

WORKSHEET OO
CO-COUNSELING IN A PRO BONO CASE

Worksheet OO is intended to facilitate a discussion about co-counseling. In addition to a discussion, you and your mentee may choose to co-counsel **in a pro bono case** if you follow the steps below.

- Follow this checklist for determining whether to co-counsel with your mentee:
 - Determine whether you or your mentee have expertise that will further the representation and ensures that your mentee gains important legal skills while also helping to serve the needs of the underrepresented. See Prof. Cond. R. 1.1, especially comments 2 and 5.
 - Make sure that you and your mentee, as well as your respective employers, are comfortable with the idea of co-counseling in a pro bono case. If so, the best way to find a pro bono case is to contact a local pro bono provider as identified at [the Ohio Access to Justice Foundation's Pro Bono Opportunities Guide](#).
 - After you have found a potential pro bono client or project, determine whether any conflict of interest exists. See Prof. Cond. R. 1.7–1.12 and 1.18. Follow the conflict of interest rules articulated in the attached materials excerpted from the Louisiana State Bar Association's [Practice Aid Guide: The Essentials of Law Office Management](#) and compare them to Ohio's disciplinary rules. Louisiana State Bar Association, *Practice Aid Guide: The Essentials of Law Office Management*, 2017.
 - Discuss the scope of representation within the parameters of Prof. Cond. R. 1.2.
 - Address the malpractice insurance requirements of Prof. Cond. R. 1.4. Disclose the amount of malpractice insurance that you carry to your mentee. If a lawyer does not have malpractice insurance, the client's written acknowledgement of that fact is required pursuant to Prof. Cond. R. 1.4; however, legal aid malpractice insurance usually covers pro bono lawyers who volunteer at legal aid brief advice and information clinics or accept a case for extended representation. Bar associations with organized pro bono programs also usually provide malpractice insurance coverage for pro bono volunteers. While you should have your own malpractice insurance, you still should check with any pro bono program to verify malpractice insurance coverage before accepting a case or providing legal information and advice at a pro bono clinic.
 - Discuss the division of fees between you and your mentee in Prof. Cond. R. 1.5 with special attention to comment 7. Although no fees will be generated by co-counseling on a pro bono case, your mentee should be familiar with the ethical parameters for such a typical co-counseling arrangement. Keeping track of billing will not only give you the opportunity to discuss that necessary task with your mentee, but it will be a

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necessary document should you prevail in a pro bono case that entitles the prevailing party to attorney's fees.

- Review Gov. Bar R. X, Section 5 regarding the opportunity to earn CLE credits for pro bono service. **Be advised, however, that no mentoring participants may earn CLE credit for pro bono service completed during the mentoring term, as they are already receiving CLE credit for their participation in the mentoring program.**
- If you and your mentee decide to co-counsel in a pro bono case, draft a co-counseling agreement. You may consult a [co-counseling sample agreement](#).
- You and your mentee must discuss the pro bono co-counseling arrangement with the client, carefully explaining all of the points and considerations listed above. If the client agrees to the arrangement, the client shall be presented with a written copy of the agreement for their review.
- Obtain a pro bono client's informed consent to the co-counseling arrangement in writing by having the pro bono client sign the co-counseling agreement. If you are co-counseling in a case assigned by a pro bono provider, ask for their particular pro bono engagement form and complete it. A sample form from a Legal Aid Society is provided in the materials for this worksheet.