



MANUAL ON PRO BONO APPEALS PROGRAMS

FOR STATE COURT APPEALS



TABLE OF CONTENTS

Preface	1
Introduction	2
Basic Considerations in Creating a Program	3

DESCRIPTIONS OF PROGRAMS

California: Los Angeles County	6
Colorado	8
Florida	10
Hawaii	13
Indiana	16
Minnesota	17
Montana	19
New York	21
North Carolina	24
Oregon	26
Tennessee	28
Texas	30
Virginia	34
Wisconsin	35

SELECTED PROGRAM MATERIALS

California

Court Website on Appellate Courts Pro Bono Pilot Project.....	39
Description of Court of Appeal, Second Appellate District, Appellate Self-Help Clinic.....	40
Explanation of Program on Website of Public Counsel	42
Article, "A New Pro Bono Frontier: California's Court of Appeal"	46

Colorado

Description of Appellate Pro Bono Program and Process.....	50
Appellate Pro Bono Program Application Form and Affidavit of Need.....	61
Motion for Extension.....	65
CBA Appellate Pro Bono Program Attorney Sign-up Form.....	69
CBA Appellate Pro Bono Program Screening Committee Procedures.....	71
Sample Letter Regarding Acceptance of Case.....	74
Sample Order Granting Extension to Apply for Program Representation.....	76
Decision in Appeal Handled by Volunteer Attorney.....	78
Article, "Colorado's New Pro Bono Program for Civil Appeals"	85

Indiana

Court Website Description of Appellate Pro Bono Project.....90
Application for Indiana Appellate Pro Bono Project.....92

Minnesota

Website Description of Program.....95
Information Regarding CLE Program on Unemployment Insurance Appeals.....96
LawHelpMN.org Information about Program.....97
Law Journal Article on Minnesota’s Pro Bono Appellate Program100

Montana

Description of Montana Appellate Pro Bono Program.....137
Exh A – Attorney Registration Form.....145
Exh B – Participant/Client Letter.....147
Exh C – Application for Appointment of Pro Bono Counsel.....150
Exh D – Montana Legal Services Association Application for Assistance.....152
Exh E – Request to Decide Appeal, Opting Out of Participation in Program.....158
Exh F – Request for Attorney Volunteer and Case Memorandum.....160
Exh G – Volunteer Attorney Notice of Case Interest.....162
Exh H – Attorney Referral Letter163
Exh I – Pro Bono Engagement Letter.....165
Exh J – Attorney Confirmation of Acceptance of Case.....168
Exh K – Notice of Appearance.....169
Attorney Registration – Online Form..... 171
Decision of Montana Supreme Court Regarding Establishment of Program.....175

New York

State Bar Website Information on Pro Bono Appeals Program185
Program Brochure.....188
Program Application.....190
State Bar News Article on Program Launch.....194
New York Bar Foundation Annual Report’s Discussion of Program.....195
News Release on Program Expansion.....197
LawHelpNY.org Entry on Program.....198
Decision in Appeal Handled by Program.....205
Decision in Appeal Handled by Program209

North Carolina

Court Description of Guardian ad Litem Pro Bono Program216
Court Website Information on Program.....218
Excerpts from Manual Regarding Appeals Procedures220

Oregon	
State Bar Website Description of Appellate Pro Bono Program.....	231
Statement of Program Principles.....	233
Tennessee	
State Bar Website Information About Pilot Program.....	238
Program Description.....	239
Application Information Form.....	243
Volunteer Form	244
Flow Chart	245
Texas	
State Bar Literature Regarding Recruitment of Volunteers.....	247
State Bar Website Descriptions of Pro Bono Programs	249
Sample Letter from Pro Se Petitioner	255
Pro Bono Program for Civil Appeals – Program Description	257
Virginia	
Web Blog Regarding Supreme Court Approval of Pro Bono Appeals Program.....	264
Wisconsin	
Article, “For the Good: Appellate Practice Section Pro Bono Volunteers Help Indigent Clients”	267

PREFACE

The unmet need for legal services by those who cannot afford to hire a lawyer is a problem that every bar association and court in the country confronts and attempts to solve. We all recognize that we can have the best legal system in the world, which we do, but for those who cannot afford a lawyer to help solve their legal problem, it is as if there is no legal system at all. Much of the focus on providing legal services to the poor naturally involves the person's initial contact with the lower courts, but a somewhat less obvious but nevertheless real need is for services at the appellate level.

Attempting to design a system in the state appellate courts to match lawyers who are willing to take pro bono appeals with clients who need their services is sometimes viewed as complicated and difficult to implement. However, in a number of states, bar associations working with the courts have established successful appellate pro bono programs. As lawyers, we look for precedents and forms so that we are relying on what has been determined or used before. For those reasons, I thought putting together a resource book describing the existing pro bono appellate programs around the country would aid bar associations and courts in other states in establishing such programs in their jurisdictions.

I know of no better group to prepare such a resource than the Council of Appellate Lawyers of the American Bar Association, and I knew of no better person to chair this effort than Cynthia Feathers, an appellate attorney who had been the New York State Bar Association director of pro bono affairs and was instrumental in establishing an appellate pro bono program in New York. I asked Cynthia to chair the committee; and her very able and motivated committee reviewed every existing pro bono appellate program in the country and prepared a summary of each program, together with forms and contact people in each state, all of which are included in this manual. They did all this work in less than a year.

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. If the manual inspires you or aids you in the effort to establish 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.

*A. Vincent Buzard
Council of Appellate Lawyers
American Bar Association Judicial Division
October 5, 2013*

INTRODUCTION

Throughout the country, pro bono programs for state court appeals have been created to help litigants of modest means who cannot afford quality appellate representation. The American Bar Association's Council of Appellate Lawyers (CAL) has designed this manual to serve as a practical tool that can make the path easier for the next generation of such programs and for the expansion of existing programs. Building on valuable surveys previously done by CAL and other groups, this resource seeks to provide a detailed examination of each state's programs, advice from program leaders, samples of 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, because the ABA Litigation Section will be creating a resource describing such programs. Nor does the manual describe law school clinics, because our focus is on representation by appellate attorneys.

We learned about existing programs via the most recent prior report by CAL and current court and state bar websites. In contacting 17 states with a pro bono appeals web presence, we learned that only 13 actually have a current program, and one state is on the brink of launching a program. We made extensive efforts to contact the other states to confirm that they do not have a program. If such states do have such a program now, we encourage interested persons to email denise.jimenez@americanbar.org and provide 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 of the persons who provided permission to reprint the invaluable program material included in this manual.

Thanks to A. Vincent Buzard, Esq. (Harris Beach, Rochester, NY), Chair of CAL, for his vision in suggesting the development of this manual and to the members of the Pro Bono Committee who created this resource, including by interviewing attorneys involved with existing programs to gain insights about each state's initiative.

The Pro Bono Committee members are Cynthia Feathers, Esq. (Chair, Albany, NY), Sean Andrussier, Esq. (Duke University School of Law, Durham, NC), Michael J. Bentley, Esq. (Bradley Arant Boult Cummings LLP, Jackson, MS), Karin Bohmholdt, Esq. (Greenberg Traurig, LLP, Los Angeles, CA), Kira Klatchko, Esq. (Best Best & Krieger, Indian Wells, CA), Linda L. Morkan, Esq. (Robinson & Cole LLP, Hartford, CT), Matthew Schettenhelm, Esq. (Best Best & Krieger, Washington, D.C.), and Charles G. Wentworth, Esq. (The Law Office of Lofgen & Wentworth, P.C., Glen Ellyn, IL). Thanks also to the Rural Law Center of New York (Plattsburgh, NY) for the assistance of George J. Hoffman, Jr., Esq. and paralegal Laura Charland. Finally, special thanks to Counsel Press for its generosity in printing this manual. Copies of the complete manual will be made available on the CAL website.

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; creating a LawHelp.org presence; and publishing articles in the general circulation or legal press about the program generally or an interesting case specifically.

7. Tenacity

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 many programs, doing 10 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 under-estimated. 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. Finally, 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.

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, unique approaches are taken in Minnesota, which handles only unemployment insurance appeals, and North Carolina, which 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 appeals are restricted to several enumerated high-need areas. 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. 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 provided by Colorado, Montana, and New York and an article about Minnesota’s program. Finally, a number of states offer pro se appeals guides, as well as pro bono representation, and links to such guides are provided in this manual.

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 was 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 of the court and Public Counsel. It is now held in a small office at the courthouse two days a week.

How are cases and volunteers chosen?

Lisa Jaskol of Public Counsel identifies meritorious cases and places them with pro bono lawyers. Cases are typically snapped 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 he 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 six years, about 30 appeals have been placed, several of which have resulted in published decisions.

How do you promote the program?

The program is promoted to litigants through the Court of Appeal. The website has a lot of information about the program. When an unrepresented litigant files an appeal, he or she receives a packet from the court. Flyers are distributed throughout the county. 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. In other districts, there seems to be resistance to establishing similar programs.

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).

Does California have a pro se appeals guide?

Yes, go to <http://www.courts.ca.gov/8676.htm>.

Who is the contact person for the L.A. program?

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Public Counsel
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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 deep judiciary 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 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 get going and craft language. 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 being developed.

Appeal sources

Information about the program is available from many sources. The Colorado Court of Appeals provides an information sheet to appellants and appellees. Litigants also find out about the program online, from district court clerks and appellate clerks or other pro bono programs. The application may be revised to have applicants indicate who referred them in order to gain a better understanding of how litigants are learning about the program. Another source of referrals is Metro Volunteer Lawyers (MVL) in the Denver area. Volunteer attorneys are covered under MVL's malpractice insurance.

Types of cases

Since its launch in summer 2010, the program has received approximately 140 applications and has agreed to representation in more than 30 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 voluntary administrator, and applications flow to her after they are submitted by applicants 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 on what cases to accept, usually meeting via conference calls. 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 done before an application is submitted; and if the case is accepted, sometimes the volunteer attorney prepares the notice of appeal for the applicant.

Full information about the process is available on the Colorado Bar Association website: <http://www.cobar.org/index.cfm/ID/20004/dpwpf/For-the-Public/>.

Unique element

There have been several court orders from the Court of Appeals, with copies to the program, giving pro se litigants who filed a brief an extension of time to apply for pro bono representation from the program. However, it is up to the litigants to follow up and apply to the program, which they do not always do.

Contact person

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FLORIDA

How was the program started?

The program was created several years ago at the impetus of the Pro Bono Committee of the Appellate Practice Section of the Florida Bar (Committee). The Committee's website is found at http://www.flabarappellate.org/about_committee_PROB.asp.

What entities are involved with this program?

The Committee, the Florida Supreme Court, and legal aid organizations.

On average, how many appeals are handled each year?

Around 15.

How does it work?

Cases generally are referred to the Committee from legal aid organizations or the Florida Supreme Court. The Committee maintains a roster of volunteer lawyers who have expressed 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 will forward basic information about the case. The Committee generally forwards any request for pro bono assistance in a civil or family law matter. Criminal or post-conviction appeals are not handled unless the Florida Supreme Court seeks to appoint counsel in such cases.

How do referrals from legal aid organizations work?

A legal aid organization may refer a party to the Committee for pro bono representation after the organization ensures that he or she 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. Such organizations do the financial screening because the Committee lacks the resources to do it. Rarely do parties contact the Committee directly seeking pro bono appellate counsel.

After the Committee notifies the roster of volunteer lawyers about a referral from a legal aid organization, interested attorneys contact such organization directly. If multiple lawyers volunteer, the legal aid program (or the client) may make the selection. Typically, the volunteer who expresses interest first is selected. Screening as to the merits of an appeal is done by the volunteer attorney after he or she connects with the referring organization or client.

How do court-originated appointments work?

When the Florida Supreme Court grants review in a case involving a pro se party, the court alerts the Committee, which notifies the roster of attorneys to determine who is interested. The Committee then forwards to the Supreme Court the names of interested persons, along with recommendations about attorney selections. The court then chooses appellate counsel. For this type of appointment, it helps if a lawyer is certified in appellate practice or is working with a certified attorney, whether from his or her firm or from the Committee.

The Committee has contacted Florida's intermediate appellate courts to find ways to work with those courts in providing pro bono representation. However, for various reasons—including the absence of a process to screen cases worthy of appointment before the cases are sent to merits panels—those intermediate appellate courts have not been a consistent source of pro bono appointments.

Must volunteers have appellate experience?

Lack of appellate experience may be a factor when the Florida Supreme Court appoints appellate counsel. Otherwise, appellate experience is not required for cases referred from legal aid organizations. Members of the Florida Bar's Appellate Practice Section may sign up for the roster, but they need not have appellate experience to do so.

Is there any oversight after cases are assigned?

If a case is assigned to a lawyer lacking appellate experience, the Committee assigns a mentor to that attorney. Mentors are selected from among certified appellate specialists in the Appellate Practice Section. A mentor may review a brief before it is filed.

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 program has no funding. The referring legal aid organization generally pays any 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 (however, volunteers and their law firms are not required nor expected to incur costs). Any costs not paid by a legal aid organization or the volunteer's law firm remain the client's responsibility.

Does Florida have a pro se appeals guide?

Yes, go to <http://prose.flabarappellate.org>.

Also, “Ensuring Meaningful Access to Appellate Review in Non-Criminal Cases Involving Self-Represented Litigants,” a paper by Jacinda Haynes Suhr of the Second District Court of Appeal, Florida State Courts System, examines self-representation in non-criminal cases filed in Florida’s intermediate appellate courts. *See* http://www.ncsc.org/~media/files/pdf/education%20and%20careers/cedp%20papers/2009/suhr_accesstoappellatereview.ashx.

Who is the program contact person?

Sarah Lahlou-Amine, Esq.
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Tampa, FL
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sarah.amine@fowlerwhite.com

HAWAII

When was the program started?

Planning began in 2012 and is ongoing. Before it is implemented, the program must be approved by the Hawaii Access to Justice Commission (Commission), which may happen later in 2013. The program will launch as a pilot project.

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 Commission, an organization created by the Hawaii judiciary to expand civil legal services for residents with low or moderate incomes. The Commission is 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 will cover 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. In the future, if the pilot is successful, the program might expand to include other types of cases and matters pending in Hawaii's Supreme Court.

How will 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 filed in hard copy; they are electronically filed.

How will the program be 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. The program is described on the HSBA Section website at www.hawaiiappellatesection.org

Who is the contact person?

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

INDIANA

Program creation

The Indiana Appellate Pro Bono Project was established in 2007 as a joint project of the Indiana Bar Association Appellate Practice Section (Indiana Bar APS) and the Indiana Pro Bono Commission (Commission), a state agency within the judicial branch. \

The program is administered primarily by the Commission, with attorney-placement assistance from the Indiana Bar APS.

Case selection and eligibility

All civil matters are eligible for the program, so long as the party meets the financial-eligibility guidelines established by the Commission. Case assignments are made at the discretion of the Commission, which also screens applicants for financial eligibility, according to its general guidelines for providing representation to low-income individuals.

Program funding

The program costs are absorbed by the Commission, which promotes access to legal services for Indiana's low-income residents. The Commission and the Indiana Bar are the primary promoters of the program.

Pro se appeals guide link

<http://www.in.gov/judiciary/cofc/2332.htm>

Program contact

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MINNESOTA

Program creation

The Minnesota Appellate Pro Bono Program was established in 2002 by the Minnesota Bar Association Appellate Practice Section (Minnesota Bar APS), with encouragement and input from the Minnesota Court of Appeals. The program's primary purposes are to give Minnesota attorneys an opportunity to gain appellate experience and to serve a particular pro bono need that was identified by the appellate court in the area of pro se unemployment compensation appeals.

The program is officially administered by the Minnesota Bar APS, but Thomas Boyd serves as the program coordinator from his office at Winthrop & Weinstine and has done so since the program's inception.

Case selection and eligibility

The 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.

Selection, service, and oversight

Attorneys volunteer for the program by expressing their interest in an email to Mr. Boyd or the Minnesota Bar APS or signing up for the program at various State Bar Association events. All licensed attorneys are eligible to volunteer; prior appellate experience is not required. Mr. Boyd maintains a list of volunteers and assigns cases to attorneys according to their availability. Generally, there is no oversight of the attorney after he or she has accepted an eligible case. Mr. Boyd, however, makes himself available to answer basic questions about administrative issues and court procedure. Attorneys are expected to represent the party for the duration of the appeal.

Program funding

The program has no funding source and thus cannot defray costs associated with the pro bono representation, and it is voluntarily administered by Mr. Boyd. The lack of independent funding presents an issue for sole practitioners and small law firms. Generally, volunteer attorneys come from larger firms in Minnesota that can absorb the costs associated with pro bono representation. All court fees are waived, pursuant to unemployment compensation laws.

Program statistics

On average, the program accepts 10 to 15 appeals each year.

Program contact

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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 justices 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 that a case selected for the APBP (and briefed by a volunteer attorney) will have oral argument. While the Coordinator recognizes that oral argument experience is a significant draw for volunteer attorneys, she does not believe

that this rule has discouraged attorneys from volunteering. 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. 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.

Program statistics and notes

Because the program has only operated for one year, the Court has not published any reports and has not yet compiled statistics on the APBP.

Program contact

Statewide Pro Bono Coordinator
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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 50 of the state's 62 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 28 counties.

The committee partnered with two nonprofits, the Rural Law Center of New York, which provides legal services in the state's 44 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 persons 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 a 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-serve 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 10 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 recently did a renewed outreach effort in the Third Department, including by 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 22 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 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.

As we go to press, the PBAP is slated to meet in fall 2013 with colleagues at the City Bar in New York City to discuss how the CCAJ model could be adapted to create a pro bono appeals program to meet the needs of New Yorkers in the First and Second Departments, covering the state's remaining 12 counties—its most populated counties. When that effort comes to fruition, CCAJ's initial dream will be realized—anywhere in the state of New York, a litigant of modest means facing an appeal involving the essentials of life will have a place to turn to apply for free appellate assistance.

Among the program's goals is providing greater recognition of volunteers. Currently, attorneys are recognized via certificates of appreciation, a listing on the program's website, and occasional articles. The PBAP hopes to do more in the future, including creating a special awards program for volunteers. A special housing court appeals initiative and pro bono opportunities for law school students are also in planning stages.

Pro se appeals guide link

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

Program contact

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NORTH CAROLINA

What is the scope and nature of the program?

The North Carolina Guardian ad Litem program (GAL) advocates on behalf of 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. Program staff recruit, train, and supervise volunteers.

When a petition alleging abuse or neglect of a juvenile is filed in the trial court, the judge appoints a volunteer guardian ad litem advocate and an attorney advocate to provide team representation to the child. 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. (The parents have their own legal representation, and the Department of Social Services is usually also involved as the petitioner.) The attorney advocate's duty is to represent the child at the trial level.

The program has offices in each county. Staff and contract attorneys employed by the state focus on trial-level representation. At the appellate level, the caseload is too large for state attorneys to handle alone, so the program relies heavily on volunteer appellate attorneys. The greatest need for volunteers is at the appellate level because the program has only one state-employed attorney dedicated to appeals; and state-paid attorneys are typically consumed with work at the trial-court level. Volunteer attorneys handle more than 30% of all guardian ad litem appeals. About 200 appeals are currently open.

Appeals from the district court go to the state's intermediate appellate court, the North Carolina Court of Appeals; are filed under an expedited timeline; and typically do not include oral arguments, but instead are decided on the briefs.

Must volunteer attorneys have appellate experience?

No. Though appellate experience is preferred, it is not required. Appropriate training or experience is mandatory to handle appeals, including a two-hour CLE program. The program provides a number of resources for volunteer attorneys. After a volunteer enters an appearance, the GAL program's appellate counsel may discuss the specifics of the cases with the volunteer.

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

Yes. The program is advertised as providing such an opportunity.

Is a volunteer attorney supervised after a case is assigned?

Yes, particularly for attorneys new to the program. A state-employed attorney coordinates appellate representation for this program and supervises volunteers.

Does the program provide resources for volunteer attorneys?

Yes. In addition to CLE training, the program has a number of resources available, including an attorney manual, a brief bank containing briefs from past cases, and a DVD on appellate advocacy tips.

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. A volunteer attorney may have to cover the cost of printing the brief he or she files, but these costs may be recovered. Costs of printing a brief are usually nominal.

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.

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 counsel will take the case back or sign on as co-counsel.

Who is the contact person?

Tawanda Foster
Appellate Counsel and Pro Bono Program Manager
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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 Court of Appeals select cases. The Program Committee consists of the program managers, the Appellate Commissioner, designees of the Chief Justice and Chief Judge, a member of the State Bar Appellate Practice Section's Executive Committee, and other individuals that named members invite. They meet yearly to review the program and propose changes as deemed necessary.

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.

How are volunteers chosen?

Program managers distribute information about the program to all active members of the Oregon State Bar through a yearly email. Attorneys interested in volunteering for the program respond by registering with the program manager. 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.

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?

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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 being re-launched and promoted this year and 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?

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TEXAS

When was the program created?

The current version of the program went live beginning 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 counsel or 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 websites, 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.

Does Texas have a pro se appeals guide?

Yes, go to http://www.tex-app.org/sct_probono_practice_guide.pdf

Who are contact persons?

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VIRGINIA

The Virginia Supreme Court has a volunteer appellate attorney program under which counsel is assigned by the court for certain cases. 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 a mentoring relationship.

This structure has various advantages. The clients benefit because they receive capable appellate representation. The less experienced lawyers do not have to take the sole responsibility for learning and complying with the nuances of the appellate system, while the experienced lawyers participate in an appeal, but do not have to do all the heavy lifting themselves. The court benefits because it receives a case with both sides professionally briefed, thus making sure that there is not an imbalance in the presentation of those cases, which can skew the results and make bad case law.

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 person

Clerk
Virginia Supreme Court
Richmond, VA
(804) 786-2251

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. Since its inception in 1998, it has provided counsel in more than 200 appeals. In 2009, the program began tracking the hours and expenses donated by volunteer lawyers. From March 2009 through July 2013, lawyers donated more than 7,000 hours of time and more than \$2 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.

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

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

Contact person

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