LITIGATION

CALIFORNIA LAWYERS ASSOCIATION

presents

2024 Litigation and Appellate Summit

Access to Justice: Progress and Promise

Friday, April 26, 2024
3:15pm - 4:15pm

Speakers: Hon. Eileen Moore, Hon. Lucy Armendariz, Hon. Lisa Jaskol, and Melanie Gold

Conference Reference Materials

The military discharge process needs to be overhauled

Jun. 8, 2022

Iraq and Afghanistan Veterans of America's website says that 62% of service members discharged for misconduct in recent years had a mental health diagnosis.

4th Appellate District, Division 3

Eileen C. Moore

Associate Justice, California Courts of Appeal

The rate of veterans with less than honorable discharges has been climbing since World War II, through the Vietnam War, and to the present day. In the post-9/11 era, the armed forces discharge service members with less than honorable discharges at higher rates than ever before. As a result of the discharge process, deserving veterans are denied many of the benefits they rightfully earned while protecting this country. Once denied valuable health care and education benefits, veterans face a higher risk of homelessness, unemployment and suicide.

It's a sad cycle. The typical scenario is that the service member suffers some sort of trauma while serving. As a result of that trauma, the service member commits an offense and ends up being drummed out of the service. In the end, the very ones who need psychological services the most are the ones who lose them in the discharge process.

This article will attempt to flesh out what Congress, the military and the VA are doing that prevents veterans from receiving the benefits they earned.

The military has some history of callous treatment of mental casualties

On August 5, 1943, General George S. Patton issued an order to all commanders in the Seventh Army, then stationed in Italy, that included this language: "It has come to my attention that a very small number of soldiers are going to the hospital on the pretext they are nervously incapable of combat. Such men are cowards, and bring discredit on the Army and disgrace to their comrades who they heartlessly leave to endure the danger of battle which they themselves use the hospital as a means of escaping."

A week earlier, Patton slapped a soldier being treated for anxiety at an evacuation hospital in Sicily. A week afterward, he slapped another soldier who was recovering from a breakdown. Patton drew his sidearm and ordered the private to return to the front lines.

As the war progressed and the Army was discharging 115,000 soldiers a year for psychiatric reasons, less cruel measures were employed. At some point, psychiatrists were sent with infantry units to treat mental health casualties on those front lines.

We know much more about mental health casualties

Since World War II, the whole country has been gaining knowledge about mental health injuries suffered by those who serve in the military. During the 1980s, the term “moral injury” was coined by Dr. Jonathan Shay, a psychiatrist who treated Vietnam combat veterans at the VA for several decades. A New York Times article about Shay states that after he suffered a stroke, he filled in the gaps in his education by reading “The Iliad” and “The Odyssey,” and it was clear to him that his VA patients were echoing many of the sentiments expressed by the warriors in those ancient texts: betrayal by those in power, guilt for surviving, and deep alienation on their return from war.

Another lesson was learned after post-World War II studies found that the majority of soldiers in war did not ever fire their weapons because of an innate resistance to killing. Largely based on those studies, Lt. Col. Dave Grossman’s book “On Killing” points out there are great psychological costs on combat soldiers. He says that at the moment of truth when they could and should kill the enemy, the vast majority of combatants have found themselves to be conscientious objectors. Thus, in training soldiers for our more recent wars, conditioning techniques have been designed to enable the modern soldier to overcome the moral repugnance to killing. Grossman’s book says one researcher found a 95% firing rate among American soldiers in Vietnam as compared to estimates of only 15 to 20% firing at the enemy during World War II.

In his book “Reflections on LZ Albany, The Agony of Vietnam,” James T. Lawrence wrote almost 50 years after the November 1965 battle of Ia Drang Valley: “The memory of aiming your weapon, steadying your hand, sighting down on the man, squeezing the trigger, firing the rifle, and watching the man’s body devastated by the projectile fired from your rifle. And the eternal knowledge that you just killed a man; ended the life that he and others had spent years building. He can no longer see, he can no longer think, he can no longer laugh, he can no longer cry, he can no longer love. He can only rot away, all because of you.”

We are now witnessing the grave consequences of overcoming the natural inhibition against killing. Pervasive mental health issues are plaguing our veterans. The signature wounds of our post-9/11 wars have been mental health issues resulting from post-traumatic stress disorder and traumatic brain injury, according to the National Library of Medicine. Iraq and Afghanistan Veterans of America’s website says that 62% of service members discharged for misconduct in recent years had a mental health diagnosis.

Despite increasing mental health casualties, the military needs readiness

Notwithstanding the fact that we've all learned a great deal more about mental illness since World War II, we still have to be aware of the needs of an effective military force. The goal of military readiness is to ensure that the military is ready and able to complete tasks and missions at any time, according to the Institute for Defense & Business. IDB says that to sustain readiness, continual training and adjustment of resources both before and following deployments will provide the most practical and cost-efficient outcomes. It just makes common sense that service members with lingering wounds detract from readiness, and that the military needs healthy members.

As a result of their mental illness, some service members act aggressively and have difficulty concentrating, the opposite of what is needed for good order and readiness. And sometimes, they end up in the military justice system.

Thus, active duty service members with mental wounds resulting from performing their military duties sometimes get booted out of the service. However, when they are discharged for the good of the military, but under less than honorable conditions due to conduct resulting from their wounds, they often end up being ineligible for many veteran benefits.

The discharge process

The DD Form 214 is the discharge paper issued when a service member separates from the military after active duty. It provides a roadmap for the VA to evaluate benefits earned, and many employers request a copy of it when evaluating veterans for employment. It should be a simple matter to process someone out of the service. But it's not. The problem starts with Congress.

Congress established a standard for eligibility for veteran benefits in 1944 when it enacted the GI Bill of Rights. 38 U.S.C. § 101(2). It excluded the right to benefits only to those service members who were discharged or released "under conditions other than dishonorable." What this language actually means is unclear. And none of the military branches use that language on discharge papers.

In 38 U.S.C. 5303 (a), Congress established statutory bars to receiving veteran benefits: discharge by reason of the sentence of a general court martial; being a conscientious objector under some circumstances; desertion, absence without official leave for at least 180 days; acceptance of an officer's resignation for the good of the service; and, discharge during a period of hostilities as an alien.

The military has two main character of discharge categories, administrative and punitive. Administrative discharges are honorable, general aka under honorable conditions, and other than honorable aka undesirable. Punitive discharges are issued as punishment after a court martial; they are bad conduct and dishonorable.

The military often poisons a veteran's well in the discharge process

It's understandable that the military wants to rid itself of some of its service members, but it doesn't always have to damage the service member's veteran benefits in the discharge process. After all, up until the time

the service member developed PTSD, TBI or some other condition, the military's needs and goals were met.

According to the Government Accountability Office Report, GAO-17-260, the policy of the Department of Defense is that the military services screen service members for PTSD and TBI upon separation. In fact, under 10 U.S.C. § 1177, a medical examination is required for those who were deployed overseas or sexually assaulted during the previous 24 months and diagnosed with PTSD or TBI. The statute mandates that a service member shall not be administratively separated under conditions other than honorable until the results of the medical examination are reviewed by appropriate authorities.

But the GAO found the Navy performs no examination or screening. Many of the separation packets the GAO reviewed for Marines administratively separated for misconduct contained no indication the service member had been screened for those conditions. The GAO also found that Army officers who oversaw administrative separations had never been trained in identifying symptoms of PTSD or TBI.

Further, the GAO found that, contrary to DoD policy, some of the military branches were not providing required separation counseling. That is, prior to agreeing to separation in lieu of court martial, service members are supposed to be counseled about the potential of ineligibility for VA services and benefits.

What happens is analogous to a situation about which civilian lawyers and judges are familiar. Criminal defendants in the civilian justice system often contend they are innocent, but that they pled guilty to a lesser crime because they didn't want to take the chance of a greater punishment for the greater charged crime.

In the military context, the service member charged with a crime sometimes accepts an administrative discharge at the command level rather than take the chance of being convicted of a crime in a military court and sent to the brig. The service member may or may not be told that acceptance of the deal will result in loss of benefits. But it's one thing to be told of that possibility by a military officer whose desk will be cleared if the deal is taken, and something quite different if the service member has someone plainly describe the deal's ramifications. Besides explaining the true impact of losing veteran benefits, a lawyer who has no stake in the outcome could evaluate the chance of the military succeeding in a court martial.

It's in that process of "taking the deal" offered by military command that veteran benefits are most often lost. Since the military is not giving the proper advisements to accused service members before they take the deal of accepting administrative discharges, many service members' future benefits are unnecessarily lost forever.

The VA denies benefits for more reasons than those mandated by Congress

When the veteran shows up at the VA and asks for benefits, the VA conducts its own Character of Discharge determination. Under the VA's Character of Discharge regulation, 38 C.F.R. 3.12, the VA permits itself to interpret Congress's words "under conditions other than dishonorable" to include a lot more than Congress's statutory list. As examples, the VA added to the reasons for denying benefits the

“acceptance of an undesirable discharge to escape trial by general court martial” and “a discharge under other than honorable conditions . . . because of willful and persistent misconduct.”

According to a book on military discharges authored by Kuzma, Montalto, Gwin and Nagin, the VA decides if the discharge is dishonorable for VA purposes. That is, utilizing its regulatory authority, the VA has added onto Congress’s list of statutory bars to receiving veteran benefits by creating its own regulatory bars. The authors point to a study that revealed that 29 percent of veteran benefit denials were based on statutory bars, while 71 percent were based on the VA’s regulatory bars.

Thus, the VA has twisted Congress’s mandate to deny benefits only to those who served other than under dishonorable conditions to include many more circumstances. And the VA has the court’s approval to its regulatory bars to benefits. In Camarena v. Brown (1994) 6 Vet.App. 565, the Court of Veterans Appeals held that 38 C.F.R. 3.12 is a valid regulation and consistent with 38 U.S.C. § 101(2).

Conclusion

Access to health care may make the difference between life and death for veterans. A study in the American Journal of Preventive Medicine reported that risk factors for suicide included a history of mental health conditions, an administrative discharge and not using mental health services. And a press release from Vietnam Veterans of America states that the suicide rate of veterans who use VA services increased by 8.8 % since 2001 and by 38.6 % among those who did not use VA services. About women, the press release stated: “In the same time period, the rate of suicide among female veterans who use VA services increased 4.6 percent, while the rate of suicide increased 98 percent among female veterans who do not use VA services.”

Just because a service member stopped satisfying the military’s needs should not mean that the person is not entitled to veteran benefits. While there must be consequences for misconduct by service members, those consequences need not include denial of health care, especially for treatment of conditions resulting from military service.

That’s where the VA’s self-serving add-on regulations become most dangerous for veterans. As stated above, the VA added to the reasons for denying benefits the “acceptance of an undesirable discharge to escape trial by general court martial.” Thus, when the service member takes the deal to avoid being court martialed, veteran benefits are lost.

Congress should clearly state the circumstances under which veteran benefits will be denied; the words “under conditions other than dishonorable” are confusing. Also, Congress needs to more closely police the VA to prevent its adding unwarranted circumstances under which benefits may be denied.

The military must cease enticing service members with administrative discharge alternatives without clearly advising them what it means to lose their veteran benefits.

The VA’s regulation that bars veteran benefits is now under review. In drafting a new regulation, let’s hope it remembers its stated mission: To fulfill President Lincoln’s promise “To care for him who shall have

borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's Veterans.

In a former life, Justice Eileen Moore served as a combat nurse in Vietnam in the Army Nurse Corps. She was awarded the Vietnam Service Medal, the National Defense Service Medal and the Cross of Gallantry with palm. She is a life member of Vietnam Veterans of America. Since 2008, she has chaired the Judicial Council's Veterans and Military Families Subcommittee. She is the author of two award-winning books, Race Results and Gender Results.

#367888

MENTAL HEALTH & TRAUMA (/TOPICS/MENTAL-HEALTH-TRAUMA)

California's Court Reporter Shortage Limits Access to Justice in Domestic Violence Cases

The story was originally published in ***San Francisco Public Press*** *(https://www.sfpublicpress.org/californias-court-reporter-shortage-limits-access-to-justice-in-domestic-violence-cases/) with support from our* **2023 Domestic *Violence Impact Fund.***

by CHJ FellowViji **Sundaram (/viji-sundaram)**

Michael Stoll/San Francisco Public Press

November 14, 2023

After arranging for her three children to be picked up from elementary school, taking time off from her nursing assistant job and battling nearly three-quarters of an hour of

traffic, the 40-year-old woman entered the Santa Clara County Superior Court last October seeking a restraining order against her ex-husband.

To her surprise, the judge said no one was available to produce a transcript. Her choices were to proceed to trial, postpone by one day with no guarantee of a certified court reporter, or hire one privately. The third option was out of the question, since the service can cost up to $3,000 daily.

The next day, the woman - a Nigerian immigrant single mother who said she did not want her name used because she feared for her safety, so we are calling her Simone - showed up again. Once more, no court reporter.

Simone then realized she might not get what she was after: giving her husband only strictly supervised visits to their children. Her lawyers suggested that without a court reporter present, it might be better to settle with him.

Advocates for women's and children's rights say providing free or low-cost access to transcripts in hearings is key to equal justice. Unlike many states, California has in recent years repeatedly failed to guarantee adequate documentations of court proceedings, putting victims of domestic violence at a distinct legal disadvantage. In a state where many litigants attempt to represent themselves because they cannot afford to hire an attorney, lacking an official record creates a significant additional barrier.

Despite failing for years to make transcripts standard practice in California family courts, the Legislature may be headed for a breakthrough. State Sen. Susan Rubio, a Democrat from Baldwin Park, made incremental progress toward that goal in February with her bill, Universal Access to Court Records, which would allow recording in Superior Court hearings when certified court reporters are unavailable.

The legislation made it through the Senate Judicial and Business, Professions and Economic committees, but hit a roadblock in the Appropriations Committee, whose members asked Rubio for revisions. That kicked it into 2024 for further consideration.

Regardless of the delay, Rubio has not exactly been idle on domestic abuse issues. On Oct. 13, Gov. Gavin Newsom signed another bill she championed, Piqui's Law, which prioritizes child safety in family court and promotes the training of judicial staff on child

abuse and domestic violence issues. The law also bans courts from ordering so-called reunification therapy programs, a controversial approach that forces children to attempt to reconcile with parents with whom they have become alienated. This was Rubia's second attempt in as many years to introduce this legislation.

State Sen. Susan Rubio has pushed for several reforms of family court, including Piqui's Law. Supporters rallied with her at the state Capitol over the summer, and the governor signed the law in October.

Yesica Prado/ San Francisco Public Press

But in many ways, solving the court reporter shortage would make a difference for a larger number of victims throughout the state.

"It's such an important issue," said Lorin Kline, director of advocacy at the Legal Aid Association of California, which co-sponsored Rubia's court reporter bill. "Until we solve it, litigants will have their rights violated, with serious life consequences."

Over the years, a number of California lawmakers have tried unsuccessfully to fix the court transcript gap through legislation lifting the state's ban on electronic recording in civil and family law hearings in which court reporters are unavailable. While the state judiciary is statutorily required to provide reporters in felony criminal, juvenile justice and dependency cases, that does not apply for civil, family, probate, misdemeanor criminal and traffic law.

In 2013 and again in 2015, former Assembly member Donald P. Wagner, a Republican from Orange County, tried to expand electronic recording. In 2018, Assembly member Blanca Rubio, Democrat from Baldwin Park and Sen. Rubia's sister, proposed allowing audio recording in civil courts. Her bill died in committee.

Wagner said pushback from the unions representing court reporters thwarted their efforts. Court reporters said they feared their jobs would be replaced by the likes of Alexa and Siri.

But experts have long expressed concern about labor organizations hindering reforms. Two decades ago, Glenn S. Koppel, a professor at Western State College of Law, wrote in the San Diego Law Review that the reporters union "maintains a powerful lobby in the California legislature that has blocked numerous efforts to introduce electronic court recording technologies in general jurisdiction proceedings." Little has changed since then.

Court reporters counter that some proposed changes to the system could degrade the quality of the official record and discourage new entrants into the profession.

Court reporters are stenographers trained to create verbatim records of hearings primarily using stenotype machines. They lay the foundation for challenging rulings when litigants claim their civil rights are violated. Their absence can doom an appeal.

Attorney Kemi Mustapha of Bay Area Legal Aid, which represents many family court litigants.
Viji Sundaram / San Francisco Public Press

"It is virtually impossible to challenge a trial court order with an appeal, without a record of what witnesses and judges said in court," said Sen. Rubio as she introduced her legislation Senate Bill 662.

Transcripts can also be used to review judicial behavior, sometimes revealing that a judge is insufficiently familiar with domestic violence law.

"Court reporters are one of the strongest tools to keep judges true to the letter of the law," said Eric Riviera-Jurado, a staff attorney with the Sacramento-based nonprofit WEAVE -When Everyone Acts, Violence Ends. "Not having them in court allows judges to ride roughshod over low-income litigants."

In California, litigants like Simone who file a fee waiver are entitled to a pro bono court reporter and transcript. The failure to provide one is a violation of a 2018 state Supreme

Court decision (https://fvaplaw.org/wp-content/uploads/2019/03/Case-Alert-Jameson-v-Desta.pdf) that entitles low-income parties in civil hearings and trials to pro bono court reporters if they ask in a timely manner. Failing to provide one and waive fees, the court held, "effectively deprives such litigants of equal access to the appellate process."

Simone's attorney, Kemi Mustapha of Bay Area Legal Aid, said her request for a fee waiver for Simone was timely - she had made it almost three months earlier. And hers was not an isolated case. Her colleague Jenna Gottlieb had unsuccessfully made about a dozen court reporter requests for her own domestic violence clients in the span of a few months. "Only three were provided, and six times I didn't get a response from the court," Gottlieb said, adding: "I felt my hands were tied behind my back."

The introduction of Rubio's bill comes after the state last year lifted a ban on novel techniques allowing transcription by voice rather than keyboard, and almost two years after it increased annual funding to county courts by $30 million for new hires. But that program has been hard to implement.

Tussle over transcription

The court reporter shortage has spiked since 2012, when more than half of the 58 trial courts in California eliminated court reporters as a budget-cutting measure.

Many states faced with similar shortfalls have introduced electronic recording of Superior Court hearings. Today, California is in the minority of states by disallowing recordings in family, civil and probate courtrooms, according to Sarah Reisman, directing attorney of advocacy and litigation at Community Legal Aid SoCal.

But California also has the greatest demand for court reporter services in the nation, followed by two other large states that highly restrict recording, Texas and New York, said Jason Meadors, immediate past president of the National Court Reporters Association.

Meadors, who has been in the profession for 48 years, said court reporters, also known as certified shorthand reporters, are the gold standard. "There is no replacement for the human caretaker of the record," he said. "If equipment fails, if there is a disruption to

record making, whether by speakers or external factors, the stenographer, managing the record second-by-second, can take the steps needed to ensure an accurate record."

Rubio said she was mindful that professionals might view her proposal as a job killer. But the bill stipulates that if a transcript from an electronic recording is requested, the court would first have to offer that work to a certified shorthand reporter.

The text of her bill underscores that the lack of access to recording technology is especially hard on low-income people, communities of color, Native tribes, people with disabilities, those with limited English proficiency and victims of domestic violence or sexual assault.

Eighty percent of family law litigants in the state represent themselves in court, according to the Judicial Council of California. But that is often a mistake, as navigating a system designed for attorneys can be stressful and legally perilous for the uninitiated.

"The proceedings in family court can be incredibly complex and fact intensive," Reisman said at a breakfast meeting organized last April by the Los Angeles County Superior Court to highlight the court reporter shortage.

Changing standards, technology

For a domestic violence survivor fleeing an abusive relationship and seeking judicial remedies, obtaining a transcript could have a deeply personal impact, say women's rights advocates. Without it, she could lose custody of her children, feel compelled to return to an abuser or even become homeless.

If enacted, Sen. Rubia's bill will also loosen some of the stringent professional requirements that the California Reporters Association has long fought to protect. It is particularly difficult to get certified in California, according to a 2022 report prepared for the California Trial Court Consortium, an association of small judicial districts.

"Most states that mandate certification have only one exam required for licensure, but California has three," the report said. "All three exams regularly yield low pass rates, but far more students fail dictation - the most specialized test - than pass. Moreover, the

number of applicants attempting and passing the dictation exam has fallen in recent years."

Rubia's bill would allow people who pass the National Court Reporters examination to work in the field without passing California's test. It would also allow judges to modify rulings relating to child custody or visitation when circumstances change. Without a transcript, it is nearly impossible to verify what the original circumstances were.

The state has taken another step to expand its court reporter pool. Last year, the Legislature lifted a ban on voice writing, in which reporters are trained to keep an accurate record by repeating the proceedings into a microphone and later preparing the verbatim transcripts. Federal and military courts have used them for years.

Not all court reporter schools in California have introduced a curriculum specifically for voice writing, but there are several online courses, according to the National Verbatim Reporters Association's president Rebecca Bazzle. She said it takes only six to 12 months to become a voice writer, as opposed to three to four years to become a certified shorthand reporter. It took her organization nearly a decade to persuade California to lift the voice writing ban.

Custody of children

In previous years, Sen. Rubio has used her legislative position to move the policy needle on a number of domestic violence issues, including coercive control (https://sfpublicpress.org/coercive-control), a recently recognized category of abuse that does not necessarily involve physical abuse, but includes psychological or economic manipulation.

Protesters at a rally for Piqui's Law supported additional education ofjudges and opposed reunification therapy, which they said forces children to reconcile with abusive parents.

Yesica Prado/ San Francisco Public Press

Asked why having new technologies in court reporting mattered so much to her, Rubio cited the case of a Latina mother who fought for custody of her three children in the Sacramento County Superior Court in 2012. The woman, identified as C.S. in court records, was denied custody, and lost her request for a permanent restraining order against her husband. The trial court found that she had not provided enough evidence of abuse in a hearing, and failed to establish that it would not be in the children's best interest to give their father custody. The father had an attorney, but the mother represented herself.

No court reporter was provided at her trial. She was probably unaware that if she wanted an official record, she would have had to request a fee waiver, said Jennafer Wagner, director of programs at the Family Violence Appellate Project, which provides free

representation to domestic violence survivors in California and Washington state. The organization is a co-sponsor of Sen. Rubia's bill-in-progress.

Lacking a transcript, the Appellate Project constructed a "settled statement" - a written summary based on the recollections of the parties and witnesses - and convinced California's third district appeals court to hear C.S's case. But the three-justice panel was not persuaded to overturn the trial court's decision. "I do believe if we had an actual transcript, the outcome of the appeal would have been different," Wagner said.

Sen. Rubio was not discouraged by the delay of her bill. In a recent interview, she said she would continue to fight for its passage because the lives of many women and children depended on it. "It just makes it a little more challenging," she said.

The aftermath of domestic violence can leave women and their children experiencing a wide range of emotions, including fear, chronic pain and insomnia, research has shown. In some cases, it can be fatal, and physical, mental and behavioral health problems persist long after the conflict ends. Children who grow up witnessing violence at home can suffer a range of emotional disturbances.

Tina Swithin, center, blogged for years about her court struggle in San Luis Obispo County to get custody of her teenage daughters, Kailani, left, and Makena, right.

Angela Ferdig/ One Mom's *Battle*

"Family courts are the most important part of the judicial system, because its judicial officers hold children's lives in their hands," said domestic violence survivor Tina Swithin, who battled in the San Luis Obispo County courthouse for nearly 10 years, sometimes representing herself, before getting full custody of her two daughters, now 16 and 18. Swithin now runs One Mom's Battle, a blog that has morphed into a worldwide movement with 225,000 followers.

Skilled labor shortage

Court stenographers are in high demand nationwide, but too few people are pursuing that career or graduating from training programs. Since 2012, the number of court reporters in the United States has dropped more than 20%. According to the Judicial

Council, California employs about 1,200 full-time court reporters, but an additional 650 are needed.

Factors contributing to the nationwide shortage include reduced enrollment in training and the high rate of retirement, said the heads of California's superior courts in a public letter last year, soon after Newsom signed the bill to allow voice writing.

California's certified shorthand reporter shortage tops that of all other states, according to the National Court Reporters Association. Only eight training programs remain today, compared with 16 in 2011, wrote Michael Roddy, executive officer of the San Diego County Superior Court, in a January opinion piece in the San Diego Union Tribune. In 2021, 175 people took the licensing exam, and only 36 passed.

Brandon E. Riley, CEO of the San Francisco County Superior Court, has had to juggle reporters among courtrooms to avoid turning away low-income domestic violence survivors.
Viji Sundaram / San Francisco Public Press

Two years ago, the Legislature budgeted $30 million annually for courts to offer financial incentives to expand their pool of court reporters. Los Angeles County's share was $10 million in each of the 2023 and 2024 fiscal years. San Francisco's was $706,000.

But few jurisdictions have shown much success, forcing some to take drastic measures. In April 2022, Santa Clara County Superior Court stopped assigning court reporters in family law cases, except in emergency restraining order hearings.

The effect of the shortage is so severe in Los Angeles County, home to the largest trial court in the nation, that in just the first two months of this year 52,000 hearings took place without a court reporter, including 14,052 family law hearings, said David Slayton, who became court executive officer there last December. In an email, Slayton said that if the situation persists, his court might not be able to provide reporters even in mandated cases.

Up until now, all family law litigants in domestic violence cases who requested fee waivers have been provided court reporters, he said. But he said that, less than ideally, "in some instances parties to domestic violence and restraining order hearings may opt to move forward with their cases without a court reporter" - a choice unlikely to result in desired outcomes.

Despite impressive financial incentives for workers and massive advertising, Slayton said he was able to hire eight court reporters since February, but eight retired in the same period, "resulting in a zero net gain."

Brandon E. Riley, head official of the San Francisco County Superior Court, said his court was "pretty close to the edge of the cliff." Despite three years of recruitment efforts, the court has only 26 reporters to fill 40 slots in its *52* courtrooms.

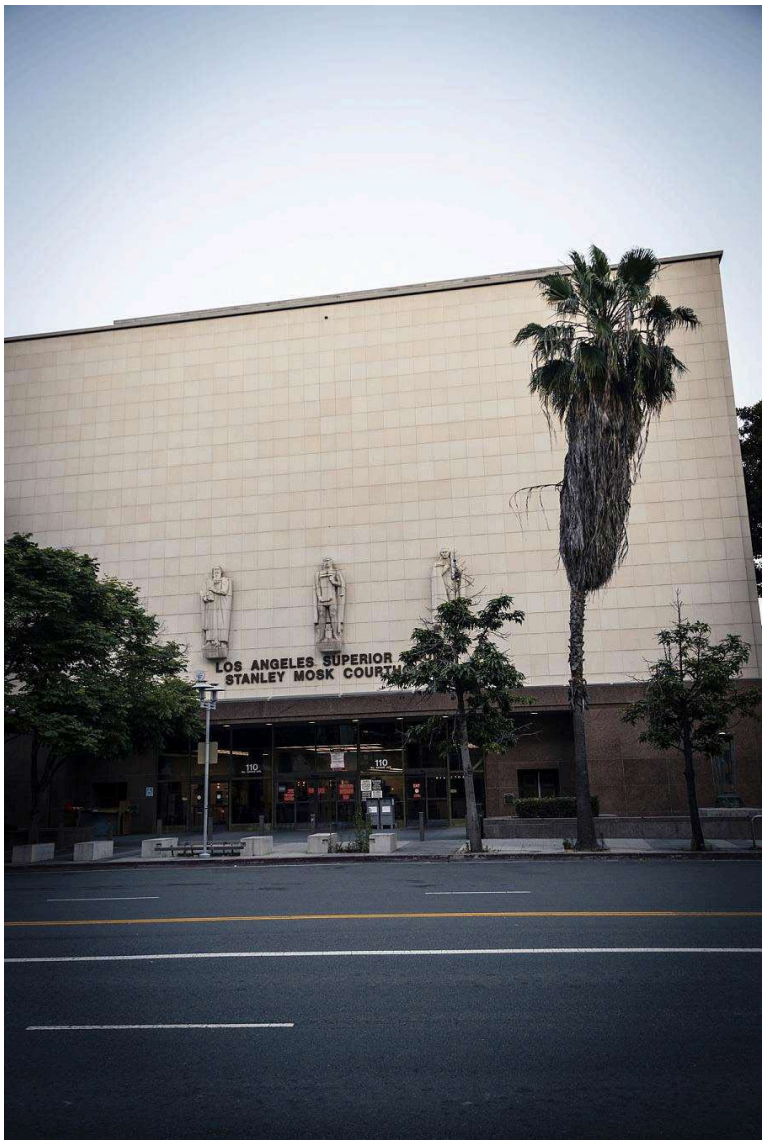
Since taking over in April, Riley said he had to juggle reporters among courtrooms to avoid turning away low-income domestic violence survivors. He said he hoped to expand the court reporter pool with a new daily fee of $1,000, and by increasing the retention offer - bonus pay to keep workers in their positions - to $30,000 over three years, up from the current $10,000. Among other creative solutions he is considering is hiring voice writers, like Santa Clara County Superior Court recently did.

Prohibitive costs

Part of the challenge for recruiting and retaining court reporters nationwide is being able to pay wages competitive with the private sector. Court reporters nationally earn an average of $62,000, but command considerably more in private companies. San Francisco pays the highest court reporter salary in the state - $150,000 plus benefits. "If you get past the exam, it's a lucrative career to work in a court," Riley said.

Alaska has not used court reporters since achieving statehood in 1959, opting instead for audio recording. In Nevada, judges are given the option of having a stenographer or a recording, and most opt for the latter, said Mark Gibbons, who served as a trial court judge there and later in that state's Supreme Court until his retirement in 2020.

Gibbons said that while electronic recording technology has improved, once in a while the equipment stops briefly. "Even two or three minutes of a gap could mean missing very important testimony," that cannot reliably be re-created, he said. "When that happens, the appellate court will decide the case the best it can, unless the lawyers for all parties stipulate to what was testified to."



Los Angeles Superior Court has turned to electronic recording to compensate for the court reporter shortage.
Angela Ferdig/ One Mom's *Battle*

But Janet Harris, president of the American Association of Electronic Reporters and Transcribers, said that certified reporters are trained to ensure that such gaps are avoided because they are monitoring the equipment throughout the proceeding.

"In the event of a problem, the certified digital reporter is trained to immediately stop the proceeding so there is no loss of record," she said. If audio gear is properly maintained and tested, she said, gaps can be avoided.

"Electronic recording equipment has proven very reliable," Los Angeles County's Slayton said. "In fact, in 2022, over 500 appeals of matters in evictions, criminal cases and other

limited jurisdiction matters were electronically recorded, reviewed and decided by our Appellate Division without incident."

Still, any move to introduce recording in California's 58 counties will likely continue to face opposition from unions. David Green, president of SEIU 721, which represents court reporters in Los Angeles and the Inland Empire, said in an interview last year that if the state "tries to replace shorthand reporters with digital devices, we will push back." He declined to comment on Sen. Rubio's latest attempt.

Women's rights advocates are determined to get Rubio's bill on the governor's desk next year. They say domestic violence survivors need those transcripts to get justice.

"We are hopeful the Senate Appropriations Committee will recognize the urgency of this issue and its impact on low-income and self-represented litigants and act to pass SB 662 out of committee before their January 2024 deadline," Slayton said.

In the meanwhile, legal aid lawyers continue to prepare their clients for finding no court reporter when they arrive in family court.

Simone, the Nigerian mother, decided to take Mustapha's advice and settle with her abusive ex-spouse. The judge awarded her a three-year restraining order and full custody of the children, all less than 10 years old.

She said she was disappointed that her ex was given unsupervised visitation rights. She had hoped for an outcome that would have given him only restricted contact with the kids.

"A lot of women from Africa," Simone said, "would hesitate to publicly speak up about the domestic violence they experienced, because of the stigma."

But had a trial happened, she said, she would not have held back about the details of the abusive behavior that ripped her family apart.

TAGS: Domestic Violence (/tags/domestic-violence)

RELATED ARTICLES

- Six reporting lessons I learned while investigating abuse in a California group home (/our-work/insights/six-reporting-lessons-i-learned-while-investigating-abuse-california-group-home)
- A puertas cerradas: Rompiendo el ciclo de la violencia domestica (/our-work/reporting/ puertas-cerradas-rompiendo-el-ciclo-de-la-violencia-domestica)
- A puertas cerradas: c6mo la defensa bilingiie puede ayudar a quienes tienen menos recursos (/ our-work/reporting/puertas-cerradas-como-la-defensa-bilingue-puede-ayudar-quienes-tienen-menos)

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

DEVELOPMENTS

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

Meehan Rasch*

INTRODUCTION

Many varieties of new "pro se" or "pro bono" appellate programs have been sprouting up around the country in recent years.[1] Courts, bar associations, and legal services and advocacy

* Associate, Sidley Austin LLP; 2009–10 Sidley Austin Pro Bono Fellow, Public Counsel Appellate Law Program, Los Angeles, California. J.D., UCLA School of Law, 2008; M.A., Indiana University Center on Philanthropy, 2002; A.B., Stanford University, 1999. This article is indebted to the careful program evaluation and detailed materials created by Public Counsel staff, including Appellate Law Program Director Lisa Jaskol, who may be reached at ljaskol@publiccounsel.org for further information about the Program. Thank you to Lisa Jaskol and Christy Mallory for editing and helpful comments on earlier drafts of this piece.

1. For a listing of pro bono civil appellate programs in state and federal courts of appeals compiled in 2005, see Thomas H. Boyd & Stephanie A. Bray, ABA Council App. Laws. Pro Se-Pro Bono Comm., *Report on Pro Bono Appellate Programs* Appendix (2005) (copy on file with Journal of Appellate Practice and Process). However, Boyd and Bray's excellent resource is no longer exhaustive or up to date; many appellate pro bono programs have been initiated or further developed since the publication of the ABA report, including Public Counsel's Appellate Law Program. For a more recent research paper on court support programs and best practices for assisting self-represented civil appellate litigants,

organizations are implementing these projects to grapple with the challenges raised by increasing numbers of pro se (self-represented) and indigent civil litigants in appellate courts.[2] The expansion of pro se litigation strains appellate court resources and staff, but because of the complex, technical nature of the appellate process, the pitfalls for pro se litigants in this area are numerous and substantial.[3] Improper designation of the record, noncompliance with the rules of court, and a failure to provide coherent briefing of the relevant legal and factual issues on appeal are all issues that often impede low-income pro se litigants from obtaining equal access to justice in the appellate process.

Access to justice depends on access to the courts,[4] and pro se civil litigants need adequate information and resources to better navigate state and federal appellate systems and perfect their cases. In many—if not most—cases, they also would

see generally Jacinda Haynes Suhr, Natl. Ctr. St. Cts. Inst. for Ct. Mgt. Ct. Exec. Dev. Program, *Ensuring Meaningful Access to Appellate Review in Non-Criminal Cases Involving Self-Represented Litigants* (May 2009) (available at. http://www.ncsconline.org/D_ICM/programs/cedp/papers/Research _ Papers_2009/Suhr_AccessToAppellateReview.pdf) (copy on file with Journal of Appellate Practice and Process).

2. *See e.g.* Jud. Council Cal., *Statewide Action Plan for Serving Self-Represented Litigants* 2 (Feb. 2004) [hereinafter *Statewide Action Plan*] ("Court operational systems, in accord with traditional adversary jurisprudence, have been designed to manage a flow of cases in which the vast majority of litigants have attorneys to represent them.") (available at http://www.courtinfo.ca.gov/reference/documents/selfreplitsrept.pdf) (copy on file with Journal of Appellate Practice and Process); *see also* Thomas A. Boyd, *Minnesota's Pro Bono Appellate Program: A Simple Approach That Achieves Important Objectives*, 6 J. App. Prac. & Process 295, 296–97 (2004) (discussing the increase in pro se litigation in federal, state, and appellate courts and citing sources).

3. *See e.g.* Jud. Council Cal. Admin. Off. of Cts., *Innovations in the California Courts: Shaping the Future of Justice* 16 (2009) [hereinafter *Innovations*] ("For the typical unrepresented civil litigant, the appellate process can be daunting. Filing requirements are exacting. The procedure bears no resemblance to the more familiar trial court routine. The very language can baffle even the sophisticated layperson.") (copy on file with Journal of Appellate Practice and Process).

4. *See* Margaret H. Marshall et al., Conf. C.Js. & Conf. St. Ct. Administrs., *Final Report of the Joint Task Force on Pro Se Litigation* 1 (July 29, 2002) [hereinafter *Joint Task Force Report*] ("[T]he constitutional and historical framework of the American justice system recognizes that a fundamental requirement of access to justice is access to the courts and that this access must be afforded to all litigants—those with representation and those without.") (available at http://www.ncsconline.org/WC/Publications/Res_ProSe_FinalReportProSeTaskForcePub.pdf) (copy on file with Journal of Appellate Practice and Process).

benefit from representation by counsel. For their part, appellate courts struggle to remain neutral and not give legal advice while providing enough guidance to ensure meaningful access for unrepresented litigants.[5] Much of the focus of pro se/pro bono appellate programs has accordingly been on providing print or online resources to which appellate court staff may direct pro se litigants without having to do too much "hand-holding" throughout the process or on methods of screening pro se litigant cases for appointment of pro bono counsel. These are each necessary, but frequently insufficient, measures. Many pro se litigants require technical assistance at each stage of the appellate process, beyond an initial referral to written directions.[6] This need for assistance places a serious burden on court clerks and staff attorneys, who must either spend inordinate amounts of time helping litigants unfamiliar with the court system or deal with noncompliant submissions and faulty briefing as a result of such litigants' lack of guidance.[7] Funding to establish and maintain more formalized assistance structures is not widely available within most courts of appeal. And mechanisms for placement of pro se appellate matters with pro

5. *See e.g.* Mark D. Killian, *Appellate Pro Se Handbook Intended as a Service to the Public as Well as the Bench*, Fla. B. News (Nov. 1, 2007) ("[T]he problem with pro se litigants is that most do not know how to proceed. 'They often are unable to timely file their notice of appeal; they don't know how to perfect their records of appeal, and this places a tremendous burden on the staff attorneys and the court system to give them some guidance without giving them inappropriate legal advice[.]'") (quoting Dorothy Easley, *Florida Pro Se Appellate Handbook* Committee Chair) (available at http://www .floridabar.org/DIVCOM/JN/jnnews01.nsf/Articles/AB855EE683867E9585257380004F2F A5) (copy on file with Journal of Appellate Practice and Process); *see also Joint Task Force Report, supra* n. 4, at 1–2 ("[R]ecent increases in the number of self-represented litigants . . . make significant demands on both court resources and on the ability of judicial officers and court staff to provide an opportunity for a fair hearing while maintaining ethical requirements of judicial neutrality and objectivity."); Boyd, *supra* n. 2, at 298–300 (discussing the challenges posed by pro se appellate litigants).

6. *Cf. Joint Task Force Report*, *supra* n. 4, at 3 (discussing pro se litigation generally) ("Self-represented litigants often expect the filing clerk to provide them with the relevant forms necessary to file a case, which may or may not exist. They also assume that verbal or written instructions will accompany the forms to facilitate the process. Where forms and instructions do not exist, or are difficult for lay people to understand, litigants often turn to court clerks for suggestions on what and how to file.").

7. *Cf. id.* at 3 (discussing pro se litigation generally) ("In some instances, court staff may reject filings by self-represented litigants, once or even several times, due to procedural requirements."); *see also id.* at 4 (discussing the burden of administrative and procedural errors by self-represented litigants after initial pleadings are successfully filed).

bono counsel may depend on proactive litigant request or may be limited in scope to certain kinds of matters.[8] These gaps in the availability of pro bono representation may allow meritorious appeals by pro se litigants to fall through the cracks.

In Los Angeles, a new model seeks to better meet the needs of both indigent pro se appellate litigants and the courts, by providing a staffed self-help clinic on site at a court of appeal. This successful program, now four years old, is a unique collaboration between pro bono public interest law firm Public Counsel,[9] the California Court of Appeal (Second Appellate District),[10] and the Appellate Courts Committee of the Los Angeles County Bar Association.[11] It is the first formal drop-in clinic for pro se appellate litigants housed in any state or federal court, and to our knowledge, no other public interest or legal aid organization in the country currently provides general in-person, self-help technical assistance to indigent pro se individuals

8. *See e.g. Appellate Division Pro Bono Civil Pilot Program*, http://www.judiciary.state.nj.us/appdiv/probono.htm (2001) (New Jersey program providing representation to self-represented low-income litigants in state's intermediate appellate court, limiting placement of pro bono counsel to domestic violence, child custody and visitation, and small claims cases) (copy on file with Journal of Appellate Practice and Process); Boyd, *supra* n. 2, at 305–19 (describing development of an appellate pro bono program at the Minnesota Court of Appeals, limited in scope to appeals from denials of unemployment compensation benefits).

9. Public Counsel is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to indigent and underrepresented children, adults, and families throughout Los Angeles County, ensuring that other community-based organizations serving these populations have legal support, and mobilizing the pro bono resources of the community's attorneys and law students. Go to http://publiccounsel.org/ for complete organizational and programmatic information, and see http://www.publiccounsel.org/practice_areas/appellate_law for an overview of the Public Counsel Appellate Law Program (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

10. The California Courts of Appeal are divided into six appellate districts. The Second Appellate District, which encompasses the City and County of Los Angeles as well as three other counties, is the state's largest. For general information about the Second District Court of Appeal, see http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/ (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process); *see also* Part I, *infra*. Aside from materials on their websites, none of the other California appellate districts have any dedicated self-help services available to indigent litigants.

11. *See* L.A. Co. B. Assn., *Appellate Courts Committee Page*, http://www.lacba.org/showpage.cfm?pageid=2188 (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

involved in civil appeals. In tandem with managing the self-help clinic, which is staffed three days a week by an experienced appellate attorney,[12] the Public Counsel Appellate Law Program also identifies and evaluates cases for pro bono representation and works with the Appellate Courts Committee to refer appropriate cases to pro bono counsel.

Everyone involved has benefitted from the presence of a knowledgeable, trusted intermediary to both provide technical procedural assistance and facilitate pro bono placement for indigent pro se litigants on appeal. Having these functions handled by the same independent, neutral specialist, accessible at the courthouse yet not paid or supervised by the Court of Appeal, has been of immense value in managing, prioritizing, and streamlining both tasks. Public Counsel hence appropriately describes the program's role as one of "triage."[13] The cost to the court system has been minimal, and the Public Counsel Appellate Law Program offers a model that, with the right local leadership and funding, has the potential to be transferable to courts of appeal nationwide.

Part I provides an overview of the needs addressed by the Public Counsel Appellate Law Program and the history of its formation. Part II gives a detailed description of the Appellate Law Program's model and operation and describes how the Program is meeting its twin goals of improving equal access to justice and increasing efficiencies of the appellate judicial system. Part III compares the Public Counsel model to other pro bono/pro se appellate projects. Part IV discusses the advantages and challenges of the Public Counsel model and its potential for replication by other courts of appeal, and the Article concludes with suggestions for courts, bar associations, and public interest organizations interested in creating similar programs.

12. The Appellate Law Program is directed by Lisa Jaskol, a certified appellate specialist. She graduated from Yale Law School and clerked for the Honorable Harry Pregerson of the U.S. Court of Appeals for the Ninth Circuit. See Part I-C, *infra*, for more on Ms. Jaskol's expertise.

13. "Triage," a familiar term in medicine, refers to the systematic sorting, assigning of priority order, and allocation of resources to those in need. *See e.g. Merriam-Webster Online Dictionary* (2011), http://www.merriam-webster.com/dictionary/triage (defining "triage") (copy on file with Journal of Appellate Practice and Process).

I. HISTORY, NEEDS, AND GOALS

A. Background

The Public Counsel Appellate Law Program emerged from a concerted, collaborative effort by judicial, bar, and public interest leaders in Los Angeles to respond to the needs of indigent pro se[14] litigants involved in appellate matters in the state's Second Appellate District. The Second Appellate District of the California Court of Appeal is the largest and busiest of the state's six appellate districts. The Second Appellate District is made up of four counties—Los Angeles, Ventura, Santa Barbara, and San Luis Obispo—and has eight Divisions of four justices each. Seven of the eight Divisions of the Second Appellate District are located in Los Angeles; they handle all general jurisdiction matters arising from the Los Angeles County Superior Court.[15] The Second Appellate District files over 5,000 appellate opinions and disposes of over 3,700 writ petitions per year.

Given this large volume of appeals, it is not surprising that the Second Appellate District receives a sizeable number of appeals involving indigent pro se litigants. About thirty percent of all civil cases involve one or more parties who are self-represented. (Statewide, over 4.3 million of all California court users are self-represented.[16]) Approximately fifty percent of the pro se appeals filed in the Second Appellate District are filed with fee waivers for indigency, and it is believed that a significant number of the remaining individuals who file pro se appeals are nevertheless indigent under existing Interest on Lawyers' Trust Accounts ("IOLTA") income eligibility standards.[17]

14. In California legal parlance, self-represented litigants are referred to as *in propria persona*, or "*pro per*." For consistency and to avoid confusion for readers outside of California, however, this Article refers to self-represented litigants as "pro se" throughout.

15. The Los Angeles emphasis of the Second Appellate District is for good reason: Los Angeles County is the largest and most populous of the state's fifty-eight counties, with approximately one third of the state's population.

16. *Statewide Action Plan*, *supra* n. 2, at 2.

17. Local IOLTA income eligibility limits for 2009–2010 equal seventy-five percent of the Los Angeles County "lower income" figure determined by the U.S. Department of

Luckily, important leaders were motivated to respond to the challenges posed for, and by, this population of litigants. The current Appellate Law Program is a direct result of the initiative taken by a handful of influential members of the Los Angeles legal community six years ago.

B. Collaborative Planning by the California Court of Appeal, Public Counsel, and the Los Angeles County Bar Association Appellate Courts Committee

In 2005, Second Appellate District Associate Justice Laurie Zelon convened a small group of key stakeholders—from the judiciary, court administration, and the local appellate bar—"to brainstorm how to deliver pro bono legal services to unrepresented appellate litigants."[18] In addition to Justice Zelon, the initial group included Joseph Lane, the Clerk of the Court of the Second Appellate District, the current and immediate past chairs of the Appellate Courts Committee of the Los Angeles County Bar Association, the President of Public Counsel, and a prominent Los Angeles appellate attorney who had served as Chair of the Board of Directors of Public Counsel, President of the Los Angeles County Bar Association, and President of the California Academy of Appellate Lawyers.[19] The driving force behind this joint effort was the recognition that low-income pro se litigants face significant hurdles and could greatly benefit from technical assistance and pro bono representation. At the

Housing and Urban Development. Memo. from Cathy E. Cresswell, Dep. Dir., Cal. Dept. Hous. & Community Dev., *Official State Income Limits for 2010* (June 17, 2010) (available at http://www.hcd.ca.gov/hpd/hrc/rep/state/inc2k10.pdf) (copy on file with Journal of Appellate Practice and Process). All income figures are for gross income.

18. Robin Meadow, *A New Pro Bono Frontier: California's Court of Appeal*, App. Advoc. 9 (Dec. 2007) (available at http://www.gmsr.com/article/A%20New%20Pro%20Bono%20Frontier.pdf) (copy on file with Journal of Appellate Practice and Process); *see also Innovations*, *supra* n. 3, at 16; Laura Ernde, *Appellate Clinic Guides Hundreds*, L.A. Daily J., http://www.publiccounsel.org/tools/assets/files/Unique-Clinic-Guides-Hundreds-Through-The-Appellate-Maze-Daily-Journal-2.8.10.pdf (Feb. 8, 2010) (copy on file with Journal of Appellate Practice and Process) (profiling the clinic and Justice Zelon's encouragement of court officials to partner with Public Counsel to create the program).

19. Meadow, *supra* n. 18, at 9. As stated later by Justice Zelon, "We're all here because we want to decide cases on their merits; it's really nice to have that additional comfort level that something hasn't fallen through the cracks because the party didn't know how to bring it forward." Ernde, *supra* n. 18.

same time, the Court of Appeal believed that providing assistance to indigent pro se appellate litigants would improve efficiencies in the court system and benefit all parties by reducing record preparation time, decreasing other administrative delays, and improving the quality of briefing.

The leaders agreed that the need to better serve and manage indigent pro se litigants was certainly there, but the structure of a suitable program was open to the imagination. As the group studied ways to provide assistance to pro se appellate litigants, certain limitations had to be recognized, including the fact that the Second Appellate District was uncomfortable with the court taking on any significant level of supervision and in any event lacked the funding and staffing to do so.[20] Various questions were raised: whether to limit cases only to certain matters; how or whether to screen litigants for indigency or cases for merit; whether the program would have paid staff or be run entirely by volunteers; how best to connect qualifying litigants with pro bono lawyers.[21]

At first, the group decided to restrict cases to those involving family law, housing, benefits, and consumer issues—programmatic mainstays of Public Counsel's work—and to those matters involving only one pro se party, in order not to contribute to the dynamic of pitting pro se parties against parties with the benefit of counsel. The initial approach was also centered primarily on placement of cases with pro bono counsel, rather than on self-help assistance, and it required time-intensive, proactive outreach measures to individual litigants: "The Clerk of the Court would identify [self-represented] candidates via the Civil Case Information Statement that every California appellant must file, and forward the names to Public Counsel. Public Counsel would then call the parties to conduct an indigency screening and to learn basic information about the case."[22] "Once Public Counsel identified a potential client and

20. *See* Meadow, *supra* n. 18, at 9. For these reasons the nearby, well-established Ninth Circuit Pro Bono Program was a less useful model to emulate, as it involved levels of funding, staffing, and court supervision beyond that with which the Second Appellate District was capable or comfortable. *Id.*; *see also id.* at 11; Part III, *infra* (further comparing the Ninth Circuit and Public Counsel programs).

21. *See id.*

22. *Id.* at 10.

case, a member of the [Los Angeles County Bar Association Appellate Courts] Committee would conduct a preliminary review of the case to determine whether there were arguably meritorious issues. . . . Then, if the case passed this test, Public Counsel would seek a volunteer attorney through its usual channels[,]"[23] with a Committee member available as a mentor. Screening of cases began in 2006.

This limited and time-consuming initial approach was short-lived, and it was substantially modified in the implementation of the current Appellate Law Program. As described in Part II-A, *infra*, the Appellate Law Program is now open to all types of civil matters and it conducts indigency screenings *after* rather than *at* the first point of contact with a pro se litigant. The Program can also provide procedural information and technical assistance to either side (or both sides) of a matter in which both parties are pro se, although it still refrains from seeking pro bono counsel for any party in such situations.[24] The outreach to pro se litigants had to be rethought, too, as litigants "were turned off by getting cold calls from someone they didn't know asking if they needed a lawyer."[25] Plus, the initial version of the Program was dependent upon volunteer and voluntary efforts, and it lacked a central locus of coordination or the ability to provide in-person self-help assistance to indigent pro se litigants until sufficient funding was secured.

C. Initial Funding and Staffing

In 2006, Public Counsel obtained funding for a full-time staff attorney dedicated to the Appellate Law Program. This initial funding came from a State Bar of California Equal Access Fund Partnership Grant, administered by the California Legal Services Trust Fund Program of the State Bar of California.[26]

23. *Id.* at 9–10.

24. *See* Part II-B, *infra*.

25. Meadow, *supra* n. 18, at 10.

26. The Legal Services Trust Fund Program "makes grants to nonprofit organizations that provide free civil legal services to low-income Californians." *See* St. B. Cal., *Legal Aid Grants*, http://calbar.ca.gov/AboutUs/LegalAidGrants.aspx (accessed Mar. 24, 2011) (copy

This breakthrough allowed the formation of a first-of-its-kind self-help clinic on site at the Second Appellate District courthouse in downtown Los Angeles, using office space provided by the Court of Appeal. In addition to providing drop-in assistance to unrepresented civil appellate litigants, the staff attorney could do preliminary screenings of cases and facilitate the placement of appropriate cases with pro bono counsel.

The background, credentials, and public service involvement of the staff attorney hired to direct the Appellate Law Program facilitated the community support for and efficient implementation of the Program. Director Lisa Jaskol is a certified appellate specialist and a former partner at Los Angeles civil appellate law firm Horvitz & Levy LLP. In addition to her extensive appellate expertise, Ms. Jaskol was the Directing Attorney of Public Counsel's Homelessness Prevention Law Project from 2001 to 2004, and she has many years of experience in advocacy and volunteer recruitment. Her appellate bar involvement and connections are also substantial; she is currently Vice-Chair of the Appellate Courts Committee of the Los Angeles County Bar Association and a member of the Association's Amicus Briefs and Access to Justice Committees. Volunteer attorneys and law students assist with the work of the Appellate Law Program under Ms. Jaskol's supervision.[27]

The appellate self-help clinic officially began operation on February 14, 2007.

Although Public Counsel has overall responsibility for the Appellate Law Program, the project remains collaborative, and the founding working group, chaired by Justice Zelon, continues to serve an oversight capacity. The planning and oversight collaborative group consults electronically and by phone to discuss progress and issues as they arise and to review the Program's goals and sustainability. In addition, the Clerk's Office of the Second Appellate District provides critical ongoing support for the clinic's work.

on file with Journal of Appellate Practice and Process). The Equal Access Fund provides financial support to programs improving services to low-income, self-represented individuals.

27. The author worked with the Public Counsel Appellate Law Program in 2009–2010 as a Pro Bono Fellow sponsored by the Los Angeles office of Sidley Austin LLP.

II. THE PUBLIC COUNSEL APPELLATE LAW PROGRAM MODEL: IMPROVING EQUAL ACCESS TO JUSTICE AND INCREASING JUDICIAL SYSTEM EFFICIENCY

The core functions of the Public Counsel Appellate Law Program are to provide assistance to pro se indigent litigants in navigating the civil appeals process, in tandem with coordination of pro bono referrals.[28] Through these activities, the Appellate Law Program seeks (1) to improve equal access to justice—by helping pro se indigent litigants effectively represent themselves; and (2) to increase the efficiencies of the judicial system—by reducing record preparation times, reducing administrative delays caused by pro se errors, and improving the quality and cogency of pro se appellate briefing. The primary entry point for these services is the Program's staffed self-help clinic at the Second Appellate District of the California Court of Appeal.

A. Free Appellate Self-Help Clinic On Site at Court of Appeal

Public Counsel's appellate self-help clinic is housed at the California Court of Appeal (Second Appellate District), in downtown Los Angeles. It is conveniently located inside the court's Settlement and Mediation Center, down the hall from the Clerk's Office. The clinic is staffed by Appellate Law Program Director Lisa Jaskol. This location on site at the Court of Appeal makes the clinic exceptionally accessible to pro se civil appellate litigants. The free clinic is open three days a week from 9:00 a.m. to 3:00 p.m., although in practice the clinic often remains open later if there are litigants waiting to be seen. A sign is posted outside the clinic listing its days and hours of operation. The Court of Appeal provides the use of an office, waiting room, telephone, copier, computer with internet access and printer, filing cabinet, and easy access to Clerk's Office services. As such, "[s]tartup and upkeep costs to the court have

28. The Public Counsel Appellate Law Program also participates in activities such as submitting amicus curiae briefs and participating in moot courts or as counsel in cases that have not come to the Program's attention through the appellate self-help clinic.

been minimal."[29] The clinic's supplies and email service are purchased and provided by Public Counsel.

The Appellate Law Program and the Court of Appeal work closely to ensure that eligible litigants are aware of the clinic's services. When an appeal is filed, the Clerk's Office of the Second Appellate District mails each unrepresented litigant a flier providing information about the appellate self-help clinic. The flier advises litigants of the clinic's location and hours, and it explains how to contact the clinic by phone and email. The Second Appellate District's website prominently mentions the clinic and provides this same contact information.[30] The Clerk's Office keeps copies of the flier on hand for in-person distribution, and its staff regularly directs litigants to the clinic. Copies of the flier have also been distributed to Superior Courts in Los Angeles County and to the Los Angeles County Law Library.

Because an appointment system proved unworkable, individuals are now seen on a first-come, first-served basis during clinic hours. The staff attorney can review litigants' paperwork, help them fill out court forms, guide them in the appeal process, and answer procedural questions. The clinic provides pro se litigants with appellate rules and forms, appellate exemplars (including publicly-filed sample briefs and other filings), simplified practice guides, and detailed explanations of the many rules and procedures they can expect to encounter in their civil appellate matters. The staff attorney can easily access these and other helpful materials on line, as well as search the Court of Appeal and Superior Court online dockets. Spanish-to-English interpretation services and other bilingual language services can be provided by the clinic when necessary and feasible.[31]

The self-help clinic is open to all pro se civil litigants with appellate matters, although the majority of users are indigent.

29. *Innovations*, *supra* n. 3, at 17.

30. *See Appellate Pro Bono Pilot Project*, http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/probono.htm (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

31. Upon arrangement and appointment, and through its pro bono network, Public Counsel can provide language services in Korean, Mandarin, Chinese, Hindi, Hebrew, Farsi, French, and German.

Initially, indigency screenings were conducted before litigants could receive clinic assistance at all, but the screening added time to the drop-in process, and only a very small number of pro se litigants coming to the clinic turned out not to be indigent. Now, formal indigency screenings are conducted after the initial visit, as part of the screening process for placing eligible cases with pro bono counsel.[32] There is no subject-matter limitation on the types of civil appellate matters for which litigants may receive assistance. Litigants who do not qualify for the clinic's services, such as criminal defendants[33] and those with trial court[34] or administrative matters, receive appropriate referrals.[35]

Common topics on which the clinic gives information and technical assistance include the following: reviewing applicable deadlines; completing case information statements; filling out and filing fee waiver applications; designating the record on appeal, including procuring the clerk's and reporter's transcripts; and curing defaults. Other general advice concerns brief writing, citations (to facts and to the law), preparation of appendices; dealing with service requirements; information on motions, applications, and stipulations; and general advice on oral argument. The support provided to appellate litigants can be extremely time-consuming, and many litigants seek ongoing assistance, returning repeatedly for help as their appeals progress. Clinic staff also update and disseminate self-help materials created by the Court of Appeal, Public Counsel, the Appellate Courts Committee, and the Judicial Council of

32. *See* Part II-B, *infra*.

33. Indigent state criminal defendants have a right to appointed counsel, including on appeal, *see Gideon v. Wainwright*, 372 U.S. 335 (1963); *Douglas v. California*, 372 U.S. 353 (1963), and in California generally qualify for representation by the office of the county public defender. In 2009, California enacted Assembly Bill 590, the Sargent Shriver Civil Counsel Act (signed by the governor on October 12, 2009), which provides funding for a two-year pilot project, slated to start in 2011, to appoint free counsel in certain serious civil cases for indigent litigants. It is unclear whether the pilot project will fund counsel at the appellate level.

34. The Los Angeles Superior Court's Appellate Division handles appellate matters involving less than $25,000, and the Public Counsel Appellate Law Program sometimes provides limited assistance in such cases.

35. Where applicable, clinic attorneys also make referrals to various services for clients with specialized needs, such as veterans, or disabled or mentally ill clients.

California.[36] They coordinate with the Clerk's Office on administrative issues relating to the handling of pro se litigants. On days the self-help clinic is not open, the director continues to assist indigent unrepresented litigants in person, over the phone, and via email from Public Counsel's headquarters.

The assistance offered by the clinic demystifies the appellate process and enables indigent pro se litigants to better represent themselves in appellate court, while stopping short of proffering actual legal advice. No direct representation of clients occurs at the clinic, and no attorney-client relationship is formed there. The Court of Appeal and Public Counsel agree that it is critical that the clinic and its operation not affect—or be perceived as affecting—the court's impartiality and independence. To this end, the Court of Appeal established early on that Public Counsel may not represent clinic litigants. After the clinic opened, the Administrative Office of the Courts also issued rules that formalized the procedures for self-help clinics in California state courts, making clear that representation and legal advice were prohibited.[37] Through a written memorandum of understanding ("MOU") and ongoing review, procedures and practices have been established to ensure that the court's independence is not compromised.

The self-help clinic clearly conveys that it is operated and staffed by Public Counsel and that the Court of Appeal is not, in any manner, advising or representing pro se litigants regarding their appeal or other legal matter. Indigent litigants are told at the clinic that the clinic staff attorney is not their counsel of record, and prominent written disclaimers posted at the clinic inform all individuals seeking assistance that Public Counsel is not their attorney and that no confidential relationship is formed

36. The Judicial Council is the policymaking arm of the California Courts, and is "responsible for ensuring the consistent, independent, impartial, and accessible administration of justice." *Judicial Council of California*, http://www.courtinfo.ca.gov/jc/ (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

37. A complete bar on staff attorneys' representation of clinic customers is not necessarily critical to the integrity of a self-help clinic, and other jurisdictions may observe different rules regarding the propriety of self-help clinic staff also handling cases. For instance, Public Counsel's Proskauer Rose Federal Pro Se Clinic, which assists indigent pro se civil litigants with matters in the federal District Court for the Central District of California, provides legal advice and representation in some cases, with no objection from the court.

when they visit the clinic.[38] Court personnel also notify the pro se litigants of the clinic's relationship to the court and that neither the Court of Appeal nor Public Counsel represents them. Public Counsel staff attorneys are prohibited from representing Second Appellate District litigants encountered through the Program; they exclusively serve a liaison or triage function with regard to representation: Cases may be farmed out to volunteer pro bono lawyers, but they are not handled "in-house" by staff attorneys.

This careful distinction between the Appellate Law Program's provision of information and technical assistance versus direct representation is a limitation in certain ways, but necessary under the rules of the Administrative Office of the Courts. It also offers certain benefits. For instance, because Public Counsel does not establish an attorney-client relationship with individuals using the clinic's services, the clinic can provide technical assistance to both sides of a matter if both sides are pro se. And qualifying litigants still may receive assistance with obtaining representation, due to the Program's functions of screening cases to determine if they are appropriate for pro bono counsel and communicating with pro bono counsel to place cases.

38. Large posters at the self-help clinic read:

Notice

The attorneys and staff at this Self-Help Clinic are available to help all indigent parties who have questions regarding a pending appeal.

The attorneys and staff can help you in preparing your own court filings and can give you general information about the appellate process.

The attorneys and staff cannot go with you to court.

THE ATTORNEYS AT THIS CLINIC ARE NOT YOUR LAWYERS. THERE IS NO ATTORNEY-CLIENT RELATIONSHIP BETWEEN YOU AND THE ATTORNEYS AT THE CLINIC. COMMUNICATIONS BETWEEN YOU AND THE ATTORNEYS AND STAFF AT THE CLINIC ARE NOT CONFIDENTIAL.

You should consult with your own attorney if you want personalized advice or strategy, to have a confidential conversation, or to be represented by an attorney in court.

The attorneys and staff of the Clinic are not responsible for the outcome of your case.

B. Identifying and Referring Matters for Pro Bono Representation

Through the clinic, the Appellate Law Program identifies qualifying indigent litigants with civil appellate matters that may be appropriate for pro bono representation. In order to have their matter placed with pro bono counsel, individuals seeking assistance must meet Public Counsel's standards of indigency,[39] and their appeal must be screened for merit. Because the majority of pro se litigants are eligible for fee waivers, most individuals seeking assistance are income-eligible. If litigants do not meet the guidelines, the clinic directs them to the Los Angeles County and Beverly Hills Bar Associations' lawyer referral services or similar services available in other counties. A qualifying matter exists where an income-eligible unrepresented individual has one or more arguably meritorious positions on appeal. Pro se indigent litigants who are respondents in their civil appellate matters are generally eligible for placement with pro bono counsel (because their success in the trial court already indicates an arguably meritorious position); appellants demand a closer inquiry.

To determine whether an indigent appellant in a civil matter can present one or more arguably meritorious issues to the appellate court, it is necessary to conduct a thorough

39. Litigants are screened for indigency under state law standards:

> "Indigent person" means a person whose income is (1) 125 percent or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project which provides free services of attorneys in private practice without compensation, "indigent person" also means a person whose income is 75 percent or less of the maximum levels of income for lower income households as defined in Section 50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

Cal. Bus. & Prof. Code Ann. § 6213(d) (West Supp. 2010). Public Counsel is fully knowledgeable and experienced in this form of income screening because it applies these standards for eligibility in its other program areas. Anyone eligible for Supplemental Security Income ("SSI"), Los Angeles County General Relief, or free services under the Older Americans Act or the Developmentally Disabled Assistance Act is eligible for Public Counsel services.

evaluation of the appeal. "Meritorious" does not mean the appellant will necessarily prevail but rather that the issue deserves serious consideration by the appellate court and may warrant a ruling in the appellant's favor.[40] The staff attorney's initial review of a matter at the clinic sometimes reveals quickly that there is no possible merit to a case. In other cases, the Appellate Law Program may need to request further information (although litigants do not always provide it) or conduct appropriate legal research. Indigent litigants who qualify for representation may be referred to Public Counsel for an interview at the Public Counsel office, or they may be referred to members of the Appellate Courts Committee of the Los Angeles County Bar Association, so that an appellate attorney may obtain more detailed information about their matter. The Appellate Law Program's initial triage of matters in this way saves time and allows staff and volunteer attorneys to focus on those appeals of arguable merit.[41]

Attorneys evaluating an appeal will review the entire record on appeal, including trial court documents and, where relevant, hearing transcripts, conduct appropriate legal research, and inform the Appellate Law Program whether, in light of the applicable standard of appellate review, the appellant can present one or more arguably meritorious issues to the appellate court. In evaluating the appeal, an attorney is assisting the Appellate Law Program only. The attorney is not forming an attorney-client relationship with the litigant. In fact, the appellant will not know the identity or law firm of the attorney evaluating the appeal; the primary interface remains with the Appellate Law Program staff attorney until the matter is placed.[42]

40. By contrast, an appellant's argument lacks merit if it would be frivolous as that term has been interpreted under California Code of Civil Procedure section 907 (West 2009).

41. As noted by Robin Meadow, a member of the initial steering committee convened by Justice Zelon in 2005, "[s]elf-represented litigants . . . frequently file meritless appeals. It would be hard to generate enthusiasm if the pro bono lawyer were to open the file and immediately discover that there was no possible basis for the appeal." Meadow, *supra* n. 18, at 9.

42. If a volunteer attorney evaluating an appeal determines that the appellant can present arguably meritorious issues to the appellate court, the attorney is welcome to handle the appeal as the appellant's pro bono appellate counsel. Alternatively, the attorney

If, after screening, Public Counsel concludes an appeal is appropriate for pro bono representation and receives the litigant's permission, Public Counsel submits the matter to the Appellate Courts Committee for additional assistance or to lawyers recruited by Public Counsel who are willing to handle appeals pro bono. In cases that are deemed not suitable, Public Counsel sends a letter to the litigants informing them of the decision not to seek pro bono counsel on their behalf. Also, regardless of merit or respondent status, the Program will not seek pro bono counsel for a pro se litigant in any matter in which the other side is also unrepresented.

Both Public Counsel and the Appellate Courts Committee of the Los Angeles County Bar Association recruit and train pro bono attorneys and law student volunteers to provide assistance in reviewing and handling appeals. Taking on cases referred through the self-help clinic provides valuable opportunities for junior practitioners to gain experience under the guidance of veteran appellate attorneys.[43] Because in California oral argument is a matter of right rather than at the appellate courts' discretion, every pro bono attorney who takes on a case and completes briefing receives the opportunity to argue. The leadership of the Appellate Courts Committee is committed to recruiting and mentoring attorney volunteers for appeals referred through the Appellate Law Program, and it has created a special listserve of its non-court members that Public Counsel uses to seek pro bono appellate counsel.

The decision to take or reject a case referred by the Program is in the sole discretion of the potential volunteers. A conflict check is conducted with the potential volunteer attorney to ensure compliance with all applicable statutory and case law. If a check reveals a conflict with a particular attorney, Public Counsel attempts to place the appeal with another volunteer, or if none can be found, refers the litigant to a list of third-party

may return the appeal to the Appellate Law Program, which will place it with other pro bono counsel.

43. *See also Report on Pro Bono Appellate Programs*, *supra* n. 1, at 6–8 (discussing the practical benefits to volunteer attorneys of taking pro bono appeals, while emphasizing that "the fundamental reason to represent appellate clients on a pro bono basis . . . is the important objective of insuring that access to justice is available to all persons, regardless of wealth or influence").

referral agencies and sources. When an individual retains counsel, Public Counsel provides no further assistance to the litigant in that matter.

The Public Counsel Appellate Law Program provides a notable increase in the level of access and quality of service provided to self-represented parties, and it relieves the pressure on Court of Appeal staff to facilitate pro se litigants' every interaction with the court. The coordination role played by the clinic serves litigants' needs and effectively relieves the Clerk's Office of being the "go-to" for every pro se litigant concern. The structure of the Program further comports with the Judicial Council of California Task Force on Self-Represented Litigants' recommendations that self-help centers should "conduct initial assessment of a litigant's needs (triage) to save time and money for the court and parties";[44] "serve as focal points for countywide or regional programs for assisting self-represented litigants in collaboration with qualified legal services, local bar associations, law libraries, and other community stakeholders";[45] and "provide ongoing assistance throughout the entire court process";[46] and that space in court facilities near the clerk's office should be made available to self-help centers for pro se litigants.[47]

Having a competent appellate specialist on site to guide pro se litigants in negotiating the appellate system and coordinate pro bono placement has provided an accessible one-stop shop that addresses both litigants' needs and the court's desire for efficiency. Internal and external evaluation measures bear out this success, as detailed in Part IV, *infra*. These findings are consistent with the report of the Task Force on Self-Represented Litigants, which has recognized both fiscal benefits to the courts and benefits to the greater community produced by pro se assistance programs.[48] Although not without its challenges, the

44. *Statewide Action Plan*, *supra* n. 2, at 13.

45. *Id.* at 14.

46. *Id.* at 15.

47. *Id.* at 25–26.

48. Fiscal benefits recognized by the Task Force include time saved in courtrooms; reduction of inaccurate paperwork; increased ability to identify conflicting orders; fewer inappropriate filings and unproductive court appearances; lower continuance rates; expedited case management and dispositions; promotion of settlement of issues; and

Public Counsel Appellate Law Program's integrated model of technical assistance and pro bono triage has proven effective in the Second Appellate District and presents unique benefits compared with other pro bono/pro se appellate models.

III. COMPARISON WITH OTHER PRO BONO/PRO SE APPELLATE MODELS

The Public Counsel Appellate Law Program model of court-based assisted self-help for indigent pro se civil appellate litigants contrasts with other legal services and pro bono appellate project models. Self-help centers are one of the most popular forms of assistance for pro se litigants in trial courts,[49] and the Judicial Council of California Task Force on Self-Represented Litigants has found that "[c]ourt based self-help centers, supervised by attorneys, are the optimum way for courts to facilitate the timely and cost-effective processing of cases involving self-represented litigants, to increase access to the

increased ability of courts to handle their entire caseloads. *Id.* at 2. Benefits to the greater community recognized by the Task Force include improved climate for conducting business, minimized employee absences due to unsettled family conflicts or repeated court appearances; relieved court congestion allowing all cases to be resolved more expeditiously; more timely disposition of contract and collection matters; promotion of public safety through increased access to orders to prevent violence; support of law enforcement through clear written orders related to custody, visitation, and domestic violence; lessened trauma for children due to homelessness or family violence; and significant contribution to the public's trust and confidence in the court and in government as a whole. *Id*. at 3.

49. Public Counsel has a number of collaborative self-help clinics at the courts, including the Pro Per Litigants Legal Clinic Program to assist indigent pro se litigants with guardianship and conservatorship matters in state court, and the Proskauer Rose Federal Pro Se Clinic to assist indigent pro se litigants with matters in the United States District Court for the Central District of California. The Conference of Chief Justices and Conference of State Court Administrators Joint Task Force on Pro Se Litigation noted several models of assistance programs for self-represented litigants in state and local courts, including self-help centers, programs and court rules encouraging "unbundled" legal services, "technological improvements in the delivery of legal information," and collaborative programs between the private bar, community organizations, and legal services agencies. *Joint Task Force Report, supra* n. 4, at 2; *see also* John A. Clarke, Bryan Borys & Joi Sorensen, *Doing Things without Bureaucracy*, 23 Ct. Manager 31, 32 (Winter 2008) ("There is a variation in services offered [by self-help programs] (from the simple provision of written materials to workshops that last the life of a case) and in the way the services are provided (from court staff attorneys to MOUs with community-based organizations).").

courts and improve delivery of justice to the public."[50] Despite the success of these models at the trial level, the Public Counsel clinic appears to be the first of its kind on site at any state or federal court of appeal. The combination of an on-site civil appellate clinic and pro bono "triage" bridges some significant gaps in the services offered by other appellate programs that depend solely on court staff to assist pro se litigants, primarily provide online or print self-help materials, or emphasize the placement of litigants with pro bono representation on appeal.[51]

In 2005, the Pro Se–Pro Bono Committee of the American Bar Association Council of Appellate Lawyers, co-chaired by Thomas H. Boyd and Stephanie A. Bray, surveyed appellate courts around the country on "programs they had developed to either address the increase of pro se litigation or promote the availability of pro bono appellate legal services."[52] Their report noted a variety of responses, "ranging from efforts to provide informal instruction and assistance to pro se parties, to self-help materials, to extensive studies and reports prepared by outside consultants on the issues, to elaborate and well-developed pro bono programs."[53] The Pro Se–Pro Bono Committee declined to endorse any prototypical program, concluding that a "one size fits all" approach would not effectively address the challenges of pro se and pro bono appellate matters in different jurisdictions,[54] but it did characterize common types of programs within the spectrum of activity reported by courts and bar organizations. Although new pro se and pro bono appellate programs have

50. *Statewide Action Plan*, *supra* n. 2, at 1.

51. Other public interest appellate programs focus on advocacy to further important social objectives. *See e.g.* Pub. Just. Ctr., *Our Work/Current Focus Areas: Appellate Advocacy*, http://www.publicjustice.org/our-work/index.cfm?pageid=69 (accessed Mar. 24, 2011) ("The PJC's Appellate Advocacy Project seeks to influence the development of poverty and discrimination law before state and federal appellate courts. . . . We work to identify cases that have the potential for accomplishing systemic change of the legal and social systems that create or permit injustice for our clients.") (copy on file with Journal of Appellate Practice and Process).

52. *Report on Pro Bono Appellate Programs*, *supra* n. 1, at 1. Portions of the discussion in the ABA report draw significantly from Thomas H. Boyd's 2004 article, *Minnesota's Pro Bono Appellate Program: A Simple Approach That Achieves Important Objectives*, *supra* n. 2.

53. *Report on Pro Bono Appellate Programs*, *supra* n. 1, at 1–2; *see also id.* Appendix at 1–22 (listing pro bono civil appellate programs in state and federal courts of appeals).

54. *Id.* at 2.

been developed since the ABA report, and others further developed or abandoned, the primary categories of programs noted remain relevant. The main types of programs highlighted in the ABA report were informal instruction by court staff, provision of written self-help materials, and formal pro bono appointment programs in some federal and state appellate courts.[55]

As the "first point of contact between pro se parties and the justice system,"[56] the clerk's office is often the primary interface for the questions of pro se appellate litigants. The ABA report indicated that a number of courts have educated their clerk's office staff on providing procedural information, forms, and other relevant resources to pro se parties.[57] One court had "initiated a program where senior staff attorneys are 'on call' to take questions from pro se litigants."[58] However, these informal instructional activities "are tempered by concerns that court employees should not provide legal advice,"[59] and the report found that some courts have expressly prohibited their clerk's staff from advising pro se litigants or providing pro bono representation.[60] As described in Part II, *supra*, by providing an accessible third-party liaison at the court, the Public Counsel Appellate Law Program relieves court staff of the time and ethical concerns inherent in providing more comprehensive assistance to pro se litigants navigating the civil appeals process. Pro se litigants can receive help with deadlines, forms, and filings without unduly burdening court resources, and court staff enjoy the benefits of more comprehensible and timely submissions, as well as less contentious interactions with pro se litigants. Court personnel also need not worry as much about

55. *See id*. at 8–14.

56. *Id*. at 9.

57. *Id.*

58. *Id.* at 14 (describing program of the New Mexico Court of Appeals).

59. *Id*. at 9.

60. *Id.* at 9–10 (reporting that the clerk's staff of the Texas Court of Appeals may not advise pro se litigants or provide pro bono representation, by order of the Council of Chief Justices for the State of Texas). *See also Joint Task Force Report, supra* n. 4, at 5 (discussing courts' historical reluctance to provide assistance to self-represented litigants) ("Rather than take the risk that assistance might be construed as the unauthorized practice of law, many court policies advised staff to err on the side of caution and not provide any assistance at all.").

crossing "the grey line between legal information and legal assistance."[61] These benefits are borne out in Public Counsel's surveys and focus groups of both court personnel and pro se litigants, as summarized in Part IV, *infra*.

The Appellate Law Program also provides additional guidance beyond that offered merely by written materials developed for pro se litigants. The ABA report found that many courts and bar associations have developed written appellate guides and pamphlets, self-help handbooks, procedural descriptions, frequently asked questions and answers, sample forms, checklists, and other relevant materials for print distribution or online availability.[62] For example, one court created an instructional CD about the appellate process, with interactive instructions for filling out appellate forms.[63] Clear guides written in accessible language (and accessible languages, for non-English speakers) are certainly a helpful minimum resource for appellate courts to provide. Such instructional materials also offer an initial way for court clerks to offset some of the burden of guiding pro se litigants; it is more efficient if court staff can direct litigants to straightforward written directions rather than explain everything anew for each pro se litigant. The Public Counsel Appellate Law Program itself depends on and distributes a host of useful written materials,[64] including an extensive self-help manual,[65] a simplified practice guide for both attorneys and pro se litigants,[66] and the online

61. *Joint Task Force Report, supra* n. 4, at 3.

62. *See Report on Pro Bono Appellate Programs*, *supra* n. 1, at 10 (giving examples).

63. *See id.* at 13 (describing CD being created by New Mexico Court of Appeals).

64. Many of the resources mentioned may be accessed through the Second Appellate District's *Resources for Attorneys and Self-Represented Litigants* web page, at http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/selfhelp.htm (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

65. Cal. 2d Dist. Ct. App., *Civil Appellate Practices and Procedures for the Self-Represented* (revised Jan.1, 2008) (available at http://www.courtinfo.ca.gov/courts/courtsofappeal/2ndDistrict/proper/ProPerMan2008.pdf) (copy on file with Journal of Appellate Practice and Process)). The Second Appellate District's self-help manual is based on the *Step-by-Step* self-help manual published by Division One of the Fourth Appellate District of the California Court of Appeal (last modified Mar. 3, 2011) (available at http://www.courtinfo.ca.gov/courts/courtsofappeal/4thDistrictDiv1/4dca_stepbystep.htm) (copy on file with Journal of Appellate Practice and Process).

66. L.A. Co. B. Assn., App. Cts. Comm., *Basic Civil Appellate Practice in the Court of Appeal for the Second District* (2003) (available at http://www.lacba.org/Files/Main%20

resources of the California Courts Online Self-Help Center.[67]

The appellate process is complicated, however, and many pro se litigants find it difficult to understand filing requirements and fill out forms despite having detailed written instructions.[68] Even sophisticated litigants can be baffled by the intricacies of the appellate process. Some litigants have the added barrier of limited literacy skills, or they are not native English speakers, and online or interactive computer resources are less accessible to low-income and homeless individuals without computers or computer skills. Court staff do not always have adequate time or patience to provide the level of technical assistance that such litigants need. The Public Counsel Appellate Law Program clinic can hence better meet the need for tangible step-by-step guidance through the appellate process. The on-site staff attorney may spend up to an hour or more with individual litigants and can help type up forms correctly, print out completed forms and make the proper number of copies, and advise litigants exactly how, when, and where to file their documents.

The ABA report also described a number of formal volunteer programs for the appointment of pro bono counsel in civil appeals, organized by federal and state appellate courts, bar associations, and community organizations. Some federal circuit courts have expanded their procedures for criminal appellate representation under the Criminal Justice Act to include selected civil appeals, or they have put panels of pro bono attorneys in place to appoint as counsel in complex pro se cases or cases that raise issues of first impression.[69] Administration of these programs often depends on court funding for dedicated court staff members, as well as volunteer attorneys who help

Folder /Areas%20of%20Practice /AppellateCourts/Files/070522_Appellate%20Courts%20 Committeeprimer.pdf) (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process)).

67. *See* Cal. Jud. Council, *Self-Help Center*, http://www.courtinfo.ca.gov/selfhelp/ (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

68. *See e.g.* Part IV-A-3, *infra* (quoting Court of Appeal staff member stating, "[R]eading the information is not enough [T]he last thing they need is a form to tell them how to fill out this form.")

69. *See Report on Pro Bono Appellate Programs*, *supra* n. 1, at 10–12 (discussing programs of the United States Courts of Appeals for the Seventh, Second, and Ninth Circuits).

coordinate appointments to the panel. State courts have enacted programs ranging from compiling lists of willing pro bono attorneys and court screening of pro se litigants who might benefit from counsel to collaborative bar/court development of "very effective pro bono programs through which the bar coordinates a pool of volunteer lawyers who will provide pro bono representation in appeals where the court has deemed pro se parties should have legal counsel."[70]

The Public Counsel Appellate Law Program has much in common with these collaborative pro bono programs, with the addition of a community organization, Public Counsel, to screen and coordinate pro bono cases in tandem with the court and bar. Compared with pro bono counsel appointment programs that depend on court staff to screen cases for placement, the Public Counsel Appellate Law Program's pro bono placement process has the advantage of relieving the appellate court of the responsibility for case screening. This placement process has obvious financial, time, and neutrality benefits for the court. Court-based screening processes also tend to kick in after briefing, whereas Public Counsel is in a position to connect with litigants early on and to screen their cases based on a review of the record, getting pro bono counsel in place earlier in the briefing process. Additionally, many other programs lack the Appellate Law Program's focus on indigency, instead basing their screening criteria solely on whether a pro se litigant's case raises significant legal issues (in part to provide an incentive for volunteers).

A comparison of the Public Counsel Appellate Law Program with its neighbor the Ninth Circuit Pro Bono Program highlights some of these differences.[71] As summarized by Robin Meadow,

> The Ninth Circuit's program is staffed and funded by the Court.

70. *Id.* at 14.

71. *See* U.S. 9th Cir. Ct. App., *Pro Bono Program Handbook* (revised Oct. 15, 2009) (available at http://www.ca9.uscourts.gov/datastore/uploads/probono/Pro%20Bono%20Program%20Handbook.pdf) (copy on file with Journal of Appellate Practice and Process).

> The [Ninth Circuit Pro Bono Program] handbook does not identify any indigency requirements and there does not appear to be any financial screening process. Rather, the program focuses on "only cases presenting issues of first impression or some complexity, or cases otherwise warranting further briefing and oral argument." Pro Bono Handbook, at 1. . . .
>
> The Ninth Circuit program generally kicks in after briefing, when staff personnel review the case to determine whether further briefing or oral argument would be helpful.
>
> Ninth Circuit pro bono counsel are appointed by order of the Court and can seek reimbursement of out-of-pocket costs from the court.[72]

Another benefit is that litigants who do not receive pro bono counsel still have access to the procedural information and technical assistance offered through the self-help clinic at the Court of Appeal. The ABA report notes a program that does the same and even goes a step further: the Veterans Consortium Pro Bono Program, which provides assistance to pro se appellants in the U.S. Court of Appeals for Veterans Claims: "Even where appointment of counsel is not eventually made, veterans who request legal services will receive substantive legal advice and direction through the program."[73] Public Counsel, as described in Part II-A, *infra*, is precluded by court rules from providing legal advice and strategy to pro se appellate litigants. On par, though, the Public Counsel Appellate Law Program model appears to provide a more comprehensive array of services, in a more efficient manner, than most programs in other jurisdictions.

IV. EVALUATION AND POTENTIAL FOR REPLICATION

In its four years of existence, the Public Counsel Appellate

72. Meadow, *supra* n. 18, at 11.

73. *Id.* at 12–13; *see also The Veterans Consortium Pro Bono Program* website at www.vetsprobono.org (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

Law Program has been well received by court employees, judges, litigants, and members of the bar. The Program's success is not just anecdotal. Ongoing recordkeeping and internal evaluation procedures, including eight formal focus groups conducted by Public Counsel, reveal tangible positive results for both litigants and court employees, as described below. In providing an on-site, neutral appellate specialist both to give self-help technical assistance and to coordinate pro bono placement, the Program has demonstrably reduced the burden on court staff, improved the quality of record preparation and briefing (at least when pro bono lawyers prepare the briefs), and improved meaningful access to the appellate judicial system. Other California appellate districts have contacted Public Counsel with interest in replicating the Appellate Law Program model, which should prove to be highly transferable to other jurisdictions in California and around the country.

A. Recordkeeping, Evaluation, and Focus Groups

Public Counsel keeps careful records of the work of the Appellate Law Program and analyzes the processes and procedures that are effective in appellate case triage. Regular recordkeeping tracks the number of people assisted, the number of self-help clinic sessions held, the number of appeals placed with pro bono counsel, the number of pro bono attorneys who have worked on those cases, and the outcomes of those cases. The Equal Access Fund Partnership grant that helps fund the clinic also requires Public Counsel to gather feedback from clinic customers and court personnel to help evaluate the clinic's effectiveness. The feedback is collected through annual focus groups and ongoing questionnaires.

1. Appellate Law Program Statistics to Date

As of December 31, 2010, the Public Counsel Appellate Law Program has held 523 sessions of the self-help clinic at the Court of Appeal. Procedural information and technical assistance has been provided to 1,104 litigants. Another approximately 250 individuals who did not qualify for the clinic's services were turned away or received referrals. Of the

1,104 litigants assisted, many have obtained ongoing assistance from the Program, returning multiple times to the clinic over the course of their appeals.

To date, the Program has placed thirty-six cases with pro bono counsel for representation on appeal, three cases with pro bono counsel for representation in appellate mediation, and thirty-two cases with pro bono counsel for evaluation only. A total of 117 pro bono attorneys have worked on these appeals in some capacity. In 2008, pro bono attorneys donated 2,833 hours to the Appellate Law Program, adding up to $1,095,540 worth of free legal aid. Of the appeals that have gone on to decision, six appellants won an outright reversal of the judgment, ten appellants experienced affirmances, and three appellants obtained a partial reversal and partial affirmance. Each of the six respondents whose appeals were placed with pro bono counsel won an affirmance of the judgments in their favor. One of the cases placed with pro bono counsel was settled, and settlements were obtained in two other appeals without the use of mediation.

The specifics of two successful appellants' cases illustrate the issues that can be at stake for pro se litigants. In one case, a litigant became the owner of real property in 1995 when his elderly aunt transferred the title to him. However, in 2006, unbeknown to the litigant, someone forged the signatures of the aunt and a notary on a grant deed purporting to transfer the property to a third party. As a result, the litigant was rendered homeless and was forced to live out of his car for two years. Acting pro se, he filed a handwritten complaint in Los Angeles Superior Court against the purchaser, the purchaser's realty company, and the title company that searched the county recorder's records in advance of the purchase. The trial court sustained the defendants' demurrers without leave to amend and dismissed the lawsuit, saying the plaintiff did not adequately explain why he was entitled to relief. The litigant appealed and sought assistance from the Appellate Law Program, which evaluated the appeal and placed it with a pro bono appellate attorney, Sarvenaz Bahar.[74] Ms. Bahar argued that the trial court

74. Ms. Bahar was later awarded the 2010 Public Counsel Appellate Law Program Volunteer of the Year Award for most pro bono cases handled with the Program. To watch

erred in dismissing the action because the facts established that the defendants committed actionable wrongs that harmed the litigant. Subsequently, the defendants quitclaimed the title to the property back to the litigant, effectively conceding that he had been the property's true owner all along.

In another case, a disabled indigent individual representing himself filed a personal injury lawsuit in November 2005 against the other driver in an auto accident. In December 2006, the trial court dismissed the case under California Code of Civil Procedure § 583.410, which provides that a "court may in its discretion dismiss an action for delay in prosecution pursuant to this article on its own motion or on motion of the defendant if to do so appears to the court appropriate under the circumstances of the case."[75] However, this provision is limited by the subsequent section, which prohibits dismissal during the first two years that an action is pending.[76] The Public Counsel Appellate Law Program first helped the litigant reinstate his appeal, as the Court of Appeal had dismissed it for failure to comply with a court rule. The Appellate Law Program then arranged for pro bono counsel at Arnold & Porter LLP to evaluate the merits of the appeal. The Arnold & Porter lawyers determined that the litigant had a strong argument that the trial court erred in dismissing his case, and they agreed to represent him, pro bono. On August 1, 2008, the Second Appellate District reversed the judgment, agreeing that the trial court erred in dismissing the case under § 583.410 where only thirteen months had passed since the complaint was filed.

These case outcomes are an encouraging measure of the Public Counsel Appellate Law Program's value for litigants.

2. Surveys of Self-Help Clinic Customers and Court of Appeal Personnel

Public Counsel's comprehensive evaluation process gauges the effectiveness of the Appellate Law Program by surveying

a video interview with Ms. Bahar concerning this award, go to http://www.publiccounsel.org/video?id=0037 (Jan. 6, 2011).

75. Cal. Civ. Proc. Code Ann. § 583.410 (West Supp. 2010).

76. Cal. Civ. Proc. Code Ann. § 583.420(a)(2)(B) (West Supp. 2010).

litigant perceptions regarding their experiences at the self-help clinic and determining how and to what extent the clinic benefits the court. Questionnaires have been a targeted way to collect this kind of feedback. Public Counsel distributes them in person at the Court of Appeal and via email, routinely evaluating the surveys and conducting comprehensive reviews of survey data as needed for internal reviews and external grant reports.

From pro se litigants, Public Counsel seeks to discover the following:

> How did they learn about the self-help clinic?
>
> Did the clinic make the appellate process easier?
>
> Did litigants receive information and assistance that helped them understand their situation better?
>
> Were litigants satisfied with the quality of service they received such as helpfulness of staff, accessibility, and responsiveness?
>
> Would they recommend the clinic to others?

From the Court of Appeal, Public Counsel seeks to discover information such as whether administrative delays due to self-represented litigant error were reduced, and how the appellate administrative process may be made more accessible, equitable, and responsive.

The surveys of court personnel reveal that the clinic has been of tremendous assistance to Court of Appeal staff. In every evaluation conducted since the program began, court staff members have expressed their appreciation for the Appellate Law Program's services and have confirmed that the presence of the appellate self-help clinic has greatly reduced the burden on them. As one court staff member puts it, "After speaking with [the clinic attorney], litigants are more educated about the process, and they're more receptive to what we have to say."[77] Court personnel describe pro se litigants as "more informed" in their questions and better prepared in their paper filings as a result of the self-help clinic and increased access to pro bono counsel. One response stated that pro se litigants "may still have some challenges with some of the components of the filing but

77. This and the following several responses are from court personnel questionnaires on file with Public Counsel.

we are generally seeing a significant overall improvement for Self-Represented litigants who utilize the Clinic."

Counter traffic at the Clerk's Office has also been relieved, and having an office near the Court of Appeal is seen as an important benefit by court personnel. "It visibly cuts down on appellants' frustrations" when they realize they can receive more detailed advice even though they are at a court, and court personnel spend "less time having to explain procedures to litigants." "In short, [the clinic] provides a buffer and helps the parties have a better understanding of the appeal process/system." Court staff members are grateful to be able to refer litigants to a "totally impartial" appellate specialist who "does not work for the courts and is not looking for clients"—she is just a "liaison between the appellant and the court." The primary suggestion for improvement by court staff has been to continue and further expand the clinic to five days per week.

Litigant survey feedback has also been overwhelmingly positive. Self-help clinic customers routinely report that they would have been unable to proceed with their appeal (or defend against another party's appeal) without the clinic's assistance. Gratitude is a common theme of the evaluations ("This place is great a life saver . . . Thank you!!!"),[78] and the staff attorney is described as "a great asset to citizens working through the Appeal process." Suggestions for improvement most frequently include provision of legal advice and guidance with substantive legal arguments—services, obviously, beyond the capacity of the clinic's neutrality. One litigant acknowledged, "I don't think they could do any more without actually representing the person looking for help. The service was most helpfuly [sic] informative and outstanding. I COULD NOT HAVE COMPLETED IT without the Clinic."

3. Annual Litigant and Court Personnel Focus Groups

Formal focus groups have furnished another useful way to capture information and suggestions for improvement. Public Counsel conducted the first round of in-person focus groups, one

78. This and the following several responses are from litigant questionnaires on file with Public Counsel.

each for small groups of clinic users and Court of Appeal personnel, in August 2007. Similar focus groups have been repeated annually.[79] Public Counsel uses a variety of methods to recruit focus group participants, including in-person requests at the clinic and telephone and email requests. There have been three to five participants in each focus group, which are confidential and facilitated by Public Counsel staff members unaffiliated with the Appellate Law Program. The Court of Appeal personnel focus groups have taken place at the courthouse, and the clinic-user focus groups have been held at Public Counsel headquarters. Indigent litigant participants have received incentives such as gift cards, metro tokens, and a meal during the focus group to encourage their participation. With participants' informed consent, the focus group discussions are audiotaped and later transcribed for Public Counsel's review.

Discussion topics for the litigant focus groups have included the following:

> How did you find out about the Public Counsel appellate clinic?
>
> Did the self-help clinic help you with your appeal, and if so, how?
>
> If not, in what way did the clinic fail to help?
>
> How can the self-help clinic be improved?
>
> What would you have done if the clinic did not exist?

Discussion topics for the court personnel focus groups have asked these questions:

> Is the self-help clinic making a difference in helping unrepresented litigants correctly fill out forms and comply with court rules?
>
> What are the most and least helpful aspects of the self-help clinic?
>
> What can Public Counsel do to improve the clinic?

79. Public Counsel conducted the second round of focus groups with clinic customers and court personnel in August 2008, the third litigant focus group in August 2009, and the third court personnel focus group in September 2009. Public Counsel conducted the fourth round of focus groups in October 2010.

In the first focus group, litigants reported hearing about the appellate self-help clinic primarily from the Clerk's Office at the Court of Appeal, with a few learning about the clinic from other sources such as the Los Angeles County Law Library or from Public Counsel fliers posted at the Los Angeles Superior Court.[80] In the 2009 focus group, litigants had generally learned about the clinic through the mailed flier from the Court of Appeal after their matter was filed pro se. They liked the in-person aspect of the self-help assistance offered ("[B]esides the internet, it helps to be able to speak to someone and visually see someone and get some kind of help through the process"). Most litigants had multiple interactions with the clinic and expressed appreciation for the directing attorney's communication style ("[S]o nice!"). "What a surprise" to come across a "very decent, very professional person," said one litigant. Focus group litigants also liked the clinic attorney's responsiveness such as calling back right away when contacted by phone.

The litigants were aware that the help they were receiving was not legal advice. As one noted, the clinic attorney "can't help you with the case, but can guide you in the right direction and give you information to help you out." This procedural assistance was still invaluable for many, though. A litigant stated that "without their help I doubt I can have pursued this appeal. And if I hadn't ran into the help of the Clinic I probably would have lost the appeal by one of the built-in defaults that the system unfortunately has."

Focus group litigants suggested that the clinic be advertised more, including distribution in public libraries and churches. Litigants also complained about sometimes waiting long hours to see a clinic attorney, and they expressed disappointment that the clinic did not give out legal advice and could not provide pro bono counsel for everyone. The inability to give legal advice was an especially frustrating limitation for some: "I have asked questions and she would come out and say: I'm not your attorney, I'm not representing you. But she could—she has answers." Another litigant who expected legal advice complained, "[W]hat I wound up doing is spending the money I

80. This and the following several responses are from transcriptions of litigant focus groups on file with Public Counsel.

didn't have because I couldn't get the resources that I thought I was gonna get. . . . [I]t was a little misleading."[81] In general, though, the clinic's efforts were appreciated. As one litigant put it, "[I]ndigent litigants . . . don't really have the firepower to go up against judges and all these lawyers that are out there. But the one thing that we can get here through Public Counsel is an education to get back into that courtroom, and a lot of help, and a lot of moral support."

Participants in the court personnel focus groups have included intake clerks, handlers of predocket appeals (before the appeals are assigned to one of the eight Divisions of the Second Appellate District), settlement and mediation program coordinators, divisional support personnel, and other clerks and staff. Court personnel report fairly constant contact with the program director, and they give frequent in-person referrals to the clinic.[82] Court staff find that the clinic services have soothed pro se litigant confusion, suspicion, and frustrations: "The skepticism and the conspiracy is kind of laid to rest when I let them know she's not with the court; she's a separate entity all her own, pro bono project, with Public Counsel and nothing to do with the Court of Appeals." "[O]nce they've had a chance to talk to her, I find that they stick with it and feel very at ease." "It helps them to have someone to vent their frustrations with the system," then "they'll come back [to the Clerk's Office] and they're more receptive to what we're saying." The on-site location is a bonus, and staff members say that litigants seem relieved "[w]hen you can give them another place to go, which is right down the hall, they don't have to repark their car, find Mapquest how to find it." Court personnel report virtually never hearing complaints about the clinic from litigants, saying that

81. Another issue that came up in the litigant focus groups was that the cost of reporter's transcripts on appeal was a big barrier for indigent appellate litigants, who have to pay for their transcripts out of pocket before their matter can go forward on appeal or be screened for pro bono placement in appeals where reporters' transcripts are required (for example, after trials). Although this is a matter outside of Public Counsel's control, it highlights one of the many financial barriers to appellate justice for low-income litigants.

82. This and the following several responses are from transcriptions of court personnel focus groups on file with Public Counsel.

the feedback they did receive indicated that "[e]verybody is getting equal treatment."[83]

The focus groups confirmed that the liaison function of the clinic is of great value to court personnel. They see the clinic as a useful coordinator for accommodating the special needs of pro se litigants, after which "they're more receptive to what we have to say." Court staff reported having quite a bit of communication with clinic attorneys, but did not see it as a burden, since it took the place of more time-consuming and frustrating direct interactions with litigants: "[I]t's a cohesive triangle. Instead of me and him battling [,] we have another person that's kind of a coordinator." "[J]ust having her there is a buffer." "[H]aving someone to maybe explain the process [and] what's going to happen down the road, probably helps a lot." Court personnel acknowledge difficulty posed by the intricacies and length of the appellate process for pro se litigants ("[T]he appeals process is tough to navigate. It's completely different." "[R]eading the information is not enough . . . . [T]he last thing they need is a form to tell them how to fill out this form."), and said that the accuracy of litigant filings and documents is improved by access to the clinic. One staff member said he found himself also having to write somewhat fewer explanatory letters to pro se litigants who submit incorrect filings ("probably 15 percent [fewer] at best"). Court personnel in the 2009 focus group stated that they had seen a noticeable improvement in filings and litigant attitude over the (then) three years of the program.

Court of Appeal personnel suggested that they would like to see the full range of clinic services open to a wider range of income levels—"in pro per, fee waiver or not. [I]t would be nice if it were open to more people who can pay the $655 to get in the door if they don't qualify for a fee waiver but they just can't afford the $20,000 that it takes." This recommendation was already somewhat implemented by the Appellate Law Program's removing the indigency screening process for initial

83. Court staff members in one focus group elaborated: "I want to say on the record that I get the sense that everybody over there gets fair treatment regardless of what their social status is, what the hierarchy is, what their case is about, religion, race, gender." "Crazy, not crazy." "Homeless, showered, not showered [Director Lisa Jaskol] just sees everybody just like it's not even you know [sic]—and that's a great thing, I think." "Her first reaction is always open, friendly, and the same, whoever you are."

visitors to the clinic. Placing more cases with pro bono counsel was also recommended; court personnel noted that litigants often "come in with the expectation that [the staff attorney is] gonna represent them" but that the clinic "quells that belief right off." Court staff members also advocated for increased hours of the clinic, since pro se litigants turn up at the Court of Appeal with needs every day and hour of the week and often take time off work and may travel great distances via public transportation to do so ("[T]he fact that it's not open every day is to me the biggest drawback." "[T]he only complaint, if there is a complaint[,] is that it would be nice if they were here five days a week.").

Court personnel additionally remarked that some litigants who arrived less prepared took up lots of valuable consultation time with the clinic attorney. They suggested including more initial information on the referral flier so that litigants would know what to bring with them on their first visit, or creating an initial intake questionnaire to target the clinic's services most effectively. Some staff members who had attended conferences on other self-help programs suggested the addition of a stand-alone computer for litigants to use when filling out forms with clinic assistance. Court staff members in the first focus group were sometimes unsure exactly what range of services the clinic offered, were unaware of changes such as dropping the indigency screen for initial visits, or thought that the clinic attorneys could offer legal advice and represent litigants. They agreed they would like to be better informed about developments ("As the project has grown, we're a little unclear as to all the services that are available."). Later focus groups showed more familiarity with the program.

Although time-consuming, these evaluation measures are critical to assessing and improving the Appellate Law Program, and they have assisted Public Counsel in securing and maintaining funding for the Program. Overall, careful recordkeeping and evaluation processes via survey and focus groups have indicated the success of the Public Counsel Appellate Law Program both for the Court of Appeal and for pro se indigent litigants.

B. Awards

In addition to these important internal measures of success, the Public Counsel Appellate Law Program has been publicly recognized for its innovation and leadership. In June 2008, Director Lisa Jaskol received an award from the Los Angeles Chapter of the National Lawyers Guild for her work with the Appellate Law Program, and in 2010 she was honored with the Los Angeles County Bar Association's Pamela E. Dunn Appellate Justice Award "to recognize significant contributions to public service and appellate practice."[84]

In 2009, the Second Appellate District was awarded a Ralph N. Kleps Award for Improvement in Administration of the Courts for its implementation of the self-help clinic.[85] This biennial awards program, administered by the Judicial Council of California, recognizes programs in the state's courts that are innovative, replicable in other courts, and have demonstrated results.[86]

The Judicial Council's decision to honor the Second Appellate District for its partnership with Public Counsel and the Appellate Courts Committee of the Los Angeles County Bar Association speaks to the success of the clinic's collaborative,

84. *See* Janet Shprintz, *National Lawyers Guild Honors Jaskol, Blasi*, Variety (June 19, 2008) (available at http://www.variety.com/article/VR1117987806.html?categoryid=1985&cs=1) (copy on file with Journal of Appellate Practice and Process)); *see also Lisa Jaskol*, http://www.publiccounsel.org/pages/?id=0013 (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process); *General Information About the Los Angeles County Bar Association Appellate Courts Committee*, http://www.lacba.org/Files/Main%20Folder/Areas%20of%20Practice/AppellateCourts/Files/ACC%20Lacba%20faq%20_2_.pdf (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process). Ms. Jaskol has also been honored by the Impact Fund.

85. *See Innovations*, *supra* n. 3, at 16–17; Jud. Council Cal., *California Court Programs Win Top Awards*, News Release No. 21 (Apr. 24, 2009) (available at http://www.courtinfo.ca.gov/presscenter/newsreleases/NR21-09.PDF) (copy on file with Journal of Appellate Practice and Process)); *see also Kleps Award Recipient 2008–2009 Appellate Self-Help Clinic*, http://www.courts.ca.gov/2195.htm; select Appellate (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process).

86. The Kleps Award also evaluates programs on the extent to which they address or incorporate key elements of "procedural fairness" such as respect, voice, neutrality/impartiality, and trust. For history and complete description of the Kleps Award Program, see *Innovations*, *supra* n. 3, at 4–8; *Kleps Award Recipient*, *supra* n. 85.

on-site program model and its potential to be transferable to other courts of appeal.

C. Advantages and Challenges of Replicating the Appellate Law Program Model

Public Counsel welcomes the opportunity to share its experience in creating the Appellate Law Program with courts and organizations in other jurisdictions. Public Counsel has consulted on creating similar programs in other districts of the California Court of Appeal, but as of early 2011, no others yet exist.[87] Now that the Appellate Law Program has demonstrated its own success and sustainability over a four-year span, it is a useful model for other pro se/pro bono appellate programs. In addition to the substantive benefits discussed above, the Public Counsel model has certain characteristics that give it an advantage as a replicable program, along with certain challenges for replication.

Among the advantages of the Public Counsel Appellate Law Program are its simplicity and its neutrality. At its core, the Program's success consists of placing one neutral appellate specialist in person at the court, to provide technical assistance to pro se litigants and help them connect with and navigate a web of volunteer and judicial resources. Assuming a functional and supportive local appellate bar and court of appeals, the straightforward act of getting an attorney in place to fill such a triage role provides almost instantaneous relief for litigants and court staff. Pro se litigants have a friendly helper to go to for tangible procedural assistance, who can additionally mobilize, connect, and coordinate community resources and service networks as needed.

87. In April 2007, the First Appellate District of the California Court of Appeal, based in San Francisco, launched a more limited pilot program, in partnership with Bay Area Legal Aid, to match indigent pro se appellate litigants with pro bono counsel. *See* Meadow, *supra* n. 18, at 11. This program did not include a clinic or self-help component; it was discontinued in 2008. According to Tiela Chalmers, executive director of the San Francisco Bar Association's Volunteer Legal Services Program, the First District program's failure to thrive was due to the way it was structured as well as reluctant justices who worried that litigants might get unfair advantage from the program's services. *See* Ernde, *supra* n. 18.

Even a part-time person can add a great deal of value, in a way that is easy to explain, understand, and quantify for courts and funders. Funding, of course, is another story, as discussed below; although theoretically the staff attorney role could be filled by a volunteer appellate attorney or team of volunteers, the benefits and stability are greatest with a dedicated staff member in place. Although the strict walling off of the Appellate Law Program from representation of clinic litigants is in large part a function of the policies of the jurisdiction, the Program's neutrality and limitation on representation and direct legal advice certainly provide an advantage for court buy-in for similar programs, as well as a possible advantage in securing funding from state or bar funds in place for court partnership programs.

Primary challenges for replicating the Public Counsel Appellate Law Program model in other jurisdictions include funding, court support and leadership, collaborative planning, and institutional and staff capacity. Funding is always a key issue for the founding and longevity of any public service project, especially in leaner economic times when many court systems and nonprofit community organizations are struggling financially. The Judicial Council of California's Task Force on Self-Represented Litigants has proclaimed that "[i]t is imperative for the efficient operation of today's courts that well-designed strategies to serve self-represented litigants, and to effectively manage their cases as all stages, are incorporated and budgeted as core court functions"[88] The Task Force points out that "[t]he same economic trends currently creating adverse fiscal conditions for courts are also working to increase the population of self-represented litigants,"[89] but all budgetary bets are off in the current era of furloughs and court closures. The Appellate Law Program's founding collaborative had the good fortune of securing a State Bar of California Equal Access Fund Partnership Grant to staff the Program,[90] but that grant itself is time-limited and unable to ensure program continuity beyond the start-up years. Public Counsel must seek support from

88. *Statewide Action Plan*, *supra* n. 2, at 1.

89. *Id.* at 10.

90. *See* Part I-C, *supra*.

foundations, corporations, and individual donors to fund the Appellate Law Program's ongoing operations, and any similar program will need to anticipate the same.

However, as the largest pro bono public interest law firm in the country, Public Counsel also commands resources beyond those of many public interest legal organizations. In Public Counsel's forty-year history, no program has been discontinued for lack of funding, and the organization has substantial unrestricted funds available to support its work.[91] Public Counsel's institutional capacity includes community networks and organizational reputation as well as financial resources. As a well-respected organization with connections to major Los Angeles law firms, public and business leaders, and the larger public interest community, Public Counsel's involvement brings legitimacy and security to a new public interest legal project in a way that may be difficult for smaller organizations to replicate.

Judicial initiative and leadership are also key challenges for replicating the Appellate Law Program. In the Second Appellate District, the Program owes its existence to the foresight of Justice Zelon, who has a "career-long commitment to equal access to justice," and has served as chair of the California Commission on Access to Justice.[92] In other jurisdictions, the

91. Unrestricted funds are generated from Public Counsel's annual William O. Douglas Award Dinner (raising approximately $2 million each year or roughly thirty-two percent of Public Counsel's operating budget), an annual fund drive (raising approximately $300,000 or five percent of Public Counsel's operating budget), and other fundraising campaigns throughout the year.

92. *See* Meadow, *supra* n. 18, at 9. Among other career honors, Justice Zelon received the 2010 Benjamin Aranda Access to Justice Award, sponsored by the State Bar of California, California Commission on Access to Justice, Judicial Council and California Judges Association. *See Justice Laurie Zelon Honored with Benjamin Aranda Award*, Cal. Bar J. (Nov. 2010), *available at* http://www.calbarjournal.com/November2010/TopHeadlines/TH2.aspx (accessed Mar. 24, 2011) (copy on file with Journal of Appellate Practice and Process). "The award, named for the founding chair of the Judicial Council's Access and Fairness Advisory Committee, honors a trial judge or an appellate justice whose activities demonstrate a long-term commitment to improving access to justice." *Id.* In 2000, the Pro Bono Institute in Washington, D.C., named the Laurie D. Zelon Pro Bono Award in Justice Zelon's honor and made her its first recipient, and in 2009, the Los Angeles County Bar Association awarded her the organization's highest honor, the Shattuck-Price Outstanding Attorney Award for "outstanding dedication to the high principles of the legal profession and the administration of justice." *See* Sherri M. Okamoto, *LACBA Selects Justice Zelon for Shattuck-Price Award*, Metro. News-Enterprise

judiciary may view pro se litigants as an annoyance and be resistant to the idea of assisting them on appeal, or may be unwilling to commit to any allocation of facilities and staff assistance to support such a program. The Public Counsel Appellate Law Project also was founded in California, a state with a demonstrable commitment to addressing the issues of pro se and indigent litigants through statewide bar and judicial initiatives and task forces. The Appellate Law Program's founding and success is also due to years of dedication and coordination by Public Counsel, the Court of Appeal, and the Appellate Courts Committee of the Los Angeles County Bar Association.[93] Without bench and bar buy-in and the right community organization to administer the program and provide a staff attorney, effective collaborative planning cannot occur.

Finally, staff capacity is important. Recruiting the right directing attorney for the Public Counsel Appellate Law Program was a breakthrough for the project. Director Lisa Jaskol has years of civil appellate expertise, a long commitment to doing work on behalf of low-income and underrepresented individuals, and she is a well-known and respected leader in the Los Angeles appellate bar and public interest community.[94] Finding a staff attorney of appropriate appellate experience and commitment—and one willing to accept the modest salary concomitant with public interest work—could be a challenge for other programs.

CONCLUSION

Unrepresented indigent litigants constitute a large number of court users, and their numbers are growing.[95] Pro se litigants

(Los Angeles, Cal.) (Mar. 27, 2009) (available at http://www.metnews.com/articles/2009/zelo032709.htm).

93. *See* Part I-B, *supra*.

94. *See supra* n. 12 *and* Part I-C.

95. "A number of social, economic, and political factors—especially the rising cost of legal representation relative to inflation, decreases in funding for legal services for low-income people, and increased desire on the part of litigants to understand and to actively participate in their personal legal affairs, are believed to be at the root of the increase." *Joint Task Force Report*, *supra* n. 4, at 3. *See also Statewide Action Plan*, *supra* n. 2, at 9–

often approach the court system with distrust, which may stem in part from courts' inability to give legal advice and the limited time that court staff members generally have to guide unrepresented litigants through the appellate process.[96] The Public Counsel Appellate Law Program significantly enhances equal access to the judicial, service, and quality of justice for this population, by providing pro se litigants with the tools and technical assistance they need to represent themselves more effectively in the appellate process, and by coordinating the placement of appropriate cases with pro bono appellate counsel. These services also help reduce delays in the Court of Appeal administrative system caused by improper or inaccurate filings, thereby improving the quality and efficiency of the judicial services that can be provided to the public.

The Judicial Council of California, in honoring the Second Appellate District with a Kleps Award for instituting the appellate self-help clinic, made the following helpful suggestions for replicating the program in other courts of appeal:

- Develop a local working group of individuals from the bar and community to brainstorm a list of resources that can be tapped.

- Obtain funding to staff the clinic with an attorney who is not paid by or answerable to the court.

- Find space in or near the courthouse to make the clinic as accessible as possible to litigants.[97]

To this list, we would also add:

- Solicit judicial support for the program and ensure that the working group includes at least one

10, 11–12 (discussing the growth in numbers of pro per litigants and those unable to afford private representation in California and elsewhere).

96. *See e.g.* Clarke et al., *supra* n. 49, at 33 ("The standard response of self-help staff [is] that, although it is clear to the litigants that we know something they don't, we won't tell them[.]").

97. *Innovations*, *supra* n. 3, at 17.

appellate justice and key court personnel such as the Clerk of Court.

- Contact Public Counsel for resources and consultation on establishing a similar program in your jurisdiction.[98]

- Build in recordkeeping and evaluation measures from day one, in order to gauge the success of the program and demonstrate the program's impacts to the court and to funders.

The Public Counsel Appellate Law Program meets an important community need and has been a boon to the Court. A neutral coordinator on site at the Court of Appeal puts indigent pro se litigants more at ease with appellate practices and procedures, provides an efficient way to triage and trouble-shoot litigant issues, and eases the burden on court staff of dealing with pro se litigants. As the Judicial Council of California's Task Force on Self-Represented Litigants has noted, there is "a unity of interest between the courts and the public with respect to assistance for self-represented litigants."[99] With the growing national awareness of the need to provide additional service to self-represented civil appellate litigants by the courts and bar, collaborations to install similar programs can expect to meet with interest and success.

98. Public Counsel Appellate Law Program Director Lisa Jaskol may be reached at ljaskol@publiccounsel.org for further information about the Appellate Law Program.

99. *Statewide Action Plan supra* n. 2, at 1.

SAN DIEGO COUNTY BAR APPELLATE PRACTICE SECTION
ACCESS-TO-APPELLATE-JUSTICE PRO-BONO PROPOSAL

I. EXECUTIVE SUMMARY

The Appellate Practice Section (APS) of the San Diego County Bar Association respectfully submits this proposal seeking to establish a pilot program that connects interested pro bono attorneys with self-represented appellate litigants who have cases in the Court of Appeal, Fourth Appellate District, Division One.

The APS found a manifest need for the program. (See Part II) One-third of Court of Appeal cases have at least one pro per litigant. These litigants have a difficult time presenting their cases and often create extra administrative burdens for the courts and their clerk's offices. At the same time, many local attorneys would like to provide pro bono appellate representation but have no way to connect with these litigants.

The APS proposal is based on a one-year study of successful appellate pro bono programs in other jurisdictions and on discussions with stakeholders in our local appellate community. (See Part III) The proposed pilot program is tailored to needs and resources in San Diego County. It utilizes a "free market" approach; covers only appellate litigants with fee waivers; applies only to cases with at least one represented party; requires moderate experience by pro bono attorneys; establishes an attorney-mentor panel; does not require direct Court of Appeal involvement; and will not require initial funding. The program details are summarized in Part IV. A program flow-chart is attached (Exhibit 1).

The long-term program objectives include: (1) promoting access to justice for low income appellate litigants; (2) enhancing efficiency of court procedures serving these litigants; and (3) providing a mechanism for local attorneys to obtain appellate experience and give back to the community. The short term program goal is to connect at least three pro per litigants with pro bono counsel. (See Part V) In preparing the proposal, we have evaluated risk management issues and possible future steps (See Parts VI and VII).

We appreciate your consideration of this proposal, and look forward to working with the Bar on implementation. The Court of Appeal, Fourth District, Division One is aware of the proposal and supports the general concept. We shall deliver this written proposal to the court at the same time it is provided to the SDCBA board.

The APS committee responsible for the study and proposal was led by cochairs Melanie Gold and Helen Irza. The committee members include: Robert Shaughnessy (APS chair), Elisabeth Cannon, David Kay, Johanna Schiavoni, Randall Christison, Kevin Green, Leslie Rose, Shanna Pearce, Christine Pangan, Richard Benes, and Heather Guerena. The committee received input and guidance from Court of Appeal Justice William Dato.

II. **BACKGROUND**

Several years ago, the APS identified a problem pertaining to the number of self-represented appellate litigants who were unable to effectively present their appeals in the state appellate courts. About one-third of all civil cases in the Court of Appeal, Fourth Appellate District, Division One have at least one unrepresented litigant.

In an attempt to address this problem, the APS—working with the Court of Appeal, Legal Aid, Law Library, and the SDCBA—created a monthly workshop (Civil Appellate Self-Help Workshop or CASHW) in which: (1) appellate attorneys present a power point to explain the state appellate process and (2) self-represented litigants have the opportunity to meet with attorney volunteers to answer solely procedural questions. During these sessions, no attorney-client relationship is permitted, and attorneys are prohibited from providing legal advice.

The CASHW workshop has helped litigants to better understand the basics of the complicated appellate process. But it is widely understood that huge gaps remain. Without an attorney, pro per litigants struggle to designate a record, understand and comply with the deadlines, identify non-frivolous issues, and present the facts, law, and arguments in an understandable manner.

Last year, the APS discussed these problems and also recognized: (1) numerous attorneys in the San Diego legal community wish to handle pro bono appeals to obtain experience and/or pursue appellate specialization accreditation; (2) the superior court clerk's office and the Court of Appeal devote substantial extra time to processing appeals filed by self-represented litigants; (3) the courts would substantially benefit if litigants had legal representation; (4) the California Supreme Court has emphasized the importance of providing access to justice to California litigants, including access to appellate justice (see *Jameson v. Desta* (2018) 5 Cal.5th 594); and (5) many successful pro bono programs exist in other legal domains, particularly for cases in the San Diego Superior Court.

With knowledge of these factors, the APS created a subcommittee to explore the possibility of creating a state appellate pro bono program for the San Diego County area (the Access-to-Appellate-Justice (ATAJ) committee). **It was understood that this program would be a win-win for the litigants, courts, attorneys, and bar.**

III. **ATAJ COMMITTEE'S INVESTIGATIONS AND OUTREACH**

The ATAJ committee included appellate attorneys from both public and private practice, large and small firms, civil and criminal fields, and law school faculty. They are experienced appellate attorneys who have practiced in this community for many years.

The committee first undertook an extensive study of successful appellate pro bono programs in other jurisdictions. They learned the Ninth Circuit has a flourishing pro bono appellate program with a long waiting list of attorneys who wish to provide pro bono representation. At least 17 states also have thriving pro bono appellate programs, and many additional jurisdictions are considering adopting programs.[1] Committee members interviewed program founders and managers from the Ninth Circuit and eight states: Massachusetts, Mississippi, Colorado, Arizona, Texas, Oregon, New York, and Hawaii. Members collected detailed information about eligible cases and litigants, intake and screening procedures, attorney panel membership and management, court involvement, and program expenses and funding.

ATAJ committee members also spoke to individuals who have worked on these issues in California state courts. For example, one member interviewed Los Angeles Superior Court Judge Lisa Jaskol, who directed a self-help clinic for pro se civil appellants and respondents through Public Counsel of Los Angeles before her bench appointment. The Public Counsel program included a successful referral component that matched select unrepresented litigants with interested pro bono counsel. Judge Jaskol detailed the strengths and weaknesses of the Public Counsel program, and the ATAJ committee used that information in designing the proposed pilot program.

The ATAJ committee then investigated local programs. It obtained helpful information from Appellate Defenders about the court appointment programs for indigent criminal and dependency appeals. Committee members also spoke with managers of the San Diego Volunteer Lawyers Program and San Diego Legal Aid Society to learn about their pro bono programs for indigent litigants in superior court. They additionally had extensive conversations with representatives of the SDCBA's Legal Referral and Information Service (LRIS) about the possibility of using LRIS's resources and structure to house the appellate pro bono program. Although it was ultimately decided that the LRIS model would not work (e.g. because it is a fee-based and referral-type program), the committee gained valuable information from these discussions.

---

[1] See Exhibit 2, ABA, Manual on Pro Bono Appeals Programs, 2nd Ed. Nov. 2017, https://www.americanbar.org/content/dam/aba/administrative/appellate_lawyers/cal_probonomanual.authcheckdam.pdf.)

The committee then conducted a series of micro-meetings with local stakeholders with the goal of selecting and designing a model program for our own legal community. For example, committee members met with a group of experienced appellate specialists who gave insight into panel application, management, and mentoring issues. They also had discussions with pro-bono coordinators for large law firms in San Diego. Committee Members also met with representatives from the Bar Association and an attorney specializing in malpractice liability to discuss structuring the program to preclude any referral liability.

Committee members also discussed intake and screening issues with clerks and their supervisors in the Appellate Division of the San Diego Superior Court and the Court of Appeal. The superior court clerk's office appears highly receptive to the pilot program and to assisting with its implementation (assuming court approval). Many local pro bono programs have offices in the superior court (including in the areas of domestic violence, conservatorship, unlawful detainer, guardianship, family law, civil harassment, elder abuse, small claims). There are no similar pro bono programs serving low income appellate litigants (other than one limited clinic for domestic violence victims).

After these extensive investigations, the ATAJ committee concluded there is a strong demand and a large supply but no currently organized means to match pro bono attorneys with low-income pro per appellate litigants who urgently need help. The ATAJ committee further concluded that a program could be designed to effectively connect these parties, and that this program would not require direct court involvement or initial funding. We discuss this proposed program in the section below.

IV. **PROGRAM DESCRIPTION**

A. **General Overview**

The proposed pilot program will connect interested attorneys who have at least a moderate level of experience with unrepresented litigants who qualify for an appellate fee waiver and whose cases meet the criteria for the program.

Applicants seeking representation will be eligible to apply after the notice of appeal and an appellate fee waiver application have been filed. An APS standing committee will then perform a nonmerits review to determine if the applicant meets minimum requirements. If so, the case will be placed on an online spreadsheet and made available to eligible attorneys.

The program will then operate as a clearinghouse, meaning that neither the APS nor the SDCBA will screen the case merits or assist with the appeal. Instead, interested volunteer attorneys will investigate the potential merits of the appeal, decide whether to go forward with the representation, and sign an independent pro bono engagement letter.

Neither the APS nor the SDCBA will be involved in merits screening, nor the appellate representation. The engagement letter and all program documents will make this clear.

We outline the component parts of the program below. The program details will be adjusted as the pilot program is implemented and tested.

B. **Eligible Cases**

1. The program will be available to unrepresented civil appellants or respondents who qualify for an appellate fee waiver.

2. The program applies only to cases in which a notice of appeal has been filed.

3. To prevent the appearance of unfairness and potential conflicts, the program will *not* be available if the appellant and respondent were both unrepresented below.

4. The pilot program will be restricted to appeals from the San Diego County Superior Court to the Fourth District Court of Appeal, Division One.

5. The pilot program does not limit the types of civil cases that are eligible.

C. **Eligible Attorneys**

1. ATAJ pro bono attorneys will be required to have the following experience:

   (a) six years' civil litigation experience as a California-licensed attorney, OR

   (b) three years' experience as a California-licensed attorney plus served as counsel on one completed civil appeal in a California appellate court or Ninth Circuit; OR

   (c) served as counsel on five completed civil or criminal appeals in a California appellate court and/or the Ninth Circuit.

2. At least one attorney for each client must complete a 90-minute training workshop focusing on appeals in the Fourth District Court of Appeal, Division One.

3. All attorneys must have an active malpractice insurance policy and no record of discipline by the State Bar.

4. All attorneys will have access to the ATAJ Attorney Mentor panel, and will be encouraged to consult with these mentor attorneys.

D. **Application Process**

1. The process begins when a party files a notice of appeal. At that point, the appellant or respondent will be eligible to apply for an ATAJ pro bono attorney.

2. Application forms will be available on the SDCBA website and at the CASHW workshop. The ATAJ committee will seek cooperation from the courts to make the forms available on the court websites and at the court clerk's offices in each superior court location where notices of appeal are filed.

3. Applicants will be directed to return the application form as soon as possible after the filing of the notice of appeal. Although there will not be a strict deadline, the parties will be encouraged to file the application within five days after the notice is filed.

4. The form will request basic information about the litigant and the case. The form will also inform litigants:

(a) filing an application does not guarantee an attorney willing to represent the applicant and they must continue with their case without waiting to hear if they are matched with an attorney, or risk dismissal;

(b) applicants should not reveal any confidential information on the application;

(c) Neither the SDCBA nor the APS will represent the applicant or provide legal advice.

E. **Application Review Process**

1. After approval of the pilot proposal, the APS will form a standing committee responsible for overseeing the program.

2. Upon receipt of an application, the committee will review the application solely to ensure the applicant:

(a) has an active appeal;

(b) had a fee waiver in the superior court and has applied for an appellate fee waiver;

(c) was the only pro per party below; and

(d) there are no obvious procedural defects and the appeal is not patently frivolous.

3. The APS committee will then place submitted applications for all qualified cases on a google.docs-type spreadsheet and will email eligible attorneys when cases are uploaded. ATAJ attorneys will have online access to the spreadsheet.

4. An ATAJ attorney may place a hold on a case for a limited time. Once a hold is placed, the ATAJ attorney will be expected to contact the applicant and make an appearance as counsel in the appeal or release the hold.

5. If no attorney arranges for representation within 30 days, the case will be removed from the spreadsheet, and the pro per applicant will be notified that no volunteer attorney accepted representation.

6. The ATAJ committee will seek approval from the superior court for no-cost online access to the court's Register of Actions for ATAJ attorneys who are investigating potential pro bono representation.

F. **Procedures for a Successful Match**

1. If an ATAJ attorney accepts a case, the attorney must agree to represent the litigant on a pro bono basis (including costs) and memorialize this agreement in a signed written retainer agreement.

2. The retainer agreement must include a provision that the client acknowledges no attorney-client relationship is being created with the SDCBA and/or an APS member, and that neither has provided legal advice or guaranteed competent representation.

G. **ATAJ Mentor Panel**

1. The APS shall recruit a panel of experienced appellate practitioners interested in mentoring newer attorneys in the pilot program. (The ATAJ committee has identified a substantial number of experienced attorneys who have expressed interest in serving on this panel).

2. The APS will post contact information for Mentor Panel attorneys, and ATAJ counsel will be encouraged to consult these mentors.

3. The Mentor Panel may offer to conduct moot court arguments if requested by an attorney.

V. **PROGRAM GOALS**

The APS intends to learn from the first year pilot-program experience and make any needed modifications during the year. The APS will then provide a written evaluation that will include statistical data and a quantitative analysis of the data.

For the first year of the program, the program goal is to match at least three self-represented appellants with pro bono attorneys. If the program is successful, the APS intends to share information learned from this pilot program with other California jurisdictions with the goal of promoting statewide pro bono appellate programs.

The longer-term program goals include: (1) promoting access to justice for a substantial portion of low income appellate litigants; (2) enhancing efficiency of court procedures serving these litigants; and (3) providing a mechanism for local attorneys to obtain appellate experience and give back to the community.

VI. **INSURANCE AND RISK MANAGEMENT ISSUES**

The ATAJ committee examined potential risk management issues in response to the SDCBA Executive Board's request that we address these issues in this proposal. After consulting with other program officials and experts in the risk management field, the committee has concluded there is a very low risk of any liability issues arising from the program. This is consistent with the experience by other appellate matching pro bono programs. The program's "free market" structure mitigates risk because the APS merely serves as a clearinghouse and will not refer cases to specific attorneys or have any responsibility for monitoring the attorneys.

But to ensure maximum protection, the committee considered several steps to limit any possible exposure. These steps include the following, which will be implemented to the fullest extent allowed:

1. The program intake form will require that applicants acknowledge that no attorney-client relationship exists between the applicant and SDCBA/APS members; that APS members will not provide legal advice; that an application does not guaranty a pro bono attorney will be willing to accept representation; that the applicant must continue to comply with all deadlines or the case may be dismissed; and that any attorney-client relationship would be solely between the litigant and the pro bono attorney, not the SDCBA or APS members.

2. The program website would require applicants who apply online to click on an "I Agree" button after viewing the notices described in Step 1.

3. Participating attorneys who receive cases through the pilot program must meet the minimum eligibility requirements; have access to mentor attorneys; and attend the required training program specific to the Court of Appeal, Fourth Appellate District, Division One.

4. All APS attorneys must have the litigant sign a retainer agreement that includes a provision that the client acknowledges no attorney-client relationship is being created with the SDCBA and/or an APS member, and that neither has provided legal advice or guaranteed competent representation.

5. All participating pro bono attorneys must have their own malpractice insurance.

VII. **POSSIBLE NEXT STEPS**

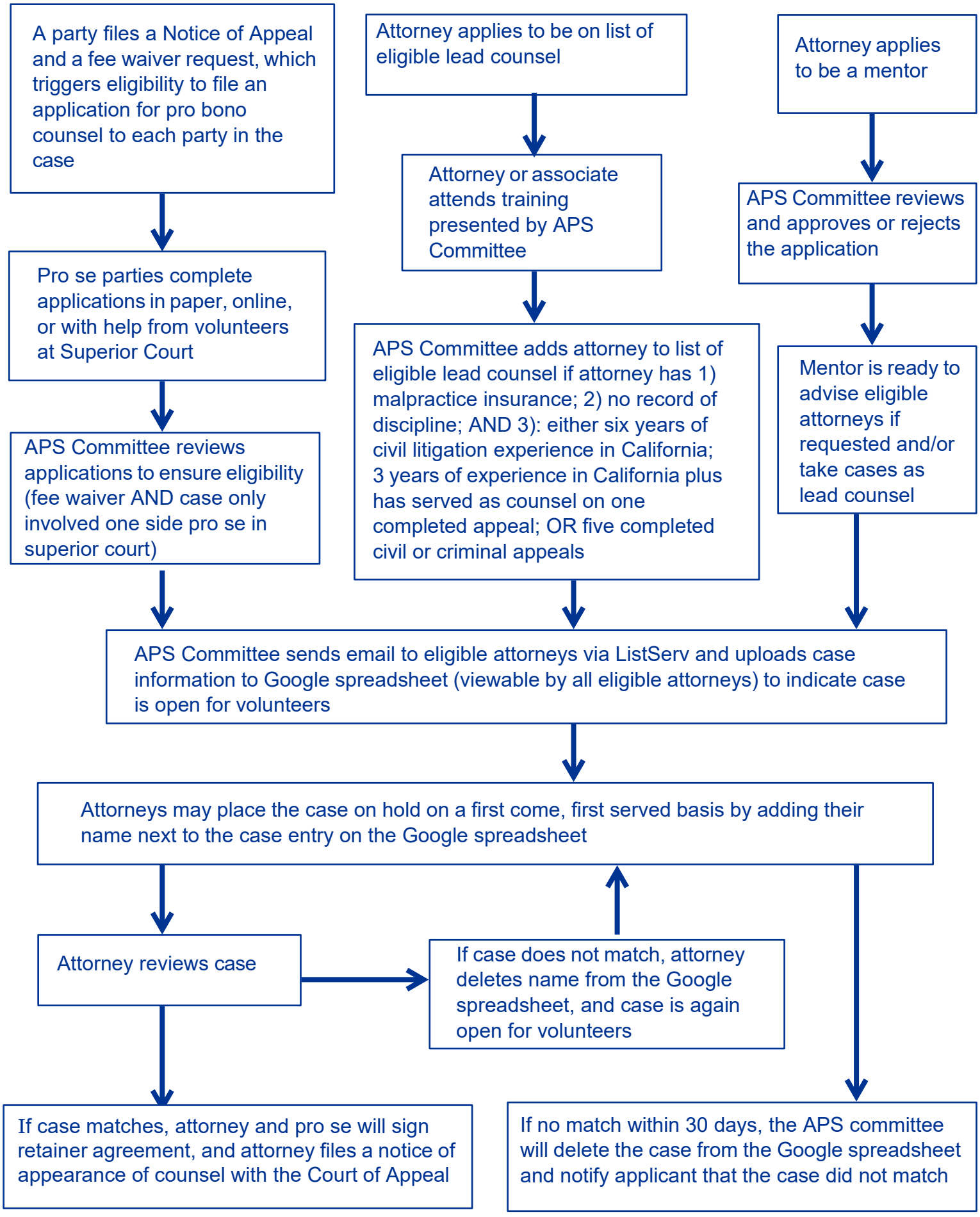
The ATAJ committee assessed many different models for providing pro bono representation to civil litigants. The proposed pilot program uses a "hands off" approach. The program leaves it to self-represented litigants to take the initiative and apply to the program, and leaves it to ATAJ attorneys to assess the potential merits of an appeal, contact the applicant, and decide whether to undertake representation.

By contrast, the Ninth Circuit and several states have pro bono programs that can be triggered by a judicial request for assistance with a specific case or issue. These jurisdictions use various mechanisms to arrange for volunteer attorneys to brief issues if the court believes such briefing would be helpful to the resolution of an appeal. The most interesting is one in which the court appoints attorneys as amicus counsel in a pro se case in which the court believes it would benefit from additional briefing. If the pilot program is successful, the APS envisions a possible proposal for a second phase of the program where the program is expanded to include amicus appointments. A follow-up proposal of this nature would need to be explored and vetted with the Court of Appeal.

Other possible future proposals include: (1) identifying funding sources to assist pro bono attorneys with record and other costs; (2) initiating discussions with the Court of Appeal for a standing 30-day stay order on record preparation while a pro per application is being considered (resulting in long term savings of time and costs for the court, the attorneys, and the litigants); and (3) expanding the program to included limited civil appeals.

Exhibit 1

The Access to Appellate Justice Program Process



Updated 12/1/2018

Exhibit 2

COUNCIL OF APPELLATE LAWYERS

MANUAL ON PRO BONO APPEALS PROGRAMS

For State Court Appeals

Second Edition ~ November 2017

ABA Judicial Division

AMERICAN BAR ASSOCIATION

TABLE OF CONTENTS

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 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. 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 exits 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/2017ProSeLitigant s.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/Superiorcourtljccivilappealsudat ed.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/CBAAppProBonocProgram_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
(813) 223-4300
jeagleton@bhappeals.com

Sarah Lahlou-Amine, Esq.
Banker Lopez Gassler P.A.
Tampa, FL
(813) 384-3994
slahlou@bankerlopez.com

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 bsiegel@vlpnet.org

Cindy Palmquist cpalmquist@vlpnet.org

Brian Dunphy
bdunphy@mintz.com

Sue Finegan
sfinegan@mintz.com

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

Thomas H. Boyd, Esq. (Unemployment Appeals) 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/APBPOver view.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.lacsnprobono.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.lacsnprobono.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.lacsnprobono.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@lacsn.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
Chief Attorney
Appeals and Post-Conviction Unit The
Legal Aid Bureau of Buffalo, Inc. 290
Main Street, Suite 350
Buffalo, N.Y. 14202
(716) 853-9555 ext. 679
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
(503) 370-6652
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 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
(512) 716-8308
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 assign attorneys to cases and transmit 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

Colleen D. Ball, Esq.
Milwaukee, WI 53202
(414) 227-3110
ballc@opd.wi.gov

88367315.2

THE CalATJ LOAN REPAYMENT ASSISTANCE PROGRAM (LRAP)FOR LEGAL AID LAWYERS

March 15, 2024

Overview: The California State Legislature has recognized the California Access to Justice Commission (CalATJ) in statute (Gov. Code Sections 68655-68659). It has appropriated $250,000 "to provide funding to the California Access to Justice Commission to administer a tax-advantaged student loan repayment assistance program for service providers employed by qualified legal service projects and support centers." (Stats. 2023, Ch.34, Sec.23 (SB133) Effective June 30, 2023.)

The need for this program: New legal aid job openings now stay unfilled for months. Retaining experienced lawyers is, if anything, a bigger problem. One-third of California legal aid lawyers leave for other jobs each year. Candidate lawyers considering legal aid jobs and veteran lawyers deciding whether to stay report that the number one concern is money.[i] Student loan payments are a major factor. Over 84% of entry-level candidates and over 75% of all legal aid lawyers have educational debt, with the median amount being between $125,000 and $149,000, with typical interest and principal payments of $8000 per year. The problem is even worse for legal aid lawyers of color with a median educational debt range of $200,000–$225,000 (2014 to 2018 graduates) and higher interest and principal payment burdens.[ii]

An efficient, tax-advantaged answer: Student loan borrowers ordinarily make their payments with after-tax dollars. However, CalATJ, as a nonprofit public benefit corporation, can make new loans to refinance the principal and interest payments of a participating legal aid lawyer. CalATJ can then cancel these refinance LRAP loans for lawyers who stay on the job. Although most loan cancellations are taxable, the program is designed to comply with Internal Revenue Code section 108(f), which excludes canceled student loans from the debtor's taxable income. CalATJ's cancellation of refinance LRAP loans will create the tax advantage that the California Legislature intended CalATJ to accomplish.

Funding: The California Legislature created the main source of capital for this program by amending Business & Professions Code Section 6219(b) to authorize qualified legal services projects and support centers, as defined in that article, "[t]o provide loan repayment assistance in accordance with a loan repayment assistance program administered by the California Access to Justice Commission for the purposes of recruiting and retaining attorneys who perform services as described in Section 6218 and permitted by Section 6223." This allows legal aid organizations to use their IOLTA and Equal Access Fund (EAF) money for the CalATJ LRAP.

CalATJ will accept contributions from qualified legal services projects and support centers to fund LRAP loan distributions to attorneys as permitted in Section 6219(b). In addition, if legal aid organizations are authorized to use other funding for LRAP loan distributions to other service providers, CalATJ will administer those LRAP loan distributions.

CalATJ will, in the future, seek other contributions to support its LRAP loan program.

Persons Served: As the preceding response states, CalATJ's LRAP loan borrowers will be attorneys or other service providers (subject to the restrictions on the sources of contributed funds used) employed by California legal aid organizations. There are approximately 1700 attorneys who work for California legal aid programs funded by IOLTA and EAF.

If borrowers satisfy the requirements for cancellation of their LRAP loans, according to the program's purpose, they will not have to repay CalATJ for the LRAP distributions. By conforming to Internal Revenue Code section 108(f), the cancelled loan balance is excluded from the taxable income of the recipient. CalATJ will confirm, before advancing loan distributions, that the recipient is in conformity with the requirements for cancelling the loan. This will minimize the risk that any recipient will have to repay the loan or have to pay taxes on the distributions.

More information is at https://calatj.org/lrap

---

[i] *See* CalATJ's report: *Legal Aid Recruitment and Retention*, https://calatj.org/publication/legal-aid-recruitment-retention-and-diversity-2022/ at pages 15-16.

[ii] *Justice at Risk* at 32.

AMENDED IN SENATE APRIL 27, 2023

AMENDED IN SENATE MARCH 20, 2023

SENATE BILL No. 662

Introduced by Senator Rubio

February 16, 2023

An act to add Section ~~8028~~ *8023.3* to the Business and Professions Code, and to amend Section 69957 of, and to add Section 69957.5 to, the Government Code, relating to courts.

legislative counsel's digest

SB 662, as amended, Rubio. Courts: court reporters.

Existing law establishes the Court Reporters Board of California to license and regulate shorthand reporters. Existing law establishes that a person who holds a valid certificate as a shorthand reporter shall be known as a "certified shorthand ~~reporter," and prohibits any other person, except as specified, from using that title or any words or symbols that indicate or tend to indicate that they are a certified shorthand reporter. A violation of the provisions regulating shorthand reporters is a misdemeanor.~~ *reporter." Existing law requires an individual to have satisfactorily passed an examination, as prescribed by the board, in order to be certified as a shorthand reporter.*

~~This bill would authorize the board to issue a provisional certificate, that would be valid for 3 years, to an individual who has passed the Registered Professional Reporter examination administered by the National Court Reporters Association or who is eligible to take the examination to become a certified shorthand reporter approved by the board, as specified. By expanding the scope of a crime, this bill would impose a state-mandated local program.~~

This bill would require the board, in consultation with the Office of Professional Examination Services of the Department of Consumer Affairs, to evaluate the necessity of requiring applicants who have passed either the National Court Reporters Association's or the National Verbatim Reporters Association's certification examination to demonstrate competency as a certified shorthand reporter. The bill would require the board to submit its findings to the appropriate policy committees of the Legislature on or before June 1, 2024. The bill would authorize the board to replace the state-specific examination requirement with the National Court Reporters Association's or the National Verbatim Reporters Association's certification examination if the board concludes that the current state-specific examination is not necessary to establish a minimum level of competency of shorthand reporters and that the examination poses a barrier to licensure as a shorthand reporter.

Existing law authorizes a superior court to appoint official reporters and official reporters pro tempore as deemed necessary for the performance of the duties of the court and its members. Existing law also authorizes a court to use electronic recording equipment to record an action or proceeding in a limited civil case, or a misdemeanor or infraction case, if an official reporter or an official reporter pro tempore is unavailable.

This bill would instead permit a court to electronically record any civil case if approved electronic recording equipment is available. The bill would require a court to provide a certified shorthand reporter, as defined, the right of first refusal to transcribe an electronically reported proceeding. The bill would additionally require that the court make every effort to hire a court reporter before electing to electronically record the action or proceedings pursuant to these provisions.

Existing law appropriated $30,000,000 in both the 2021–22 and 2022–23 fiscal years to the Judicial Council to be allocated to courts to increase the number of official court reporters in family and civil law cases, as specified.

The bill would require the Judicial Council to collect information from courts regarding how they are utilizing funds appropriated to recruit and hire court reporters. The bill would require, beginning January 1, 2025, and annually thereafter until all such funds are expended, the Judicial Council to report to the Legislature the efforts courts have taken to hire and retain court reporters and how the funds appropriated for this purpose have been spent.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) There is a fundamental right to a verbatim record of any court proceeding because without an accurate record, litigants may not understand what the judge has ordered.

(b) The lack of a verbatim record of court proceedings may result in attorneys declining to take cases on appeal or may result in law enforcement being unable to enforce, among others, active restraining orders or child custody and visitation orders.

(c) Many Californians, regardless of income, are navigating critical civil legal issues without legal representation or meaningful legal assistance. Nearly 90 percent of people facing eviction are unrepresented, and one or both parties are unrepresented in 70 percent of family law cases. The problem is worse for low-income Californians, particularly communities of color, tribal communities, rural Californians, those with disabilities, those who are limited English proficient, seniors, and people who have experienced domestic violence or sexual assault.

(d) Under existing law, the verbatim record may only be captured and transcribed by a certified shorthand reporter (CSR) in California courts, however, since 2013, an exception has been made to allow electronic recording in eviction cases, small claims court, traffic court, and misdemeanor criminal cases.

(e) A CSR is required to be provided in felony criminal cases and juvenile justice and dependency cases. In all other types of cases, the court is not required to provide a CSR, except upon the request of an indigent litigant. Parties may arrange for the services of a court reporter in all other cases, at an average cost of $3,300 per day.

(f) California courts currently employ about 1,200 full-time court reporters. To provide CSRs in mandated cases, courts estimate they will need to hire approximately 650 new court reporters. Over 50 percent of California courts have reported that they do not have CSRs to routinely cover nonmandated cases, including civil, family law, and probate cases, and over 30 percent can never provide CSRs in those cases. Currently, 74.5 percent of courts are actively recruiting official court reporters to fill vacancies throughout California, with 102 court reporter vacancies for the Los Angeles County Superior Court alone.

(g) Although indigent litigants are entitled to a CSR free of charge, courts are increasingly unable to fulfill those requests. Instead, indigent litigants, including those seeking domestic violence restraining orders, emergency custody orders, and elder abuse and civil harassment protection orders, are forced to choose whether to proceed with their matter without a verbatim record or to return to court at a later date when a CSR may be available.

(h) In 2022, the Legislature appropriated $32,000,000 for courts to recruit, hire, and retain CSRs. These funds are meant for courts to offer salary raises, bonuses, and educational benefits to incentivize becoming a court reporter. According to the preliminary fiscal year 2022–23 Schedule 7A, court-employed reporters' median total salary and benefits ~~is~~ *are* an estimated $184,184. This is significantly lower than the cost to hire a court reporter through a private company at $2,580 per day for a deposition and $3,300 per day for a trial, on average. Additionally, transcripts must be purchased from court reporters. In 2021, the Legislature increased the statutory transcript fees by approximately 30 percent. In the 2021–22 fiscal year, California courts spent $18,400,000 on transcripts.

(i) Courts must compete with the private market for CSR services and these services are required, on a daily basis, for thousands of non-court proceedings, including depositions, administrative hearings, arbitration hearings, and cases being heard by private judges.

(j) In 2022, there were 5,605 active CSRs of whom 4,829 listed an address in California. The number of licensed CSRs has been steadily dropping from 8,004 in 2000, to 7,503 in 2010, to 6,085 in 2020, representing a 30-percent decline since 2000.

(k) According to the National Court Reporters Association, the average court reporter is 55 years of age. In California, 44 percent of all licenses were issued 30 years ago or more.

(*l*) Applications to take the CSR licensing exam have declined, and the passage rate is low. In 2018, 369 individuals took the licensing exam, and in 2021, only 175 individuals took the exam. Of those, only 40 individuals passed. In 2015, 96 licenses were issued, and in 2021, only 39 licenses were issued. Currently, only 8 court reporter training programs remain in California, down from 16 programs in 2011.

(m) In January and February of 2023 alone, the Los Angeles County Superior Court was unable to provide a CSR in 52,000 nonmandated civil, family, and probate cases. According to calculations by the court, this will result in over 300,000 cases going without a record this year.

(n) Where electronic recording is permitted, California has implemented stringent technical standards to ensure the recordings are of high quality and can be transcribed for use to craft orders, provide meaningful access to an appeal, and for use in future proceedings to enforce or modify a court's prior orders.

(o) Electronic recordings are subject to the same privacy, ~~protection~~ *protection,* and storage requirements as all other digital records held by California courts, and all California courts are required to maintain digital court files.

(p) The Court Reporters Board of California should allocate funding toward recruitment and retention by publicizing the profession to high schools, vocational schools, and higher education institutions.

(q) Courts are encouraged to provide senior CSRs as mentors to provisionally licensed CSRs until the expiration of the provisional license and ensure that courts continue to recruit, hire, and retain CSRs to the fullest extent possible.

~~SEC. 2. Section 8028 is added to the Business and Professions Code, to read:~~

~~8028. (a) The board may issue a provisional certificate to perform the duties of a certified shorthand reporter in a court in this state to an individual who meets either of the following:~~

~~(1) The individual has passed the Registered Professional Reporter examination administered by the National Court Reporters Association.~~

~~(2) The individual is eligible to take the examination approved by the board pursuant to Section 8020.~~

~~(b) A provisional certificate issued under this section shall terminate three years from the date of issuance and may not be renewed.~~

SEC. 2. Section 8023.3 is added to the Business and Professions Code, to read:

8023.3. (a) The board, in consultation with the Office of Professional Examination Services of the Department of Consumer Affairs, shall conduct a review of the examination required for licensure, including all three parts required under Section 2420 of Title 16 of the California Code of Regulations to evaluate the necessity of requiring applicants who have passed either the National Court Reporters Association's or the National Verbatim Reporters Association's certification examination to demonstrate competency as a certified shorthand reporter.

(b) The board shall evaluate whether the examination pursuant to Section 2420 of Title 16 of the California Code of Regulations should be replaced with acceptance of the National Court Reporters Association's or the National Verbatim Reporters Association's certification examination to establish proficiency in machine shorthand reporting or voice writing required for licensure.

(c) The board shall submit its findings to the appropriate policy committees of the Legislature on or before June 1, 2024, during its regular Joint Sunset Review Oversight Hearings.

(d) Notwithstanding any other law, if the board, following the evaluation conducted pursuant to subdivision (a), concludes that the California-specific examination is not necessary to establish a minimum level of competency of shorthand reporters and that the examination poses a barrier to licensure as a shorthand reporter, the board may vote to replace the examination with the National Court Reporters Association's or the National Verbatim Reporters Association's certification examination. Until that time, the board may otherwise revise its examination requirements based on the evaluation conducted pursuant to subdivision (a).

SEC. 3. Section 69957 of the Government Code is amended to read:

69957. (a) If an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court,

subject to the availability of approved equipment and equipment monitors, the court may order that, in any civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. A transcript derived from an electronic recording may be utilized whenever a transcript of court proceedings is required. Transcripts derived from electronic recordings shall include a designation of "inaudible" or "unintelligible" for those portions of the recording that contain no audible sound or are not discernible. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use and shall only be purchased for use as provided by this section. A court shall not expend funds for or use electronic recording technology or equipment to make an unofficial record of an action or proceeding, including for purposes of judicial notetaking, or to make the official record of an action or proceeding in circumstances not authorized by this section.

(b) If a transcript of court proceedings is requested, the court shall provide a certified shorthand reporter the right of first refusal to transcribe the electronically recorded proceeding. For the purposes of this section, "certified shorthand reporter" means the same as in Section 8018 of the Business and Professions ~~Code and includes an individual with a provisional certificate issued pursuant to Section 8028 of the Business and Professions Code.~~ *Code.*

(c) The court shall make every effort to hire a court reporter for an action or proceeding before electing to have the action or proceeding be electronically recorded pursuant to subdivision (a).

(d) Notwithstanding subdivision (a), a court may use electronic recording equipment for the internal personnel purpose of monitoring the performance of subordinate judicial officers, as defined in Section 71601 of the Government Code, hearing officers, and temporary judges while proceedings are conducted in the courtroom, if notice is provided to the subordinate judicial officer, hearing officer, or temporary judge, and to the litigants, that the proceeding may be recorded for that purpose. An electronic recording made for the purpose of monitoring that performance

shall not be used for any other purpose and shall not be made publicly available. Any recording made pursuant to this subdivision shall be destroyed two years after the date of the proceeding unless a personnel matter is pending relating to performance of the subordinate judicial officer, hearing officer, or temporary judge.

(e) Prior to purchasing or leasing any electronic recording technology or equipment, a court shall obtain advance approval from the Judicial Council, which may grant that approval only if the use of the technology or equipment will be consistent with this section.

(f) The Judicial Council shall adopt rules and standards regarding the use of electronic recordings to ensure recordings are able to be easily transcribed.

SEC. 4. Section 69957.5 is added to the Government Code, to read:

69957.5. (a) The Judicial Council shall collect information from courts regarding how they are utilizing funds appropriated to recruit and hire court reporters. Courts shall include whether the court reporters they have hired are court reporters that are returning to court reporting after having left the profession, coming from another court, coming from the private market, or are new to the profession in California.

(b) Beginning January 1, 2025, and annually thereafter until all such funds are expended, the Judicial Council shall report to the Legislature the efforts courts have taken to hire and retain court reporters and how the funds appropriated for this purpose have been spent. The report shall include whether the court reporters that have been hired are court reporters that are returning to court reporting after having left the profession, coming from a different court, coming from the private market, or are new to the profession in California. The report shall comply with Section 9795 of the Government Code.

~~SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within~~

~~the meaning of Section 6 of Article XIII B of the California Constitution.~~

O