qualify?

This Section addresses questions related to whether Member activity qualifies as pro bono immigration legal services under the Pro Bono Standards. The threshold consideration in determining whether particular services count towards the AILA Member Pro Bono Program, including the AILA Member Pro Bono Pledge, is whether the activity involves <u>legal services or legal assistance in the immigration field</u>, as opposed to general legal assistance or some other type of volunteer effort. This threshold test can be applied to a range of activities which benefit the community but may not be cognizable as pro bono immigration legal services for purposes of the AILA Member Pro Bono Program.

Question: Do pro bono legal services or assistance performed in other areas of practice—criminal, landlord-tenant, family, etc.—count as pro bono immigration legal services for purposes of the Pro Bono Standards?

Answer: Yes, but only where the legal services are linked to a client matter involving immigration practice. The Standards contemplate pro bono legal services or legal assistance in the "immigration field" which may be interpreted broadly in order to further the goals of the AILA Member Pro Bono Program. The focus of the Program is legal services or legal assistance relating directly to practice of immigration law, but the Program also recognizes certain legal services and legal assistance that certain Members with multi-disciplinary skills may provide in other legal disciplines as ancillary services on behalf of immigration clients. For example, in the course of a Member's representation of a client with an immigration matter, the Member may also represent the client in proceedings to reopen a criminal conviction with the aim of limiting the immigration consequences of the criminal activity. Or, in the course of a Member's representation of a client with an immigration matter, the Member may also represent the client in proceedings to avoid eviction. The activities in these examples would count as pro bono legal services or assistance for purposes of the Program. In contrast, pro bono legal services or assistance by a Member in an ancillary field for a person who is not a client with an immigration matter are beyond the scope of the Program.

<u>Question:</u> Does time spent performing community service or time spent participating in activities that combine legal services with community service activities count as pro bono hours for purposes of the Pro Bono Standards?

<u>Answer</u>: The Standards define pro bono immigration legal services as legal services or legal assistance, but do not encompass non-legal community service or other volunteer activities. Time spent on an immigration law seminar for low-income residents of a homeless shelter would count within the Pro Bono Standards definition of pro bono. But time spent preparing or distributing food to those residents does not count.

<u>Question</u>: Does time spent on non-litigation activities count as pro bono hours for purposes of the Pro Bono Standards?

<u>Answer</u>: The Standards focus on direct representation or assistance in the broadest sense and therefore pro bono immigration legal services are not limited to litigation activities. Thus, preparing family-based immigration petitions and applications for naturalization, assisting community outreach programs with "know your rights" or legal information clinics, and participating in projects to improve detainee standards and treatment are just a few examples of legal services or legal assistance that are clearly encompassed by the Program.

Ouestion: Does time spent on advocacy or drafting legislation in the immigration field count as pro bono services for purposes of the Pro Bono Standards?

<u>Answer</u>: Where legal skills are used for advocacy or drafting legislation, the activity is considered legal assistance which may qualify for purposes of the Standards, if it is determined that such efforts are primarily aimed at, or would have the likely consequences of primarily, benefiting immigrants of limited means.

<u>Question:</u> Does service on a non-profit board or a bar association count as pro bono services for purposes of the Pro Bono Standards?

<u>Answer</u>: The Standards definition of pro bono does not include participation in activities for generally improving the law, the legal system, or the legal profession. The rationale for this exclusion is that this category of activities is so broad that the primary purpose of the AILA Member Pro Bono Program—increasing the provision of immigration legal services and legal assistance to aid disadvantaged immigrants—would only be incidentally served, if at all. Even if the board or association focuses on legal services, such general

service is not a pro bono activity within the scope of the AILA Member Pro Bono Program. However, certain kinds of <u>legal assistance</u> provided in the context of such board or association membership, or through other avenues, could be considered pro bono work for purposes of the Standards. Examples might include assisting an organization in some aspect of its delivery of legal services to the indigent, advising on measures to improve detainee standards and treatment, preparing a legal brief in support of extending IOLTA and other funding to immigrants, and drafting proposed regulations for expanding fee waivers to a larger class of disadvantaged immigrants.

Question: Does time spent working at a reduced rate or accommodating low income clients with payment plans (so called "low bono" or "slow bono") count as pro bono services for purposes of the Standards?

<u>Answer</u>: Working for a fee, even at a reduced rate or generous payment schedule, would not count as pro bono immigration legal services for purposes of the Standards.

<u>Question</u>: Does time spent working on a pro bono matter which eventually results in an award of attorneys' fees still count as pro bono services for purposes of the Standards?

<u>Answer</u>: If the Member originally accepted the matter in question on a pro bono basis, then the service retains its pro bono character regardless of the fact a court awarded attorneys' fees in the case. However, accepting a matter on a contingency fee basis does not make it a pro bono matter under the Standards. Time expended on contingency cases—successful or not—cannot be counted for purposes of the Standards.

On Whose Behalf is the Legal Work Being Performed?

This Section addresses questions related to determining client eligibility for pro bono immigration legal services for purposes of the Pro Bono Standards.

<u>Question</u>: What standards are acceptable for determining whether a client is a person of "limited means"?

<u>Answer:</u> The determination whether a person has "limited means" should be made with reference to reasonable standards. The federal poverty guidelines, for example, serve as one recognized standard. See: http://www.census.gov/hhes/www/poverty/poverty.html.

Far from advocating for fixed or inflexible standards, the Standards recognize that numerous factors may impact an individual or organization's ability to pay for needed legal services.

<u>Question</u>: Does time spent assisting a nonprofit organization count as pro bono services for purposes of the Standards?

Answer: Yes, if the nonprofit organization serves the unmet legal needs of the immigrant poor or otherwise provides assistance to further the interests of immigrants. The Program seeks to support direct delivery of legal services and/or providing legal assistance, including mentoring, training, advocacy, community outreach and other forms of legal assistance, in furtherance of meeting the legal needs of the disadvantaged. The Program recognizes that in certain circumstances a Member may substantially leverage his or her immigration law expertise by providing legal services, mentoring, and training assistance to nonprofit organizations in matters that are primarily for the benefit of persons of limited means. For example, if a Member provides immigration law training assistance to a nonprofit organization that will use such training to serve persons of limited means, then the time spent by the Member counts for purposes of the Standards. Also, if a

Member provides general legal assistance such as incorporation services to a nonprofit organization, then the time spent by the Member counts for purposes of the Program if the nonprofit organization is dedicated to furthering the overall goal of providing immigration legal services to the disadvantaged.