



COUNSEL TO GREAT COMPANIES

Idaho State Bar's Appellate Practice Section

A Snapshot of Pro Bono and Mentoring Programs In The Ninth Circuit Court of Appeals

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Pro Bono Program: Overview



- ❖ Program was established in 1993
- ❖ A significant percentage of new appeals filed in the Ninth Circuit have at least one party appearing pro se
 - In January 2012, approximately 50% of newly filed appeals had at least one pro se party
- ❖ Primary purpose is to provide pro bono counsel to pro se litigants in meritorious and complex appeals
- ❖ Program also assists the court in processing civil pro se appeals in a more equitable and efficient manner, and ensures that pro se cases receive the same attention as other cases of similar complexity

How A Case Is Selected For Inclusion



- New pro se civil appeals are initially reviewed by court staff for jurisdictional defects and are dismissed if jurisdiction is lacking
- Others appeals may be dismissed for failure to prosecute or are otherwise summarily disposed of on clear procedural grounds; others may be processed on the merits by staff attorneys through presentation to oral screening panels where oral argument is deemed unnecessary (usually in cases where the result is clear and the applicable law is well-established in the Ninth Circuit)
- Only cases that involve issues of first impression, have some level of complexity, or might otherwise warrant further briefing and oral argument are selected for appointment of pro bono counsel

How A Case Is Selected For Inclusion (cont'd)



- A staff attorney, the Ninth Circuit appellate commissioner and/or a panel of judges will review the merit and complexity of each pro se civil appeal
- Many of the cases include prisoner civil rights appeals or immigration petitions
- But may also include labor and employment cases, discrimination, bankruptcy, social security, Indian law, mining law, contract law, and civil forfeiture appeals
- Direct criminal or simple habeas corpus appeals are NOT included because appellants are entitled to paid counsel in these cases

How Pro Bono Counsel Is Assigned



- Once order is issued placing appeal in pro bono program, court staff will contact district coordinator who is responsible for locating pro bono counsel
- Copies of any briefs or case materials not available through Pacer will be made available to prospective pro bono counsel so he/she can review the issues on appeal, the case history and the parties involved before deciding whether to accept the appointment
- Pro bono counsel must be a member of the Ninth Circuit bar
- Upon accepting the appointment, court staff will work with counsel to formulate a mutually convenient briefing schedule
- A Clerk's order will then be entered appointing counsel and setting the briefing schedule
- Pro bono counsel should send a letter to client outlining terms of representation and obtaining client's consent to representation

How Pro Bono Counsel Is Assigned (cont'd)

- ❑ A sign-up form is available on the court's website, www.ca9.uscourts.gov/probono
- ❑ Each district in the circuit has a district coordinator who recruits volunteer attorneys for the program
- ❑ District coordinator for District of Idaho is Leonard J. Feldman, Feldman@pwrlk.com



Scope Of Appointment



- The order of appointment states that counsel is appointed “for the purposes of the appeal only”
- Pro bono counsel is responsible for only handling the appeal (which may include participating in mediation or drafting a petition for rehearing, where appropriate)
- But does NOT include the filing of a petition for certiorari in the Sup. Ct., or participating in any other court/agency proceedings unless specifically requested by the Ninth Circuit panel and agreed upon by counsel and client

Benefits of Participation



- ✓ Oral argument is guaranteed unless counsel opts out (see 9th Cir. Gen. Order 3.7)
- ✓ Pre-screening of cases ensures complex appeals
- ✓ Certain expenses are reimbursable (see expense reimbursement request form on court's pro bono webpage)
- ✓ Success rate for pro bono attorneys in the program is approx. 50% (at least partial reversal or other termination favorable to pro bono counsel)
- ✓ Provides a valuable learning experience for inexperienced counsel
- ✓ Serves as a manageable pro bono commitment

Program Resources



- ❑ Due to complex and ever-changing nature of immigration law, an immigration law outline is available on court's website, www.ca9.uscourts.gov/probono
- ❑ Pro bono counsel may also request assistance from the Immigrant Legal Resource Center (ILRC) by calling 415-255-9499
- ❑ Program specifics are summarized in a Pro Bono Program Handbook on court's website, which includes sample order of appointment and a sample representation letter
- ❑ For a personal program review, check out Leonard Feldman's May 2008 article in *The Federal Lawyer* posted on court's pro bono webpage
- ❑ Have other questions about pro bono program? Call 415-355-8020, or email Probono@ca9.uscourts.gov

Appellate Mentoring Program: Overview

- ❖ Mentoring is provided on a voluntary basis to attorneys who are new to federal appellate practice or who do not frequently handle appellate matters
- ❖ Type of assistance provided includes mentoring regarding general appellate practice, as well as immigration law and habeas corpus petitions
- ❖ Mentors are volunteer attorneys who have experience in these areas
- ❖ Assistance is limited to counseled cases



Mentoring Program: How It Works

- Appellate Lawyer Representatives (ALRs) serve as coordinators who recruit volunteer attorneys with appellate expertise to serve as mentors
- Program information is provided to counsel by court staff in case opening materials and information is posted on court website
- To request a mentor, contact court staff at mentoring@ca9.uscourts.gov and they will notify local ALR who will identify a mentor



Mentoring Program: How It Works (cont'd)

- ✓ Type of mentoring offered will depend on nature of the case, mentee's needs and mentor's availability
- ✓ Examples of mentoring may include guidance on mechanics of perfecting an appeal, effective research methods, identification of appellate issues, strategy, appellate motion practice and brief writing tips
- ✓ Mentee is solely responsible for handling appeal and client relationship; mentor has no professional liability for advice given



Please Consider Volunteering Today!

*As you grow older, you will discover
that you have two hands.*

*One for helping
yourself, the other
for helping
others.*

—Audrey Hepburn

