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Manual on Pro Bono Appeals Programs for State Court Appeals

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MANUAL ON PRO BONO APPEALS PROGRAMS

For State Court Appeals

Second Edition ~ November 2017



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PREFACE

Courts and lawyers continue to wrestle with how to handle the large volume of cases involving litigants who cannot afford to hire a lawyer. While much of the focus on providing legal services to the underrepresented and indigent often involves the lower courts, there is a serious need for legal services at the appellate level. For litigants without a lawyer in the appellate courts, an appeal may be complex and utterly unapproachable and thus these individuals are left without any real means to solve their legal problems in these courts.

In a number of states, appellate courts and bar associations have worked together to establish and administer successful pro bono appellate programs, designing systems to match lawyers who are willing to take pro bono appeals with clients who need their services. In 2013, the Council of Appellate Lawyers of the American Bar Association, in a tremendous effort chaired by A. Vincent Buzard and Cynthia Feathers, prepared a comprehensive resource book surveying those pro bono appellate programs.

After the publication of the Council of Appellate Lawyers Pro Bono Manual, I have been so pleased to hear from lawyers, judges, bar associations, and court staff around the country that the manual has been an incredibly valuable resource in establishing and implementing pro bono appellate programs in their jurisdictions.

In early 2017, Katie Barrett Wiik of Robins Kaplan LLP volunteered to chair the Council of Appellate Lawyers' pro bono committee, which she then promptly tasked with the significant project of updating the Pro Bono Manual. The committee, ably led by Katie, both updated the analysis of the pro bono appellate programs previously included in the manual and addressed new programs that had been established in states after the manual's publication. Katie and her committee did this work in a very short period of time so that this new resource could be presented to appellate judges, lawyers, and staff attorneys attending the Appellate Judges Education Institute Summit in Long Beach, California in November 2017.

As chair of the Council of Appellate Lawyers, and on behalf of its members and the clients who may be served as a result of their work, I want to express our admiration and thanks for their extraordinary efforts. I know of no better group to prepare this resource than the Council of Appellate Lawyers, and I am so proud of the work done by our dedicated members.

If the manual inspires you or aids you in the effort to establish or administer a pro bono appellate program, our mission will be fulfilled. We would appreciate any comments or any reports of your successful use of the manual.

*Katharine J. Galston
Chair, Council of Appellate Lawyers
American Bar Association
Judicial Division
November 2, 2017*

INTRODUCTION

Throughout the country, appellate bench, bar, and court staff (and often exciting collaborations between these groups) have designed pro bono programs for state court appeals to help litigants of modest means who cannot afford quality appellate representation. In 2013, the American Bar Association's Council of Appellate Lawyers (CAL) designed this manual, and now in 2017, CAL has revised it. We hope that the manual will serve as a practical tool that can make the path easier for the next generation of appellate pro bono programs and for the expansion of and cross-pollination between existing programs. The manual seeks to provide a detailed examination of existing programs, links to various forms, articles, and contact information for each state. The manual surveys only pro bono programs that operate in state courts; it does not cover federal court pro bono programs. Nor does the manual describe law school clinics, because our focus is on representation by practicing appellate attorneys.

In revising and updating the 2013 edition of this manual, we researched and contacted all of the states with entries in the first edition of this manual, as well as any others that had a pro bono appeals web presence. We made extensive efforts to contact the other states to confirm that they do not have a program. It was inspiring to see how much growth and expansion has occurred in the pro bono appellate space in just four years, and this manual includes several state programs that did not exist in 2013. If such states do have programs that are not included here, we encourage interested persons to contact me (kbarrettwiik@robinskaplan.com) or the ABA's Denise Dempsey (Denise.Dempsey@americanbar.org) and provide us with the relevant information so that we can supplement the online version of this manual. The CAL Pro Bono Committee also encourages leaders of the programs detailed here to update us on their efforts and thanks them for their generous cooperation and assistance in compiling this manual. We also thank all those who provided permission to reprint the invaluable program material included in this manual.

A note about resources and link rot. Given the greater number of states included in this revised edition, we opted not to include program forms and materials as part of the manual, as that would have created an overly cumbersome manual in terms of length and file size. Instead, we have included hyperlinks to online resources and used specific enough names and descriptions to provide the reader with accurate search terms for online research. All of the website links were current as of November 1, 2017, but link rot presents an ongoing challenge. If included links become stale and readers are unable to locate updated links from

web searches using the information provided in the manual, please reach out to us at the emails above and we will endeavor to help. Copies of the complete manual will be available on the CAL website at https://www.americanbar.org/groups/judicial/conferences/appellate_judges/appellate_lawyers/committees.html.

A warm thanks to Kate Galston (Law Office of Katharine J. Galston, Beverly Hills, CA), Chair of CAL, for her support and encouragement updating this manual, and to the entire CAL Executive Board for its enthusiasm for this project and pro bono service. We are also grateful to the members of the CAL Pro Bono Committee who originally created this resource and the next generation of committee volunteers, who worked hard to research and update the manual. This work often involved interviewing attorneys involved with existing programs to gain insights about each state's initiative.

We wish to thank the CAL Pro Bono Committee members and their colleagues who dedicated so much time and energy to complete the 2017 updated version of this manual. Our manual update team included Veronica C. Gonzales-Zamora (who very graciously swooped in to save the day handling many states as our deadline approached), Robert Paul Coleman III, Sean E. Andrussier, Sara J. Kobak, Raymond P. Ward, David Andrew Timchak, Jeff Richardson, Timothy Anzenberger, and Lyndey Zwing.

My colleagues at Robins Kaplan LLP, in particular my fabulous assistant Jennifer Gerboth, and also paralegals Ann Potter, Elaine Magnan, and Ashley Hoellein, who extensively and generously gave of their time and ideas to make this update happen and I am so grateful for their help. Chris Sullivan graciously donated his graphics design expertise, creating the cover of this revised edition.

The membership of the CAL Pro Bono Committee at the time of this publication includes myself, Adam Hansen, Annette G. Hasapidis, David Andrew Timchak, Jason Paul Steed, Jeff Richardson, Jehmal Hudson, Leah Spero, Lyndey Zwing, Marina Bogorad, Raymond P. Ward, Robert Paul Coleman III, Sara J. Kobak, Sean E. Andrussier, Stephanie Martin, Timothy Anzenberger, and Veronica C. Gonzales-Zamora.

*Katie Barrett Wiik
Chair, Pro Bono Committee, Council of
Appellate Lawyers
American Bar Association, Judicial Division
November 2, 2017*

BASIC CONSIDERATIONS IN CREATING A PROGRAM

This manual cannot tell you how to create or expand a pro bono appeals program. However, it can help you consider the relevant elements of such a program and identify likely obstacles and benefits. Some of the basic questions and issues to consider are set forth below.

1. Appellate experience

Is the goal of your program to find opportunities for experienced appellate attorneys to use their skills in order to provide quality representation in addressing an unmet need in the community? Or would you like to train attorneys to do appeals? If so, will you use a mentoring system, in which seasoned appellate practitioners guide the work of other volunteers, and will you limit the kinds of cases less experienced volunteers handle?

2. Appellate attorney committees and sections

One theme that emerged in our research was the central role of the organized appellate bar in creating programs, screening cases, and representing litigants. Such attorneys know how difficult appeals can be and have been a significant force in mobilizing their own colleagues to offer free appellate representation. Pro bono appeals are thus a distinct genre of pro bono service, which often starts not with a group of attorneys with a particular skill set, but with a particular need, and sometimes uses paid pro bono staff to train volunteers. The appeals programs are also distinct in often operating on a statewide, not a local, level in the recruitment of volunteers and screening of cases.

3. Role of the appellate courts

What role will the appellate courts play? There are many possibilities. In some instances, the courts themselves were the primary force behind creation of a program. More often the program was started by a state bar appellate group. In those situations, a question to address is whether the appellate court will be considered a full partner in the program. Other questions are whether the court will refer cases to the pro bono program and will appoint counsel, as is often done in federal court programs, but less often in state programs.

4. Role of nonprofits and funding

What role will existing legal services/pro bono programs play? Are there programs in your community that can provide administrative assistance,

malpractice insurance, and other support? Partnerships of state bar appellate groups and pro bono organizations work well where there is a mutual understanding and respect for each other's role. The attorneys are grateful for the infrastructure and guidance offered by pro bono professionals, who in turn support the vision and expertise of the appellate bar.

Is the pro bono program local, regional or statewide? Will it handle the income qualification of applicants, and what standards will apply? Can it identify possible funding sources, prepare grant proposals, and administer funds? If so, how will such funds be used? In one state, two members of the state bar appeals committee receive a stipend in recognition of their ongoing role in helping to run the program. In other states, the appellate attorney administrator is fully voluntary, and the pro bono program donates staff time. Funding can also be used for transcripts and printing costs, where the volunteers cannot absorb such costs, and for outreach efforts. Several programs have no funding, and volunteers must cover their costs.

5. Appeal topics

Another threshold consideration is whether a program will cover any and all appeal topics or will narrow the subject matters in which appeals will be handled, based on perceived high-need areas.

6. Promoting the program

Except where the court runs the program and identifies the cases warranting pro bono appellate counsel, a basic issue programs face is getting the word out about the program to lawyers and litigants. States have found a number of ways to promote their programs: placing information on court, pro bono program, and state bar websites; distributing materials at Continuing Legal Education (CLE) programs; making brochures and posters available via the above entities and in trial and appellate court clerks' offices; and publishing articles in the general circulation or legal press about the program generally or an interesting case specifically.

7. Persistence

The road to creating a pro bono appeals program may not be smooth. Once the program is launched, getting a steady flow of cases and managing the program to place the cases and ensure timely and quality representation can be difficult. Reinvigorating an existing program with new leadership or outreach efforts is often required. Innovative approaches may be called for. For example, one

jurisdiction that initially sought to represent primarily litigants who could not obtain assigned counsel has created a partnership with providers of mandated representation to expand services to indigent persons in family law appeals.

8. Defining success

Even the most vibrant programs do not define success by a high-volume of appeals handled each year. For some programs, doing ten appeals a year is typical. That number belies the value of such programs. For one thing, a single appeal involving an enormous record and multiple complex issues can be a very labor-intensive undertaking.

For another thing, the power of appeals in creating binding precedent that will serve other similarly situated persons of modest means should not be underestimated. Indeed, many pro bono programs have made important new law in their jurisdictions. Working with legal services groups to identify possible impact cases or areas where amicus curiae briefs could make a critical difference seems to be a largely untapped frontier. Even in appeals not deemed to be “impact” cases, each appeal can have an enormous impact on the life of the individual litigant represented. The number of appeals handled is not indicative of the number of applications screened and valuable information provided to trial counsel and pro se litigants about the appeal process and possible problems with rejected appeals.

While most of the appellate programs surveyed here provide routes for pro se parties to find pro bono appellate attorneys to handle their entire appeal, there are some that also provide only legal consultations, which may allow a greater number of pro se individuals to receive some sort of assistance. A unique program is Los Angeles County’s, which emphasizes a brief advice clinic that helps a high volume of pro se litigants, while referring a small number of cases for pro bono representation.

Similarly, in Minnesota, the appellate bar and state law library have collaborated to launch a monthly pro se appeals walk-in clinic housed at the state’s Law Library. Each clinic allows pro se customers to consult with volunteer appellate attorneys but individual representation is not provided through the clinic.

9. A few comparisons

The most common model involves a collaboration of a state bar appellate section, a public interest nonprofit organization, and a court. In some cases, the nonprofit

entity performs the income qualification of applicants, whereas in others, the appellate attorneys do so. Perhaps the state with the greatest court control of a program is Montana. In Oregon, the court also chooses the cases, but the state bar plays a major role in the program. In Colorado, in some cases that were briefed by pro se litigants, the court issues an order inviting the litigant to seek pro bono counsel through the program and provides an extension for supplemental briefing. In most programs, referrals flow from a variety of sources, which may or may not include the court.

As to topics, some states focus on specific types of cases. In Minnesota, the full representation pro bono programs tend to involve unemployment compensation appeals and criminal defense appeals in collaboration with the state appellate defenders. North Carolina involves only guardian ad litem representation of children in appeals. Many states apparently do not limit topics. A middle ground is taken in Hawaii and New York, where pro bono appeals are restricted to several enumerated high-need areas. States with regional programs that do not cover the entire state include California and New York. In creating or expanding your program, you may find especially useful the extensive program literature and forms linked to within this manual.

ARIZONA

The Arizona Court of Appeals Pro Bono Program (“Program”) provides pro bono counsel to pro se parties in selected civil and juvenile appeals and special actions (“Appeals”) in cases identified by the court to assist the court in resolving those Appeals more efficiently.

Goal of Program:

The goal of the Program is to provide pro bono counsel to pro se parties in civil and juvenile Appeals identified by the court in which briefing and argument by counsel would benefit the court’s consideration of the matter. Each Appeal selected for the Program has been screened by a staff attorney, a judge and/or a panel of judges.

Selection Criteria for Appeal:

A party cannot apply to participate in the Program; only cases selected by the court are eligible to participate in the Program. Only cases presenting issues of first impression or some complexity, or cases otherwise warranting further briefing and oral argument, are selected for the Program. Where practicable, no judge who has participated in the selection of an appeal for participation on the Program will be involved in resolving that Appeal, either individually or with the panel of judges that decides the Appeal.

A pro se appeal may be selected for participation in the Program at any time. However, pro se appeals typically are identified as candidates for participation in the Program: (1) during the court’s initial jurisdictional review; (2) during motion practice or (3) after the matter has been assigned to a merits panel for resolution. A pro se Appeal may be identified as a candidate for the Program by a staff attorney, an individual judge or a panel of judges as part of the motions panel or an individual judge or a panel of judges as part of the merits panel.

Direct criminal and most post-conviction relief Appeals are not eligible for the Program because the appellants in those cases are entitled to appointed counsel and because any appellant proceeding pro se in such a case is typically doing so by choice. Similarly, juvenile Appeals in which the parties are entitled to appointed counsel are not included in the program.

Appointment of Counsel:

Once an order has been issued placing an Appeal in the Program, the relevant Court Pro Bono Coordinator contacts the Pro Bono Attorney Coordinator for the Division in which pro bono counsel is to be appointed and makes available briefs and other case information, including, where possible, relevant portions of the record on Appeal. The Pro Bono Attorney Coordinator then checks for conflicts. If the Pro Bono Attorney Coordinator determines that he or she has a conflict, the Pro Bono Attorney Coordinator advises the Court Pro Bono Coordinator of the fact that a conflict exists and has no further involvement with the process of appointing pro bono counsel. If the Pro Bono Attorney Coordinator determines that no conflict exists, the Pro Bono Attorney Coordinator then contacts potential pro bono counsel. Potential pro bono counsel then checks for conflicts. If potential pro bono counsel determines that he or she has a conflict, potential pro bono counsel advises the Pro Bono Attorney Coordinator of the fact that a conflict exists and declines the potential appointment as pro bono counsel. If potential pro bono counsel determines that no conflict exists, potential pro bono counsel will then have the opportunity to familiarize themselves with the issues on Appeal, the history of the case and the parties involved.

If no pro bono counsel is available for a given Appeal in the relevant Division, the Pro Bono Attorney Coordinator will contact the Pro Bono Attorney Coordinator from the other Division to locate available pro bono counsel to handle the Appeal. If pro bono counsel is required for more than one party to an Appeal, the Court Pro Bono Coordinator will endeavor to contact one Pro Bono Attorney Coordinator for the appointment of counsel for appellant and the other Pro Bono Attorney Coordinator for the appointment of counsel for appellee. Pro bono counsel must be authorized to undertake such legal representation in Arizona.

If willing and available pro bono counsel reviews the briefs and/or other materials and determines that no arguable basis exists for an appeal, pro bono counsel may decline the appointment and advise the relevant Pro Bono Attorney Coordinator of that declination. If a Pro Bono Attorney Coordinator has been unable to locate pro bono counsel who will accept the appointment within the time allocated in the Order Placing Case In Court's Pro Bono Program And Staying Appeal, the Pro Bono Attorney Coordinator must notify the Court Pro Bono Coordinator.

Once willing and available pro bono counsel has been located for an Appeal, after client consultation and consent to the representation, pro bono counsel will send a letter to the client outlining the terms of the representation agreement to obtain

the client's written consent. Pro bono counsel will then file a notice of appearance that, in cases that already have been briefed, will address whether replacement briefing or supplemental briefing will be submitted. The court encourages the submission of replacement briefing rather than supplemental briefing. The Court Pro Bono Coordinator causes an order to issue appointing pro bono counsel and establishing a briefing schedule. Where appropriate, pro bono counsel may request that the Appeal be included in the court's Mediation Program.

Pro bono counsel who has filed a notice of appearance may move to withdraw as counsel based on any of the established grounds for doing so. Such a motion will be freely granted. If leave to withdraw is granted, absent extraordinary circumstances, no other pro bono counsel will be appointed and the Order Placing Case In Court's Pro Bono Program And Staying Appeal will be vacated.

Scope of Appointment and Oral Argument:

Except for appointments for purposes of settlement conferences, the court usually will hear oral argument in cases selected for the Program.

The order of appointment provides that pro bono counsel will be appointed to represent the appellant for purposes of this Appeal only. Accordingly, the appointment includes only the handling of the Appeal and the drafting of a motion to reconsider where requested by the client, but does not include the preparation and filing of a petition for review by the Arizona Supreme Court or any other proceedings in any other court or agency unless specifically ordered by this court or separately agreed upon between the pro bono counsel and the client.

The Court of Appeals does not reimburse parties or pro bono counsel for attorneys' fees or any expenses incurred in participating in the Pro Bono Program. Shifting of attorneys' fees and taxable costs may be available to prevailing parties and pro bono counsel under applicable statutes and rules to the same extent as retained counsel, provided procedural requirements for such requests are met.

Pro Bono Attorney Coordinators:

Each of the Divisions has a Pro Bono Attorney Coordinator who recruits volunteer attorneys who are willing and available to serve as pro bono counsel in the Program, maintains the current list of volunteers and identifies individual attorneys willing to accept specific appointments. The Pro Bono Attorney Coordinators and their contact information is set forth below and, along with the

attorney sign-up form, is available on the Court's website at <http://www.azcourts.gov/coa1/ProBonoRepresentationProgram.aspx>

CONTACT INFORMATION

Division One Pro Bono Attorney Coordinator:

Kimberly A. Demarchi, Esq.
Lewis Roca Rothgerber Christie LLP
201 East Washington Street, Suite 1200
Phoenix, Arizona 85004 (602) 262-5728
Email: kdemarchi@lrrclaw.com

Division Two Pro Bono Attorney Coordinator:

Andrew M. Jacobs, Esq. Snell & Wilmer, L.L.P.
One South Church Avenue, Suite 1500
Tucson, Arizona 85701-1630 (520) 882-1207
Email: ajacobs@swlaw.com

Pro Se Appellate Guides:

The Arizona Court's provide a pro se appellate guide that can be found at http://www.azcourts.gov/LinkClick.aspx?fileticket=RytqX_kEDo%3D&portalid=163

An interactive video guide relating to the filing of a Petition for Review in the Arizona Supreme Court can be found at <https://www.azcourts.gov/Portals/21/Pro%20Se%20Forms/2017ProSeLitigants.swf>

The guide is also available in Spanish that can be found at https://www.azcourts.gov/Portals/21/Pro%20Se%20Forms/ProSeGuide_SPA_NISH.pdf

There is also a guide specific to Worker's Compensation Case Appeals that can be found at <http://www.azcourts.gov/Portals/34/Guides/ICAGuideupdated.pdf>

Guides on how to appeal a final order or judgment can be found at

Civil:

<http://www.azcourts.gov/Portals/34/Guides/Superiorcourtljccivilappealsupdated.pdf>

Criminal:

<http://www.azcourts.gov/Portals/34/Guides/CriminalGuideupdated.pdf>

Civil Traffic:

<http://www.azcourts.gov/Portals/34/Guides/CivilTrafficupdated.pdf>

**CALIFORNIA:
LOS ANGELES COUNTY**

When was the program created?

2006

How was it started?

The program started after Justice Laurie Zelon of the Second District Court of Appeal decided that her court needed to do something to help the unrepresented civil litigants who were having a difficult time navigating the system. She contacted Public Counsel, a public interest nonprofit law firm, the Appellate Court Section of the Los Angeles County Bar Association, and a few prominent appellate lawyers in L.A. Then a series of meetings were held to brainstorm and design a program. In the meantime, Public Counsel created an appellate law program and received a five-year grant through the State Bar to get the program started. An appellate self-help clinic was established in a partnership with the court and Public Counsel. It is not held in a small office at the courthouse one day a week, typically Wednesdays.

How are cases and volunteers chosen?

Public Counsel identified meritorious cases and places them with pro bono lawyers. Cases are typically picked up quickly. The L.A. County Bar Association set up a special listserv for Public Counsel to use. The volunteer lawyer decides if the appeal presents non-frivolous issues, and if the lawyer wants to keep it or give it back to Public Counsel to find another lawyer to handle it. When respondents come to the clinic, their appeals are immediately placed with pro bono lawyers.

Do volunteers need to have appellate experience?

Appellate Court Section members typically possess appellate expertise. If the volunteer lacks experience, a mentorship arrangement is created with a more experienced appellate lawyer.

On average, how many appeals are handled each year?

Several thousand pro se litigants have been helped at the clinic, and in the first six years of the program, about thirty appeals were placed, several of which have resulted in published decisions.

How do you promote the program?

The program is promoted to litigants through the Second District Court of Appeal. The website contains information about the program under the “Court Programs” and “Appellate Pro Bono Pilot Project” tabs. When an unrepresented litigant files an appeal, the litigant receives a packet from the court. Flyers are distributed throughout the county, as well. Lawyers learn about the program through the Appellate Courts Section or Public Counsel.

What obstacles had to be overcome to establish the program?

Largely funding.

Where can I learn more about this program?

A law journal article offers a detailed discussion of the program. *See* Meehan Rasch, “A New Public-Interest Appellate Model: Public Counsel’s Court-Based Self-Help Clinic and Pro Bono ‘Triage’ for Indigent Pro Se Civil Litigants on Appeal,” 11 J. APP. PRAC. & PRO. 461 (2010).

Additionally, the Public Counsel website provides information:
http://www.publiccounsel.org/practice_areas/appellate_law.

Does California have a pro se appeals guide?

Yes, go to <http://www.courts.ca.gov/2148.htm>.

What is the contact information for the program?

Appellate law Project Office
Ronald Reagan State Building
300 South Spring Street
Suite 1726
Los Angeles, CA 90013

COLORADO

Program Creation:

The state's pro bono program was inspired by two Court of Appeals judges, one of whom started his career in Legal Aid. The culture in the state helps to explain the judiciary's deep support. The state has a "Self-Represented Litigant" program in the trial courts, with help available in person for pro se litigants in civil cases. There is also a national program headquartered at the University of Denver - the Institute for the Advancement of the American Legal System, headed by a former Colorado Supreme Court judge - which seeks to improve accessibility to courts.

The Colorado Bar Association formed a five-person committee to develop a pro bono program. That committee looked at model programs in Austin and Houston, Texas. It took seven or eight months to craft language and get the program going. Before posting information about the program on its website, the Bar Association received numerous requests for help. Members of the committee took pro bono appeals while the process was still being developed.

Referral Sources:

Information about the program is available from many sources. The Colorado Court of Appeals provides an information sheet to appellants and appellees. Litigants can also learn about the program online, from district court clerks and appellate clerks, or other pro bono programs such as the Metro Volunteer Lawyers (MVL) in the Denver area. The MVL's malpractice insurance also covers volunteer appellate attorneys.

Types of Cases:

Since its launch in summer 2010, the program received approximately 350 applications and has agreed to representation in more than 60 civil appeals. About half are domestic relations cases. The cases come from all over the state. The volunteers may represent parties on either side of an appeal. The volunteer attorney, not the program, is the attorney of record for the appeal.

Process:

Attorney Jane Ebisch is the volunteer administrator who receives the program applications submitted to the Colorado Bar Association. She is a member of the

Appellate Subcommittee of the Litigation Committee of the State Bar. A small screening committee decides which cases to accept. There are mentor-mentee relationships between experienced attorneys and newer attorneys. The Litigation Committee has a small war chest to absorb costs. Ms. Ebisch often calls applicants to discuss procedural issues. The program does not require the notice of appeal to be filed prior to submitting an application; and if the case is accepted, the volunteer attorney can prepare the notice of appeal for the applicant.

Full information about the process is available on the Colorado Bar Association website:

http://www.cobar.org/Portals/COBAR/repository/probono/CBAAppProBonoProgram_March2011.pdf.

Unique Element:

The Court of Appeals has issued several orders allowing pro se litigants an extension of time to apply for pro bono representation by a volunteer attorney in the program, even after the litigant's brief has been filed.

CONTACT INFORMATION

Jane Ebisch, Esq.
The Ebisch Law Firm
Lakewood, CO
(303) 233-1232
jebisch@ebischlaw.com

FLORIDA

How was the program started?

The program was created by the Pro Bono Committee of the Appellate Practice Section of the Florida Bar (Committee). See http://www.flabarappellate.org/about_committee_PROB.asp (Committee's website).

What entities are involved with this program?

The Committee, the Florida Supreme Court, Florida's Statewide Guardian ad Litem Program, and legal aid organizations throughout Florida.

On average, how many appeals are handled each year?

25

How does it work?

Cases are referred to the Committee from legal aid organizations, Florida's Statewide Guardian ad Litem Program, the Florida Supreme Court, and other sources. The Committee maintains a roster of volunteer lawyers who have expressed an interest in serving as pro bono appellate counsel. When the Committee receives word of a potential pro bono appeal, it distributes an email to the roster to ask who is interested in handling the appeal. With this inquiry, the Committee forwards basic information about the case, which is typically provided by the referring organization. The Committee generally handles requests for pro bono assistance in civil and family law matters, as well as dependency matters in the case of referrals from the Statewide Guardian ad Litem Program. The Committee does not handle criminal or post-conviction appeals except where the Florida Supreme Court seeks to appoint counsel in such cases.

How do referrals from legal aid organizations work?

Legal aid organizations are invited to contact the Committee for assistance in appellate matters. In addition to handling appeals for clients of legal aid organizations, the Committee also offers appellate assistance to legal aid attorneys handling their own appeals or who need such assistance at pivotal stages in the trial court.

A legal aid organization may refer a party to the Committee for pro bono representation after the organization ensures that the party qualifies financially

for assistance. If a party contacts the Committee directly seeking appellate representation, the Committee tries to route the applicant to a legal aid organization for financial screening. Screening the merits of an appeal is done by the volunteer attorney after he or she connects with the referring organization or client. For referrals originating from the Statewide Guardian ad Litem Program, such screening is provided by the organization, and the case is referred to the Committee at the briefing stage of the appeal.

After the Committee notifies the roster of volunteer lawyers about a referral from a legal aid organization, interested attorneys may contact the organization directly. If multiple lawyers volunteer, the legal aid program and the client select the attorney. Typically the volunteer who expresses interest first is selected.

How do court-originated appointments work?

When the Florida Supreme Court grants review in a case involving an unrepresented party, the Court may appoint counsel to represent the pro se party. When the Court seeks to make such an appointment through the Committee, it contacts the Committee, which notifies its members of the opportunity. The Committee then forwards to the Court the names of those interested in the appointment along with their qualifications, and the Court makes the appointment.

The Committee periodically receives referrals from Florida's intermediate appellate courts. However, for various reasons - including the absence of a process to screen cases worthy of appointment before the cases proceed to merits panels - the intermediate appellate courts do not make formal appointments at this time.

Must volunteers have appellate experience?

Appellate experience is not necessary, but volunteers who lack such experience are strongly encouraged to avail themselves of the resources available through the Committee's mentoring program. Through this program, volunteers are paired with a board-certified appellate attorney who provides the volunteer with feedback and assistance during the appeal.

Is there any oversight after cases are assigned?

The Committee's main purpose is to advise its members of pro bono opportunities and to facilitate access to such opportunities. The decision to undertake representation is made by the volunteer attorney independently. The Committee does not maintain oversight over ongoing pro bono matters. But the Committee does follow up with volunteer attorneys to track results and obtain feedback.

Are there length-of-engagement guidelines or rules?

Length of engagement is governed by the arrangements reached between the client and volunteer attorney.

How is the program funded?

The referring legal aid organization generally pays costs necessarily incurred in handling the appeal. At the volunteer attorney's option, any costs not covered by a legal aid organization may be paid by the volunteer attorney's law firm (but volunteers and their law firms are neither required nor expected to incur costs). In addition, the Committee has established a partnership with the Florida Bar Foundation which provides assistance with appellate costs in some cases. Any costs not paid by these sources remain the client's responsibility.

Does Florida have a pro se appeals guide?

Yes. See <http://prose.flabarappellate.org>. See also Jacinda Haynes Sur, *Ensuring Meaningful Access to Appellate Review in Non-Criminal Cases Involving Self-Represented Litigants*, http://www.ncsc.org/~media/files/pdf/education%20and%20careers/cedp%20papers/2009/suhr_accesstoappellatereview.ashx (examining self-representation in non-criminal cases filed in Florida's intermediate appellate courts).

Who is the program contact person?

Joe Eagleton, Esq.
Brannock & Humphries P.A.
Tampa, FL
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HAWAII

When was the program started?

2016.

What entities are involved with this program?

The groups involved are the Appellate Section of the Hawaii State Bar Association (Appellate Section); Volunteer Legal Services of Hawaii (“VLS”); and the Hawaii Access to Justice Commission (“Commission”), and organization created by the Hawaii judiciary to expand civil legal services for residents with low or moderate incomes. The Commission was involved in the pilot project’s creation, but will not play a direct role in the program’s execution once it is launched.

What types of cases are covered?

In Hawaii’s Intermediate Court of Appeals, the program covers foreclosure, summary possession, employment discrimination, workers’ compensation, tax appeals, probate, and divorce - the types of cases in which the court sees numerous pro se parties.

How does it work?

Step one: Request for services and initial screening.

Cases will not originate from any court. Rather, an unrepresented party seeking appellate counsel must contact the Appellate Section, which will initially screen the case to ensure that it is a type listed above. If it is, the process will proceed to step two.

Step two: Financial screening.

After confirming that the appeal fits within one of the included categories, the Appellate Section will notify the pro se party to contact VLS so that the latter organization can confirm that the party meets the income eligibility threshold. The party must pay VLS an administrative fee to cover that organization’s financial screening. The amount is minimal; and all organization clients must pay such a fee.

Step three: Obtaining a volunteer attorney.

When financial screening is successfully completed, the Appellate Section will send an email to a listserv of volunteer attorneys who have expressed an interest in pro bono appellate work. This listserv will not be limited to members of the Appellate Section. The email to the listserv will include any information the Section has about the pending appeal, including relevant documents. The first attorney to volunteer for an appeal will be selected. The volunteer will send his or her own engagement letter to the client.

The Appellate Section will send a confirmation letter to confirm the match. After that, the Section will have no further involvement in the case; and neither will VLS, but it will provide volunteer attorneys with legal malpractice coverage.

Must volunteers have appellate experience?

No. One of the program's objectives is to provide an opportunity for lawyers to get appellate experience. For attorneys lacking such experience, the program will have a mentoring component: experienced appellate lawyers can volunteer with the Appellate Section to serve as mentors. Mentors will not enter an appearance.

Are there length-of-engagement guidelines or rules?

The program imposes no obligation on a volunteer attorney to represent a client beyond the disposition of the Intermediate Appellate Court.

Are there reimbursement programs for attorneys volunteering?

No. Volunteer lawyers agree to serve without compensation for their service. Costs are expected to be minimal. As noted, the party must pay a small fee for financial screening. As for filing fees, an unrepresented party will have already filed a notice of appeal. Other costs remain the client's responsibility, though parties deemed indigent by the trial court do not bear appellate costs. Printing costs are minimal because appellate briefs are not file in hard copy; they are electronically filed.

How is the program promoted?

The Appellate Section will advertise on its website and send marketing materials to legal aid organizations. Courts will have informational flyers available for the public, and so will the HSBA.

What is the contact information for the program?

Rebecca A. Copeland, Esq.
Chair, HSBA Appellate Section
Honolulu, H.I.
(808) 792-3808
chair@hawaiiappellatesection.org

INDIANA

When was the program started?

Although the Indiana Appellate Pro Bono Project was established in 2007 as a joint project of the Indiana Bar Association Appellate Practice Section and the Indiana Pro Bono Commission, the program does not appear to exist any longer. In 2016, the Indiana Pro Bono Commission was supplanted by the Coalition for Court Access to provide a focused and comprehensive organizational structure for Indiana's civil legal aid programs. However, no specific appellate pro bono program appears to have been created.

The website for the Coalition for Court Access is

<http://www.in.gov/judiciary/iocs/3149.htm>.

Guidance on how to proceed pro se can be found here:

<http://www.in.gov/judiciary/selfservice/2361.htm>.

MASSACHUSETTS

The Civil Appeals Pro Bono Clinic, a state-wide pro bono program located at the Massachusetts Appeals Court, provides legal assistance to low income self-represented litigants with their appeals. Volunteer lawyers meet with and advise litigants in subject areas ranging from housing disputes to family law issues. As of October 27, 2017, a total of 301 litigants have been helped by 160 attorneys from 20 law firms and in-house counsel.

Goals of the Program:

In 2013, the Massachusetts Access to Justice Commission established the Pro Bono Appellate Committee to study self-represented appellants in the court system and whether a pro bono program should be established to assist them. The committee's report found that, among other things, the Appeals Court staff fielded 40-50 calls from self-represented litigants every day.

The Pro Bono Appellate Committee began working with the Volunteer Lawyers Project and the law firm of Mintz Levin to create a pilot program located in one county in the state. After a successful launch, the program expanded statewide. With the assistance of the Appeals Court Clerks Office, the clinic is held at the Appeals Court Clerks Office. The program has three main aspects: a weekly Lawyer for the Day appellate clinic; referral to a Pro Bono Appellate Screening Panel that reviews potentially meritorious cases; and assignment of pro bono attorneys for cases selected by that Panel. This arrangement allows attorneys to give brief guidance to most litigants, while allowing for greater involvement for those cases that warrant it.

Selection of Cases:

Self-represented litigants who qualify for assistance meet with volunteer attorneys, who may assess whether a final judgment exists and calculate any deadlines, give general advice concerning appellate issues and procedure, advise the litigant in making the strategic decision to appeal or to continue seeking relief in the trial court, and provide and assist with self-help materials, other resources, forms and motions.

Volunteer attorneys also assess whether a litigant's case should be reviewed for further representation, considering whether the appeal is meritorious, falls within the Volunteer Lawyers Project priority issue areas, has broad-based implications for low-income people and/or constitutes a legal error. If so, the volunteer may

recommend that the case be sent for a second layer of merit-based screening by experienced appellate attorneys and legal services experts.

Volunteer attorneys on Review Panels review cases identified by Clinic volunteers as possible candidates for representation on appeal. The Review Panels recommend whether the case should be referred to a law firm for full representation on appeal. Additional program information can be found at <http://www.mass.gov/courts/programs/pilot-programs/appeals-clinic.html> and https://www.vlpnet.org/volunteer/item.6901-Civil_Appeals_Clinic

Pro Bono Attorney Coordinators:

The Volunteer Lawyers Project and Mintz Levin primarily operate the pro bono Civil Appeals Clinic.

CONTACT INFORMATION

Volunteer Lawyer Project

Barbara Siegel

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Cindy Palmquist

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Brian Dunphy

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Sue Finegan

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Guides and Resources:

Appeals forms, including indigency forms, can be found at:

<http://www.mass.gov/courts/forms/appeals/appeals-forms-gen.html>

The Appeals Court Help Center website provides a guide for Housing Appeals:

<http://www.mass.gov/courts/court-info/appealscourt/appeals-court-help-center/housing-appeals-guide.html>

MINNESOTA

Pro Se Appeals Clinic

In 2016, the Appellate Practice Section of the Minnesota State Bar Association (MSBA), in collaboration with the Minnesota Law Library, launched a monthly pro se appeals clinic. The clinic is typically held the third Thursday afternoon of every month at the State Law Library within the Minnesota Judicial Center in downtown St. Paul, which is the same facility that houses the state appellate judges and the Clerk of Appellate Courts.

Typically three volunteer appellate attorneys, most of whom are members of the Appellate Practice Section, are present at each clinic, and each volunteer attorney meets with walk-in pro se customers for approximately thirty minutes at a time to discuss each customer's appellate issue. The clinic relies heavily upon the work and assistance of State Law Librarian Liz Reppe and the other librarians at the State Law Library, who handle walk-in customer registration, administer intake forms, and utilize the library resources to pull necessary court documents that might help the volunteer attorney understand the issue such as orders to be appealed and state court dockets. A limited number of pro se customers who are not able to travel to St. Paul for the clinic are able to speak with volunteer attorneys over the telephone.

Pro se customers arrive at the clinic with a variety of appellate question and issues but in the first year, the most common types of cases included family law matters, state agency appeals, and a variety of general civil matters. Questions often arise about appellate procedure and how to navigate the process pro se. In the first year, the pro se clinic served more than 100 customers. The clinic is getting positive reviews from customers, court staff, and appellate judges alike. Given the high numbers of pro se individuals with civil appeals, the Appellate Practice Section and Law Library are looking for ways to expand the program, such as holding the clinic more often, having additional volunteer attorneys, or expanding the telephonic consultation component of the clinic.

Pro Bono Appeals (Full Representation)

The Appellate Practice Section of the Minnesota State Bar Association (MSBA) began its Appellate Pro Bono Program was established in 2002, with encouragement and input from the Minnesota Court of Appeals. The program matches interested volunteer attorneys with individuals with appeals, with the goal of providing full representation attorneys for appellate matters. The

Appellate Practice Section's pro bono efforts focus on three primary areas of pro bono appeals: 1) unemployment compensation appeals; 2) criminal defense appeals in collaboration with the State Public Defenders; and 3) immigration appeals in collaboration with local organizations such as the Advocates for Human Rights, Immigrant Law Center of Minnesota, and the University of Minnesota's Center for New Americans.

The Appellate Practice Section regularly sponsors training programs designed to encourage its members to take on these pro bono appeals, and serves as a resource to connect interested pro bono attorneys with appellate opportunities.

The unemployment compensation appeals program is officially administered by the Appellate Practice Section, but Thomas Boyd serves as the program coordinator from his office at Winthrop & Weinstine and has done so since the program's inception. The unemployment appeals program accepts only unemployment compensation appeals by pro se litigants whose fees have been waived pursuant to state law. The program focuses on these appeals because the court receives a significant number of such cases each year. These appeals involve limited legal standards that are manageable and easily grasped by volunteer attorneys who do not have previous experience in such matters. There was also a concern that a more expansive program could sweep in cases that would otherwise have gone to paid attorneys.

The program's narrow focus benefits volunteer attorneys by limiting cases to a pre-determined area of the law governed primarily by statute and well-defined legal principles. In addition, all appeals are from an administrative agency and are based on an easy-to-compile record. Generally, eligible cases are screened by Mr. Boyd and the volunteer attorneys, who weed out meritless appeals before a volunteer attorney agrees to provide pro bono representation.

The criminal appeals pro bono program is typically administered by several law firm attorneys in conjunction with set contacts within the appellate public defender's office. The liaison attorneys in the appellate defender's office screen cases to identify ones with discrete appeal issues and manageable records, as many of the volunteer attorneys do not have prior experience handling criminal appeals. The appellate defender's office provides resources such as prior briefs and remains available throughout the duration of the appeal to answer questions that volunteer attorneys might have.

Both the unemployment appeals and criminal appeals typically provide oral argument experience for volunteer attorneys, both to assist the court in deciding the appeals but also because as the bench and court staff recognize that oral argument experience are desired by volunteer attorneys and sometimes difficult to get in large law firm settings. Oral argument is not typically granted in cases where pro se individuals have not been able to find or afford counsel.

Program funding

At this point, neither the pro se clinic nor the appellate pro bono programs dedicated funding source, but instead rely upon the staff resources of the State Law Library and the pro bono services of private attorneys. The lack of independent funding presents an issue for sole practitioners and small law firms, who may not be as able to absorb the costs of pro bono representation. Generally, volunteer attorneys come from larger firms in Minnesota that can absorb the costs associated with pro bono representation. For unemployment and criminal appeals assigned through the Appellate Public Defender's office, all court fees are waived.

On average, between the unemployment and criminal opportunities, pro bono appellate attorneys handle approximately several dozen appeals each year.

Program contact and resources

Minnesota Pro Se Appeals Clinic: <https://mn.gov/law-library/services/clinics/appealsclinic.jsp>

State Law Library: <https://mn.gov/law-library/>

MSBA Appellate Practice Section:
<http://www.mnbar.org/members/committees-sections/msba-sections/appellate-practice-section#.WftlbRGovyQ>

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Winthrop & Weinstine P.A.
Minneapolis, MN
(612) 604-6505
tboyd@winthrop.com

MISSISSIPPI

When was the program created?

While Mississippi does not yet have a formal appellate *pro bono* program, the Appellate Practice Section of the Mississippi Bar has filed a motion before the Mississippi Supreme Court proposing a program and requesting approval of that program. The motion specifically requests that the Court adopt and implement the proposed program as Rule 7 of the Mississippi Rules of Appellate Procedure, and the rule was reviewed and approved by both the Mississippi Volunteer Lawyers' Project (the "MVLP") and the Mississippi Access to Justice Commission. The motion was filed in December of 2015 and is still pending before the Court.

The motion can be viewed on the Court's docket here: <https://goo.gl/6eYiwD>

How will it work?

The proposed program is loosely based on the existing programs in Arizona and Montana, although the program was specifically tailored to match the needs of Mississippi's appellate courts.

Under the proposed rule, Mississippi's appellate courts are authorized to appoint *pro bono* counsel in civil appeals with a *pro se* party or parties. An appointment will take place after a case has been fully briefed and only after the appellate court has determined that the case would benefit from additional briefing and - possibly - oral argument by appointed counsel.

The appellate court itself will not directly select and appoint counsel. Instead, any member of the court - through a single justice or judge - may enter an order requesting appointment. The Clerk of the Court will then forward a copy of that order to the MVLP, who will act as administrator of the program. The MVLP will then solicit "qualified *pro bono* appellate counsel" through the Appellate Practice Section of the Mississippi Bar. Once counsel has been selected, the Clerk of the Court will enter an order appointing the selected attorneys and directing them to appear in the case.

Appointed counsel will not represent the *pro se* litigant in the case and therefore no attorney-client relationship will be established by appointment. Instead, appointed counsel will appear as *amicus curiae* and will file a supplemental brief

on the specific issues identified in the order requesting counsel. The court's order may also direct appointed counsel to advocate for a particular party or position.

What is the scope of program?

The scope of the program is limited to civil appeals.

How does the proposed rules define "qualified *pro bono* appellate counsel?"

The proposed rule contemplates the appoint of "qualified *pro bono* appellate counsel," and the rule defines that phrase as attorneys who (1) are members in good standing of the Mississippi Bar and of its Appellate Practice Section, (2) have been in the active practice of law for a minimum of three years, (3) have completed the Appellate Practice Section's continuing legal education program in Ethics in Pro Bono Appeals, and (4) agree to bear the expenses of a *pro bono* appellate appointment under this Rule. The Chair of the Appellate Section will maintain a list of qualified appellate counsel and furnishing it to the MVLP. If a lawyer is otherwise qualified except that he or she does not meet the three-year minimum active practice requirement, he or she may be selected if another qualified appellate counsel agrees to supervise his or her participation.

Aside from the motion and proposed rule, are there any other appellate *pro bono* opportunities in Mississippi?

Although the motion is still pending, and although there is no formal appellate *pro bono* program in Mississippi, the Mississippi Supreme Court has - on occasion - entered orders directing the Chair of the Appellate Practice Section to find and appoint *pro bono* counsel to appear as *amicus curiae* and advocate on behalf of *pro se* litigants in civil cases. The Chair of the Appellate Practice Section has then solicited the potential appointment to the members of the section.

MISSOURI

Although we do not find a specific appellate pro bono program, a summary of Missouri pro bono programs can be referenced at the following link for further inquiry about whether they include appeals:

<https://www.courts.mo.gov/page.jsp?id=43918>

MONTANA

Program creation

The Montana Appellate Pro Bono Program (“APBP”) was established in May 2012 by order of the Montana Supreme Court. Confronted with an increase in pro se litigants that nearly overwhelmed its Pro Se Law Clerk, the court established the APBP, along with an Access to Justice Commission to address the needs of low-income litigants in Montana.

The APBP is administered by the Supreme Court’s Pro Bono Coordinator (“Coordinator”) with assistance from the court’s Pro Se Law Clerk. The Montana Legal Services Association (“Montana LSA”) screens applicants for financial eligibility.

Case selection and eligibility

Only pending cases involving a pro se litigant are eligible for placement. The pro se litigant must have perfected the appeal (if the appellant) and filed an initial brief before the APBP screening process is triggered. Pro se cases are then selected through the court’s established supplemental-briefing procedure.

To be eligible for pro bono assistance, the pro se litigant must meet the financial criteria established by the Montana LSA for representation of low-income persons and must have a case pending before the court that requires supplemental briefing or oral argument. There are no subject matter limitations. In any pending case, the justice may order supplemental briefing - triggering the appointment of pro bono counsel for a pro se litigant. If multiple parties are self-represented on appeal, the court will offer pro bono counsel to each party who is appearing pro se.

Selection, service, and oversight

Attorneys volunteer for the program by completing an online form. All licensed attorneys are eligible to volunteer; prior appellate experience is not required.

The Coordinator is responsible for placing volunteer attorneys with eligible litigants. The pro se litigant must consent to the appointment of the selected attorney. Young lawyers or lawyers with no appellate experience may be paired

with experienced attorneys to provide an attorney-mentoring element to the APBP.

The court does not guarantee a case selected for the APBP (and briefed by a volunteer attorney) will have oral argument. After a volunteer attorney is assigned, the APBP remains in contact with the attorney and provides answers to questions, general information regarding the appeal process and administrative issues, and, if needed, information regarding practice resources, in order to ensure that the attorney has a positive pro bono experience. Volunteer attorneys receive malpractice insurance through the Montana LSA.

Program funding and promotion

The costs of the APBP are absorbed by the Montana Supreme Court employees, led by the Coordinator and the Pro Se Law Clerk, manage the program. Some program costs are defrayed by the Montana LSA's agreement to screen pro se litigants for financial eligibility.

There are no fee-waivers associated with program eligibility. Though a pro bono attorney is appointed, the party is responsible for all costs associated with the appeal, unless those costs are waived in accordance with existing court rules (unrelated to the pro bono program). The Coordinator may, however, facilitate the volunteer attorney's access to an electronic record from the trial court (when available), at no cost to the attorney or party.

The APBP is promoted primarily by the Montana Bar Association, which absorbs any costs associated with program promotion. The Montana Supreme Court and the Montana LSA also promote the program on their websites. For a summary of the program, visit

https://courts.mt.gov/Portals/113/cao/ct_services/probono/docs/APBPOverview.pdf.

Program contact

Statewide Pro Bono Coordinator
Montana Supreme Court - Office of the Court Administrator
(406) 794-7824
pfain@mt.gov

NEVADA

The Nevada Pro Bono Appellate Program assigns counsel on a pro bono basis to represent pro se litigants in select cases before the Nevada Supreme Court or Nevada Court of Appeals.

Goal of Program:

The Program's goal is to provide pro bono counsel to pro se parties in civil appeals in which briefing and argument by counsel would benefit appellate review, and assist with the fair and efficient administration of justice.

Selection of Cases:

The court has designated a staff attorney to screen cases for the Program. In the past, the court appointed counsel to handle only cases involving significantly complex or novel issues of law. Under the new program, the court will consider appointing counsel if an appeal presents an issue of arguable merit, including error correction under existing law, or involves weighty issues, such as a modification of child custody. These standards have led to more appointments, and have significantly assisted the court's administration of justice.

Appointment of Counsel:

The Program operates statewide as a partnership between the courts, legal aid providers, and the bar. The Supreme Court identifies cases for inclusion in the Program and issues an order referring the case to Legal Aid Center of Southern Nevada for evaluation of the party's eligibility. Legal Aid Center then contacts the party, screens them for legal aid eligibility, and determines if the party is willing to consent to pro bono representation. Legal Aid Center, working with the Appellate Litigation Section of the State Bar of Nevada (State Bar), coordinates the assignment of a volunteer attorney. The pro bono attorney counsels the client, and briefs and argues the case.

From the Program's inception in 2013 until 2016, pro bono counsel has been appointed on behalf of 80 clients in matters involving employment, civil rights, contract disputes, foreclosure, and family law. In several child custody cases, the court appointed counsel to both parties. Several cases have resulted in published opinions. The Program's success is due to the work of Legal Aid Center and the Appellate Litigation Section of the State Bar, in conjunction with the many

attorneys who have volunteered their time and expertise. The Legal Aid Center lists available pro bono appellate cases at:

<http://www.lacsnpobono.org/available-cases> .

Scope of Representation:

Each volunteer attorney should enter into an agreement with the client that clearly states the scope of the representation, including whether or not the representation will extend to petitions for rehearing, reconsideration or a petition for a writ of review or certiorari. Generally, there is no expectation that the volunteer attorney represent the client in other matters, or in district (or administrative) court after remand, though some attorneys choose to do so.

Oral Argument Attorney Support:

The Nevada Supreme Court and the Nevada Court of Appeals guarantee oral argument in nearly every case included in the Pro Bono Program. This commitment reflects the courts' strong view that this Program provides a valuable service to the courts and the public. The court will set the length of argument in each case. If one party in the case remains pro se or waives oral argument, the court may not guarantee oral argument in that case.

The Appellate Litigation Section supports the Nevada Appellate Pro Bono Program with additional resources, including FAQs, sample briefs, forms, and mentoring at the briefing and/or oral argument stages. As an example, the Section's lawyers have set up pre-argument moot court sessions for volunteer lawyers to prepare for the oral argument, with experienced practitioners acting as moot court judges. Additional resources can be found on the Center's website at <http://www.lacsnpobono.org/resources-and-training/appeals/> .

Pro Bono Attorney Coordinators:

The Legal Aid Center of Southern Nevada recruits volunteer attorneys who are willing and available to serve as pro bono counsel in the Program, maintains the current list of volunteers, and identifies individual attorneys willing to accept specific appointments. A Program Overview is available at <http://www.lacsnpobono.org/wp-content/uploads/2015/01/Pro-Bono-Appellate-Program-Overview-FINAL-2.26.16.pdf>.

CONTACT INFORMATION

Legal Aid Center of Southern Nevada

Noah Malgeri, Esq.
Pro Bono Project Director
probono@lacsncsn.org

Pro Se Appellate Guides:

The Nevada Courts provide forms for pro se appellants at:

<https://nvcourts.gov/AOC/Templates/documents.aspx?folderID=10941>

https://nvcourts.gov/Supreme/Appellate_Practice_Forms/

The Civil Law Self Help Center website describes how to file an appeal at:

<http://www.civillawselfhelpcenter.org/self-help/lawsuits-for-money/post-trial-stage-after-the-dust-settles/251-appealing-the-case>.

NEW MEXICO

With the endorsement of the Court of Appeals and the approval of the Supreme Court, the Appellate Practice Section of the State Bar launched an appellate pro bono program in the Fall of 2016.

Goal of Program:

The aim of the program is to provide pro bono representation to certain self-represented, low-income litigants in appeals assigned to the Court of Appeals general calendar. Because cases assigned to the general calendar are more complex in nature and require briefing and argument by counsel, pro bono representation benefits the court's consideration of the matter.

Appointment of Counsel:

Under the program, when a pro se party has an appeal placed on the general calendar, the Court of Appeals notifies the party that he or she may request pro bono legal assistance for the appeal. Those parties who opt in are referred to the Volunteer Attorney Program (VAP) of New Mexico Legal Aid, where an eligibility determination based on financial and other factors is made. If the party is eligible for pro bono assistance, the VAP circulates information about the appeal (probably, the docketing statement) to the attorneys who have volunteered to participate in the program. A lawyer on the volunteer panel who is interested in potentially representing the pro se party may obtain the record proper for review from the Court of Appeals. If an attorney is willing to represent the pro se party in the appeal, he or she will be put in contact with the party through the VAP. The number of appeals eligible for pro bono representation through the program is anticipated to be on the order of 10 per year.

Appeals in which the parties are entitled to appointed counsel, such as criminal and post-conviction relief, are not included in the program. Where appropriate, pro bono counsel may request that the appeal be included in the court's Mediation Program.

Oral Argument:

As with any matter, it is within the court's discretion to hear oral argument in cases selected for the program.

Fees:

Volunteer attorneys are not reimbursed for attorneys' fees or any expenses incurred in participating in the pro bono program. Shifting of attorneys' fees and taxable costs may be available to prevailing parties and pro bono counsel under applicable statutes and rules to the same extent as retained counsel. Additionally, parties represented by volunteer attorneys may qualify for free process, which would alleviate the burden of costs.

Pro Bono Attorney Contacts:

The VAP recruits volunteer attorneys who are willing and available to serve as pro bono counsel in the program, maintains the current list of volunteers and identifies individual attorneys willing to accept specific appointments. Their contact information is set forth below and, along with the attorney sign-up form, is available on the VAP website at http://www.nmjusticeforfamilies.org/volunteer_form

CONTACT INFORMATION**New Mexico Legal Aid**

Dina Afek, Esq.

Director of the Volunteer Attorney Program

dinaa@nmlegalaid.org

505-814-6719

Appellate Practice Section of the State Bar

Edward Ricco, Esq.

Past Chair

Rodey Law Firm

ericco@rodey.com

505-768-7314

Pro Se Information Guide:

The New Mexico Courts provide a pro se appellate guide that can be found at

https://s3.amazonaws.com/realfile3016b036-bbd3-4ec4-ba17-7539841f4d19/d622f87b-a43b-4eb7-9a4a-58f9c033701d?response-content-disposition=filename%3D%22SRL_Appeals.pdf%22&response-content-type=application%2Fpdf&AWSAccessKeyId=AKIAIMZX6TNBAOLKC6MQ&Signature=N8j0tEp%2BgJN7NcWg66kn86DK0bg%3D&Expires=1508015043

NEW YORK

History of the program

New York State's Pro Bono Appeals Program ("PBAP") was established by the State Bar Association in 2010 and now covers fifty of the state's sixty-two counties. The State Bar's Committee on Courts of Appellate Jurisdiction ("CCAJ") had reviewed an American Bar Association report which revealed that only a handful of states offered programs that provided pro bono representation in appeals. The committee decided to create a program in which experienced appellate attorneys would offer free, quality representation in selected appeals.

CCAJ focused on state court appeals because the U.S. Court of Appeals for the Second Circuit has its own pro bono appeals program. The committee further determined to handle appeals to the four judicial departments of the state's Appellate Division, the mid-level appeals court for most appeals. The clerks of all four departments were consulted, and all voiced support for a pro bono appeals program, but did not want to have responsibility for choosing cases or volunteers. CCAJ realized it could not provide statewide coverage from the outset and decided to launch a pilot program in the Appellate Division, Third Department, based in Albany, covering appeals from twenty-eight counties.

The committee partnered with two nonprofits, the Rural Center of New York, which provides legal services in the state's forty-four rural counties, and the Legal Project, which provides legal services in the state's wider capital region. They helped shape the program, do outreach and intakes, and provide malpractice insurance. CCAJ met with the leaders of the Third Department to obtain the support of the court and its input as to the proposed program description. Finally, the Executive Committee of the State Bar Association approved the pilot. Since then, the Association - from the President to the staff - has provided extraordinary support to the program.

Family Court and other appeals

Initially, the program handled only Family Court appeals for person making 250% or less of Federal Poverty Guidelines ("FPG"). That income cap was chosen based on the premise that many persons denied assigned counsel because of income above 150% of FPG could not afford to retain counsel. Then the program branched out to also cover other "Civil Gideon," topics, that is education, health, housing, and subsistence income - including unemployment insurance and

Workers' Compensation cases. Program applications and brochures were widely distributed.

A seven-person working group screens cases, accepts only those that appear meritorious, and provides rejected applicants with an manual on how to do an appeal pro se, as well as insights on potential problems presented by the case. Accepted cases are described and disseminated on a confidential listserv to volunteers from CCAJ and other participating appellate attorneys. Appeals are typically assigned on a first-come, first served basis. The program will only represent one side in a given case.

Cases of interest and outreach efforts

Eventually, the program became firmly established in the Third Department, and CCAJ was taking about ten appeals a year. Cases of interest have included one that changed the case law on the modification of out-of-state child support orders and on whether ministers of the Universal Life Church can officiate at weddings; one on the violation of a claimant's constitutional rights in an unemployment insurance matter; and another one regarding whether 9/11 volunteers not affiliated with an organization can receive Workers' Compensation benefits. While many topics are covered, the vast majority of applications concern family law.

The committee outreach efforts in the Third Department include sending brochures and posters to chief clerks at all Supreme Courts (a New York trial court) and to Family Courts and by meeting with Administrative Judges in all affected Judicial Districts. Program literature was also provided to all local, minority, and special bar associations.

Expansion and funding

In spring 2013, the PBAP was also expanded to the Appellate Division, Fourth Department, based in Rochester, which covers twenty-two counties in the western part of the state. The leadership of the court and the State Bar were instrumental in the launch of the program there. In both departments, the PBAP also offers representation for further appeals to the Court of Appeals, New York's highest court.

At the same time, with the support of the Rural Law Center, the program established an office in Albany. The office is staffed by two part-time appellate attorneys from CCAJ who do the initial vetting of all applications and provide

substantive support to volunteers, including compiling records when representing appellants. A paralegal also assists with administrative matters. Funding comes from the State Bar's philanthropic arm, The New York Bar Foundation; the State Office of Court Administration; Interest on Lawyer Account grants; and attorney's fees awards in divorce and family law cases where fee-shifting based on a disparity in income is permitted.

The private bar has enthusiastically embraced the program. Dozens of appellate attorneys have volunteered to handle cases. In addition to carrying on its existing model - emphasizing merits review for persons who cannot obtain assigned or retained counsel - the PBAP has added a new model. Through collaborations between the PBAP, a legal aid office in Onondaga County, and a public defender in Monroe County, volunteers will serve as of counsel for several Family Court appeals for a year for each of those offices. These new initiatives are inspired by a successful model in New York City, in which an institutional provider of indigent criminal appellate defense services collaborates with major law firms that provide pro bono representation.

Pro se appeals guide link

<http://www.nysba.org/probonoappeals>

Program contact

Timothy P. Murphy
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The Legal Aid Bureau of Buffalo, Inc.
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tmurphy@legalaidbuffalo.org

NORTH CAROLINA

What is the scope and nature of the program?

The North Carolina Guardian ad Litem program (GAL) advocates on behalf of abused and neglected juveniles. The state legislature created the program in 1983 to provide legal representation to children who allegedly have been abused, neglected, or are dependent. The program relies heavily on a partnership between volunteer child advocates and attorney advocates.

Trial court proceedings include custody hearings; adjudicatory, disposition, permanency planning, and review hearings; and proceedings to terminate parental rights. A juvenile has full party status in the trial court and appellate proceedings. (Parents who are indigent are entitled to appointed counsel, and the Department of Social Services is usually also involved as the petitioner.)

The program has offices in each county, but at the appellate level, the program has only one state-employed attorney dedicated to appeals. Therefore, the program relies heavily on volunteer appellate attorneys and *pro bono* attorneys typically handle about 50% of the approximately 200 annual guardian ad litem appeals.

Appeals in guardian ad litem cases currently go to the state's intermediate appellate court, the North Carolina Court of Appeals; are filed under an expedited timeline per Rule 3.1 of the North Carolina Rules of Appellate Procedure; and typically do not include oral arguments, but are decided based on the briefs. Some cases, after review by the Court of Appeals, will ultimately reach the North Carolina Supreme Court, where they will be briefed again and orally argued. A 2017 legislative change mandates that appeals from termination of parental rights will go directly to the Supreme Court beginning in 2019.

Must volunteer attorneys have appellate experience?

No. Although appellate experience is preferred, it is not required. The program provides a number of resources for volunteer attorneys, including the opportunity for appellate training. After a volunteer enters an appearance, the GAL program's appellate counsel is also available to discuss the specifics of the case with the volunteer.

Does the program offer an opportunity for attorneys to gain appellate experience?

Absolutely. One of the benefits to our *pro bono* attorneys, in addition to the experience of putting their legal skills to work on behalf of children at need, is the opportunity to acquire and develop appellate practice experience and skills, by settling records, writing and filing briefs, and appearing for oral argument in the cases that reach the North Carolina Supreme Court.

Is a volunteer attorney supervised after a case is assigned?

Yes, although the volunteer attorney is expected to be responsible for following appellate procedure and complying with all relevant deadlines in the case. The program's appellate counsel coordinates appellate representation for this program and provides assistance to the volunteers.

Does the program provide resources for volunteer attorneys?

Yes. In addition to training, the program has a number of resources available, including a program-specific attorney manual and the UNC School of Government's manual on abuse, neglect, dependency and termination of parental rights cases. Again, the program's appellate counsel is also available to consult on any questions that may arise during the course of representation.

How is the program funded?

The program is funded by the state of North Carolina. The state pays for transcripts. Juveniles are considered indigent, so they do not have to pay for records. The appellate courts generally do not attempt to recover the costs of printing associated with our appeals.

How is the program promoted?

Through the Internet, social media, and contact with attorneys.

Are volunteers recognized for their service?

Yes. Volunteers are recognized periodically and receive small tokens of appreciation, such as certificates.

Are there length-of-engagement guidelines or rules?

Attorneys represent juveniles in the North Carolina Court of Appeals and may also continue with the case in Supreme Court, but if an attorney is not comfortable doing so, the program's appellate counsel will take the case back or sign on as co-counsel.

Who is the contact person?

Matt Wunsche, GAL Appellate Counsel. His phone number is (919) 890-1255 and his email address is Matthew.D.Wunsche@nccourts.org.

NORTH DAKOTA

In general, there is no appellate pro bono / pro se program in North Dakota. However, the following could be helpful and/or pertain to an appellate pro bono service:

The Veterans Consortium Pro Bono Program: U.S. Court of Appeals for Veteran Affairs

<http://www.nd.gov/veterans/benefits/legal-assistance>

ND Commission on Legal Counsel for Indigents: provides attorneys for appeals in some matters

<http://www.nd.gov/indigents/faq/>

OREGON

How was the program started?

The Oregon Pro Bono Program started with inspiration from the Pro Bono Program in the U.S. Court of Appeals for the Ninth Circuit. The Oregon Supreme Court and Oregon Court of Appeals select cases for inclusion in the program. The Program Committee consists of the program managers, the Appellate Commissioner, designees of the Chief Justice and Chief Judge, representatives from the State Bar Appellate Practice Section's Executive Committee, and other individuals that named members invite. The Program Committee meets yearly to review the program and to propose changes as deemed necessary. The designated representatives from the Oregon State Bar Appellate Practice Section's Executive Committee also provide bimonthly updates to that committee.

How are cases chosen?

A case may be appropriate for acceptance in the program if the court believes that referral of the case to a volunteer counsel would be helpful to the court. Selection of a case for the program does not reflect a determination of the merits of a party's position, but rather indicates that pro bono counsel is considered to be potentially beneficial to the court. In certain cases, the appellate courts may request participation of counsel from the program as "amicus to the court," rather than as a representative of a party.

How are volunteers chosen?

Program managers distribute information about the program to all active members of the Oregon State Bar through a yearly email. Information about the program also is shared at different appellate bar events. Attorneys interested in volunteering for the program respond by registering with the program manager. When the courts refer a case to the program, the program manager sends an email with some case information to the attorneys registered with the program. Interested attorneys then volunteer to take a case, and the cases are assigned based on the volunteer responses.

Do volunteers need to have appellate experience?

Not necessarily. One of the purposes of the program is to provide less experienced attorneys with appellate opportunities. Law school clinical

programs may participate, but are subject to terms and regulations imposed by the program.

Do you recognize volunteers for their service, such as by certificates or awards or articles in bar association publications?

On an annual basis, the Executive Committee of the Appellate Section will acknowledge the pro bono work done by volunteer attorneys.

Are there reimbursement programs for attorneys volunteering?

No, neither the court nor bar managers reimburse volunteer attorneys for expenses.

Who is the contact person?

Professor Jeffrey C. Dobbins
Willamette University College of Law
Salem, OR
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jdobbins@willamette.edu

SOUTH CAROLINA

What is the scope and nature of the program?

The Appellate Practice Program was initiated in 2013 by Justice John Few when he was Chief Judge of the South Carolina Court of Appeals. Currently, the South Carolina Commission on Indigent Defense, in cooperation with the South Carolina Bar Association and with the approval of the Attorney General of South Carolina, the Chief Judge of the South Carolina Court of Appeals, and the Chief Justice of South Carolina maintain the program. The primary goal of the program is to assist the Commission's Appellate Division to control, and hopefully reduce, its enormous caseload (consistently over 1500 active cases), which the Appellate Division currently handles with only ten attorneys.

Must volunteer attorneys have appellate experience?

No. Appellate experience is preferred but not required.

To qualify for participation in this program, participants must:

- Be practicing members of the Bar in good standing who have complied with the requirements of Rule 403, SCACR;
- Attend the appellate practice CLE as scheduled by the Commission;
- Commit to comply with deadlines in the Appellate Court Rules. (The court will allow reasonable extensions.)

The next Appellate Project CLE is Thursday, November 30, 2017. 25 lawyers will be chosen by the Appellate Division to handle one criminal appeal pro bono over the next 6 months to a year in the Court of Appeals.

Does the program offer an opportunity for attorneys to gain appellate experience?

Yes. One of the primary goals of the program is to give practicing attorneys in South Carolina an unprecedented opportunity to gain appellate experience in actual cases argued before the South Carolina Court of Appeals. Participants are appointed to represent one indigent criminal defendant on direct appeal to the South Carolina Court of Appeals. As an appointed attorney, participating attorneys are responsible for preparing the Appellant's brief and Reply brief for filing with the Court of Appeals and arguing the case orally before a panel of judges on the Court of Appeals.

Is a volunteer attorney supervised after a case is assigned?

No; however, resources and guidance is available through the South Carolina Commission on Indigent Defense.

Does the program provide resources for volunteer attorneys?

Yes. Participants in this program are required to participate in a CLE on appellate practice, at a substantially reduced cost, taught by the preeminent leaders of the appellate Bar in South Carolina and sponsored by the South Carolina Bar Association.

How is the program funded?

The actual costs of producing the briefs and the Record on Appeal will be arranged by the Commission on Indigent Defense. However, no attorney's fees will be paid, and attorneys will not be reimbursed for travel.

How is the program promoted?

Through the Internet, social media, and contact with attorneys.

Are volunteers recognized for their service?

Participants are recognized before the Court of Appeals for their work. Participants also receive 6 hours of MCLE credit as well as credit for the appointment under Rule 608, SCACR.

Are there length-of-engagement guidelines or rules?

Attorneys are expected to remain engaged through the length of the appeal before the South Carolina Court of Appeals. After such time as the appeal has ended, the Commission will take over the case if any further appeal to the Supreme Court occurs.

Who is the contact person?

Terry Burnett tburnett@scbar.org
CLE Director - 803-799-6653 Ext. 152

SOUTH DAKOTA

In general, South Dakota has two pro bono programs: Access to Justice, Inc. and East River Legal Services, neither of which covers appellate cases. South Dakota also has the Second Judicial Circuit Pro Bono Project, but this also does not involve appellate cases.

TENNESSEE

When was the program created?

2011.

How was it started?

A pilot initiative was established by the Tennessee Bar Association (TBA) and the statewide Tennessee Alliance Legal Services.

How are cases chosen?

Cases are mainly referred from legal services programs or attorneys who have represented clients in the lower courts and are not able to continue with those cases upon appeal.

What criteria are used?

Of particular interest are cases involving matters of first impression or complex legal issues, vindication of substantial constitutional rights, and unsettled questions of law. Judges may refer cases, but that has not happened yet.

How are volunteers chosen?

The TBA keeps a list of volunteer attorneys. Usually the first attorney to respond is selected. Currently, TBA has an active appellate group.

Do volunteers need to have appellate experience?

No. Both young and experienced appellate attorneys are welcome. The program provides an opportunity for senior attorneys with appellate expertise to mentor younger attorneys seeking such experience.

On average, how many appeals are handled each year?

About five cases. The program is looking to include areas such as administrative appeals and to increase the number of referrals and cases handled.

Are there reimbursement programs for attorneys volunteering?

No, however, sometimes TBA is able to find financial assistance for transcripts for the attorneys.

Who is the contact person?

Elizabeth Slagle Todaro, JD
Access to Justice Director
Tennessee Bar Association
Nashville, TN
(615) 277-3233
ltodaro@tnbar.org

TEXAS

When was the program created?

The current version of the program went live in 2007.

How was it started?

The appellate courts in Texas have been a driving force behind advancing the mission of fair and efficient administration of justice. State and local bar associations have assisted in that mission through pro bono appellate programs serving qualified applicants throughout the state. The latest iteration of the Texas State Bar Appellate Program and excellent stand-alone programs are the embodiment of efforts of both the appellate bench and bar.

What entities are involved in the program?

The following appellate courts have programs administered through the Texas State Bar Appellate Pro Bono Program: the Texas Supreme Court; the Fifth Circuit Court of Appeals; and the First, Second, Third, and Fourteenth Courts of Appeals. The Dallas Court of Appeals, the state's busiest intermediate appellate court, has its own program, administered through the Dallas Volunteer Attorney Program. Through an ad hoc program administered by the State Bar Appellate Section, volunteer pro bono appellate lawyers can also be placed with any case pending anywhere in the state (whether or not an official pro bono program exists for that particular appellate court).

How are cases chosen?

When a pro se party initiates a civil appeal, the required docketing statement includes a brief description of the pro bono programs and asks whether the party wishes to participate. When a party elects to do so, the Clerk of the Court forwards the docketing statement to the applicable screening committee working with that court. The committee screens referred cases based on a number of discretionary criteria, including financial means, with 200% of Federal Poverty Guidelines as a benchmark. Other factors include the number of appeals pending, the number of available volunteer lawyers, and the issues presented. The committee sends to a database of volunteers an email providing a very brief overview of the case.

When a volunteer indicates an interest in a case, the committee serves as a liaison to match the pro se party with the lawyer. In the vast majority of cases, volunteers are found. However, there is no guarantee that a match will be found.

As a general rule, certain committees will presumptively solicit volunteers without substantial screening of the merits, recognizing that non-meritorious cases likely will not generate any responses from the volunteer pool. The Dallas Volunteer Attorney Program utilizes a similar approach in screening for financial need.

The Supreme Court of Texas has its own Pro Bono Pilot Program. Review in that court proceeds in multiple phases. First, parties file petitions for review, identifying issues to be raised. If the court wants additional information, it will request briefing on the merits from the parties, and if a pro se party is involved, the court will refer the case to its Pro Bono Pilot Program. The program liaison will then seek volunteer lawyers to work with the pro se parties.

How are volunteers chosen?

Attorneys interested in volunteering must submit an application to be considered for the State Bar Appellate Pro Bono Program. The committee then asks volunteer attorneys what their particular areas of interest or experience are so that appropriate matches can be made. The Dallas Volunteer Attorney Program utilizes a similar approach. Many pro bono appellate lawyers are on multiple program lists.

Do volunteers need to have appellate experience?

No. Attorneys do not have to have previous appellate experience. As part of the recruiting effort, there is a tiered program to attract a wide variety of appellate practitioners. One goal is to include as many highly experienced appellate attorneys as possible. Another goal is to include new appellate practitioners who can handle a case with assistance from more experienced practitioners. Appellate lawyers have the option of either taking on a case as lead counselor mentoring less experienced practitioners. Junior lawyers can gain valuable experience by taking a lead role in representing pro bono clients on appeal, with opportunities to present oral argument.

How is the program funded?

The State Bar Appellate Pro Bono Program is funded by the Appellate Section. In practice, volunteers and/or their firms also cover some of the costs associated with representing pro bono clients. The Dallas Volunteer Attorney Program is a nonprofit entity funded via grants.

On average, how many appeals are handled each year?

Anywhere from 24 to 36 through all channels.

Have there been any particularly noteworthy cases you would like to highlight?

Pro bono appellate volunteers have won appellate reversals in difficult cases, including one case for an indigent civil rights claimant and another for an asylum-seeking immigrant.

How do you promote the program?

The program is promoted via appellate court web sites, docketing statements of participating state appellate courts, brochures, emails, state and local appellate bar association meetings, and one-on-one attorney recruiting.

Do you recognize volunteers for their service, such as by certificates or awards or articles in bar association publications?

Volunteers are recognized in meetings, and pro bono hours count towards the State Bar of Texas Pro Bono College, which lauds attorneys who have far exceeded the State Bar's aspirational pro bono goal.

What obstacles had to be overcome to establish the program?

Qualifying applicants and gathering their paperwork and information can be time consuming. The committee has two co-chairs and several city-specific screening teams to tackle the load. The Dallas Volunteer Attorney Program uses its in-house screening personnel and systems.

What lessons have been learned in implementing the program?

(1) The courts of appeals, their judges, lawyers, clerks, and staff know best what will work with their systems. (2) They are always willing to help. (3) Applicants need to be able to speak with someone on the program committee at the very early stages of seeking representation. (4) Forms, pamphlets, and communications need to be standardized and available both in hard copy and electronically. (5) The qualification phase should be centralized, so that once an applicant is cleared, the request can go to volunteers via email.

What advice do you have for other states that wish to start a program?

Start a dialogue with the court(s) from the outset and study what has worked in other jurisdictions. The Fifth Court of Appeals Dallas Volunteer Appellate Program is an excellent stand-alone program that could provide a framework for an initial pilot program.

Is there any oversight after cases are assigned?

Volunteer attorneys report at case conclusion.

Are there length-of-engagement guidelines or rules?

Length of engagement is governed by the arrangements reached between the client and volunteer attorney.

Are there reimbursement programs for attorneys volunteering?

No. The volunteer lawyers agree to serve without expectation of compensation for their service or expenses.

Where can I find more information about the program?

Visit the web page State Bar of Texas Appellate Section's Pro Bono Committee by [following this link](http://www.tex-app.org/DrawOnePage.aspx?PageID=7) or by typing this address in your browser: <http://www.tex-app.org/DrawOnePage.aspx?PageID=7>

Who is the contact person?

Ms. Rachel Anne Ekery
State Bar of Texas Appellate Section
Pro Bono Committee Co-Chair
Alexander Dubose Jefferson & Townsend
515 Congress, Suite 2350
Austin, TX 78701-3562
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rekery@adjtlaw.com

VIRGINIA

In 2007, the Supreme Court of Virginia approved the creation of a Pro Bono Civil Panel (“Panel”). The Panel consists of attorneys willing to accept assignments in civil appeals where one party is indigent and unrepresented. Through the program, attorneys fall into two groups: experienced appellate advocates and lawyers looking for appellate experience. When cases are chosen, the court assigns one attorney from each group, thus providing inexperienced lawyers with a mentor.

Goal of Program:

The objective of the program is three-fold. First, to ensure that each side of all civil appeals in the Supreme Court, where one of the parties is an indigent proceeding pro se, receives professionally prepared briefing and oral argument at the merits stage. Second, to enable appellate attorneys to fulfill the requirements of the Rules of Professional Conduct (2% of time devoted to pro bono work). And third, to enable attorneys to gain experience in the handling of appellate cases, with the secondary goal of improving the quality of appellate advocacy overall, through the use of a mentoring model, which pairs two attorneys in each case.

Appointment of Counsel:

When the Court awards an appeal in which one side is an indigent party unrepresented by counsel, and the Court determines it would be beneficial to provide representation for that party, the Clerk contacts the party to determine if he/she is willing to have pro bono counsel to provide representation. If the party consents, the Clerk then contacts one attorney from the core group and one from the second group to ascertain if they are willing to accept the case. Upon confirmation from counsel of their willingness to accept the case, the Clerk then enters the order granting the appeal and forwards a copy of the order to counsel assigned to that side of the case. This arrangement fosters learning through mentoring; enables the attorneys to share the workload in the case; and permits two different perspectives in shaping the course of the representation.

The Panel is administered by the Clerk of the Supreme Court, with the assistance of the chair of the State Bar’s Appellate Practice Subcommittee. The Clerk assigns attorneys to cases and transmits to them copies of briefs and other papers necessary to effectuate the representation of the party or the filing of the amicus brief.

Scope of Representation:

The two attorneys from the Panel serve as counsel of record for the pro se party. The entry of the grant order, upon confirmation of the assignment of the Panel attorneys to the appeal, begins the period for filing of the brief of appellant under Rule 5:26(b)(1), in the event the Panel attorneys represent the appellant. The Court may extend the due date for the brief of appellant upon application by the assigned attorneys

Unfortunately, because most civil appeals in Virginia are by petition, most indigent litigants do not get counsel at the petition stage. As a result, only three or four pairs of attorneys per year are invited by the court to represent indigent clients on appeal.

CONTACT INFORMATION

Supreme Court of Virginia

Patricia L. Harrington
Clerk of the Court
P.O. Box 1315
Richmond, VA 23219-1315
(804) 786-2251

Court of Appeals of Virginia

Cynthia L. McCoy
Clerk of the Court
109 North Eighth Street
Richmond, VA 23219-2321
(804) 371-8428

Appellate Advocacy Guide:

The Litigation Section of the Virginia State Bar publishes a Handbook on Appellate Advocacy in the Virginia appellate courts:

<http://m.vsb.org/docs/sections/litigation/AAhandbook.pdf>

WASHINGTON, D.C. (DISTRICT OF COLUMBIA)

The D.C. Bar Foundation established the Barbara McDowell Appellate Advocacy Project in 2004. The Project is maintained by the Legal Aid Society of the District of Columbia. The Legal Aid Society of the District of Columbia is D.C.'s oldest and largest general civil legal services organization. Since 1932, Legal Aid lawyers have been making justice real in individual and systemic ways for persons living in poverty in the District.

Goal of Program:

The Project not only litigates appeals on behalf of Legal Aid clients but also files "friend of the court" briefs on cases involving matters of importance to people living in poverty. Beyond litigation, the Project provides appellate instruction, consultation, and advice to the larger D.C. legal services community. Although most of the Project's work involves cases before the District's highest court - the District of Columbia Court of Appeals - the Project also gets involved in administrative appeals and cases before the District of Columbia Superior Court and the federal courts.

Case Intake:

Legal Aid staff and volunteers conduct initial interviews with applicants seeking assistance on certain days and times each week at two different general intake locations throughout Washington, D.C. In addition, Legal Aid meets applicants at various specialized intake centers across the District.

CONTACT INFORMATION

Legal Aid Society of the District of Columbia
1331 H Street, NW, Suite 350,
Washington, DC 20005
(202) 628-1161

WISCONSIN

The Wisconsin State Bar's Appellate Practice Section coordinates a pro bono appeals program for cases in the state's Court of Appeals and Supreme Court and, occasionally, federal appellate courts.

The program does not take requests for pro bono counsel directly from potential clients, because it lacks the resources to screen for indigence or merit. The courts and various public interest firms identify cases involving important legal issues and screen for indigence. Then they call the pro bono program coordinator for a volunteer willing to represent the indigent party. Sometimes organizations like Legal Action of Wisconsin, the Legal Aid Society, and the ACLU seek a volunteer to write an amicus brief. Historically, most of the appeals have involved civil or quasi-criminal law matters, such as due process rights in prison disciplinary proceedings, family law issues, and collateral attacks on criminal convictions.

Recently, the State Public Defender has begun to refer some direct criminal appeals to the program. It also refers cases for which it lacks authority to appoint counsel. For example, after losing a search-and-seizure case in the Wisconsin Supreme Court, the State Public Defender determined that its client was no longer eligible for representation. The pro bono program then provided counsel to prepare a petition for a writ of certiorari to the U.S. Supreme Court.

The program handles about 10 to 15 appeals per year. In 2009, the program began tracking the hours and expenses donated by volunteer lawyers. From March 2009 through December of 2016, lawyers donated more than 14,000 hours of time and more than \$3.8 million in fees and costs.

The program coordinator has developed a sense of which issues or types of litigation will be attractive to firms. Some large firms seek training opportunities for their associates. Smaller firm lawyers may want an opportunity for their first argument before the Wisconsin Supreme Court. Some attorneys have a passion for certain kinds of issues, such as constitutional law, family law, or ineffective assistance of counsel. Others just want to donate their appellate expertise. The coordinator considers such factors when contacting a lawyer about a case.

The program tries to offer volunteers the resources they need to do a good job. It will connect the volunteer lawyer with an attorney who is knowledgeable in the area of law at issue, provide sample motions or briefs, and organize rehearsal arguments before a panel of retired judges and/or practitioners.

In addition to formal pro bono referrals, another opportunity for volunteer appellate lawyers is to assist with the online “Pro Bono Help Desk” available to pro se appellate litigants. The Appellate Practice Section of the Wisconsin Bar Association, State Public Defenders Office, and Federal Defenders worked with the appellate court to increase the number of pro se referrals from the court. It was determined that a large number of pro se appeals were being dismissed for procedural errors before the merits of their case could be assessed for referral. The Clerk’s office is unable to answer many of the questions for pro se litigants, as this would qualify as legal advice. To address the need for access to legal advice while not laying an undue burden on volunteers, a virtual Appellate Help Desk was created on Wisconsin’s Self-Help Law Center website. Now when a pro se notice of appeal is filed the Clerk’s office mails a notice to the filer with instructions on how to contact the Appellate Help Desk. The virtual help desk is accessible via email and a Google Voice mailbox, which are virtually staffed by a volunteer attorney for 4 hours a week from wherever there is internet access. Since November of 2015 the help desk has assisted with 450 calls.

For Wisconsin’s Self-Help Law Center and the Appellate Help Desk, go to:

<https://www.wicourts.gov/services/public/selfhelp/appeal.htm>

For Wisconsin’s pro se appeals guide, go to:

<https://www.wicourts.gov/publications/guides/docs/proseappealsguide.pdf>

Contact person

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